

August 19, 2021

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY PLANNING COMMISSION
Naples, Florida
August 19, 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.
Christopher T. Vernon
Tom Eastman, Collier County School Board Representative

ALSO PRESENT:

Raymond V. Bellows, Zoning Manager
Michael Bosi, Planning and Zoning Director
Jeffrey Klatzkow, County Attorney
Heidi Ashton-Cicko, Managing Assistant County Attorney

PROCEEDINGS

CHAIRMAN FRYER: Good morning. This is the August 19, 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: Will the secretary please call the roll.

COMMISSIONER FRY: Thank you, Mr. Chairman.

Mr. Eastman.

MR. EASTMAN: Here.

COMMISSIONER FRY: Mr. Shea.

COMMISSIONER SHEA: Here.

COMMISSIONER FRY: I'm here.

Chairman Fryer.

CHAIRMAN FRYER: Here.

COMMISSIONER FRY: Vice Chair Homiak.

COMMISSIONER HOMIAK: Here.

COMMISSIONER FRY: Mr. Schmitt.

COMMISSIONER SCHMITT: Here.

COMMISSIONER FRY: Mr. Vernon.

COMMISSIONER VERNON: Here.

COMMISSIONER FRY: Mr. Klucik.

COMMISSIONER KLUCIK: Here.

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

CHAIRMAN FRYER: Thank you very much. Welcome all, and a special welcome to our esteemed colleagues who have graduated to the dais. We're very proud to be sitting alongside you, and we -- we are already functioning in a very close fashion, and now we're physically close, too. So that's great. Welcome all.

First of all, on addenda to the agenda we had had something that has been canceled, and that is that we received -- we'd all received an e-mail from Judith Hushon on behalf of the League of Women Voters who wanted to allow an expert witness to testify out of order in order to accommodate his teaching schedule. Just since we all got that e-mail, I wanted to report back to you that as of yesterday evening when she called me, that request has been withdrawn.

Mr. Bellows, any other addenda to the agenda?

MR. BELLOWS: No other changes.

CHAIRMAN FRYER: Thank you, sir.

Planning Commission absences. Our next meeting is September 2, 2021. Anyone know if they will not be able to be here?

(No response.)

CHAIRMAN FRYER: Sounds good. And the one after that is the 16th. Same question.

(No response.)

CHAIRMAN FRYER: All right.

COMMISSIONER SCHMITT: Sixteenth of October?

CHAIRMAN FRYER: Of September.

COMMISSIONER SCHMITT: Oh, I'll be here.

CHAIRMAN FRYER: Good, good.

COMMISSIONER SCHMITT: Jumping ahead a month.

COMMISSIONER HOMIAK: Where you going; Kabul?

COMMISSIONER SCHMITT: Yeah, I'm going to Kabul. Been there enough. I could talk about that for the next hour.

CHAIRMAN FRYER: Yeah. It's terrible what's going on there.

All right. We've got three sets of minutes to act upon. The first set is those of our

May 26th meeting. Any corrections, changes, or additions to those minutes?

(No response.)

CHAIRMAN FRYER: Hearing none, is there a motion to approve them as submitted?

COMMISSIONER HOMIAK: Motion to approve.

CHAIRMAN FRYER: Is there a second?

COMMISSIONER SCHMITT: Second.

CHAIRMAN FRYER: Further discussion?

(No response.)

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

COMMISSIONER SHEA: Aye.

COMMISSIONER FRY: Aye.

CHAIRMAN FRYER: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER SCHMITT: Aye.

COMMISSIONER VERNON: Aye.

COMMISSIONER KLUCIK: Aye.

CHAIRMAN FRYER: Opposed?

(No response.)

CHAIRMAN FRYER: It passed unanimously.

Second, our meeting of June 3rd. Those minutes are also before you, June 3rd of 2021.

Again, any corrections, changes, or additions to those?

(No response.)

CHAIRMAN FRYER: Hearing none, is there a motion?

COMMISSIONER HOMIAK: Motion to approve.

CHAIRMAN FRYER: Is there a second?

COMMISSIONER SCHMITT: 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 HOMIAK: Aye.

COMMISSIONER SCHMITT: Aye.

COMMISSIONER VERNON: Aye.

COMMISSIONER KLUCIK: Aye.

CHAIRMAN FRYER: Opposed?

(No response.)

CHAIRMAN FRYER: It passed unanimously.

And third and last, our minutes of the June 17, 2021, meeting. Again, any corrections, changes, or additions to those minutes?

COMMISSIONER HOMIAK: Motion to approve.

CHAIRMAN FRYER: Is there a second?

COMMISSIONER SCHMITT: 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 HOMIAK: Aye.

COMMISSIONER SCHMITT: Aye.

COMMISSIONER VERNON: Aye.

COMMISSIONER KLUCIK: Aye.

CHAIRMAN FRYER: Opposed?

(No response.)

CHAIRMAN FRYER: It passed unanimously.

All right. BCC report and recaps. Mr. Bellows.

MR. BELLOWS: On July 13th, the Board of County Commissioners approved the RLSA adoption at their advertised public hearing, and on the summary agenda they approved the Lawmetka PUD amendment and the Blue Coral Apartments rezone and companion GMP amendments, and there were some LDC amendments that were approved, various LDC amendments.

CHAIRMAN FRYER: Thank you, sir.

Chairman's report, none today. Consent agenda, there's none on our agenda under that heading.

So we come to advertised public hearings, and the first one is matter No. PL2021000093, which is a proposed GMPA amendment regarding private property rights -- excuse me. My notes are wrong. My notes are wrong.

MR. YOVANOVICH: I'll sit back down.

CHAIRMAN FRYER: Let me correct myself here quickly, if I can. Here we are, okay.

***This is -- all right. It's the same number, PL2021000093, and it is the -- yeah, it is the Soluna RPUDZ. So we need to ask around if -- first of all, if are there any people who wish 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. Disclosures from the Planning Commission starting with Mr. Eastman.

MR. EASTMAN: No disclosures.

COMMISSIONER SHEA: Staff material and site visit.

COMMISSIONER FRY: Staff materials, e-mails, public record.

CHAIRMAN FRYER: Staff materials, meeting with staff, communications with the applicant, and communications with members of the public.

COMMISSIONER HOMIAK: I just exchanged e-mails with the petitioner.

COMMISSIONER SCHMITT: I had communications with Mr. Yovanovich and the applicant about the project.

COMMISSIONER VERNON: No disclosures.

CHAIRMAN FRYER: Thank you.

COMMISSIONER SHEA: Robb.

COMMISSIONER KLUCIK: Staff material and a staff meeting.

CHAIRMAN FRYER: Thank you. Thank you. It's going to take me a while getting used to having all eight of us up here, but I promise to do so.

Mr. Yovanovich, I'm going to ask you to rise if you would, please, sir, and I'm going to suggest that we have a conversation about a technical matter to precede the hearing that follows conversations I've had with the County Attorney and also staff. There may or may not be some action that the Planning Commission wishes to take with respect to this before it's started.

And I'm going to certainly ask Mr. Yovanovich to present his point of view on this, and I'm also going to ask the County Attorney to supplement what I intend to give as a brief presentation of what this issue has turned out to be.

The issue is the adequacy of the NIM audiotape. And I don't know whether anybody or everyone listened to that. I always do. I find it useful for a number of reasons: Listening, of course, for any commitments that an applicant might make but also for the tenor and content of the

questions and comments that are supplied by the staff.

The problem, in a nutshell, with this NIM audible -- audiotape is that it was almost nearly inaudible, at least from the standpoint of hearing members of the public. The applicant is to be heard crystal clear, and it's understanding that they used one microphone, and that was in the hands of the applicant. So to the extent at all that you can even hear remote noise from the members of the public, it's through that single microphone.

So in order to try to fix that situation so that we wouldn't have to have this discussion and possible action, we asked our own Mr. Troy Miller, who's our chief engineer, to try to somehow electronically augment or boost the signal, the output, so that the public could also be heard.

And he made diligent efforts, which we certainly appreciate but, unfortunately, he was not able to gain any improvement at all due to the fact that distortion or noise also gets boosted along with signal.

In addition to inaudibility, at least with respect to the public, is the issue that the tape has still not been posted to CityView, so it's not available to the public. And when I wanted to go back and hear the public comments or the applicant's presentation, I can always refer to CityView and hear it firsthand, even if there's a transcript, because it's posted there.

Some -- well, let me first say this just to make it perfectly clear: I'm not calling out anybody for any wrongdoing or any ill intentions. This is at most an honest inadvertence, and it's something that I think should and will be viewed by the Planning Commission in that light. And, in fact, to say Mr. Yovanovich, he hadn't even been engaged before this -- the NIM was held, so he's in no way responsible for it. He's very experienced in overseeing NIMs, and our experience with him shows that he really does deliver first-rate product, along with Mr. Mulhere and Mr. Arnold and many others who appear before us frequently.

So when I was speaking with staff on Tuesday, it was brought to my attention that some years ago Chairman Strain called for another NIM under similar circumstances. Now, by way of other background, the Collier County Land Development Code Administrative Procedures Manual in Section 8(B) says that the county staff planner assigned to attend the pre-application meeting or designee must attend the NIM and will serve as the facilitator of the meeting; however, the applicant is expected to make a presentation of how they intend to develop the subject property, and the applicant is required to audio or videotape the proceedings of the meeting and to provide a copy to the Planning and Zoning Department.

Now, I've also spoken with the County Attorney, and I know that he's been in touch with Mr. Yovanovich and with the staff, and I'm not going to speak for him except possibly just to short-circuit it to say that I believe he believes that this is a matter that is most appropriately acted upon by the Planning Commission whether it wishes to call for another NIM or go with the current one.

And so as I see it, I think we have several options here. One would be to make a decision right now, based upon the acknowledged inaudibility of much of the NIM, that we want another NIM. That's one option. A second option, I think, to take it with the case, so to speak, and by that I mean decide on the NIM issue at the close of the hearing when we decide on the merits of the matter. And then a third thing that occurred to me as, perhaps, a way of doing this -- and I'm a little less sanguine that it would work as I see not a lot of the members of the public are here today. But I was going to suggest that it might at least partially cure the NIM problem if we were a little more tolerant of the time allocated to members of the public to be sure that they make the points without being cut off, particularly if they had attended the NIM and wanted to make those points.

So that was just a potential solution that I thought of. I know that the -- that the applicant has some issues involving the tax law and possible changes where they'd like to get this done by the end of the year, and we certainly respect that it may or may not be appropriate to have another NIM and then deal with the other steps that the applicant would have to take to close, because they're contract purchasers.

So the staff has said that they're following the advice of the County Attorney on this. And

I don't want to presume to represent the views of the County Attorney. So, Mr. County Attorney, is there anything further that you'd like to add?

MR. KLATZKOW: The primary purpose of a NIM is to advise the community what's going on so that notice is given to the community. There's a public place that's open. They sit down. They can ask questions of the developer after a presentation, and the developer could -- if there are any issues between the community and the development, the developer has the opportunity to amend their plans accordingly. That's the primary purpose of it. That purpose was served here.

I don't know the purpose of having a second NIM. The people who are interested showed up for the first NIM. So I don't know how you cure the audio problem here.

I would make a suggestion that staff in the future consider whether or not they should be responsible for recording these things. I know they don't want to because that means if it's a screw-up it's on them, but I think there's far less likely for a screw-up if our capable staff does it than to rely on developers to do it. Mr. Yovanovich is very experienced in this. Not every developer, however, has an attorney as experienced as Mr. Yovanovich.

COMMISSIONER SCHMITT: Well, before he speaks, we would like to speak first.

CHAIRMAN FRYER: Yes, and I think that's in order. Do you have anything further, County Attorney?

MR. KLATZKOW: Yes. Whether or not the Board wishes to have a second NIM is entirely up to the discretion of the Planning Commission. I don't believe it's legally required, but if that's what you want, you are the Planning Commission.

CHAIRMAN FRYER: Thank you.

Commissioner Schmitt.

COMMISSIONER SCHMITT: Somebody was before me.

CHAIRMAN FRYER: Yeah, two people were, actually.

COMMISSIONER SCHMITT: All right. I understand the problem, but let's talk about the genesis of the NIM process. I happen to have been the administrator at the time when this thing was implemented, and it involved three different aspects of notice to the public.

One of the biggest problems we had, number one, we changed the requirements for the signage. In fact, in most cases you're driving 35, 40 miles an hour, you can't read the sign anyway; the second thing that was done was to improve the advertisement process, the maps that are included in the paper; and the third was the NIM.

But I have to ask. You used the word "facilitator." Staff, my recollection, is not the facilitator. This is a meeting held -- scheduled, held, and conducted by the petitioner to brief the public on what the proposed rezoning is going to be. Staff is only there to ensure, number one, that the meeting is conducted and, two, is to take administrative notes on the process or note any anomalies between the NIM and, of course, the application. And in that case, the requirement has been met.

The issue of recording came later in the process, and I can't recall when. I was probably long gone by then. But the recording's to be made available. The one instance where the NIM was rescheduled, I believe, had to do with erroneous or maybe misinformation being presented at the NIM. I don't think any of that took place in this case. It was a matter of the audio being available. Certainly, that's not the way -- what was supposed to be the intent when they do record these things, but it doesn't mean that there was -- it was not in compliance.

The NIM was conducted. The public attended. The questions were raised. Staff, I believe, captured those questions, and staff then included and checked in the review process to ensure that the various aspects of the questions asked or any changes that were made were incorporated in the PUD.

So the intent -- and the NIM was actually conducted. I'm not sure if there's even a statute to stand on to require the NIM to be rescheduled. There's nothing in the -- in the LDC that describes the quality of the audio. Maybe there should be. I don't know. But the intent was

never to have staff be involved in the NIM process because it is not a staff petition. It is the petitioner who presents the NIM, and staff is only there, again, to ensure that the public can engage with the applicant and to review the application process and to review the petition. So that's my recollection. And I'm sure staff can certainly highlight that.

CHAIRMAN FRYER: Thank you.

COMMISSIONER SCHMITT: Thank you.

CHAIRMAN FRYER: Commissioner Fry.

MR. YOVANOVICH: May I?

CHAIRMAN FRYER: Let me just test with -- I've got four commissioners here who want to be heard. Do we want to hear from Mr. Yovanovich first?

MR. KLATZKOW: This is a Planning Commission discussion. You guys ought to make the decision on this.

COMMISSIONER SCHMITT: Agreed.

CHAIRMAN FRYER: All right. Well, then we'll hear from ourselves first.

Commissioner Fry.

COMMISSIONER FRY: So I think two questions as I see it. One is, you know, was the administrative process followed, and I think that's one question which Joe got into deeply; and the other is whether we have the information we need to do our job today. And so as -- my recollection of the packet was there was a staff summary of the NIM, there was an applicant summary of the NIM in the packet. A few summary thematic issues were documented in those NIMs.

I think that's always supplemented by changes in the presentation and changes since the NIM that Mr. Yovanovich or the applicant would present and also by public speakers. And I'm just curious, do we know how many speakers are here from the public for this?

CHAIRMAN FRYER: Well, we can ask. All those members from the public who are here and plan to speak on this, please raise your hand. All right. A further question: Is counsel for the Canopy Association here?

(No response.)

CHAIRMAN FRYER: Apparently not.

COMMISSIONER SCHMITT: And how many public speakers do we have on Zoom?

MR. YOUNGBLOOD: We have two public speakers for this item.

COMMISSIONER SCHMITT: Okay.

CHAIRMAN FRYER: Okay, thank you.

Go ahead, Commissioner Fry.

COMMISSIONER FRY: So I guess, you know, I'm assuming that we can capture those issues and vet them as we do, I think I'm comfortable to proceed. I wish there were more representatives of the Canopy neighborhood here since they were the -- and the attorney. They were the primary raisers of the objections and the concerns, so...

CHAIRMAN FRYER: Thank you.

Mr. Eastman.

MR. EASTMAN: I think we're concerned about developer statements and developer promises. And if I understood what you said, you could hear the developer clearly.

CHAIRMAN FRYER: Yes.

MR. EASTMAN: You couldn't hear the public. So that takes care of one side of the issues. Now, the public concern is the only thing that's left, and having members of the public here to tell us what the concerns were, along with the notes, I feel comfortable, along with the other commissioners who spoke to, you know, proceeding without redoing the NIM. I think that's efficient.

CHAIRMAN FRYER: Thank you.

Commissioner Schmitt.

COMMISSIONER SCHMITT: No, I'm done.

CHAIRMAN FRYER: Okay. Commissioner Klucik.

COMMISSIONER KLUCIK: Yes. Well, I agree that -- with the sentiment that we have the information necessary to do our job, and in addition to that, we do have our, you know, attorney's assurance from his perspective that, as a matter of law, there's nothing that prevents us from going forward and accepting what we have, you know, despite the faultiness of it. And so I'm inclined to -- you know, to think that we don't really need to delay this anymore. We don't need a second NIM.

I will say that I think, you know, we obviously could have petitioners who could be paying attention and become abusive about this kind of situation, and I think we can always -- we can always do what we want to do at that point, I think. I don't -- like, our attorney also said that we could say we need a second NIM.

So it's really up to us. And I think if we think something -- you know, someone is taking advantage of -- you know, of a technical difficulty, which I don't think that this is the case, but if he suspected that, we could always, you know, impose the requirement for a second meeting according to what our attorney has said. So I'm comfortable going forward.

CHAIRMAN FRYER: Thank you.

Commissioner Fry.

COMMISSIONER FRY: I just wanted to ask one clarification from staff. I had an e-mail correspondence with Andrew Youngblood. I think that I expressed previously, and some of the other commissioners did, that we really find great value in the transcript. The word for -- the written transcript, and it's in some of our packages but not in all. So I believe it's not required, but it is often provided. So what -- is that simply up to the applicant whether they pay to have it transcribed?

MR. BELLOWS: For the record, Ray Bellows.

Yeah, that's at the applicant's discretion if they wanted to go to the expense of having a full transcript of a NIM, but that's not in our administrative code; just a summary, written summary findings.

COMMISSIONER FRY: So just for the record, I mean, the advantage of that is that we can quote verbatim statements made by the developer and by the people in the public. We can refer to pages in our packet. So in my opinion, it's a much more effective standard for us to be effective in reviewing the NIM.

MR. BELLOWS: Understood. And that's one reason we wanted the audio or video of the meetings as well, because you can really just get the sense of the attitude by viewing the video or listening to the tape. In this case, we do have the applicant repeating some of the questions that were being asked as well, so -- and plus our staff was there and took good notes.

COMMISSIONER FRY: We do have ongoing issues, though. It's pretty common that something is inaudible or people don't say their name before they speak. It's like a recurring theme in here, well, we couldn't understand this in the NIM or that in the NIM. So is there any way that a transcript could become part of the standard? Is that something that is -- is it infeasible to do that? Is it -- I don't know if that's an expensive proposition.

MR. BELLOWS: We would have to do some research.

MR. KLATZKOW: The way you would have to do it -- you don't want a court reporter there. That doesn't make any sense. So what you'd have to do is you'd have to have a tape transcribed, which could be done. At that point in time, you're just talking about an expense whether you deem it appropriate to do this in the context of everything we do. At the end of the day, the expense would be on the developer. We would just charge the additional fee. But, again, it's -- you're the Planning Commission. This is something that I think should come from this board.

COMMISSIONER FRY: Thank you.

CHAIRMAN FRYER: Commissioner Schmitt.

COMMISSIONER SCHMITT: Yeah. Let's -- again, I'm going to go back to, the

purpose of the NIM was for the applicant to interface with the community, to receive the community input. And after that, as many NIMs, after meeting with the community and they begin to sense the issues that are raised, they adjust their plan accordingly if they can. I mean, that's what the NIM was about. It was -- it was never meant to be part of the administrative process. The administrative process meaning the actual staff report that we get is compiled by the staff. The issues are captured by the staff, they're supposed to be, and then either adjudicated through the -- in the review process or raised to the Planning Commissioners in the staff study, whether issues that were raised were either -- either solved or unsolved or basically noted. And our packet included several e-mails from residents in the area as well who raised concerns, and that is the purpose of the NIM.

The NIM started because of the perception of the public that the developers were somehow secretively creating plans with the staff, and then the next thing you know it comes to the Planning Commission in an advertised public hearing.

The NIM was meant to make sure that the public was aware months and months and months prior to any public hearing. To include the signs. And that -- and the advertisement in the paper. All three were part of the process of keeping the public informed, and that's what the NIM was supposed to be, and that's what the process is hopefully that -- the NIM, then, if there are any issues, the public would be here to raise their concerns. That's what this was all about.

CHAIRMAN FRYER: Thank you.

Commissioner Klucik.

COMMISSIONER KLUCIK: Yes. On your last point, Commissioner Schmitt -- and it was a point that Commissioner Fry made -- I would say that I -- you know, I live out in Ave Maria, and I've had issues that were before this -- you know, the Planning Commission and the County Commissioners, and it's asking a lot of people, you know. You know, they went to the NIM. The fact that they went to the NIM and they didn't come here, I generally am not going -- you know, I'm going to try to not hold that against people that, you know, have jobs or, you know, live a long ways away --

COMMISSIONER SCHMITT: Yeah.

COMMISSIONER KLUCIK: -- or have no idea if it's going to be eight hours. You know, we never know. Just because it's on the schedule as the first item, we could have decided to postpone it until, you know, 2:00, you know. So the idea that people aren't here doesn't always sway me.

I realize that wasn't your major point, Commissioner Fry, but I just wanted to bring that up as a -- I don't generally hold that against community members, because I think it's hard to come to one of these meetings no matter when and how much we try. Even if you tried to make an evening meeting, then people -- you know, some people can't come if it's an evening meeting, so...

CHAIRMAN FRYER: Thank you, sir.

Commissioner Vernon, you had your light on, then it went off. Did you have something to say, sir?

COMMISSIONER VERNON: Yeah. First I just want to go back to the first thing Joe said in his first thoughts, and that is, I don't want to put any of this burden, if there is a problem to solve this problem, on the staff. I'm totally in agreement with Joe on that.

Number two, if I don't know what to do, then I sort of put my judicial hat on. Putting my judicial hat, it seems to me, if I understood you correctly, Mr. Chairman, that you said it was required for the developer or the applicant to provide a video or -- excuse me, video or audio, which it did not do.

So I think the -- they're in violation of the requirement but, again, I'm relying on what you just said.

COMMISSIONER HOMIAK: There was audio.

COMMISSIONER SCHMITT: Wait. There's an audio.

COMMISSIONER HOMIAK: I listened to it.

COMMISSIONER SCHMITT: There is an audio.

COMMISSIONER HOMIAK: And you can hear it.

COMMISSIONER VERNON: You can hear the whole thing?

COMMISSIONER SCHMITT: Yeah.

COMMISSIONER HOMIAK: I skipped around, and I didn't have a problem. The petitioner was repeating the questions if people didn't hear.

COMMISSIONER VERNON: All of the questions?

COMMISSIONER HOMIAK: I didn't have a problem with it. It's a neighborhood information meeting. It's for the neighborhood. It's right in the title.

COMMISSIONER VERNON: No, I understand.

COMMISSIONER HOMIAK: Geez.

COMMISSIONER VERNON: The audio is completely -- you could hear everything on the audio? I thought you couldn't. I thought there was one microphone.

COMMISSIONER HOMIAK: I could hear it.

CHAIRMAN FRYER: I've got it here and could play excerpts of it if you want to, but I don't think it's necessary. I think staff will concur that the members of the public were almost totally inaudible; is that correct?

MR. BELLOWS: Yeah. For the record, Ray Bellows. I did listen to both the audio and the Zoom recording of the NIM, and the one-speaker system worked great picking up the agent, and the agent you could hear very clearly. The public responding you could barely hear things, but it wasn't -- I couldn't discern what they were saying. But in some cases, I'm not -- I don't know if it was every time, but most of the cases he did repeat the question.

COMMISSIONER VERNON: But that's my point. To me it's not -- I mean, to me, presenting the audio is presenting the complete audio. So if it is a requirement of the developer, I don't think they met it, so that's my point.

I think based on what Jeff said, we do have discretion. And sort of moving to my quasi-judicial hat, you get into the intent, and it sounds like the intent was met, the purpose was met.

But given at least my belief that the requirement was not met, I would suggest we reserve ruling until we get later into the day before we make a decision on whether there should be another NIM, because my understanding was there was about 20 people at the NIM, and there's only about four people here.

So I don't think the applicant or anybody's going to be prejudiced in any way if we reserve ruling on whether we need another NIM. Go ahead and hear everything we need to hear today and make a decision after we've heard everything today.

CHAIRMAN FRYER: Thank you.

Commissioner Shea.

COMMISSIONER SHEA: Is it out of the line if I just make the motion that we proceed?

CHAIRMAN FRYER: You're entitled to make whatever motion you wish.

COMMISSIONER SHEA: I would like to make a motion we proceed hearing --

COMMISSIONER SCHMITT: I'll second.

COMMISSIONER HOMIAK: Yeah.

CHAIRMAN FRYER: All right. It's been moved and seconded that we proceed with the hearing. Is your motion addressing the question of whether we accept the NIM tape or reject it?

MR. KLATZKOW: If you're going to proceed with the hearing, the NIM issue is done.

COMMISSIONER SCHMITT: Right.

COMMISSIONER SHEA: Exactly.

COMMISSIONER HOMIAK: Yeah.

COMMISSIONER SHEA: My intent is that the NIM issue is done.

CHAIRMAN FRYER: Okay. Is that the intent of the second?

COMMISSIONER SHEA: If we need a future change in our policy, I don't think we need

to do that now.

CHAIRMAN FRYER: Okay. So it's been moved that we proceed and we -- implicit in that decision is that we're going to accept the NIM audiotape; is that the second?

COMMISSIONER KLUCIK: I'm going to go ahead and ask for -- suggest a friendly amendment that we include the -- that we proceed and we are -- in voting to proceed, we're stating that a second NIM is not necessary.

CHAIRMAN FRYER: Okay. Does the movant agree to that?

COMMISSIONER SHEA: Yes.

CHAIRMAN FRYER: All right. Any discussion?

(No response.)

CHAIRMAN FRYER: I just have one comment, and that is -- and it's been somewhat vitiated by the lack of public attendance here. I was going to try to be a little more lenient than usual in letting the public speak to be sure that, if we had adequate representation, that we wouldn't cut people off after three minutes or five minutes if they hadn't made their presentation and try to cure the NIM problem in that fashion. I'm not sure that that is going to work, but I'm going to, I guess, reserve judgment on that, and if --

COMMISSIONER SCHMITT: I would concur. I'd give them all the time they want.

COMMISSIONER SHEA: I would, too.

CHAIRMAN FRYER: All right.

COMMISSIONER SCHMITT: No problem.

COMMISSIONER FRY: I would defer to your judgment, Mr. Chairman, in offering people additional time.

CHAIRMAN FRYER: Thank you. Any further discussion on the motion? Does it need to be restated? Everybody understand what's before us?

COMMISSIONER KLUCIK: And -- but what you just said isn't really part of the motion. That's just how we're dealing with it.

CHAIRMAN FRYER: No, it's just part of the discussion, yeah.

Okay. All those in favor, please say aye.

COMMISSIONER SHEA: Aye.

COMMISSIONER FRY: Aye.

CHAIRMAN FRYER: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER SCHMITT: Aye.

COMMISSIONER KLUCIK: Aye.

CHAIRMAN FRYER: Opposed?

COMMISSIONER VERNON: Aye.

CHAIRMAN FRYER: It passes 6-1. Thank you.

Mr. Yovanovich, I should have given you an opportunity to speak, but I wouldn't want you to risk seizing failure out of the jaws of victory.

MR. YOVANOVICH: I'm a little out of practice. It's been six weeks since I've been here, so -- for the record, Rich Yovanovich. One of the hardest things to do is to sit here and be quiet.

COMMISSIONER KLUCIK: Oh, I hear you.

MR. YOVANOVICH: As I'm sure Mr. Vernon and Mr. Klucik know, when you're watching the judge talking, you're just praying it goes your way. But I do thank you for allowing us to go forward.

I want to introduce the team. And I am going to make just a few comments related to what happened since the NIM to hopefully put your minds at ease that their -- the neighborhood's concerns were, in fact, heard and were, in fact, met with, but I'll get to that after introducing the team.

With me this morning from D.R. Horton are Wayne Everett and Mark Brumfield.

Introduce myself, I'm the land-use counsel. The agents for the applicant from RWA is Ken Gallander, he's our planner, and you'll hear from him during the presentation. Our engineer is Joel Blikstad. He can answer questions regarding civil engineering. Is Mr. Treesh here? Oh, TR Transportation is here. Craig Smith from DexBender, our environmental consultant, is here. And Kristen Petry from -- is our landscape architect, who is also here and can answer questions we have -- or you have regarding the presentation.

The subject property is 18.4 acres. It's at the southwest corner of Tree Farm Road and Massey Street. Just for those -- and we'll show you a map in a moment. Massey Street actually runs in a north/south direction. It meets Woodcrest, which goes up to Immokalee Road, and many, many years ago -- I know Mr. Schmitt was around, but I don't think anybody on this Planning Commission was around at the time -- the county's transportation system was designed to have Woodcrest and Massey connect all the way down to Vanderbilt Beach Road, and Tree Farm Road was supposed to also be connected to Woodcrest/Massey, and it was to be a bypass from the intersection of Immokalee Road and Collier Boulevard.

There's a light at Woodcrest on Immokalee Road, so it's a bypass road. It's always been designed to accommodate that traffic to try to get traffic away from the intersection. And you also have the Vanderbilt Beach Road extension occurring as part of the transportation improvements. But we're getting to what was planned many, many years ago as part of the transportation system.

Our property is less than 20 acres. It's designated urban residential subdistrict. Under the Comprehensive Plan or the Growth Management Plan, it's an infill parcel. What's an infill parcel? An infill parcel is a parcel of land less than 20 acres in size. And under the Comprehensive Plan, your Comprehensive Plan encourages increases in density on infill parcels, and that's what we're in under is under the residential infill provisions of your Growth Management Plan to go from the base density of four units per acre to seven units per acre.

The county's had that infill process for quite a number of years, approximately 20 years ago when the Rural Fringe Mixed-Use District provisions were adopted into your Growth Management Plan. The three-unit-per-acre increase has now been tied to the acquisition of TDRs, Transfer of Development Rights.

So in order to increase the density from four units per acre to seven units per acre to get the three bonus units, you have to buy one TDR for each acre to get the full three. So you have to buy -- if you want to get one unit, you've got to buy it through a TDR. If you want to get the full three, you've got to buy a TDR. So we will be acquiring 18 or 19 TDRs to entitle this project when we come forward with a plat.

So this infill provision is part of the Rural Fringe Mixed-Use District provisions and is a mechanism for those people who had sending lands to actually get compensated for losing their development rights. So this project furthers your infill provisions as well as your TDR provisions in the Growth Management Plan.

The overall project request is for 130 dwelling units. We obviously have an amenity tract, and Ken will take you through that. We have a clubhouse. We've the full range of allowed residential uses; detached single-family, townhomes, et cetera, are all being permitted through the PUD.

We have a concurrent plat going through the project -- going through the process right now, and the current plan for development is townhomes, but should the market change and townhomes are no longer in favor, we have the ability to do other uses.

We will have -- this piece of property is in a floodplain, so we have to do additional floodplain compensation, and that affected how the master plan lays out, and Ken will kind of take you through that. And then we always -- we have our typical preserve tract.

I've already addressed this slide, but I wanted to -- I'm going to bring Ken up in a moment. But this is the layout of Woodcrest/Massey that I discussed earlier. Here's Woodcrest. To the north is Immokalee Road and to the south is Vanderbilt Beach Road, and this is Tree Farm Road. And this is -- if you've -- those of you who have done the site visit, you know this little roundabout

here, and this, obviously, is the property.

So the transportation system always contemplated traffic coming from Immokalee Road and finding its way over to Collier Boulevard either at Tree Farm Road or going all the way down to Vanderbilt Beach Road to get traffic. So there has been plans for, you know, more than 20 years, and it goes back even to -- this is Warm Springs that's in your staff report. This is Bristol Pines, which is not in your staff report. But Bristol Pines is a --

COMMISSIONER KLUCIK: Which one is that?

MR. YOVANOVICH: This is Bristol Pines PUD. It's a -- it's not referenced in your staff report, but it's a project that I worked on many years ago. It's approved at seven units per acre. It's a townhome project, so it is very similar to what is being contemplated over here in the Soluna project. This is Brynwood Preserve. It is four units an acre, and this is Warm Springs that was also approved.

CHAIRMAN FRYER: Excuse me, Mr. Yovanovich. You said this, but I was not watching the monitor. Would you show me again where the other seven DUA development is.

MR. YOVANOVICH: This piece and this piece up here are all part of Bristol Pines, which was approved at seven units per acre.

CHAIRMAN FRYER: Okay, thank you.

COMMISSIONER KLUCIK: Mr. Chairman?

CHAIRMAN FRYER: Yes, Mr. Klucik.

COMMISSIONER KLUCIK: So your point -- and you mentioned it twice now, to have that traffic flow. Your point is, I guess, that it's not a quiet area or -- I'm just trying to figure out what your point --

MR. YOVANOVICH: A couple of reasons for that point --

COMMISSIONER KLUCIK: Sure.

MR. YOVANOVICH: -- is one, there was always contemplated traffic would come here but, two, there has always been -- and we hear continually concerns about Immokalee Road. How does Immokalee Road function? The traffic signal at Immokalee Road and Collier Boulevard at times can be backed up. And I'm just --

COMMISSIONER KLUCIK: This is a stress reliever?

MR. YOVANOVICH: This was always intended to bring relief to that intersection and relief from Immokalee Road and together with Vanderbilt Beach Road will bring further relief from Immokalee Road because, as your staff report indicates, there are portions of Immokalee Road today that are not at their adopted level of service, but your staff has acknowledged that the improvements that are being made will relieve those issues. So I just wanted to bring those up and --

COMMISSIONER KLUCIK: Is that just because you were anticipating concerns about the increased traffic, you know, so, therefore, what you're saying is, well, there was always an anticipation that there would be a lot more traffic on --

MR. YOVANOVICH: There's always comments about traffic on roads, and I've anticipated enough times that some people on the Planning Commission bring up Immokalee Road. No disrespect to the Chairman. But we talked about it, and I just wanted to get that on the record early. I'm sure the Chairman's still going to raise -- ask questions about it, but I just wanted to address those concerns.

COMMISSIONER KLUCIK: Sorry for the diversion.

MR. YOVANOVICH: That's okay. You're good.

CHAIRMAN FRYER: Commissioner Schmitt.

COMMISSIONER SCHMITT: You mentioned the -- I'll call it the roundabout or traffic circle. I believe part of the intent was when staff -- did the county actually pay for that construction? Because part of the intent of that traffic circle was, again, a traffic-calming device but also to merge for part of the -- what was planned many years ago as, quote -- you used the word as a "bypass" around the Immokalee/Collier Boulevard, but I believe that roundabout was actually

constructed by the county, and I'm not sure.

MR. YOVANOVICH: I'm going to -- I'm going to punt that question to your staff. I do know that some of Tree Farm Road and some of --

COMMISSIONER SCHMITT: Do I see Mike hiding back there?

MR. YOVANOVICH: -- the Woodcrest extension were at developer expense, but I don't know specifically regarding the traffic circle.

COMMISSIONER SCHMITT: Just, Mike, for the record, I don't know if you have input on that question. I know we're interrupting Rich's presentation, but this is a piece -- since we're talking about it. Go ahead, Mike.

MR. SAWYER: Yeah. For the record, Mike Sawyer, Transportation Planning. Collier County did construct that.

COMMISSIONER SCHMITT: Yes.

MR. SAWYER: I believe that there were participation from the adjacent communities to pay -- help pay for that fair share.

COMMISSIONER SCHMITT: Fair share, and impact fees.

MR. SAWYER: Correct, exactly.

COMMISSIONER SCHMITT: Okay.

MR. SAWYER: As far as this particular area, Massey is going to be improved along with Vanderbilt Drive, just so everybody knows.

COMMISSIONER SCHMITT: Okay. That's what I thought. Thanks, Mike.

MR. SAWYER: Sure.

CHAIRMAN FRYER: Commissioner Vernon.

COMMISSIONER VERNON: I'm not lit up.

CHAIRMAN FRYER: I'm sorry?

COMMISSIONER VERNON: No, I had no question.

CHAIRMAN FRYER: Okay. Commissioner Fry.

COMMISSIONER FRY: Rich, you mentioned Bristol Pines, which I believe is the most dense community in the immediate vicinity, correct?

MR. YOVANOVICH: (Nods head.)

COMMISSIONER FRY: So if the agricultural parcels qualify for four DUA, how did Bristol Pines -- without the residential infill bonus, how did it get to seven DUA?

MR. YOVANOVICH: It is an affordable housing project.

COMMISSIONER SCHMITT: Correct.

MR. YOVANOVICH: And it was one of two that I worked on before the Great Recession that -- going through the process, it was an owner-occupied project that had certain number of units dedicated to affordable housing, because at the time, because we were over 20 acres, the method to increase the density was through the affordable housing density bonus program.

COMMISSIONER FRY: Great. Thank you.

MR. YOVANOVICH: Any more?

CHAIRMAN FRYER: Any other questions? No one is lit up at this point.

MR. YOVANOVICH: So I do want to touch a little bit on what we do at NIMs and how important they are and actually what happens after a NIM, typically, and did happen in this case.

Ironically, I was hired for this project because of the NIM and because of your staff's thorough review and recollection of what happened at the NIM and some comments that came in the review letter for this project because of issues that were raised at the NIM.

So your -- just to put your mind at ease, I hope, Tim Finn did a great job summarizing all of the residents' concerns and, in fact, had asked for certain revisions to the project based upon those concerns, and that's how I got involved.

Also, we met with residents of -- not me personally, but Mr. Gallander who's here met personally with residents of Canopy, which is this project right here, I think specifically residents

in this area, to talk about their concerns about the project, walked their property, and we'll show you pictures of their buffer and how we did sightline analyses since then to show them how we're not going to negatively impact them.

But I think it's important to know that we as developers take these NIMs seriously, and we do follow up, and we do meet with -- we don't always give them everything they want, but we do, in fact, follow up and we meet with them and we take their considerations into our design.

I did enough projects in this area. This is Vanderbilt Drive Country Club. I didn't do every project in this corridor, but I did most of them that abut Vanderbilt Country Club. And before I was even contacted, I think I told my client, let me ask -- let me guess, the nearby residents want you to put in a solid wall? And that was one of the comments, "Put in a solid wall," because Vanderbilt Country Club and the other surrounding communities don't have solid walls. And my response has always been, if you wanted to live in a community that had solid walls around it, you should have bought in a community that had solid walls around it. You shouldn't be requiring the adjacent property owner to put in solid walls.

So we've addressed some of those concerns. We'll have a chain-link fence hidden in landscaping to, obviously, address that. But our response was, we're not going to give you a solid wall on our border so you effectively have all of the surrounding development build the wall you didn't want -- you didn't require when you moved in your community. Those are the kind of comments that we didn't agree to. We did agree to others in dealing with this project -- with this process as part of the NIM.

So I just want you to know that although there was some issues with the quality of the audio, those issues will be addressed and corrected. It's a simple fix: Have a second microphone. I will tell you, I will never be able to totally control people speaking all over each other and maybe not identifying themselves in the record, but we do our best to try to do that. But I'm sure Mr. Gallander will make sure he has a second microphone at the next one to make sure that the public hears -- the public comment can be heard.

But I do think the public has been heard through that process. The intent of the NIM was met, and I appreciate that you-all have decided to move forward with that.

With that, I'm going to have Mr. Gallander come up here, take you through the master plan. It specifically addressed the buffers, the development standards associated with the project, and the compatibility with the neighbors because there were several comments from neighbors regarding compatibility.

And then we'll open it up to any questions you have. My entire consultant team is here to answer any questions you may have, but we're going to focus on the planning aspects, but that doesn't mean the other aspects are not important, and if you would like to address those, that's fine with us.

An important thing to remember is your staff, every discipline, is recommending approval and has found us consistent with your Comprehensive Plan. And with that, I'll turn it over to Mr. Gallander unless Mr. Klucik has a question.

CHAIRMAN FRYER: Commissioner Klucik.

COMMISSIONER KLUCIK: Mr. Chairman, you know, I guess from what I've seen and, you know, getting the briefing -- of course I haven't made up my mind yet, but it seems -- how long do you think your presentation is going to be, because I almost --

MR. YOVANOVICH: Ten minutes.

COMMISSIONER KLUCIK: -- feel -- how much?

MR. YOVANOVICH: Ten minutes tops.

COMMISSIONER KLUCIK: Ten minutes, okay, great, because I'm, you know, not thinking that there's much that we're going to hear that's unexpected. It seems like a pretty straightforward proposal from what I've seen. And I'm trying to figure out, you know, the basis for the objection, you know, in law, that would, you know, cause us to say that there's a reason, you know, because we're sitting quasi-judicially on this.

MR. YOVANOVICH: And, Mr. Klucik, I agree with you. I don't think there's a basis to say no --

COMMISSIONER KLUCIK: Yeah, so I'm just --

MR. YOVANOVICH: -- under the law.

COMMISSIONER KLUCIK: I'm just -- I'm just hoping that we -- you know, I'm glad to hear it's only 10 minutes, because I don't want it to be like we're here for hours hearing things that we already know.

MR. YOVANOVICH: I didn't feel the need to do a much longer presentation that I would have done with others where we've had many, many, many more people involved.

So, with that, I'll turn it over to Mr. Gallander.

MR. GALLANDER: So I might need to take a few pages out of this. No, just kidding.

Thank you, Mr. Yovanovich. And, again, Mr. Chairman, Commissioners, I'm Ken Gallander, certified planner with RWA. Thank you for this opportunity. And I also will make some statements towards the end about the NIM.

But what Mr. Yovanovich said, I'm going to just take us through just as quickly as possible, and just bear with me as we work through this along some of the key aspects of our development. And as we -- as Mr. Yovanovich pointed out, I just want to just quickly go through the perspective of our subject property in relation to all the residential existing developments near us. And I won't go further into that but, again, the aspect of infill, and this is an ideal example of that in this area.

So next I want to just drill down on our master plan. And what we have here is just a typical master plan that is developed in similar configurations. To the northwest we have our single access, primary access. There are no other access points to the development. The single one off of Tree Farm Road. Then throughout the development we've got an amenity tract just right at the entrance, and then surrounding our internal lake are the residential tracts with the circular network for mobility throughout the development.

One key area I think is necessary to point out is the significant preserve to the north --

COMMISSIONER KLUCIK: Mr. Chairman?

CHAIRMAN FRYER: Yes, Commissioner.

COMMISSIONER KLUCIK: Just for clarification. Okay. So you have L, which is the lake, right?

MR. GALLANDER: Yes.

COMMISSIONER KLUCIK: And then you have a ring around that.

MR. GALLANDER: Which is the right-of-way.

COMMISSIONER KLUCIK: Well -- well, the R?

MR. GALLANDER: Yes, the residential.

COMMISSIONER KLUCIK: Those are residential. And then you have a roadway, right?

MR. GALLANDER: That's correct, the right-of-way.

COMMISSIONER KLUCIK: And then you have more residential. That's what that is?

MR. GALLANDER: Correct. All the Rs represent the residential tract.

COMMISSIONER KLUCIK: Okay. And so you have -- when I'm looking at this, then, to the south, you really don't have any residential. You have roadway.

MR. GALLANDER: Correct. The roadway --

COMMISSIONER KLUCIK: And it's really to the west is where you're going to have the units that seem to be most -- well, that's where you actually have new buildings that are going to be butting up against neighboring communities, and to the south you have a roadway that's --

MR. GALLANDER: That is correct.

COMMISSIONER KLUCIK: -- butting up against neighboring communities.

MR. GALLANDER: That is correct.

COMMISSIONER KLUCIK: And so that's where the issues arise?

MR. GALLANDER: Right.

COMMISSIONER KLUCIK: Okay.

MR. GALLANDER: Concerns our neighbors to the west --

COMMISSIONER KLUCIK: I'm kind of slow like Colombo, so I just -- I like to get clarity up front.

MR. GALLANDER: So this may help. You can see --

COMMISSIONER KLUCIK: Great.

MR. GALLANDER: I was going move to into that, but let's just jump to this one. This is our overlay of our master plan with overlay on an aerial showing the correlation or the relations with our neighbors to the north, to the west, and to the south.

So, again, from this perspective, this kind of takes us into the aspects of compatibility.

And what I want to emphasize --

COMMISSIONER SCHMITT: Before you get into that, I wanted to --

CHAIRMAN FRYER: Go ahead, Mr. Schmitt.

COMMISSIONER SCHMITT: Your preserve that you identified --

MR. GALLANDER: Yes.

COMMISSIONER SCHMITT: -- that was deemed to be the best suitable land, the preserve. Is it jurisdictional wetlands there, or was it just deemed to be the best area to create your preserve?

MR. GALLANDER: In combination to that.

COMMISSIONER SCHMITT: Okay.

MR. GALLANDER: So our ecologist can speak a little bit more clearly to that, if necessary. But, yes, the design of the project relied upon having that significant area to that -- to the east there to preserve the native vegetation.

COMMISSIONER SCHMITT: Okay.

MR. GALLANDER: And also, if I may just clarify also, Mr. Yovanovich pointed out the floodplain compensation area. That is this F designation tract, and that is a component of managing for floodplain aspects of the area.

COMMISSIONER KLUCIK: Will that look like wilderness? Is that what that's -- that whole area or --

MR. GALLANDER: It's not going to be a wilderness. It is a managed area, so it's a depression area, so it will be cleared and utilized for those purposes of ensuring for floodplain management.

CHAIRMAN FRYER: Commissioner Vernon.

COMMISSIONER VERNON: Yeah. As much as I like to talk, I have not been lighting up, so I don't know why --

CHAIRMAN FRYER: Oh, you're not? Sorry.

Commissioner Shea.

COMMISSIONER SHEA: Just to stick on the last topic we were talking about, does that preserve area have to be there? I mean, obviously, if you could line it up on the other side of the property, you'd have a lot less complaints but, obviously, you can't do that.

MR. GALLANDER: Right. Through our evaluation and analysis, this is what we've determined to be the best layout and arrangement for --

COMMISSIONER SHEA: Is it possible to put it on the other areas to form additional buffers with the residentials that are there?

MR. GALLANDER: If we were, that's --

MR. YOVANOVICH: Mr. Shea, if I may. Under the Comp Plan, we have to keep the largest, most contiguous area for preservation. So if you go back, you'll see in the existing conditions of the property, the largest most contiguous area for the native vegetation preserve is exactly where we're keeping it. It would have been real easy for us if we were allowed to do it other ways, but between the floodplain compensation requirements and the largest most contiguous

area requirements, the site plan laid out the way the site plan had to lay out.

CHAIRMAN FRYER: Mr. Eastman.

MR. EASTMAN: Speaking about the floodplain and the floodplain management, will you disperse less water from this site as it is today? After your proposal here to build it, will you disperse less water after it's built, if it is built, onto your neighbors because the water's managed? Are you improving the drainage situation for your neighbors by managing the floodplain waters here with this project?

MR. GALLANDER: What I want to do is have our engineer come up and speak to those technical aspects of it.

MR. BLIKSTAD: For the record, Joel Blikstad with RWA Engineering.

CHAIRMAN FRYER: Would you mind saying your name a little slower.

MR. BLIKSTAD: Joel Blikstad.

CHAIRMAN FRYER: Blikstad?

MR. BLIKSTAD: Blikstad.

CHAIRMAN FRYER: Thank you, sir.

MR. BLIKSTAD: I believe the question was, will we adversely affect the neighbors. We are going through the South Florida Water Management District permitting process, and as part of that, we had to demonstrate no adverse impacts. This will be a managed water management system. There will not be any offsite flow to the neighbors to the south or to the west there. We will have our proper berming in place. So I guess the short answer is, no, there will be no adverse impacts to the surrounding developments.

MR. EASTMAN: Will there also be an improvement, or is there water that's draining on your neighbors now as this naturally sits, and you'll discontinue that by managing the flood waters?

MR. BLIKSTAD: The way that the calculations worked out for this site, this site stored water in the existing condition for the neighbors. We are preserving that, and that's one of the reasons we have the floodplain compensation area to continue to store water for the neighbors to provide, like I said, no adverse impacts to the floodplain that was stored in the existing condition.

MR. EASTMAN: So it's fair to say it's no better and no worse?

MR. BLIKSTAD: Correct.

CHAIRMAN FRYER: Commissioner Fry.

COMMISSIONER FRY: Could we go back one slide, please.

So to nutshell what's been said here -- actually go back one more slide, please. It shows the two cleared areas. Yeah, the two large cleared areas on the west side that currently have the communication towers, you're saying that, obviously, the natural preserve area, the only area that isn't already disturbed, is that -- is the eastern portion of that. So you've taken that and you've made it -- you split it between preserve and floodplain management, which is the only practical way to approach it. So you could not feasibly have put the preserve on the west side protecting Canopy.

MR. BLIKSTAD: Correct. Collier County also -- I think Rich was speaking to this -- is not a fan -- in their code they are not a fan of very narrow preserve here, and that did not meet the width requirement to be a preserve, nor the area requirement.

COMMISSIONER FRY: Okay. That answers it. Thank you.

CHAIRMAN FRYER: Continue, sir.

COMMISSIONER KLUCIK: Just to --

CHAIRMAN FRYER: Oh, I'm sorry.

COMMISSIONER KLUCIK: I didn't press my button.

CHAIRMAN FRYER: Commissioner Klucik, go ahead.

COMMISSIONER KLUCIK: So when you say "not a fan of," I actually like colloquial language, but does that mean that it's not allowed?

MR. YOVANOVICH: The answer is no, I couldn't do it because I couldn't meet the code requirements for your preservation requirements by putting a long, narrow strip of preserve along

the eastern boundary.

COMMISSIONER KLUCIK: And, in theory, we could grant -- I don't know. Could we --

MR. YOVANOVICH: Our western boundary; western boundary, sorry. See, I'm directionally challenged.

COMMISSIONER KLUCIK: Mr. Klatzkow, could we -- could we authorize, you know, that they -- that they -- you know, a deviation from that?

COMMISSIONER SCHMITT: No, no.

COMMISSIONER KLUCIK: Okay. Not that I think that's the appropriate. I'm just wondering what the possibilities are to -- because I think, if it -- you know, if it's possible, then the people who are, you know, here, the residents who are here, you know, it would be good if they know that that's a possibility. And if it's not possible legally, then, you know, we don't really have a choice.

MR. YOVANOVICH: I know it's tempting, but if we can go just two more slides, I think we can address what's on our western boundary today and what we will be planting, basically, adjacent to it for that buffer. And I think, in my opinion, it more than addresses the concerns of those -- I think it's five homes that are on that border, the western border that are living within Canopy.

So if you can bear with us, hopefully we'll address those, but if not, we'll --

COMMISSIONER FRY: Two, but only two, Rich.

MR. YOVANOVICH: Okay. I'm going to bank that I counted correctly that it's two slides.

MR. GALLANDER: You want me to --

MR. YOVANOVICH: Keep going.

MR. GALLANDER: Okay. So back to the compatibility aspect of it, I want to just quickly go through the uses. Mr. Yovanovich spoke to these at the beginning. In my professional opinion, in terms of the uses, Soluna is proposing the single-family, the townhouses, multifamily uses. Those are all consistent and compatible with those uses that are also approved under the developments to the north, to the west, and to the south.

In terms of development standards, also professional opinion, we are consistent and compatible with the development standards. Staff had also provided an analysis in your packet of the consistency with the development standards.

I think one particular aspect, looking at our setback standards, we are providing a minimum Planned Unit Development perimeter setback, which is the setback, obviously, in association with the overall perimeter boundary of the Soluna project.

Typically what you find in the approved Planned Unit Developments is a 15-foot setback from the perimeter, and sometimes there's none. Then you rely upon the rear setback that's typically around 10 feet. We're providing 30 feet, so twice that distance that's typically found, so I just wanted to point that key aspect.

Height, we're consistent. We're at 30 feet zoned consistent with our surrounding neighbors.

For the buffers --

COMMISSIONER KLUCIK: Can you show that 30 feet? Because I'm not understanding.

MR. GALLANDER: I can show you that in a follow-up slide.

COMMISSIONER KLUCIK: Okay.

MR. GALLANDER: It will help us.

COMMISSIONER KLUCIK: I apologize, Mr. Chairman.

MR. GALLANDER: Sure.

CHAIRMAN FRYER: Thank you.

MR. GALLANDER: Yeah, I don't have -- we don't have setbacks orientated on our

master plan, just the buffers.

But for purposes of that, it would be -- this is a 15-foot Type B buffer. It would be another 15 feet beyond that dashed line in terms of sort of a scalable reference for you.

CHAIRMAN FRYER: Further to that, how will -- how will that commitment find its way into the ordinance?

MR. YOVANOVICH: It's in there.

MR. GALLANDER: It's in the Planned Unit Development document, or it's in the document as a part of our --

CHAIRMAN FRYER: Is it an exhibit?

MR. GALLANDER: Yes, it is.

CHAIRMAN FRYER: Okay. Well, it's not in the master plan, which is C.

MR. GALLANDER: Right, but --

CHAIRMAN FRYER: Where is it?

MR. GALLANDER: It's in the development standards.

MR. YOVANOVICH: It's in the Development Standards Table.

CHAIRMAN FRYER: That's what I wanted to know. Thank you.

MR. GALLANDER: Sorry for that mis --

CHAIRMAN FRYER: No problem.

MR. GALLANDER: No, that's all right.

Looking at our buffers, key aspects of that are what is in relation to our neighbors to our west and to our south. As stated before, 15-foot Type B buffer, and the typically required buffer along the right-of-ways of a 20-foot Type D buffer, and those have been found consistent and compliant with the LDC, which is based on that for compatibility purposes.

So moving to this slide that we looked at just briefly before, this is just really an appropriate example of the perimeter buffer that is on the Canopy, and this was during my site visit with the neighbors. They were kind enough to invite me out there, and we walked the properties and walked the buffer just to see, and that's an important aspect of doing any project, understanding your relations with your neighbors.

And what you can see here is a well-established hedge row and then the palm trees and the pines. That is their portion of their buffer requirement.

CHAIRMAN FRYER: Commissioner Klucik.

COMMISSIONER KLUCIK: Right. So what we're looking at is you're standing on one of the lots to the west --

MR. GALLANDER: Correct.

COMMISSIONER KLUCIK: -- where there's a house right behind where the camera is?

MR. GALLANDER: Yep. I was, I believe, in this general area here.

COMMISSIONER KLUCIK: And we're looking at those rows of trees that are there on that image -- this image that we're looking at now.

MR. GALLANDER: Correct.

COMMISSIONER KLUCIK: And those are all going to stay intact just how they are, and then you're going to also add --

MR. GALLANDER: Right.

COMMISSIONER KLUCIK: -- more in that 15 feet that we see on the dotted line? There's going to be more trees there, more vegetation there?

MR. GALLANDER: So for our project, then we will -- and the intent is, if possible, to maintain any existing trees, but that may not be possible. But the requirement for providing our buffer, we will be meeting the similar requirements that Canopy is doing on that.

COMMISSIONER KLUCIK: So it would be almost a duplication of what we see here but from the other perspective?

MR. GALLANDER: Exactly, looking from -- this is looking towards the east, so this is looking, again, towards this way.

CHAIRMAN FRYER: Commissioner Fry.

COMMISSIONER FRY: Ken, sorry to interrupt --

MR. GALLANDER: Yes, sir.

COMMISSIONER FRY: -- but I think it's relevant and timely is that from the materials, Canopy has a 10-foot Type B buffer and you have a 15-foot-wide Type B buffer, similar vegetation just in a wider swath on your side of the property line.

MR. GALLANDER: Yes, that's correct. My research has indicated that Canopy or Buttonwood Preserve has required a 10-foot landscape buffer on their side.

COMMISSIONER FRY: You mentioned a 30-foot perimeter buffer.

MR. GALLANDER: Setback.

COMMISSIONER FRY: Setback. Thirty feet exactly to what? Is that to the property line of the closest houses? Is it to a building? Is it to a driveway? What is the 30 feet setback to?

MR. GALLANDER: So this is moving on to another -- next slide. And this will help -- this is the property line or the perimeter boundary, the Planned Unit Development boundary. To the right is Soluna. To the left would be Canopy. And this top slide is a -- at time of planting for these buffers.

And so from -- you can see this dimension of the 15-foot Type B buffer. So there would be another 15 feet for setback from that perimeter boundary from this property line. So 30 feet back, no building, primary building, could be within that setback. And that's -- and these are to our scale of what we are proposing through our development project in terms of the 15-foot buffer. Our building is well beyond even the 30-foot setback perimeter.

This also references a two-story structure. And what -- moving on to this exhibit, this shows on the Canopy side their existing buffer as it's matured over time. To the right, within Soluna's, is our buffer at time of planting. And the line of sight, which was a concern about privacy and -- which is legitimate, and so we wanted to go back and analyze and look at so what do our technical requirements -- and how does this look from a cross-section point of view?

And we have a perspective of an individual on the second story and their sightline down into the neighboring property. And what we've -- our opinion of what we see here is that the existing buffer on the Canopy is sufficient to provide the privacy. Then, as required, we will provide our buffer, and as it grows, in the bottom portion of this slide image, is maturity, four to five years of our trees, our shrubs, hedge work growing. It further impedes that sightline.

CHAIRMAN FRYER: Commissioner Klucik.

COMMISSIONER FRY: Sorry. I wasn't quite finished.

CHAIRMAN FRYER: Oh, I'm sorry. Commissioner Fry, then Commissioner Klucik.

COMMISSIONER FRY: So in the comments from neighbors, the letter from Katrina Curran referenced concerns over visibility from the second floor --

MR. GALLANDER: Yes, sir.

COMMISSIONER FRY: -- into the backyards. Also that it would be -- the visibility would take five years to be diminished by your landscaping as it grew. Has this changed since the NIM, since meetings with the neighbors? Are we likely to hear people stand up and say, yes, they've addressed our concerns, or are you still at odds with the neighbors in terms of whether this is a sufficient buffer?

MR. GALLANDER: We are still at this point -- we have not changed our plan post the NIM at this point, so we are at this opportunity during the public hearing to address that.

COMMISSIONER FRY: Okay. Thank you.

CHAIRMAN FRYER: Commissioner Klucik.

COMMISSIONER KLUCIK: Yes, thank you.

So am I right -- I can't quite see it that clearly. On the top -- no, no, on the top number --

MR. GALLANDER: Yes.

COMMISSIONER KLUCIK: -- right there, that's to the wall, from the border to the wall

that's 38 or 36?

MR. GALLANDER: 38.7 feet.

COMMISSIONER KLUCIK: And by rights that could be 30 feet?

MR. GALLANDER: Correct.

COMMISSIONER KLUCIK: For whatever reason, it's further than it needs to be.

MR. GALLANDER: Right. Our design of the project dictated that.

COMMISSIONER KLUCIK: Right. So I'm just trying to figure out -- and this is really, you know, maybe a question not necessarily for you, although I'm sure either you or Mr. Yovanovich could answer it. But I think it's an important question. I'm thinking that, you know, because of the infill and, you know, this is land that seems like there's no reason why you wouldn't expect that that would end up being, you know, a similar usage to -- you know, to the neighboring land, and, you know, if they were going to have an individual house there that was, you know, the same height -- what is this; two stories?

MR. YOVANOVICH: Two stories.

COMMISSIONER KLUCIK: Right. So you have a two-story single home just like the neighboring -- Canopy? Just like Canopy. Let's say we had the exact same kind of project as Canopy. You'd still have a two-story house looking in.

And I'm just trying to figure out, is there some legal basis to say people can't build a house next to you without an extra buffer that's not even necessary because people will be able to, you know, see your house? I just -- I'm trying to figure out -- I understand that we would all like to not have people -- we'd all like to have more privacy. I'm just trying to figure out legally -- I think it's great that you're addressing it, but it seems like you wouldn't even need to. It's just -- it's good planning, but it's not legally necessary. You could come before us and have a buffer that really wasn't going to end up providing this much concealment.

MR. YOVANOVICH: Correct. We're meeting the Land Development Code requirements for buffers where you have multifamily adjacent to single-family. We're meeting the requirements.

What we didn't have -- Mr. Fry, just so you know, we didn't have the sightline studies at the NIM. We provided and prepared the sightline studies so the residents can understand what real-world sightlines exist today. And when ours is ultimately a few years after planting, you're going to have double the protection from the sightline.

So to say we didn't address it is not totally correct. We didn't make a change, but we did show them through the sightline analysis with the existing -- the existing sightlines that we can't see through your berm, your berm and buffer, and you will not see through our berm and buffer after a reasonable period of time for those trees to grow.

COMMISSIONER KLUCIK: Well, right. And so if we could go back to that picture, because that was going to be my next question is -- the picture that's the actual photograph. That actually -- I know the angle can always make it seem different than it is. We actually have a continuous sightline breakup there, you know, with the actual buffer trees, or like let's say you got rid of -- I mean, I know you're going to try to preserve the trees that are there.

MR. YOVANOVICH: Those are their trees. They're on their property.

COMMISSIONER KLUCIK: No, I know. Well, but behind --

MR. YOVANOVICH: Behind it.

COMMISSIONER KLUCIK: Behind the palm tree, for instance, are we starting to get to the vegetation that's already there on your land?

MR. GALLANDER: That's correct.

COMMISSIONER KLUCIK: So you're intending to keep that there, if possible?

MR. YOVANOVICH: We will keep as many trees as we can, but through the normal construction process, there will be some that are -- that don't survive the process, and our required buffer will supplement that and result in the sightline analysis you see on this slide.

COMMISSIONER KLUCIK: Well -- and is -- what we're seeing in the cross-section, is

that pretty much any -- you know, is that just what's required by code, or have you gone beyond what's required by code?

MR. YOVANOVICH: The Type B buffer is the code-required Type B buffer.

COMMISSIONER KLUCIK: Okay. So in this case, it appears as though code actually addresses the issue that, of course, people would have, and whether it addresses it exactly how neighbors -- you know, of course, we'd all like to have really big, tall trees immediately, you know, to get rid of the -- you know, the sightlines, to block the sightlines.

MR. YOVANOVICH: Sure.

COMMISSIONER KLUCIK: But in this case, the code actually will cause that to happen over time, and that's what's reasonable, and that's what the code demands of developers.

MR. YOVANOVICH: Right. And you know in Florida it all grows pretty quickly. So, it will -- you know, we're saying five years max. My guess, it will be probably quicker than that.

COMMISSIONER KLUCIK: Thank you.

CHAIRMAN FRYER: Thank you. In approximately 15 minutes, we're going to take our mid-morning break.

Having said that, Commissioner Schmitt.

COMMISSIONER KLUCIK: Yes. Ken, shown on this diagram, just for edification, it appears, of course, that the site -- Soluna site, the base elevation is higher. I would assume that you are building to the current BFE requirements versus when the neighboring property was built.

MR. GALLANDER: That's correct.

COMMISSIONER SCHMITT: What's the difference now; do you know?

MR. GALLANDER: I do not know.

COMMISSIONER SCHMITT: Jamie may know, but I have to assume since --

MR. GALLANDER: Ours is higher.

COMMISSIONER SCHMITT: -- since Canopy has been built, which probably back then was maybe, I don't know, in that part of the county, maybe eight feet above sea level, you're probably at least two foot higher requirement for BFE, base flood elevation; is that correct?

MR. GALLANDER: I don't know.

COMMISSIONER SCHMITT: You don't know.

MR. GALLANDER: I, unfortunately, can't say, but it sounds --

COMMISSIONER SCHMITT: I mean, the public needs to understand that the elevation's going to be higher, and it -- you sort of show that in the drawing, because it's -- the slab certainly reflects that it's higher than the neighboring property, but the requirement -- you have to meet the base flood elevation requirement.

MR. GALLANDER: Absolutely.

CHAIRMAN FRYER: We have Ms. Cook coming up to the microphone. She can, perhaps, answer that question.

MS. COOK: Good morning. Jaime Cook, director of Development Review.

When they get their South Florida Water Management District permit, the base flood elevation will be set at that point.

COMMISSIONER SCHMITT: Okay. Well, Jaime, that's sort of true, but there's also requirements based on the flood maps.

MS. COOK: Correct.

COMMISSIONER SCHMITT: But you're correct, the -- once they do the -- they go in for their ERP, Environmental Resource Permit, through the District, they'll get that requirement as well. Thank you.

CHAIRMAN FRYER: We might have a second Jamie at the mic.

COMMISSIONER SCHMITT: Another Jamie.

MR. FRENCH: You can't go wrong with two Jamies. She's the better one, though.

Very quickly. Joe, you're absolutely right. Jamie French, for the record. The BFE out in that area is -- and I didn't look at the map. I think it's set at about eight or nine feet.

COMMISSIONER SCHMITT: Yeah, it would have to believe.

MR. FRENCH: If they do not seek that, the Florida Building Code has a requirement of one foot of freeboard on residential --

COMMISSIONER SCHMITT: Yep.

MR. FRENCH: -- nonetheless, and that's in the latest version of the Florida Building Code. But they'll come in, they'll set their elevations. As far as -- the maps will be updated based off of that, and they'll be required to work with staff and illustrate that they're above. But it will be above the current natural grade, no doubt.

COMMISSIONER SCHMITT: But -- and, of course, this is -- I'll go back to Ken again. This -- this portrays that you're going to try and keep as natural as possible that 15 feet, because you're obviously going to bring in fill in for the areas that you're going to be constructing homes on. But as Mr. Yovanovich -- as Rich stated, there will be some impact, but to minimize any impact on anything along that boundary and, of course, then you're going to put your preserve -- your buffer in, but -- which is fine.

And then that certainly acts -- but you still have the requirement -- I know Jamie will verify this. But when you go for your ERP, you have to retain all your water or move your water as specified through the Environmental Resource Permit. You cannot drain to the neighboring property.

MR. GALLANDER: That's correct. We understand that.

CHAIRMAN FRYER: Thank you.

Commissioner Vernon, you're lit up again. Is that a false alarm?

COMMISSIONER VERNON: No, if I light up, you don't call on me. If I don't light up, you call on me. So I think I've got some --

CHAIRMAN FRYER: I'm funny that way.

COMMISSIONER VERNON: You are. Maybe it's something I said. Maybe it's my earlier vote.

Actually, I just had, in a much less technical way, the same concern/question that Joe had. So -- and I think it's mostly been answered, but maybe just elaborate. If you're required to be higher than Soluna -- or the other -- to Canopy, then the natural thought I have is water's going to run off, and I think Joe addressed it, that that's not going to occur because -- but just elaborate in plain terms for me how they're going to be protected from water runoff.

MR. YOVANOVICH: Just so you know the exhibit you see in front of you where it says FFE equals 17.5 feet, we're in for our ERP permit, and hopefully we'll be issued shortly, because we have our plat running concurrently.

So in a technical sense, Joel designs the water management system to assure that we keep all of our water that's currently on that site on our site. So even though it looks like we're higher, the system is designed to make sure the water does not flow off of our property onto neighbors' property. Now, he can come and show you the calculations and how that works, and we could probably show you an exhibit, but that's -- we go through a very detailed review through the Water Management District ERP permit process to assure our water does not go off onto our neighbors.

COMMISSIONER VERNON: Yeah. That's what I wanted. I wanted a practical response. I don't need the technical. Thank you.

CHAIRMAN FRYER: Commissioner Klucik.

COMMISSIONER KLUCIK: Thank you, Mr. Chairman.

The 17.5 FFE compares to the 15.4 Canopy FFE. I'm just trying to figure out, does that mean anything? Because I was thinking, then, the difference is 2.1 feet. But is that too simplistic? It's not necessarily?

MR. GALLANDER: For the record, Ken --

COMMISSIONER KLUCIK: Okay. Because we talked a lot about it, and I'm, like, I'm third in line on the button here, and I'm, like, wait. It's right there.

MR. KLATZKOW: There's also nothing you can do about it.

COMMISSIONER KLUCIK: Pardon?

MR. KLATZKOW: There's nothing you can do about it. I mean, it's -- it's outside -- it's outside the county's purviews. They'll go for their permit. They'll get their permit. Hopefully the water's retained. If the water's not retained, well, that's life. It's just outside your purview, this issue.

CHAIRMAN FRYER: Anything else, Commissioner Klucik?

COMMISSIONER KLUCIK: No, thank you.

CHAIRMAN FRYER: Commissioner Shea.

COMMISSIONER SHEA: Just more of an education for me. Obviously, you say water is not going to leave the property, but you're designing it under a condition. What is the condition? A 100-year condition? A 50-year? Because it will -- there will be an event that it will leave the property. I'm just wondering what the condition is.

MR. YOVANOVICH: Fair question. I'm going to actually ask the engineer to give you that. I think it's a hundred-year, but I don't want to mis --

COMMISSIONER SCHMITT: It's a hundred-year, hundred-year event.

MR. BLIKSTAD: Rich knows more than he's willing to admit. But, yes, it is a hundred-year that this system is designed to.

COMMISSIONER KLUCIK: That's the secret to his success.

MR. YOVANOVICH: Not willing to admit anything.

CHAIRMAN FRYER: No one else is signaling now, so continue, please, sir.

MR. YOVANOVICH: I think that -- I already hit the highlights on the transportation during my presentation. We've asked for some deviations. Your county staff has supported those requested deviations.

And with that, I think that concludes our presentation. Obviously, we'll answer any other questions you may have, but I think we've hit all the highlights. We hope you'll follow your staff's recommendation to recommend approval of our PUD to the Board of County Commissioners. And we're available to answer any further questions you may have regarding the project.

CHAIRMAN FRYER: There appear to be none. Commissioner Fry.

COMMISSIONER FRY: Rich, if the Planning Commission decided that a little bit beefier buffer was needed -- we haven't heard public speakers yet to understand where they stand on this and what evidence they have. If that request was made, are you prepared to offer anything at this point?

MR. YOVANOVICH: Of course. Do you want me to offer it now?

COMMISSIONER FRY: Sure.

MR. YOVANOVICH: We have talked about -- there's a gap right here at planting. We talked about acquiring some trees that are tall enough to be planted at that sightline (indicating) at planting.

COMMISSIONER FRY: Meaning more mature trees.

MR. YOVANOVICH: Taller, I guess mature, whatever. The answer is, yes, we can fill that gap in if we need to. I'm not sure it's worth that extra expense, but if that's, you know, what will give the residents of Canopy more level of comfort and the Planning Commission a level of comfort, then we can plant it taller to hit the sightline now and not wait a couple years for growth to get to the bottom part of the sightline.

COMMISSIONER FRY: I think that's good to know now before the public speakers speak, because at least we can ask them if that would assuage their concerns. So thank you.

MR. YOVANOVICH: You're welcome.

CHAIRMAN FRYER: Thank you.

Commissioner Schmitt?

COMMISSIONER SCHMITT: Not me.

COMMISSIONER VERNON: There you go.

MR. YOVANOVICH: Is it you this time?

COMMISSIONER SHEA: It must have been Chris.

COMMISSIONER VERNON: It was me.

CHAIRMAN FRYER: Before you speak, Commissioner, I'm going to ask Mr. Troy Miller during the upcoming break if he would check on this system, because we seem to get some false positives on the deliberator.

Go ahead, Commissioner.

COMMISSIONER HOMIAK: That's Joe's seat.

COMMISSIONER VERNON: Oh, is that what it is?

COMMISSIONER SCHMITT: It's got my name on there.

COMMISSIONER VERNON: How many units in Soluna are going to be along the west side excluding the part that faces Tree Farm or that's next to Tree Farm?

MR. YOvanovich: On the west side?

COMMISSIONER VERNON: On the west side, yeah, running along that track that's against the Canopy.

MR. YOvanovich: I just want to make sure, so we're talking the same language, from this corner to that corner?

COMMISSIONER VERNON: Not even that. Just to the corner of Canopy.

MR. YOvanovich: So from here down?

COMMISSIONER VERNON: Yep, exactly. Units.

MR. YOvanovich: My client -- it's 120 feet. My client says there's six units in that area.

CHAIRMAN FRYER: Other questions or comments?

(No response.)

CHAIRMAN FRYER: No one is lit up on the deliberator. It's 23 minutes after 10:00. Unless the Commission feels otherwise, I think we should start our break now, go for 15 minutes.

MR. YOvanovich: It may -- before.

CHAIRMAN FRYER: Oh, sure.

MR. YOvanovich: Wayne just said to me there will be a maximum of two buildings in that row, which would be 12, but it's going to be between six and 12 in that area, not 18 that the audience just said. So in that area, six to 10, where the R is.

COMMISSIONER KLUCIK: Mr. Chairman?

CHAIRMAN FRYER: Yes, sir. Go ahead, Commissioner.

COMMISSIONER KLUCIK: Real quick question on the deviation. The sidewalk deviation, which parts will end up that should have sidewalks without the deviation, which areas would then not have sidewalks under your request?

MR. GALLANDER: That would be the portion along the southern boundary since there's no residential or the R on this side. So the sidewalks are only in relation and adjacent to where there's a residential tract or the amenity tract. So it's really -- it's going to be this portion there. This Deviation 3 symbol on this, that is that reference point for you.

COMMISSIONER KLUCIK: Great. Thank you.

MR. GALLANDER: Yes, sir.

CHAIRMAN FRYER: Without objection, then, we'll stand in recess until 10:40. That's 15 minutes from now. Thank you.

(A brief recess was had from 10:25 a.m. to 10:39 a.m.)

CHAIRMAN FRYER: Ladies and gentlemen, let's return. It's 10:40.

Mr. Yovanovich, do you have anything further, sir?

MR. YOvanovich: No. We've concluded. I didn't know if there were any further questions of us. If not, I think staff goes next.

CHAIRMAN FRYER: Well, we'll find out. Are there any further questions from the Planning Commission of the applicant?

(No response.)

CHAIRMAN FRYER: Apparently not. Ready for staff report. Mr. Bellows.

MR. BELLOWS: Yes. For the record, Ray Bellows. I've been working with Mr. Finn on this project, and it's my pleasure to present it to you today.

We are rezoning 18.5 acres from ag to Residential Planned Unit Development. As noted in your staff report, staff has found it consistent with the Growth Management Plan. And the listed deviations that were reviewed by staff, they are found not to have any health or safety issues, and we are recommending approval of those deviations. And I'd be happy to answer any questions.

COMMISSIONER SCHMITT: I have one question.

CHAIRMAN FRYER: Commissioner Schmitt.

COMMISSIONER SCHMITT: Yeah. Ray, would you just highlight --

CHAIRMAN FRYER: Actually, that's out of the sequence. I didn't look over here. Commissioner Klucik is first.

COMMISSIONER KLUCIK: Well -- and mine is real brief.

COMMISSIONER SCHMITT: Go ahead.

COMMISSIONER KLUCIK: And everyone saw it. I just want to disclose that I was speaking with the residents who are here, so that's a disclosure --

CHAIRMAN FRYER: Understood.

COMMISSIONER KLUCIK: -- communication.

CHAIRMAN FRYER: Thank you, sir. Commissioner Fry.

COMMISSIONER FRY: Mr. Bellows, I'm just curious, the residential infill bonus of three dwelling units per acre, what's -- just explain in laymen's terms the purpose of it and how the number three was arrived at.

MR. BOSI: The logic behind the infill bonus is you've got empty property that development has -- has been placed around it. You have a wide availability of infrastructure. Because of that, those are the properties we would want to see to be added to the property tax layer, to be added to the active land-use layer. So we want to promote -- we want to incentivize development from taking advantage of areas that have that full complement of infrastructure availability. So, therefore, to promote activity, we reward it with an additional three units per acre. And we've utilized that also to help augment the demand that's associated with the Rural Fringe Mixed-Use District to be able to -- and it requires that the first unit for that infill -- that infill three units per acre has to come from a TDR. So it augments the demand for TDRs, so people who have had their development rights restricted within the sending area have opportunities to be made whole.

COMMISSIONER FRY: I have not heard density being an issue raised in this project, but I'm curious if that number of three, the bonus of three has ever been adjudicated downward by the Planning Commission or the --

CHAIRMAN FRYER: I want to interject first, and then, Mr. Bosi, please answer the question. It's my understanding that that is a discretionary bonus; am I correct?

MR. BOSI: Oh, yes, yes.

CHAIRMAN FRYER: Okay. I just wanted to be sure everybody understands that this is not obligatory on us. It's discretionary.

MR. BOSI: Any rezoning that's in front of you, you have the ability to limit the density based upon the safety concerns -- healthy, safety, welfare issues that you may perceive within that individual project.

COMMISSIONER FRY: So I guess my question is still, it's discretionary, as Chairman Fryer said. How often have you, Mr. Bellows, staff, seen it adjudicated downward by the Planning Commission or the Board of County Commissioners?

MR. BELLOWS: For the record, Ray Bellows.

There are many rezone applications that take advantage of various density bonus provisions. There's another one called a density band that surrounds our activity centers. That's

another one where you get three additional eligible bonus over the base of four for seven, kind of like this. And there have been many cases where they've asked for seven and we -- or the staff or the Planning Commission has, based on those site-specific conditions, recommended less.

COMMISSIONER FRY: So here's -- the last question is very much of a laymen's question. But why -- I know there's residential surrounding this area, and this is the last parcel to complete a fully residential block of land. Why is the bonus only for residential? Why would you not also want to consider commercial in an area like that to serve the residential communities?

MR. BOSI: The bonus is designed to add/incentivize for residentially -- for properties that want to seek residential use. Now, if they wanted a commercial aspect within their residential component, they would have to request a mixed-use -- a mixed-use PUD, and they would have to -- it would have to be in compliance with the commercial allocation of the Growth Management Plan in terms of where we allocate it as appropriate. This isn't an area that has been designed or allocated by Future Land Use Map for commercial development. It is urban residential.

So based upon that designation, commercial's not a use that we encounter or that we would contemplate related to incentivizing further -- from a residential perspective.

COMMISSIONER FRY: Okay. Thank you.

CHAIRMAN FRYER: Thank you.

Commissioner Shea.

COMMISSIONER SHEA: Just more educational questions. If this is 22 acres, would they be allowed to do this? Is there something magical about the 20-acre -- being less than 20 acres?

MR. BOSI: Other than that's the cutoff point that we -- that we've established for the infill bonus provision.

COMMISSIONER SHEA: So they wouldn't be able to do this if they were two acres bigger?

MR. BOSI: Correct.

COMMISSIONER SHEA: Okay. So what they're -- if they just built without having to come here for a rezone, they could put four dwelling units per acre?

MR. BOSI: No. The current zoning designation is agricultural. They could put one unit per five acres.

COMMISSIONER SHEA: One per five acres. So we're actually going -- okay. But they're proposing going to seven, and in exchange they're going to give us --

CHAIRMAN FRYER: I'm sorry, but the current zoning is A, but under the GMP it's anticipated that it's going to be urban infill.

COMMISSIONER SHEA: Urban infill, which is four, right?

MR. BOSI: Yes.

COMMISSIONER SHEA: So they could come in --

MR. BOSI: The land-use allocation -- the future land-use allocation is a base of four units per acre.

COMMISSIONER KLUCIK: And the basis --

MR. BELLOWS: And that's a base density. There are ways to get additional through bonuses. This is one way. Affordable housing is another way.

COMMISSIONER SHEA: You can go through affordable housing or this. So in exchange for going from four to seven, they're going to conserve 18 acres in the rural fringe area somewhere?

MR. BOSI: Well, they have purchased -- they have purchased 18 TDRs. Those 18 TDRs convert to 80 acres of sending lands.

COMMISSIONER SHEA: Okay.

COMMISSIONER FRY: Eighty or 90? Isn't it five acres per TDR?

MR. BOSI: Five.

CHAIRMAN FRYER: Thank you. Commissioner --

COMMISSIONER SHEA: Yeah.

CHAIRMAN FRYER: Sorry.

COMMISSIONER SHEA: I'm just trying to -- it seems like a pretty reasonable exchange.

MR. BOSI: Yes.

COMMISSIONER SHEA: Thank you.

CHAIRMAN FRYER: Commissioner Schmitt.

COMMISSIONER SCHMITT: Both lines of question were exactly what I was going to ask Ray to clarify. Certainly I know the issue, but I want to make sure both the public and my colleagues understand. But also understand the incentive here -- if you recall, we had two programs -- for my colleagues. We had the Rural Fringe Mixed-Use District and the Rural Lands Stewardship Area; two areas where we had initiatives to preserve certain areas of the county that were deemed to be areas we wanted to protect, and part of this problem was -- well, part of the issue here is the incentive of compensating landowners in the Rural Fringe Mixed-Use District because now we have an applicant that is going to pay someone for the TDRs that they've had on the market probably for 20 years, I have to assume, since it started.

And they're going to be compensated for land that has been identified as land that no longer can be developed, but it still had development rights, and now they're transferring those rights through TDRs. So it's a win-win. Frankly, it's a win-win for the infill. The density may not be deemed a win-win, but it's a win -- because the infill is being constructed based on our Future Land Use Map because this is an area -- or a tract that was identified for residential. But the real win is the property owners that have these rural fringe -- or these TDRs on the market. Now, all the county does, is my understanding -- could you clarify -- you just monitor the TDR bank. You're not the banker. You just monitor the transfer of the TDRs.

MR. BOSI: Mike Bosi, Planning and Zoning director.

We are not a TDR bank. We are the -- kind of the commodity exchange.

COMMISSIONER SCHMITT: Commodity exchange, yeah.

MR. BOSI: We make sure the transfers are provided for within the proper fashion. We have a set -- minimum set price tag for what the base credits can be exchanged for. We maintain the existing inventory of TDRs that have been issued, when they've been expended, when they've been extinguished. But we are just -- we provide the exchange. We do not provide a banking account.

COMMISSIONER SCHMITT: Thanks. So but -- and this is clearly in compliance with all the requirements for an infill and for the density bonus associated with it?

MR. BOSI: Correct.

COMMISSIONER SCHMITT: Okay. Thanks.

CHAIRMAN FRYER: Thank you.

Commissioner Klucik.

COMMISSIONER KLUCIK: And for clarification -- I'm not sure if this is our planning staff or our attorney or maybe even both, maybe even some of you could set me straight on this. But just to confirm or clarify, you mentioned the health, safety, and welfare issues could be a reason for both the deviations as well as the bonus to recommend disapproval. Am I -- you know, is it implied and is it actually the case that if we don't identify something specific as to health, safety, and welfare that we wouldn't be in a position to deny those requests?

MR. KLATZKOW: You need a rationale --

COMMISSIONER KLUCIK: In other words, if we don't find a --

MR. KLATZKOW: You need a rational basis --

COMMISSIONER KLUCIK: To say no?

MR. KLATZKOW: -- to say no.

COMMISSIONER KLUCIK: And those are traditionally ones that we use, because those are obviously a good -- you know, if there was a health issue caused by one of the deviations, then that would be a rational basis.

MR. KLATZKOW: Yes, sir.

COMMISSIONER KLUCIK: And at this point, we haven't -- the staff has not found a rational basis.

MR. BELLOWS: We haven't identified any.

COMMISSIONER KLUCIK: Okay. And to be honest with you, that's kind of a cue to the fine people that -- you know, that do live in Canopy that are here that I spoke with during our break. That's a cue to you that that would be what you need to find and what you need to be arguing. You know, in my -- you know, I'm not an expert on it, but to me, you know, from our discussion right here, you have to have some rational basis and those health, safety, and welfare concerns are -- in the past have always been something that we can use as a rational basis to deny a petition like this.

CHAIRMAN FRYER: Thank you, sir. Anything else from the Planning Commission for staff?

(No response.)

CHAIRMAN FRYER: Anything else from staff?

MR. BELLOWS: That's it.

CHAIRMAN FRYER: Thank you very much. Therefore, it brings us to the time for public comment. What -- Mr. Youngblood, what do we have and from whom?

MR. YOUNGBLOOD: Mr. Chairman, we have five registered speakers for this item. Two of them are present with us, three of them are online. We will start with Steve Shambo followed by Kristen Petry.

MR. SHAMBO: I was going to defer to him.

CHAIRMAN FRYER: All right. Did the first waive off?

MR. SHAMBO: He has all my concerns. Yes, I give it to him.

CHAIRMAN FRYER: All right. So the first speaker's not going to be speaking. So the second speaker, please approach the podium.

MR. YOUNGBLOOD: Kristen Petry.

MS. PETRY: So I'm with the client here on this side, so I don't know how that got --

CHAIRMAN FRYER: Can you come up to the microphone and let us know. It doesn't matter who you're representing if you're a member of the public and you want to speak.

MR. YOYANOVICH: She's my landscape consultant.

CHAIRMAN FRYER: Okay.

MR. YOYANOVICH: So I think she just got --

CHAIRMAN FRYER: Okay. All right.

MR. YOYANOVICH: -- listed as a public speaker, but she's not a public speaker.

CHAIRMAN FRYER: Thank you. Understood. Do we now go to the videotape -- go to the Zoom?

MR. YOUNGBLOOD: Yes, Mr. Chairman. Ken Dechman is our first speaker.

CHAIRMAN FRYER: All right. Mr. Dechman, are you on, sir?

MR. YOUNGBLOOD: Give me just one moment here.

CHAIRMAN FRYER: All right. We need to unmute on the speaker end, please, sir.

MR. YOUNGBLOOD: All right. Mr. Dechman, are you with us?

MR. DECHMAN: Yes. Are you able to hear me now?

CHAIRMAN FRYER: Yes. Please proceed.

MR. DECHMAN: Yeah, this is Ken Dechman. I'm a resident in Canopy. There are a number of issues here.

I just want to briefly speak about one issue regarding the NIM that was discussed earlier. There were extremely few of us in the community here who were notified of the NIM in the first place, and the same occurred for this meeting today. In fact, our community was notified probably fourthhand for today's meeting. There was one letter that went to one of our residents here who shared it with me, and then I e-mailed it to the board, who then sent it out.

We did not have enough time to plan to attend these meetings. I believe there would be many more of us in attendance had the proper notice been given. In my opinion, it wasn't proper notice. I think we're the community that's most affected by this development, and yet even those of us who attended the NIM, which I did, I did not receive notice about this meeting except for secondhand. I don't know if that could be addressed in the future. To me, it just seems improper. And I'll mute.

CHAIRMAN FRYER: Well, we'll address it right now, sir. Mr. Bellows.

MR. BELLOWS: Yeah. For the record, Ray Bellows.

I pulled up the advertising information that was part of your packet. We did do a mailed notice to property owners pursuant to the Land Development Code, and that was to those registered with the Property Appraiser's Office. We also posted signage on any part of the PUD boundary that has a street frontage, and we also posted -- or a newspaper ad.

CHAIRMAN FRYER: And that's notice to 500 people?

MR. BELLOWS: Five hundred feet in the urban area.

CHAIRMAN FRYER: Five hundred feet.

MR. BELLOWS: A thousand feet in the rural.

CHAIRMAN FRYER: Okay. Thank you.

Commissioner Schmitt.

COMMISSIONER SCHMITT: Thank you.

Yes, Ray, to clarify, that's 500 feet from the boundary.

MR. BELLOWS: Correct.

COMMISSIONER SCHMITT: Into the neighboring properties.

MR. BELLOWS: And we used the Property Appraiser's lists. So if somebody's renting, they may not get the notice.

COMMISSIONER SCHMITT: Let me pass this question to Mr. Dechman. You live where?

CHAIRMAN FRYER: Mr. Dechman, are you still with us, sir?

MR. DECHMAN: I'm still here. I live on Canopy Circle. I did not receive notice. I've lived here four years, and I'm a registered taxpayer here.

I only know of one neighbor who lives here who received notice in our community. There may be others, but I know that it's -- the majority of those neighbors that I spoke with who are registered permanent full-time residents here in Collier County received no notice. It may have been posts, but as you mentioned before, those signs are very difficult to read unless you actually walk out and go to them.

But I had one neighbor who received notice, and when I made a copy of that and e-mailed it to our board president, he indicated that he had also not been contacted. I would at least think that the members of our board would have been notified of these meetings, but apparently they were not.

COMMISSIONER SCHMITT: Let me follow up, then, with the staff or with the petitioner.

Ray, staff verified that letter notice went out?

MR. BELLOWS: Yes.

COMMISSIONER SCHMITT: How many letters went out?

MR. BELLOWS: I have to look it up.

COMMISSIONER SCHMITT: And based on the property records, and that is the applicant's responsibility based on the property records. They will do, in assistance, typically, with the staff, if I'm not mistaken, you --

MR. BELLOWS: Planning Commission advertising, we do -- we contact our graphic's staff, and they provide us a map and a list of property owners.

COMMISSIONER SCHMITT: But the applicant actually sends out the letter?

MR. BELLOWS: Only for the NIM.

COMMISSIONER SCHMITT: Only for the NIM. You actually send the letters for the Planning Commission?

MR. BELLOWS: Planning Commission.

COMMISSIONER SCHMITT: Okay. I was not clear on that. I forgot that. So -- but the -- so based on the registered addresses in the Property Appraiser's website, which has got to be the most accurate --

MR. BELLOWS: Yes.

COMMISSIONER SCHMITT: -- within 500 feet, which is basically through a GIS process, you're sending every homeowner within 500 feet of the property a letter advising them of the meeting?

MR. BELLOWS: Yes. We work with a company that does the mailing for us. We provide the letter that's part of the -- goes in the envelope, but the mailing company gets the list from the county that we work with our GIS staff to -- from Property Appraiser records and GIS, and they --

COMMISSIONER SCHMITT: So if a -- if a homeowner is not living here full time -- and that's the postal service and forwarding of mail, whatever.

MR. BELLOWS: Yes.

COMMISSIONER SCHMITT: But the notices were sent?

MR. BELLOWS: Yes.

COMMISSIONER SCHMITT: Okay. Thank you.

COMMISSIONER SHEA: I think the key is 500 feet.

COMMISSIONER SCHMITT: Five hundred feet.

COMMISSIONER SHEA: It's probably outside of 500 feet. That's why he didn't get it and others did.

CHAIRMAN FRYER: I think it's worth mentioning that we have had before us -- and I think it's -- I'm not sure where it is now in the proceedings, but I believe we have taken action to recommend expanding that number to what -- it was at least 1,000 feet if not more.

MR. BELLOWS: Well, there's a proposed LDC amendment. That's Estates zoning though, one mile.

MR. BOSI: The Estates zoning has been increased to one mile, but the other notification areas within the rural communities have not been extended beyond that one mile.

CHAIRMAN FRYER: Sometime I thought we had taken recommendatory action on everything, but not --

COMMISSIONER VERNON: I thought we did, too.

COMMISSIONER SHEA: It was related to the Estates when we were doing the RLSA villages out there, because we weren't reaching enough of the neighbors because of the size of the lots. That gets to the Estates side.

CHAIRMAN FRYER: It sounds to me like this, that the current ordinance was satisfied with respect to sending of notice.

MR. BELLOWS: Yes. And I do have some additional information. There were 126 letters that went out based on the 500-foot measurement.

CHAIRMAN FRYER: Okay. But this points out, again, at least for me, the advisability of us taking another look at the reach of these notifications for the entire county because it's -- it seems to me that if all of Canopy didn't get notification, then our ordinance falls short of what it should say. Now, that doesn't -- that doesn't change anything with respect to this application because it complied with the ordinances. But we're the Planning Commission, and I think we need to look at that and consider whether we want to recommend a broader reach.

Commissioner Klucik.

COMMISSIONER KLUCIK: Yes, thank you, Mr. Chairman.

Just, you know, Google Maps allows you to do a distance, and I'm just swinging a radius of 500 feet from, you know, the corner, and it seems like, you know, maybe half of the -- not even

half of the homes in Canopy would have been, you know, within 500 feet.

And so I guess I'm thinking that, you know, that might be why; I'm not sure. So if you were on the easternmost portion of the Canopy Circle, the eastern half, you more than likely got -- than not got a notice. And then, obviously, there's other communities that are near by and that's -- that might be why. And I'm not -- you know, I don't know.

But I don't -- I don't doubt that our staff did it, but I certainly think that the -- if you look at the people that seem to be most affected, you know, it's going to be those people. You know, all of those houses that are near the buffer, they all definitely got -- you know, got notice, you know, unless -- unless we're hearing inaccurate information, you know, from our staff, and -- you know, and I guess if Mr. Dechman, you know, lives in that area where it butts up against that wall, then he would -- you know, he can, you know, testify that he didn't -- has told us that he didn't get it. I'm not sure where he lives, but it seems as though we followed the code.

CHAIRMAN FRYER: All right. Thank you.

Mr. Dechman, anything further from you, sir?

MR. DECHMAN: No. I would just say that my property does not go up against the wall, but I may be half a dozen houses from there, so I'm actually very close to this community. So if I'm outside of that zone, then I think the county should readdress who is notified, because I'm within a line of sight of this development. So I feel like, at a minimum, I should have received notice.

But my other point was that our HOA board should have received direct notice, and my understanding is that they did not, which is a -- a grave concern to me.

CHAIRMAN FRYER: Go ahead, Vice Chair.

COMMISSIONER HOMIAK: The mailing did go to Canopy Neighborhood Association. There's a list right in our packet. It was mailed to them. And the other association, that was some letter we got that said there wasn't -- they didn't -- weren't notified, Mockingbird or something, they were also mailed.

CHAIRMAN FRYER: The association?

COMMISSIONER HOMIAK: Yep. Sent to the management companies.

CHAIRMAN FRYER: I happen to agree with the sentiment of Mr. Dechman. I think we need to revisit this for future applications, but for the current application it seems to me that the ordinance was complied with.

Anybody else, questions for Mr. Dechman? Comment? Commissioner Fry.

COMMISSIONER FRY: Mr. Dechman, I'm waiting for somebody from Canopy to elucidate your concerns with this development. Is that -- was that part of your presentation or simply concerns about the notice?

MR. DECHMAN: I'll leave it to the rest of our community to address those. But I would just reemphasize the fact that even though you're saying that our board was sent notification, when I e-mailed our board president, he informed me that he had not received direct notice of it. I just wanted to make sure that I have that point made clear. But, otherwise, I'll defer to the other members of my community for the rest.

CHAIRMAN FRYER: All right, sir. Thank you very much.

Who's our next speaker?

MR. YOUNGBLOOD: Mr. Chairman, our next speaker is Katrina Curran. Ms. Curran.

CHAIRMAN FRYER: Ms. Curran, are you online?

MR. CURRAN: That's my wife. Oh, okay.

MS. CURRAN: Hello.

CHAIRMAN FRYER: Yes, ma'am. We hear you, and you have the floor.

MS. CURRAN: Yes, I apologize.

So I wanted to address a couple of things that were brought up in my letter. My understanding is everybody thinks I'm specifically concerned about the view from the trees. That is not -- that is a concern, and to address with that, if -- we bought this land with a radio station

behind it, okay. Nothing there. No plans for anything or anything to that sort. We knew Tree Farm was coming in. We knew Massey, and that's fine, but to have a dense 130 townhomes built right here was never on our radar. It was never said, and that's it.

With that being said, I understand development is going to happen. So if you want to put a two-story house here, it's a two-story house; it is not 18 townhomes. There's a huge difference in that fact, you know.

And if you look at my correspondence, I went over to D.R. Horton's other property, Meadowood, and if you look at the photos, that is what they are planning to put behind my house with those -- with that fence with that landscaping.

Can you guys look at the photos or anything to see how Meadowood is set up?

CHAIRMAN FRYER: If I may -- if I may try to address your question. The development standards limit the properties to be built to a zoned height of 30 feet and actual of 40, which I think is consistent with the neighboring properties.

MS. CURRAN: Correct. I mean, I have a house two story next to me, and that's fine. But what I'm talking about is the dense population. If it's four single-family homes behind me two-story, that's fine, you know. My concern is the density of it.

CHAIRMAN FRYER: Well, personally, I think your concern over density is a reasonable one and something that we need to think about. And, as you know, an infill density bonus, which is discretionary, is being requested in the amount of three additional DUAs. We will consider that carefully and be mindful of your comments.

MS. CURRAN: Okay. So that's one thing.

In regards to the wall issue, Mr. Gallander was correct. We don't have anything here, but that is on our developer, Neal Communities. Their original plans had for a fence along this property line and a wall along Tree Farm Road. And Neal community bailed on us. They did absolutely nothing about it.

We had -- we tried to deal with them and negotiate it, and they refused to do anything. However, on the neighboring properties to Vanderbilt and Bristol, there's a wall. They -- I'm assuming they thought we had a preserve, and they just walked away from us.

But I did have a fence along the east side of this property that went about, I want to say, eight or nine homes, and then they stopped it.

The radio station has a fence, and that's where they went up to, and then they just left it. So they left our fence up to the radio station.

CHAIRMAN FRYER: Commissioner Fry.

Go ahead, Commissioner.

MS. CURRAN: I'm sorry. What?

COMMISSIONER FRY: Go ahead. I didn't mean to interrupt you.

MS. CURRAN: No, no problem. So that's why we are mentioning it to D.R. Horton, because we were left high and dry by Neal Communities, so -- and that's where that's coming.

And in regards to the type of wall that we want, in there -- our -- Soluna's request for deviation, Deviation No. 4 is they want to put a wall height of eight feet on the perimeter of the project on Tree Farm Road and allow 12-foot-tall wall/bedroom combination, but can't they bring that down along Canopy? You're already going to do it; you just continue it, okay. That's what I'm looking at. If they already requested a deviation on it, why not just continue it?

CHAIRMAN FRYER: All right. Commissioner Fry has a question or a comment, ma'am.

COMMISSIONER FRY: Ms. Curran --

MS. CURRAN: Sure.

COMMISSIONER FRY: -- in your -- and I want to ask Ray if this is something we could put up on the screen. In the packet, page -- her letter, an e-mail thread. It starts on Page 147. But on Page 150 of the packet you have photos.

MS. CURRAN: Yes.

COMMISSIONER FRY: And I wanted to clarify what those photos are.

MS. CURRAN: Sure.

COMMISSIONER FRY: First of all, the top photo -- and Ray is attempting to put these photos up on the actualizer so we can see them. There are six homes shown that are part of Canopy along that border. Which home are you?

MS. CURRAN: Okay.

COMMISSIONER FRY: Are you one of the homes?

MS. CURRAN: Yeah. I'm lot number -- or house -- the No. 56, that's me. That one.

COMMISSIONER FRY: Okay. The one that's slightly diagonal.

MS. CURRAN: Yes.

COMMISSIONER FRY: The next picture has a pink pipe and a picture of a fence. So clarify exactly what that picture is.

MS. CURRAN: That is Meadowood. That's their development that they're building off of 951. That pink pipe is where the back of the townhome finishes. That is the fence that they have going up against Indigo Lakes, and that is what they are proposing to put behind their property here.

COMMISSIONER FRY: And that distance from the pink pipe to the fence is, I believe --

MS. CURRAN: 23.7 feet.

COMMISSIONER FRY: 23.7. Okay. So just to point out they're 30-some feet -- 37-and-a-half feet. So they're another 14 feet further back from that pink pipe in this development, and the other difference is that the buffer that you see at that fence is some low-lying hedges. You already have a buffer that's significantly beefier than that, and they're putting in a buffer that is beefier than that as well. So my question is, to what extent can you actually see through your buffer once they -- when they put their homes in and they have an immature buffer in on their side, are you -- is it your position that the homes -- the second story of the townhomes over there will be able to easily see through their buffer and your buffer into the backyards of your homes?

MS. CURRAN: Let me -- can we go back to the photo that he took of the property, that Mr. Gallander took of the property when he was here. Because I will explain to you -- because that's actually my backyard.

COMMISSIONER FRY: Are you able to see what we're seeing on the screen from where you are?

MS. CURRAN: Yeah, I see this right now. So he's standing in my backyard. Those hedges in front get cut down to five feet. Right now they're just overgrown. So basing that as a buffer is irrelevant.

Behind that is palm trees, and a couple feet behind that is the property line. All of that tall stuff you see behind there and behind those palm trees are almost going to get torn down.

We asked him to leave the pine trees, and he was like, well, we'll see what we can do. But a majority of that's going to get torn down. Some of it is invasive species. Fine. I get that. But what you guys see is not going to remain. That is one of the issues. It will not be there.

And we have gone to the property line of Canopy and to where that fence is from that radio station, and that is 38.7 feet, and where that fence is with the radio station is where the back of the townhome will be according to their sightline drawings of 38.7 feet. That will not be there.

COMMISSIONER FRY: Okay. The last two photos you have, one is a -- it's a lot with some, you know, wood construction, kind of a cleared lot, and then a few feet to a fence. What is that exactly?

MS. CURRAN: That's Meadowood.

COMMISSIONER FRY: That's Meadowood again. So that's under construction. And then the final photo is finished townhomes looking at a fence and another development. What is that?

MS. CURRAN: That's Meadowood.

COMMISSIONER FRY: Meadowood also.

MS. CURRAN: These are all Meadowood, yes.

COMMISSIONER FRY: Yeah. Ray is putting those up now.

I just want to be clear on what these exhibits are. So it's your -- it is your statement that a second-story townhome would easily be able to see through your buffer and whatever they put in into your backyards?

MS. CURRAN: Correct.

COMMISSIONER FRY: You also had an issue about screening of air conditioners units, and I think hearing those things humming and all that. Is that also an issue remaining for you?

MS. CURRAN: Correct. Because as you can see, you can see where the air conditionings are, right there, and my bedroom is right there on the other side of that.

COMMISSIONER FRY: Okay. The other issue I remember from your letter and others from the NIM were concerns about traffic getting out onto Tree Farm Road out of your exit and how this additional traffic would make that more difficult. So what is -- what is an update on that? And just give us more information.

MS. CURRAN: Correct, as their attorney was explaining that Woodcrest and Massey going through Vanderbilt and Tree Farm, that is correct; it's been there set up a long time; however, the development that has occurred on Immokalee Road in the last several years is going to outweigh that capacity that side bypass will be able to handle. On the corner of Collier and Immokalee, we're building 400 apartments. You go further down Immokalee, there's another 850-home development coming up, and there's more developments coming up that way.

And Immokalee right now is the main corridor from out Ave Maria and toward to the interstate. So people will be turning down Massey and Woodcrest at an increased volume. And the traffic study, unfortunately, does not allow for five years in the future or even what's coming in right now. So that is my concern.

COMMISSIONER FRY: What is your experience currently getting out onto Tree Farm? I assume you're turning west on Tree Farm is where you're experiencing potential delays?

MS. CURRAN: Yes, especially during season when we're trying to make that left to get on it, and it becomes a little bit difficult sometimes to get out there.

COMMISSIONER FRY: All times of day or specifically in the afternoon?

MS. CURRAN: During rush hour.

COMMISSIONER FRY: Okay.

MS. CURRAN: The morning rush hour and coming home, and people go speeding down that road quite frequently.

COMMISSIONER FRY: Okay. Thank you.

Commissioner Schmitt.

COMMISSIONER SCHMITT: Yes. Can you clarify the issue with the fence? You're basically saying your developer -- and you believe your -- the PUD documents, the Planned Unit Development documents for your development required the developer to put up a wall, and they left and did not put up a wall; is that your position?

MS. CURRAN: Well, their original plans had that stuff in it, and then I guess plans, obviously, develop and change, and in their final one it was not there anymore.

COMMISSIONER SCHMITT: Okay. But I don't understand. Well, I understand exactly what you're saying, but there's perception of what you thought the developer was supposed to do and what -- the PUD requirement.

Let me turn to staff, Ray or Mike, what -- what were the requirements for Canopy? Because it's residential abutting ag. There's no requirement for a wall.

MR. BELLOWS: Correct.

MS. CURRAN: Correct.

COMMISSIONER SCHMITT: All they put up was a chain-link fence to delineate the property. Who put up the chain-link fence; Canopy or the radio station?

MS. CURRAN: It's the radio station's.

COMMISSIONER SCHMITT: Okay. So they fenced off their property, so --

MS. CURRAN: Yeah. So when I'm --

COMMISSIONER SCHMITT: You're saying that your developer -- or someone told you or it was a belief on your part that a wall was supposed to be constructed there?

MS. CURRAN: Yeah. I mean, according to the original plans that were submitted to the county, it had a wall there and it had a fence there, but by the time they got done -- they changed it before the actual development came forward. They changed the plans and removed it.

COMMISSIONER SCHMITT: Okay.

MS. CURRAN: It was there, and then it wasn't there.

COMMISSIONER SCHMITT: All right. I'm sorry for the questions, but I'm trying to understand. You -- it's your position that there was a plan submitted and approved that a wall was going to be constructed.

MS. CURRAN: Correct.

COMMISSIONER SCHMITT: Let me ask staff. Was there a plan submitted that you know of that required a wall to be constructed, and did they come in to amend it to not construct the wall?

MR. BELLOWS: I was just going to pull up the PUD to see what the language was. There might have been one time a proposal to have a perimeter wall, but it isn't required --

COMMISSIONER SCHMITT: It's not required.

MR. BELLOWS: -- to have it against an agricultural rezoned parcel.

MR. KLATZKOW: No. The issue is, what was approved by the Board? Because they weren't selling houses until the PUD was approved. So what does the PUD say?

COMMISSIONER SCHMITT: What does the PUD say?

MR. BELLOWS: I'm opening it up now.

COMMISSIONER SCHMITT: The second question is, this is residential abutting residential. So in accordance to with the Land Development Code, there is no wall required, just a buffer between residential buffer -- adjacent to residential. So it's basically Canopy's position that whether it was required or not, the wall was never constructed, but now you're saying you believe that it's now the -- this petitioner's responsibility to put up a wall since your developer did not; is that your position?

MS. CURRAN: No. I'm not saying that it's their responsibility because our developer did not. It's their responsibility because they are putting something in there. The existing fence is being torn down. Look, I don't care what's behind it, because it's a radio station that's there. But I have to look at it as a safety standpoint. If there is nothing there, there is open property between Soluna and us; nothing stopping anybody from trespassing between the two properties.

We have young children here. Who's to say a child cannot go into the construction site? Who's to say a construction worker can't come onto my property? That is the issue. There is nothing stopping anything from happening between these two properties if we leave it completely open.

COMMISSIONER SCHMITT: I understand. What the petitioner's offering, what, to put up a chain -- to replace the chain-link fence, or no fence?

MR. YOVANOVICH: Am I allowed up? Can I come up?

COMMISSIONER SCHMITT: Yes, please.

CHAIRMAN FRYER: Go ahead.

MR. BELLOWS: I put up on the screen the master plan that shows the adjacent project, Buttonwood Preserve, where the wall is optional, listed on the master plan as optional.

COMMISSIONER SCHMITT: And that's what was approved by the county. It was optional?

MR. BELLOWS: Correct.

COMMISSIONER SCHMITT: A fence or a wall.

MS. CURRAN: Yes.

COMMISSIONER SCHMITT: Okay.

CHAIRMAN FRYER: Mr. Yovanovich?

COMMISSIONER SCHMITT: If it was going to be commercial, there would be a wall required, typically --

MR. BELLOWS: Correct.

COMMISSIONER SCHMITT: -- or sufficient buffer. But in this case it was residential. No wall required. A fence could be approved. So there was no requirement -- it was either/or.

MR. BELLOWS: That's correct.

COMMISSIONER SCHMITT: Okay. Thank you.

MS. CURRAN: Yeah. So they chose the "or," not doing it. That's what I'm saying.

CHAIRMAN FRYER: Mr. Yovanovich.

MR. YOVANOVICH: If I can, I've put the survey of the property up just so we can get a better idea. I think what she's talking about is the fence you can see on the survey that surrounds the existing antennas, okay. We intend to put our own vinyl-coated chain-link fence on our property on the western property line or in the vicinity of the property line putting in a chain-link fence on our property. That will be part of our development. We are not going to put in a wall along that property line.

It's hard enough -- I don't think it's legal nor is it fair to require us to put a wall in that was an option for a previous developer on a different piece of property to address those concerns. But we are addressing the concerns by putting in a vinyl-coated chain-link fence on our property.

COMMISSIONER SCHMITT: And the fence will be constructed when?

MR. EVERETT: As soon as feasible.

MR. YOVANOVICH: As part of the initial site work.

MR. EVERETT: We can agree to that.

MR. YOVANOVICH: We can agree to do it as part of the initial site work as part of the -- as we move forward.

COMMISSIONER SCHMITT: Yeah. My position, I agree, that you're going to be doing site work. I mean, either -- some kind of a temporary fence until the permanent fence goes up.

MR. YOVANOVICH: And we're happy to do that. But I need a -- first of all, let's make it clear that the code does not require --

COMMISSIONER SCHMITT: Right, I understand.

MR. YOVANOVICH: -- require any type of fence between neighbors.

COMMISSIONER SCHMITT: Correct.

MR. YOVANOVICH: And it seems a little odd to me that residential people can't get along with residential people; that we have to put in these boundaries to separate ourselves, but if -- we're going to do that.

COMMISSIONER SCHMITT: And then -- but the -- as far as Canopy, is Canopy a -- managed by a homeowners' association or is it a CDD?

MR. YOVANOVICH: I have no idea about Canopy.

MR. CURRAN: HOA, homeowners' association.

COMMISSIONER SCHMITT: Okay. I know the -- it is a homeowners' association, just a response from the attendees here.

So the HOA, if they chose to, they certainly could assess their property owners to put up a fence or a wall?

MR. YOVANOVICH: I'm assuming they could, or the individual property owner could probably put a fence or wall on their property.

COMMISSIONER SCHMITT: Yeah. It's an HOA issue that really -- I understand the issue. I certainly, you know, don't object to what is being presented, but it's not an issue of this zoning other than the fact that it is an issue that's been raised by the community, but it's not required. The LDC does not require it. And if it's an ongoing issue, I think the community has

to, through its initiative, take action to put up a fence if they so choose.

And I hate to be that blunt, but it's -- I don't know what in the code would require us to tell this developer to put up a wall.

MR. BELLOWS: For the record, Ray Bellows. I agree. And I'm looking at --

COMMISSIONER SCHMITT: I wouldn't like it. I don't like the idea, but the fact of it is I don't know what we can do about it. Go ahead.

MR. BELLOWS: Yeah. And I'm looking at the Land Development Code for the landscape buffer requirements, and when Buttonwood Preserve went in, they were abutting agricultural zoned land.

COMMISSIONER SCHMITT: Correct.

MR. BELLOWS: The code requires that to be a Type A buffer, which is a 10-foot-width buffer but it doesn't include a hedge. When Soluna comes in, they're required, because they're now abutting residential, to come in with a Type B, which is 15 foot. That includes trees more closely centered, 25 feet on center, plus a hedge. Those are the minimum code requirements for compatibility between residential.

MR. KLATZKOW: All right. Your density bonus. They're entitled to the four units, okay. The issue is the other three.

COMMISSIONER SCHMITT: Correct.

MR. KLATZKOW: The other three is a density bonus. And your LDC says that density bonuses are discretionary, not entitlements, and are dependent upon meeting the criteria for each bonus provision and compatibility with surrounding properties.

If this board believes that the only way they can meet compatibility is with a wall, then you can require the wall, but that would be a finding.

CHAIRMAN FRYER: Thank you.

COMMISSIONER SCHMITT: But I -- you understand that would be a ruling of this board, but under what justification? It's residential abutting residential.

MR. KLATZKOW: You'd be saying in order to make -- it's sort of like the conditional-use process where we go through it and say, okay, what do we need to do to this property to make it compatible with the next property.

COMMISSIONER SCHMITT: I understand.

MR. KLATZKOW: It's the same concept.

CHAIRMAN FRYER: We've got Commissioner Klucik and Commissioner Vernon signaling. Gentlemen, are you both wanting to ask this witness questions?

COMMISSIONER KLUCIK: Yes.

CHAIRMAN FRYER: Okay. Commissioner Klucik, you're first.

COMMISSIONER KLUCIK: So, ma'am, I guess I just wanted to point out or just ask, is the -- are the hedges that you're concerned about being trimmed back? I mean, it seems like from what I can see from the map, you know, in looking at the county appraiser's website and, you know, the GIS maps, that you actually own those trees, and maybe you could talk to your HOA if you have maintenances -- you know, lawn maintenances that's provided by your HOA or otherwise. Make sure that, you know, what you prefer to be a really dense buffer as far as vegetation, that -- you know, that you not trim it back, which seems to address one of your issues. It seems like you're in control of that, and that -- you know, that's part of, you know, you brought it up, so I'm just addressing that that seems like something you could fix from that one small slice of it. And the rest of it is -- it just seems like it's -- you know, we already heard, it's asking someone who's not responsible to put up a wall to put up a wall because other people failed the community by not doing what apparently they -- you know, they said they were going to do, but -- do you own that -- those bushes?

MS. CURRAN: Yeah, and I'm not arguing that. That's fine. I get that they're there. That's not my issue. My issue is what's behind all that stuff that's going to get ripped down. That's what I'm talking about. And in all fairness, it's their property; they can do whatever they

want with it.

But I am just asking for some type of buffer and some kind of security. Don't put a wall, fine. But a fence would be nice for security measures. And if they want to put landscaping in, I request -- Mr. Yovanovich stated that they could put more mature bushes. That would work, too.

COMMISSIONER SCHMITT: Okay. That's what they proposed.

MS. CURRAN: Yep.

CHAIRMAN FRYER: Okay. Anything else, Commissioner?

COMMISSIONER SCHMITT: No.

CHAIRMAN FRYER: Commissioner Vernon.

COMMISSIONER VERNON: Ma'am, I just wanted to kind of confirm, kind of cut through the density, wall, traffic, terminology, and I'm trying to, in listening carefully to you, identify your concerns. Your first concern, I think, if I understood it, is noise; second concern, first floor, viewing concerns; third concern, traffic, rush-hour traffic and speeding; and then fourth concern is safety or trespassing both during construction and after it's built. Did I cover everything that -- I'm just trying to -- not trying to -- it's not even a question. I just want to make sure I covered your concerns.

MS. CURRAN: Yes, but safety is more like No. 1.

COMMISSIONER VERNON: Got it. Thank you.

CHAIRMAN FRYER: Thank you, Commissioner.

Anyone else have questions or comments for this witness?

(No response.)

CHAIRMAN FRYER: If not, Ms. Curran, I believe we've been quite generous with you on time. But before I go on to the next speaker I want to be sure that you've covered all your issues. If you have anything new that we haven't heard from you about yet, please say it now.

MS. CURRAN: My only real quick thing, when he was talking about the roads between Vanderbilt and stuff and you guys mentioned it at the beginning, about moving the preserve from one side to the other side. We do have neighboring communities, but they all have a huge amount of space between them. One of them has -- between us and Bristol 112 feet. Between us and Vanderbilt is, like, over 90 feet, you know. So it's a spacing issue. That's one of the things and, you know, I guess just repeating something.

And then to backtrack a little bit -- I had to step out for a bit -- regarding the signage, whenever I drive on the road, I see a huge billboard on the side of the road advertising a public hearing for zoning changes. What they had on this property is a piece of paper in a plastic on a fence off of Massey Street. There was nothing posted on Tree Farm Road. So if anybody did not go down Massey and get out of their car and look at the sign on the fence, nobody knew about this unless you received direct mailing.

COMMISSIONER SCHMITT: Let me ask staff on this question. You have pictures of all the signs posted, correct, Ray? And they were in the packet.

CHAIRMAN FRYER: They're in the packet.

MR. BELLOWS: Yeah, they're in the packet. I'm just trying to --

COMMISSIONER SCHMITT: And the proper signage was posted on Tree Farm and Massey?

MR. BELLOWS: That's my understanding.

MS. CURRAN: Where? Do you have a photo of Tree Farm? Because I've never seen it.

MR. YOVANOVICH: I drove it yesterday. It was there.

COMMISSIONER SHEA: I drove at the -- over the weekend, and both signs are there.

COMMISSIONER SCHMITT: That's what I thought. Because I go by there as well.

CHAIRMAN FRYER: All right. Ms. Curran, I don't want to cut you off, but is there anything further that you that we haven't already heard?

MR. CURRAN: No, that will be all.

CHAIRMAN FRYER: All right. Thank you so much.

Who's our next speaker, Mr. Youngblood?

MR. YOUNGBLOOD: Mr. Chairman, our next speaker is Ted Treesh.

MR. YOVANOVICH: He's with me.

CHAIRMAN FRYER: Oh, okay. He's with the applicant, and I assume he does not want to speak as a member of the public; am I correct?

MR. YOVANOVICH: No, sir, he does not want to speak as a member of the public.

CHAIRMAN FRYER: Thank you very much.

Next speaker.

MR. YOUNGBLOOD: My mistake. Our final speaker for this item is Richard Ceresa.

Mr. Ceresa, are you with us, sir?

MR. CERESA: Yes, I am.

CHAIRMAN FRYER: Okay. Sir, we can hear you loud and clear. Please proceed.

MR. CERESA: Okay. My main concern -- I live in Mockingbird Crossing. One item, we were not notified of the development coming in. I'm on the board of Mockingbird Crossing.

But my main concern is Massey Street. I feel that Massey Street is unable to handle the current traffic load now, and with these improvements, we're going to end up having too much traffic.

I know there's improvement to Massey in conjunction with Vanderbilt Road extension, but I think it's unrealistic for the county to consider Massey/Woodcrest a designated bypass. And I think it's unfair to the residents that live in this area. And that's my main issue.

I don't think there's been enough planning put in -- and to have a two-lane road be designated as a bypass, and morning and evening we have solid traffic for two hours to two-and-a-half hours, people coming from Immokalee and people coming from Vanderbilt in the evening. And right now I counted at least five new developments east of Collier out Immokalee Road, and that's just going to add additional traffic that's going to impact the people that live in this area.

And I think the traffic needs to somehow be moved down Immokalee, because those roads can handle it -- instead of using a two-lane farm road that will be improved shortly -- but it's still going to be a two-lane -- as a bypass. And that is a great concern, and it's going to impact the people that live in this area. And I think that the planning board needs to really look at that. And that's my main issue.

CHAIRMAN FRYER: All right, sir. Thank you.

MR. CERESA: Everything else, planning, you know, with the development, I don't see any issues that are going to impact us at Mockingbird Crossing except for the traffic.

CHAIRMAN FRYER: All right, sir. Thank you. I've got two commissioners who may have questions or comments, starting with Commissioner Klucik.

COMMISSIONER KLUCIK: Yeah. I would just suggest that, from what I can see, D.R. Horton created Mockingbird Crossing, and D.R. Horton is proposing this project, and maybe, you know, you could direct your frustration at not being notified of whatever -- you know, the details at them.

But certainly, you know, you're -- from what I can gather, some of -- some of the people in Mockingbird Crossing would have been within the 500-foot radius, but clearly not most of them.

And as to the traffic issue, I think it's -- you know, we have a traffic analysis from -- in the packet, and I don't think we -- it's fine from an objective measure, you know, that that's done when these petitions come before us. And, yes, there will be an increase in traffic, you know, obviously.

I just started using that road recently, kind of like when we did that one road that happened to be on our agenda, I had just used it a month before. For the first time I used Massey road about a month ago to get to St. Agnes from Ave Maria, and, you know, I understand it seems like that's a really small road.

But I think our planning staff, you know, and even the petitioner has probably, you know,

made sure that what they were proposing was not going to violate the traffic requirements -- the traffic study analysis, and so I don't think there's really much we can do about that.

CHAIRMAN FRYER: Thank you.

Commissioner Schmitt.

COMMISSIONER SCHMITT: Yes. Rich, do you have your traffic guy here?

MR. YOVANOVICH: Ted's on the phone. Oh, you're here.

COMMISSIONER SCHMITT: And I would ask Mr. Sawyer as well. Mike, if you're back there. I see you back there. Just for the record, from your traffic study --

MR. BYKAU: Yes, good morning. For the record --

COMMISSIONER SCHMITT: -- could you give us a highlight of what you found, and I'd like to have staff discuss what their -- defend their recommendation for approval based on what we're hearing about traffic. I know the area because I cut down that area when I go to Isam- -- what is it, Is -- what's the one at the corner? Isa -- on Immokalee Road, I have a relative that lives up the street, so I know that area. I always come off Collier and go down Tree Farm and go up Massey. I know the area. But go ahead.

MR. BYKAU: For the record, Yury Bykau with TR Transportation Consultants.

We did conduct a traffic study, as for every rezoning application, and our analysis -- one of our analyses we do is link-level service analysis, is to look at capacity on the surrounding roadway network. And I know there was a concern coming about, do we take into consideration other future project traffic into our trips? And I believe maybe Michael Sawyer can come and speak to that. But I believe the trip bank volumes that we used from the AUIR report represent approved future projects in the area --

COMMISSIONER SCHMITT: Right.

MR. BYKAU: -- and we include that in our traffic analysis. And then, on top of that, we add our project traffic. And the results for analysis indicated that there is sufficient capacity on the surrounding roadway network to support this rezoning request.

COMMISSIONER SCHMITT: I'm not saying people are not going to be inconvenienced.

MR. BYKAU: Correct.

COMMISSIONER SCHMITT: They may, certainly during rush hour, but the studies all validate that the capacity is there.

MR. BYKAU: Correct. And staff reviewed our traffic study, and I believe they are -- approved it, and it's been consistent.

COMMISSIONER SCHMITT: Mike, if you would.

THE COURT REPORTER: Can you spell your name.

MR. BYKAU: First name, Y-u-r-y. Last name B-y-k-a-u.

CHAIRMAN FRYER: I'd like to jump in on this witness, if I may, Commissioner.

COMMISSIONER SCHMITT: Yeah, go ahead. Yeah, before. Yeah, thanks.

CHAIRMAN FRYER: Mr. Expert Witness, I'm sorry.

MR. BYKAU: Yury.

COMMISSIONER SCHMITT: Yury.

CHAIRMAN FRYER: Yes. Are you familiar with Road Segment 44 on the AUIR?

MR. BYKAU: Yes.

CHAIRMAN FRYER: What road is that?

MR. BYKAU: That's Immokalee Road east of Woodcrest Drive.

CHAIRMAN FRYER: And so how proximate is it to the site of this project?

MR. BYKAU: How approximate?

CHAIRMAN FRYER: How proximate? How close?

MR. BYKAU: I don't know the exact distance. Maybe two miles. That's my guess.

CHAIRMAN FRYER: But it would -- it would absorb at least some of the traffic, the new traffic --

MR. BYKAU: Yeah.

CHAIRMAN FRYER: -- wouldn't it? Yeah. All right. Do you know what the status of the road is with respect to remaining capacity, level of service, and --

MR. BYKAU: Yes. It is getting pretty close to capacity. It has 95 trips remaining. And with our project, there will be 90 trips remaining. So we're only adding a few trips to that segment.

CHAIRMAN FRYER: Yeah. But I just want to establish for the record that that particular segment goes deficient this year, correct?

MR. BYKAU: No. It's -- in our analysis it's shown not to go deficient -- even when analysis was done 2025, there's still sufficient capacity, even with those -- including those trip bank volumes, which are very significant.

CHAIRMAN FRYER: The 2020 AUIR, if I'm not mistaken -- and I can scroll to it here -- says that that segment goes deficient in 2021. Do you disagree with the AUIR, or is my recollection faulty?

MR. BYKAU: Which AUIR did you mention; which year?

CHAIRMAN FRYER: 2020, the one that's current.

MR. BYKAU: Okay.

COMMISSIONER KLUCIK: Mr. Chairman, where is the segment?

CHAIRMAN FRYER: Forty-four is Collier and Immokalee, yeah.

COMMISSIONER KLUCIK: The intersection?

CHAIRMAN FRYER: I think it includes the intersection.

MR. BYKAU: There is a column in the AUIR report that does mention that it's projected in 2021 to fail.

CHAIRMAN FRYER: Right. So this year, which is 2021 --

MR. BYKAU: Right.

CHAIRMAN FRYER: -- it's projected to fail?

MR. BYKAU: This is a column that you might need to ask Michael Sawyer about what this column represents.

CHAIRMAN FRYER: Well, I could and would, but I know full well what it represents.

MR. BYKAU: Right. I don't know how --

CHAIRMAN FRYER: I'm wondering if you do, sir.

MR. BYKAU: I do. I just don't know how it's calculated directly.

CHAIRMAN FRYER: Okay. Well, we can find out.

That's all I have for this witness.

Commissioner Schmitt, were you finished?

COMMISSIONER SCHMITT: Yes, I'm done. I just wanted to have Mike come up and preside -- provide his overview of his review of the project.

CHAIRMAN FRYER: Mr. Sawyer.

MR. SAWYER: Good morning, again. Mike Sawyer, Transportation Planning.

As far as explaining the situation that we've got on Immokalee, that particular section is projected, with background traffic, to be deficient in -- in 2021.

According to state statutes, we need to also look at parallel road segments that are within the five-year projection for improvements -- that would be Vanderbilt -- as well as we're not able to deter a development if the background traffic projected due to growth is what's -- what is projecting that failure. In other words, if -- if we've got a road segment that is nearing capacity and our growth projections for that road is showing that over the next five years there's a projected deficiency, that deficiency is the responsibility of us. Collier County's responsible to take care of that, not the individual developers.

CHAIRMAN FRYER: I understand and certainly concur with your analysis of the law.

My question, though -- you mentioned Vanderbilt. I would put forth this idea that each and every time or damn near each and every time that we have a development that involves Immokalee Road or other roads parallel to it, we hear about how the Vanderbilt Beach extension is

going to be a panacea for it, and in each individual case that might be true. But is anyone looking at how in the aggregate the completion of Vanderbilt Beach Road will suffice to alleviate deficiencies such as on Segment 44?

MR. SAWYER: Yes. And the way that that's done is anytime that the developer -- once they achieve zoning, when they start coming in for their individual plats and their SDPs, we get another slice of the -- another bite at the apple, if you will. They come in with a new TIS with the current standards, with the current AUIR, as well as what they're actually projecting to build. And that's important, I mean, because when a developer puts together a PUD, it's got a listing of possible uses that they might have. It has projected -- in this case a projected number of units. They may or may not reach that maximum unit count. They may or may not. They probably will, but -- on a smaller development like this, but they may not.

CHAIRMAN FRYER: Let me try to ask it a little differently. I'm sorry I wasn't clear. This developer has -- his study concludes that there will be a few additional trips, peak p.m. trips on Segment 44, and we've got 95 left. So it's not, in and of itself, going to be material to -- in the near term, to Immokalee Road.

My question for you, sir, is that let's say a year from now, by then all of the 95 trips have been used up and the road became deficient in 2021 and we're now in 2022 and a developer comes in and wants to add more trips to that road, what is going to be the position of your department?

MR. SAWYER: At that point we would still be required, under 169 state statute, to also allow the project to go through because we still have Vanderbilt sitting there.

CHAIRMAN FRYER: All right. I won't beat the dead horse. Thank you very much. Anything else for this witness?

MR. YOVANOVICH: May I ask one question?

CHAIRMAN FRYER: Yes, of course.

MR. YOVANOVICH: I guess, Mr. Fry, I think you were going to ask a question, right?

COMMISSIONER FRY: I was just going to ask Mike, there was mention of improvements to Massey as part of the Vanderbilt Beach project. Does that mean four-laning it?

MR. SAWYER: No, just two lanes, but it would be a full two-lane. Currently that is an unusually narrow roadway, currently. It's going to be brought up to current standards for the county. It will be very similar to Woodcrest.

COMMISSIONER FRY: Thank you.

CHAIRMAN FRYER: Go ahead, Counselor.

MR. YOVANOVICH: Thank you.

Mr. Sawyer, you would agree that Collier County's professional transportation staff and its consultants have determined that this project meets all of the Collier County Growth Management Plan and LDC requirements for transportation, correct?

MR. SAWYER: Correct.

MR. YOVANOVICH: And you and your transportation staff have determined that the future construction of Vanderbilt Beach extension will address deficiencies related to Immokalee Road, was it Segment 44, correct?

MR. SAWYER: Correct.

MR. YOVANOVICH: That's all I have.

CHAIRMAN FRYER: Okay. Thank you.

Mr. Ceresa, are you still on the phone, sir?

MR. CERESA: Yes, I am.

CHAIRMAN FRYER: Do you have anything further, something new for us to think about?

MR. CERESA: No, I think my main issue, and the issue with the people in this area, is that the county is not really looking at the future, and we here are going to end up suffering because of it with the amount of traffic that's going to come down here. Not just by this development, but all of the developments that are being built further out Immokalee. They all come in there in the

morning, and they leave here in the afternoon, and a lot of them are coming down Massey Street, right past our houses. And I know you-all probably don't live in the area, so it doesn't bother you, but if you did, it would bother you, and you would look at some alternatives.

MR. KLATZKOW: That was the whole point of Massey Street. The whole point -- Nick Casalanguida and I worked on this, like, a lifetime ago. The whole point of this was to divert traffic off of Immokalee Road so that it could save the intersection of Immokalee Road and Collier.

COMMISSIONER SCHMITT: Correct.

MR. KLATZKOW: And the point was to give people a bypass going down Immokalee. They would take Woodcrest/Massey to VBR and then head down on Collier --

COMMISSIONER SCHMITT: Correct.

MR. KLATZKOW: -- or they go ahead go down to Tree Farm and hit Collier that way. That was the entire point of this. So if the argument is that we're getting more traffic, yes, you are. That's what it was designed to do.

COMMISSIONER SCHMITT: That was the intent.

MR. KLATZKOW: That was the intent.

COMMISSIONER SCHMITT: That was my point with Mr. -- with staff as well. That was the intent. That's why they built the traffic circle. That's why --

MR. KLATZKOW: That's why we did this.

COMMISSIONER SCHMITT: Yes.

CHAIRMAN FRYER: Thank you. Anything else, Mr. Ceresa, that hasn't already been covered?

MR. CERESA: No, that's it. Thank you.

CHAIRMAN FRYER: All right, sir. Thank you very much.

Oh, Commissioner Klucik has a question. Sorry, Commissioner.

COMMISSIONER KLUCIK: Well, no. Mr. Chairman, I was just going to ask you -- I'm hoping we could plow through this before we break for lunch. Do you think -- I know maybe I'm being premature, but it seems like we're at that point now where we're --

CHAIRMAN FRYER: Well, I can tell you -- first of all, I think Mr. Yovanovich has accomplished at least some of his rebuttal, I hope, and -- so I don't anticipate that this is going to go too much longer. My hope has been that we could work until 1:00 p.m. and try to -- we've got three other matters, but they're not -- I don't think they're lengthy or detailed. And so my hope is is that we could finish up by 1:00 and then have our lunch on our own --

COMMISSIONER KLUCIK: I'm here, Mr. Chairman. What do you mean it's going to be easy to get through those items?

CHAIRMAN FRYER: I stand corrected. I stand corrected.

Sir, I'm sorry. I can't call on you. Actually, I can call on you. If there's any unregistered speaker who wishes to be heard on this matter, now is the time. So, sir, you need to be sworn in, and then we'll hear you.

COMMISSIONER SCHMITT: They both stood up, didn't they, for -- sworn in?

CHAIRMAN FRYER: Oh, you're sworn in.

MR. CURRAN: May I?

CHAIRMAN FRYER: Please approach.

MR. CURRAN: My name is Tim Curran. I'm the -- and, actually, I did call Mr. Finn a couple weeks ago and told him I wanted to speak, so I'm not sure how I didn't get on the list. But, anyway, here I am.

My name is Timothy Curran. I am the vice president of the Canopy Neighborhood Association Board of Directors as well as one of the affected homeowners along the Canopy/Soluna border.

Our association attorney did send in a letter from our board detailing our concerns with this project. We are concerned about the buffer width between the properties and both the size and amount of landscaping screening used in that buffer. I did appreciate hearing how they're going to

be talking about maybe using larger landscaping so that -- we appreciate that. We are concerned about security and noise. We don't want to see all of the beautiful, mature pine trees along our shared border cut down and replaced with basically 10-foot trees in pots, okay.

CHAIRMAN FRYER: Did you say pine or palm?

MR. CURRAN: Pine.

CHAIRMAN FRYER: Pine.

MR. CURRAN: I'm sorry, pine trees.

Most importantly, Canopy residents feel that the proposed density of seven dwelling units per acre, which is the absolute maximum allowed, versus basically the current zoning on the parcel of four dwelling units per acre, is way too much for this relatively small parcel of 18-and-a-half acres. In real numbers, that is 130 units versus only 74.

All of the surrounding communities are single-family homes. Allowing a project with 130 total units, which is seven dwelling units per acre, is simply not compatible with the surrounding communities. You've got Vanderbilt, you've got Canopy, you've got Mockingbird. I mean, those are single-family homes with yards around them. I think they're half a million dollars apiece or more. You know, it's -- putting 130 units in a small area just is -- you know, it doesn't fit.

Canopy proposes reducing the density from the requested seven dwelling units per acre to down just over six, specifically eliminating Buildings 4, 5 and 6, a reduction of only 18 units. This would yield 112 units instead of the proposed 130.

On the Collier County view, there's actually -- instead of having just a real general, like, rectangular box representing units. I mean, there's actually a map on here that shows a total of 19 buildings and, you know, having -- and the part bordering Canopy, it shows three buildings, Building 4, Building 5, Building 6, having six units apiece. So I think showing that particular map will give a much better view of what they're proposing instead of just having that one with the -- a few rectangles on it.

You know, having this amount of reducing these units here would give more green space inside the development along with more pervious land to help with surface water management and reduce flooding. It would allow most of the existing mature pine trees along the western border to remain, possibly yielding more conservation area.

The buffer between the two developments would be widened, allowing for increased landscaping screening. There would be less noise from air conditioners and less visual impact for all homeowners along our shared border.

Canopy residents feel very strongly about this. Reducing the property size by taking out those three buildings would reduce only by 18 units, will fix almost all of the issue we are concerned about.

Canopy wants to make sure our communities are safe and secure, so I'm happy to hear about putting up a fence. That's something that was not talked about before, and we're glad to hear that.

We would also -- Canopy would also ask the county to require a screening wall be built around the air conditioning units outside the homes because, you know, if you can imagine 18 A/C units going all at the same time, it would be quite noisy. Not only will this reduce visual impact for future Soluna homeowners, it will help reduce noise for Soluna and all surrounding properties.

Collier County loves its trees and requires them on all new PUDs. Why, then, should we allow existing native mature trees to be cut down? You know, remove the exotic trees, but keep as many of the mature trees as possible. It would look nicer for all surrounding neighborhoods, as the tall pines can be seen for quite some distance. Those trees will also block sightlines so homeowners on each side will see more tree and less concrete thereby retaining some semblance of privacy.

Residents of Canopy are not opposed to development as long as it is done responsibly. We want nearby development to have a positive impact on our surroundings, not take away from it. We feel zoning the parcel for a density of six dwelling units per acre is a much more reasonable

amount than seven. That is a 50 percent increase over the existing zoning of four.

Please do not allow a density of seven dwelling units per acre. Zone it for six and eliminate Buildings 4, 5 and 6, keeping that space mostly open and green. As I mentioned earlier, this will solve almost all of our concerns.

CHAIRMAN FRYER: Thank you.

Commissioner Klucik.

COMMISSIONER KLUCIK: I guess the point of my -- I brought it up, and I kind of didn't press it when I -- I think maybe when I was talking with you guys privately. But if you look at that, you know, affordable housing to the west of Canopy, that looks like it's pretty dense. And I'm thinking it's -- you know, it's a very similar density. I would -- you know, just based on looking at it. And it's -- you know, it becomes difficult, then, to say it's not compatible, you know, with the community or that the concerns you raise are things, you know, when you bought. I don't know if Canopy was first and then affordable housing came in or what.

But, you know, because you have beautiful, you know, property with -- you know, with nice vegetation on it, that's -- you know, that's kind of what everybody -- when you're kind of in earlier, you're always going to end up, you know, with that and -- you know, and you have to expect that the neighbors get to use their land according to -- you know, to how -- you know, the development code.

And in this case, I just think that your -- your concern about density is certainly a concern that everybody would have in your situation, but you have to look at what's, you know, on your immediate western boundary. It looks like the same density or similar density, and I don't know what the density is, but that seems like it's an awfully dense project.

MR. CURRAN: I would agree with that. You also, if you were to look at our map, we don't have homes, for the most part, abutting that border. There's a wall there, then we have our mailboxes, then we have Canopy Circle, and then we have the front of the homes with the front yard and then the actual house is there. So we don't actually have backs of homes butting up against Bristol Pines. The only area -- you'll see a lake there. We have some homes around the lake but, you know, all that -- all that section where you see the two properties coming together, that's where our street is, and we have a wall there, and actually, there's, you know, a little bit of landscaping in there as well. So there's not actually a house butting to that.

COMMISSIONER KLUCIK: I guess my point is that it's hard for me to come up with a basis to deny, you know, based on -- your objections are all reasonable as far as concerns that any neighbor would have, but I just look at the -- you know, even saying that, you know, oh, well, could we force a wall there because of -- you know, it's not considered compatible, like Mr. Klatzkow suggested, I just -- you know, I look at the area around it, and I just see that that's -- you know, it seems compatible to me.

MR. CURRAN: I would just have to comment on that. I mean, you look at the list of deviations that they're requesting. You know, in order to fit -- in order to maximum seven dwelling units per acre, 130 units, they're asking for a number of deviations to allow them to cram as much in as possible.

So you look at Deviation No. 1, to allow a local street right-of-way width of 60 feet down to 50 feet; you have Deviation No. 2 which prohibits dead-end streets except when designated as a cul-de-sac; then you have No. 3, which requires 5-foot sidewalks within public and private rights-of-way or easements which are internal to the site on both sides of local internal access way streets to allow sidewalks to be constructed only on the side of the street that are directly adjacent to residential units.

I mean, there's -- if we're having to change the rules to allow this to happen, I think it's too much. So if having to make all these changes rules -- rule changes to get this to fit, then it's clearly too much. So I think, you know, reducing that density is important. I think seven is way too much for the size -- for an 18-and-a-half-acre parcel.

It was brought up earlier that if you had a 20 -- like, 21-acre parcel, you would not -- they

would not be able to do this. So why -- it's hard for me to comprehend why they could get away with it with only 18 and a half. It's -- you know, to me, that doesn't make sense. I understand what they're trying to do in terms of a private property situation but, I mean, this property was already being used. This isn't some vacant land that was just kind of sitting or forgotten about or -- you know, this was an antenna farm.

CHAIRMAN FRYER: Thank you.

Commissioner Schmitt.

COMMISSIONER SCHMITT: Yes. You mentioned Buildings 4, 5 and 6.

MR. CURRAN: Uh-huh.

COMMISSIONER SCHMITT: Do you have any kind of reference? I have no idea what you're talking about. I don't have the -- any type of drawing that show 4, 5 and 6. Could you put it on the visualizer, please?

MR. CURRAN: I've got -- I took that off of CityView. So that has -- if you were able to see that -- a total of 19 buildings and 130 units in there, and Canopy would be on the left-hand side of your screen. Buildings 4, 5 and 6 would be, you know, those three along the left. There's a top part there, which we can't see. I can't fit the whole thing in. But, you know, taking out -- that's 18 units right there. That's, from what I'm understanding, is what they're proposing.

COMMISSIONER SCHMITT: Can I ask the applicant, is this the current submittal, or is this a concept plan?

MR. YOVANOVICH: We're in for our plat. And just -- the number we're in for is 108 units. So this is the 108 units. What he's not -- he's not asking us to go to 112. He's asking us to go to 90.

COMMISSIONER SCHMITT: Yes, I understand.

MR. YOVANOVICH: He wants us to eliminate Buildings 4, 5, and 6, which is 18 units. So he wants us to go to 90 units, not 112, because he's asking us to eliminate 18 units from a plan that only shows 108.

CHAIRMAN FRYER: Anything else, Commissioner?

COMMISSIONER SCHMITT: And you're -- you're at how many now?

MR. YOVANOVICH: Hundred and eight.

COMMISSIONER SCHMITT: Hundred and eight.

MR. YOVANOVICH: Which is six units an acre.

COMMISSIONER SCHMITT: Which is?

MR. YOVANOVICH: Six units an acre.

COMMISSIONER SCHMITT: Six units an acre.

MR. YOVANOVICH: 5.8.

COMMISSIONER SCHMITT: That is six units an acre.

COMMISSIONER KLUCIK: Isn't that what you asked for?

MR. KLATZKOW: So why are we zoning at seven?

MR. YOVANOVICH: Because at -- when we started the process, we had did not have the plat in.

MR. KLATZKOW: No, I understand that, but now that you know what you're developing, why don't we just do six -- why don't we just do six and be done with this?

COMMISSIONER SCHMITT: Yeah. That's my next question. It's six units an acre.

MR. YOVANOVICH: And if you recall, when I began, I told you it was 108 under the current configuration.

COMMISSIONER SCHMITT: Yes.

MR. YOVANOVICH: With townhomes.

And I had said we wanted to keep the flexibility. In the event that townhome product was not well received by the market, we wanted to have the ability to do the traditional multifamily homes within the project. That's what I said, and that's the flexibility we're looking to keep but, obviously, we'd be all in the same development standards of two stories, et cetera.

COMMISSIONER SCHMITT: Okay.

MR. YOVANOVICH: That's what we were -- that's what we were proposing, and we're -- we've committed -- if I -- I'll save for rebuttal. I don't know what I'm supposed to do now, because you have a witness up here, so I didn't know what's the proper --

CHAIRMAN FRYER: Why don't you save it for rebuttal, if you can, just so we can --

COMMISSIONER SCHMITT: Is that all you have, sir?

MR. YOVANOVICH: I have one question for him.

COMMISSIONER SCHMITT: Go ahead.

CHAIRMAN FRYER: Go ahead.

MR. YOVANOVICH: Did you review the -- you live in Buttonwood Preserve, correct? That's the PUD.

MR. CURRAN: Well, it's Canopy PUD.

MR. YOVANOVICH: But it's the Buttonwood Preserve PUD?

MR. CURRAN: I think the prior name for it, yes.

MR. YOVANOVICH: Okay. Do you have any idea what the street widths are in Buttonwood Preserve?

MR. CURRAN: I want to say -- I want to say 50, correct.

MR. YOVANOVICH: So Buttonwood Preserve asked for the same deviation that we're asking for, correct?

MR. CURRAN: We have 52-and-a-half acres with 108 houses.

MR. YOVANOVICH: Do you know what you were originally approved for?

MR. CURRAN: I do not.

MR. YOVANOVICH: It was 220. Would you trust me that it was 220?

MR. CURRAN: I wasn't here when it -- I didn't move here when it was being planned, so I just know what we have now.

MR. YOVANOVICH: Well, I will state: It was approved twice, once by me at 220 and then subsequently amended by Mr. Anderson for Neal Communities for 220. So that was the originally approved density on that project.

CHAIRMAN FRYER: Anything further from this, counselor?

MR. YOVANOVICH: That's all I have.

CHAIRMAN FRYER: Okay. Commissioner Fry.

COMMISSIONER FRY: So I'm looking at a rendering of the townhomes. I believe it's a rendering. It's on Page 217 of our packet, Ray. Wondering if you could put that up.

I was going down the thread with you, Mr. Curran, of -- you know, Mr. Klucik expressed his opinion in terms of as one planning commissioner and, you know, there's seven of us up here to vote.

MR. CURRAN: Sure.

COMMISSIONER FRY: So there are -- I think we have a lot of options. As our attorney has said, we have the purview to reduce it to six or five or four. You know, those are discretionary, those three bonus units. So I'm trying to think of what are the various options that we do have and one -- one is, of course, beefing up the buffer. They've offered more mature trees, higher, more opacity, I think, sooner.

I'm looking at the rendering of the townhome. It looks to me like the garages are down below and most of the living spaces up above. So I thought, well, what about one-story units along your neighborhood so -- to eliminate that visibility and the sightlines of seeing that even through the landscaping, but that doesn't look feasible based on the architecture of the units.

He's proposing 108 units here but, of course, there are 18 two-story townhomes that abut your community. About -- I think about 12 of those actually line up with your -- with your community.

MR. CURRAN: Well, the entire -- as far as where the houses are, yes, because we have a preserve up by Tree Farm Road that comes down a little bit, so.

COMMISSIONER FRY: Right. But you're -- you know, they've -- you asked -- you're suggesting six units per acre. They have a plan that is about six. They have a plan they're showing that is six, but you still have the same issues of proximity.

MR. CURRAN: Correct.

COMMISSIONER FRY: The units that are along your border. So then if they are honoring your request of six here, then you're really left with a -- either eliminating all those and going down to 90, like Mr. Yovanovich says, or beefing up the buffering wall, something like that.

So just give me your thoughts, because that is -- that is based on your recommendation of six right there, or at least it counts out to six dwelling units per acre.

MR. CURRAN: I thought -- I was thinking that that was 130 from that look right there. I think that's still extremely dense for what that property size is. I mean, if you were to do the math for four per acre, you would be at 74, I believe. So even -- you know, even at -- if he's saying 110, that's still significantly over where it would at -- where it normally would be at. Because if that was a 22-acre parcel, it would be at four acre -- four dwelling units per acre. I mean, am I not correct in saying that?

COMMISSIONER FRY: I think so. The 20 acres is, you know, a line they drew in the sand. It's somewhat arbitrary, I guess. But it is part of the policy and part of the GMP, so it is something we have to consider is they do qualify for up to three bonus units. So I'm just looking for ways to resolve this to your relative satisfaction and to their relative satisfaction.

MR. CURRAN: If they could take the whole thing and shift it over some more to the right, utilize some of the area between our border as -- count that as some conservation area. Keep those -- the tall trees that are there, maybe plant some additional stuff, use -- take some of the conservation area on the other side where there is a big buffer between that and Massey, I think it would possibly be good. It would probably alleviate a lot of the concerns.

The biggest concern is having basically a backyard, you know, those people looking in our house and us looking into them having basically a 30-foot backyard in between us with a couple hedge rows, you know. And if you're in the second floor looking out, you'll clearly be able to see over most of those hedges and the palm trees that are there. You know, cutting down all those trees will just -- it will open it all up, I think. And that's what most of my neighbors are concerned about who live along that corridor. They'd like to see --

CHAIRMAN FRYER: Pardon me for interrupting, but we're now covering ground that's already been covered, and I want to be --

MR. CURRAN: Correct.

CHAIRMAN FRYER: -- sure that anything new that needs to be said, that you have the opportunity to say it. Have you covered all your points?

MR. CURRAN: Yes, I have.

CHAIRMAN FRYER: Okay. Thank you very much. No one is signaling at this point, so I take it no one has questions or comments.

And that -- do we have any other public speakers? We do not.

Now, that would take us to rebuttal. It's my assessment that Mr. Yovanovich has been able to accomplish some, perhaps most of his rebuttal, but he has an opportunity to do more.

COMMISSIONER SCHMITT: Do we need to offer her a break?

CHAIRMAN FRYER: I'm going to do that. Well, I'll do it right now. It's six minutes after 12. We need to decide how long we're going to be here today. We can ask Mr. Yovanovich how much rebuttal he has. We still have three more items. I think they're relatively short. Are we going to try to take a lunch and come back, or are we going to try to postpone our lunch and complete our business before we go our separate ways?

COMMISSIONER KLUCIK: Postpone.

COMMISSIONER HOMIAK: Postpone. Finish by 1:00.

COMMISSIONER SCHMITT: Are we taking a break now, though?

COMMISSIONER HOMIAK: No.

COMMISSIONER KLUCIK: Plow through.

Okay. I'm hearing differences of opinion.

COMMISSIONER VERNON: I'm willing to keep going until we're done.

CHAIRMAN FRYER: All right. All those in favor of keeping going, well, until 1:00. We've got to be taking a break if we go beyond 1:00, I mean, for the court reporter and for everyone else.

So all those in favor -- is the court reporter -- would that be satisfactory, or do we need to take a break sooner?

THE COURT REPORTER: I could use, like, five minutes.

CHAIRMAN FRYER: Okay. Let's take a five-minute break right now. Five-minute break right now. We're in recess until 12:12.

(A brief recess was had from 12:07 p.m. to 12:12 p.m.)

CHAIRMAN FRYER: Ladies and gentlemen, let's return. And we on the dais are going to try to make a decision as to whether we are going to try to plow through before lunch or to take a lunch and come back and finish.

First question, Mr. Yovanovich, how much rebuttal will you have?

MR. YOVANOVICH: Less than five minutes.

CHAIRMAN FRYER: Okay. And, undoubtedly, there will be some questions, though, or comments that will come out of that, so it's going to be a little longer than that.

So I think at least one commissioner mentioned that he has some significant questions on one of our remaining three items, and there may be other questions coming up on them. So I think -- it's doubtful, in my judgment, that we could finish by 1:00, but we might be able to finish by 1:30.

COMMISSIONER SCHMITT: Yeah.

CHAIRMAN FRYER: So should we try to go to 1:30?

COMMISSIONER SCHMITT: Yes.

CHAIRMAN FRYER: Anybody object --

COMMISSIONER HOMIAK: Let's let Joe ask his questions first.

CHAIRMAN FRYER: We'll do that. We'll do that. Does anybody object to us going to 1:30?

COMMISSIONER FRY: No, sir.

COMMISSIONER VERNON: No.

CHAIRMAN FRYER: All right. That's what we'll do, then.

Mr. Yovanovich, you have the floor.

COMMISSIONER SCHMITT: Before he does that, what about the other item we were going to talk about, the continuation thing?

CHAIRMAN FRYER: Well, that's on at Item 11.

COMMISSIONER SCHMITT: Okay.

CHAIRMAN FRYER: That's one of the three.

Go ahead, sir.

MR. YOVANOVICH: I wanted to -- I just want to focus on the adjacency issue with Canopy. We're -- I've got up on the screen -- Troy told me to use this -- we're talking about five homes within the Canopy project that are adjacent/abutting the proposed project. And their concern -- and I understand their concern about -- is how close are the buildings going to be? What are they going to see? What are they going to hear?

The reality is, they have this buffer on their side, and we are proposing a similar Type B buffer which is a row of hedges that is opaque, I believe at six feet in height within a year, and then we have our trees. And we've already committed to planting trees that will be at the height where you see that dotted dash line.

So it will -- they will be planted at the sightline level as we're building those buildings along the western boundary. So I think what we've done is we've addressed their concerns about

will people be able to see through their hedge? We're not going to be able to see through their hedge because we'll have our hedge, and we'll have their hedge.

We've already done the exercise of can we actually move the preserve over to the western boundary, and the answer is no. It does not meet your Comprehensive Planning, so between the preserve requirements and having to provide for compensating water management, floodplain management, the preserve is set where the preserve needs to be consistent with your code.

So we are willing to address it through taller plantings at the initial planting to address concerns about compatibility. We've agreed to do a fence to address safety concerns about people leaving our property going to their property and maybe, I guess, vice versa, coming from their property to our property. So I think we've addressed those concerns.

If it makes everybody comfortable for us to reduce the density to 108 units, because that's really what's going through the process right now, we'll reduce it from 130 to 108, which is slightly less than six units per acre. I did the math based upon 18 acres. I think we're 18-and-a-half, but the number would be 108.

The irony of their concern about the air conditioning units is their neighbors' air conditioning units are actually closer to their houses than what we're proposing because, remember, we're 30 feet away from property line, so our A/C unit are going to be even further away than their current A/C units, and we're going to have our hedge and buffer. So putting additional sound attenuation around those A/C units is not necessary for compatibility.

You've received professional compatibility testimony from Ken and from Ray and your staff. The competent substantial evidence regarding compatibility is what we're proposing is compatible with the neighbors. We have residential next to residential. We have two-story. They have two-story. We're actually a little lower in height than they are in height. We're talking about two-story townhomes on this piece of property, and we're consistent with the Comprehensive Plan.

The 20 acres has been in the code for as long as I can remember, and it used to be three free units that you can come in and ask for, but it was modified when the Rural Fringe Mixed-Use District provisions came into place, because you wanted to provide an incentive for people to purchase TDRs.

And the reason you do infill is you have these 20-acre parcels, and they already have infrastructure to them. You didn't want to encourage people to continue to go further east. You wanted to fill in the urban area, thus urban -- residential -- urban residential infill is what has been encouraged by your Comprehensive Plan.

You need the economies of scales for these smaller parcels to make economic sense. They still have to be compatible, and I believe residential next to residential is clearly comparable. But you don't have to believe me. You can believe Ray. You can believe Tim. You can believe Ken. They've all given you the professional testimony that we've met the compatibility criteria.

Transportation-wise, we've met those criteria as well. I won't belabor the whole transportation system, but if you look, most of the PUDs along Tree Farm Road came in around 2004-ish with this concept of Woodcrest/Massey going all the way down to Vanderbilt Beach Road as well as Tree Farm Road. So the system is being built to accommodate everybody along the way, and it was always designed to do that.

The reality is, there have been some units that have not been -- they were zoned but haven't been built, so you -- it turns out that I'm sure the -- less units than were contemplated will be using those roads than were going to be officially zoned to use those roads.

We believe we've met the criteria. Your staff's recommending approval, and we're asking that you recommend approval to the Board of County Commissioners of this project with the modifications that we've offered up regarding the fence, the additional plantings. And if you want to reduce this to 108 units, reduce us to 108 units, because that's the plan that's going through the process right now.

With that, we'll answer any other questions you may have.

CHAIRMAN FRYER: Thank you.

Commissioner Fry.

COMMISSIONER FRY: Rich, the Type B buffer, what is the separation between the taller trees? Is it 25 feet on center?

MR. YOVANOVICH: On center, yeah.

COMMISSIONER FRY: So that's about from me to you?

MR. YOVANOVICH: I think we're a little further apart than 25 feet.

COMMISSIONER FRY: It may be 30. But perhaps myself to the podium that you're standing at. I guess the only -- the one concern I think that is viable still is the sightline's nice laterally. Obviously, you see that the trees are tall enough, but it looks to me as if initially -- and they would -- it would be pretty easy visibility between those trees because of that spacing for the second-story units to see in and vice versa across that buffer.

What is the next step up in terms of buffering in terms of maybe a little less spacing between the trees? Or just what is the next step up for a Type C buffer?

MR. KLATZKOW: Can staff answer that question?

COMMISSIONER SCHMITT: Here comes Jaime.

CHAIRMAN FRYER: Ms. Cook.

MS. COOK: Jaime Cook, your director of Development Review.

A Type C buffer would actually have 30-foot on center trees and a double row hedge. The Type B buffer -- so you're going to have to those 25 foot spaced apart trees, but you're also going to have a five-foot hedge at planting.

COMMISSIONER FRY: Okay.

MR. YOVANOVICH: And I'll give you the layman's, but to be backed up by the professional, is the canopy of those trees, when they mature, get very wide. So they do, in fact, form the wall of trees, if you will. They have to have room to grow and spread the canopy of the tree, and --

COMMISSIONER FRY: Do they meet, and would they -- would they obscure the sightline from that second-story unit looking across the buffer at the properties in Canopy?

MS. PETRY: Yeah. The simple --

CHAIRMAN FRYER: Your name, please, ma'am.

MS. PETRY: I'm Kristen Petry. My company is Pergola, and I'm here helping D.R. Horton today.

The general idea for a landscape buffer is, as it's governed by code, is that there's a tiered system in place. So, essentially, the hedge governs and blocks out the area that's from the ground to whatever code says the top of the hedge should be.

So, for example, a less involved hedge or a less opaque hedge would be the D buffer that goes adjacent to a road, and you're only required to have a much shorter hedge. I think it's a 24-inch or 36-inch at height of planting.

This is a beefier hedge from time to time that it goes in, because code requires that it be a five-foot-tall hedge when it grows in. So if I'm 5'5", it's only slightly shorter than me. That takes up the whole portion of the tree from where it comes out of the ground to where the first branching starts, and then the canopy rises to 10 to 12 feet, which is what code says it should be at the time that it goes in, and it will be roughly probably five foot apart, and code also governs that. And I think it's probably a 4- to 5-foot spread that it's required to be when it goes in.

However, what code also says is that a tree like that should be a large-size canopy tree, and the county actually has a list of what species it considers to be a canopy tree. So we would be -- Soluna, as a project, would also be complying with that. And those trees are the things like live oak trees. You know, those are the easiest ones to point out. (Undiscernible) state tree. It's the one we all know.

They get tall and wide and so, essentially, what you have is the tiered idea where you have the trees at the top, and then you have the mid layer and the bottom layer accomplished by a

5-foot-tall shrub. By the time you buy a 5-foot-tall shrub, that's a significant increase from a thing that would be the three-gallon shrub for a D buffer, which is the less stringent buffer that we use along the road. So before -- like right out of the gate, this is a much better -- it's an upgraded buffer, essentially.

And I think then, once you apply that and you take it into consideration with the fact that there's already a B buffer on the other side, you're -- you're creating a buffer pathway that's combined. So if you think about it, I think of the landscape as a story, right, and so we're linking this story all throughout the county. And when you're coming over and you're landing in the airplane and you look down and you see all these parcels of different colors of green with the strips in between, it's -- it just starts to make sense, and because it's a fairly wide combined buffer of 25 feet, that's a decent buffer, really. It's inconvenient to get through by the time it grows in. There's going to be less crossing back and forth. I think the views are handled in between, and it also does good things like makes a wildlife corridor. And because the county also ensures that we are using a majority of native species, you're also achieving that.

So from my perspective, I think it meets intent of code, and I think it's doing a good thing.

COMMISSIONER FRY: If you were trying to obscure the views both ways between two developments and you have an existing Type B buffer on one side, would you stagger the trees on your side to be in between the trunks of those trees so that they would stagger and pretty much of block the view?

MS. PETRY: Yeah, absolutely, absolutely. And there are some things that can be done during the building process, too. There are always slight adjustments, and part of the thing that we're required to do that the county, in its wisdom, has foreseen would need to happen is the landscape architect needs to certify that, first of all, the -- what has arrived on site and what has been installed complies with the plan that was approved but also that we've made practical decisions along the way to help the site and its adjacent neighbors function well together.

And so, yeah, that's just a thing that we would do as a matter of course. Look at where the windows are. Block the views as best we can. Stagger when we can do it, cluster when we can do it. Yeah, I hope that helps.

COMMISSIONER FRY: In your professional opinion, with these two buffers combined with each other, to what percent would they obscure the view each way between these -- because these units are very close. I think we would all prefer buffer -- the preserve is on the other side closer to this neighborhood. But you have the units that are very, very close. So will these buffers obscure the view to what percentage?

MS. PETRY: In five years' time, I would say 80 to 100 percent. I would refer to the little drawings that I did here. When you go in, stuff will be babies, and that's just the way that it is. And it would be onerous and beyond what code requires to ask the developer to put -- to start out with --

COMMISSIONER FRY: Five year -- are you --

MS. PETRY: To start out with a five-year condition, I guess.

COMMISSIONER FRY: Is that what you're offering, to start out with a five-year condition, Rich?

MS. PETRY: No, absolutely not.

MR. YOVANOVICH: I would say we're probably starting out at the three-year condition gets you to the -- to this line right here. This one right here, okay. It's about three -- normally it would take, from when you plant it -- I'm sorry, up here. To fill that gap would take about three years. We're saying -- and the five-year is the one on the bottom.

COMMISSIONER FRY: Gotcha.

MR. YOVANOVICH: So what we're saying is we'll get to the three-year -- we're going to plant at the three-year, and it gets to the gap, and then when the whole thing is totally mature, you're going to have the one on the bottom.

COMMISSIONER FRY: Thank you.

MR. YOVANOVICH: Does that make sense?

CHAIRMAN FRYER: Commissioner Vernon.

COMMISSIONER VERNON: Yeah. On the fence, you're going to build a 6-foot chain-link fence vinyl?

MR. YOVANOVICH: Yes.

COMMISSIONER VERNON: And you said -- but we talked about the timing. When are you going to do that, and can you commit to that in terms of what we --

MR. YOVANOVICH: We would do that as part of the overall initial site work, correct, the fence? Now, the landscape will go in a little bit later when we get over to that area because of --

COMMISSIONER VERNON: I'm just thinking the issue of safety the mom raised. So that will go in and -- okay. So I think that's really my only question. So just in the interest of time, you know, I would request they do move down to the density of 108, that they plant the more mature trees that's been discussed, that they put the fence up immediately, and I would support the project based on that.

CHAIRMAN FRYER: Thank you.

MR. YOVANOVICH: When you say "immediately," as we're doing the initial site work --

COMMISSIONER VERNON: Right, as soon as you can.

CHAIRMAN FRYER: Thank you.

COMMISSIONER KLUCIK: Is the fence going to be along the border?

MR. YOVANOVICH: Yeah.

COMMISSIONER KLUCIK: In between the two buffers?

MR. YOVANOVICH: We anticipate the fence will be right on the property line. So, yes, it would be between the two buffers, their buffer and our buffer.

COMMISSIONER KLUCIK: Are we ready for a motion, Mr. Chairman?

CHAIRMAN FRYER: We've still got other speakers from up here. Thank you. Commissioner Shea.

COMMISSIONER SHEA: No. Actually, that was my question was, where is the fence? Where's the -- is it going to run just between where those six homes are, or is it going to engulf the property?

MR. YOVANOVICH: Right now we would put it -- I'm sorry. I wasn't close to the mic. I'm sorry.

We would do along the west boundary initially. We're not sure we're going to have a fence along the southern boundary and the -- do I have it right -- southern and eastern boundary. But we're definitely agreeing to have the fence along -- tie into their fence to keep Canopy secure. My understanding is Vanderbilt Country Club has one already.

So the only gap, Mr. Vernon, in fencing is along Canopy already. So we would fill that gap. And I think -- and don't -- I'm not -- I think their fence line ends approximately here, right?

MR. GALLANDER: That's correct.

MR. YOVANOVICH: That's where their fence ends, so we would take it the whole way up to here.

CHAIRMAN FRYER: On which side?

MR. YOVANOVICH: That's the west. That doesn't mean we may not do it along the other boundaries, but right now we're committing to the west.

CHAIRMAN FRYER: Commissioner Schmitt.

COMMISSIONER SCHMITT: Yes. I would also recommend that the units that are on the western property -- we heard the commissioner talk -- or the homeowners talk about the A/C units. I don't think it would be that onerous for you to put up some kind of a vinyl fence around the A/C units, especially these 6-unit units that are being -- six -- or 6-unit buildings that are being placed on the western side. I'm also thinking about the people that are living in those units. You

can put up a fairly inexpensive vinyl decorative fence to buffer some of the noise around those A/C units. I don't think -- I'm not talking about a masonry wall, a concrete masonry unit type brick wall. It's just a decorative vinyl fence, fairly inexpensive, but you could surround -- certainly allow for sufficient space for air to circulate in those units not to be encumbered by the fence blocking air flow. But you could put up some kind of a decorative fence both for the homeowners that are moving in and the homeowners on the western property line.

MR. YOVANOVICH: And just so we're talking language --

COMMISSIONER SCHMITT: Yes.

MR. YOVANOVICH: -- to the height of the A/C unit.

COMMISSIONER SCHMITT: Yes, absolutely.

MR. YOVANOVICH: That's approximately three feet.

COMMISSIONER SCHMITT: Absolutely. And those are very inexpensive decorative fence. You know what I'm talking about. A vinyl --

MR. YOVANOVICH: We just want to make sure you weren't asking us to put a 6-foot hedge to block the window view.

COMMISSIONER SCHMITT: No, no.

MR. YOVANOVICH: I just wanted to --

COMMISSIONER SCHMITT: Just something to help muffle some of the sound.

COMMISSIONER HOMIAK: They could use shrubs.

COMMISSIONER SCHMITT: They could use shrubs as well, but shrubs are not -- and a lot of the units -- a lot of those multifamily units already construct -- put in these -- this, you know, vinyl fencing. What is it, 2-and-a-half, 3-foot, 4-foot, whatever height it is. I don't think that would be onerous on the developer's part.

COMMISSIONER KLUCIK: Is that just on those three buildings?

COMMISSIONER SCHMITT: I would prefer it all the buildings, but that's me, because I live in a community that has to screen A/C units. Most of the -- most of the developers in my -- some do and some don't. But I'm just saying on the western property. That's all I'm talking about. Whatever you do for the rest of it for marketing or sales, you do it internally, but I would say those -- just those units facing to the west.

MR. YOVANOVICH: Okay.

COMMISSIONER SCHMITT: Okay.

CHAIRMAN FRYER: All right.

COMMISSIONER SCHMITT: And I -- as to the other two items, we talked about the fence, and six dwelling units per acre I would support as well.

CHAIRMAN FRYER: Thank you.

No one else is signaling. Any other questions or comments from the dais?

(No response.)

CHAIRMAN FRYER: If not, I think we're -- assuming you're finished, Mr. Yovanovich?

MR. YOVANOVICH: I am finished unless somebody calls me up and asks me a question, or if the motion's not clear, I may ask you to clarify.

CHAIRMAN FRYER: Okay. Well, I'm going to try to state the motion with the conditions that I've heard, and then I'll ask the Planning Commission if I omitted anything or added something that was not agreed to, and then that will set the stage, perhaps, for a motion and a second, if that works for everybody.

So -- and these are in no particular order. But first of all, the developer will meet the five-year buffering commitment in three years as far as the buffering vegetation height is --

COMMISSIONER FRY: I believe that's two.

CHAIRMAN FRYER: I heard three.

COMMISSIONER FRY: They're planting -- they're planting trees that would be at the three-year level of maturity, meaning they would only take two years to reach the five-year, is what I heard.

COMMISSIONER HOMIAK: I think you're making it confusing. Just put it up on the line of sight.

MR. YOVANOVICH: How about I modify this exhibit to where the top exhibit shows the height of the trees at planting? Because that's what we committed to, this line right here.

COMMISSIONER SCHMITT: Yes.

MR. YOVANOVICH: We would modify that exhibit for the record so you all would know.

COMMISSIONER FRY: Your applicant was signaling you.

COMMISSIONER SCHMITT: Would you indicate the height on that exhibit? Because that is what the county will look at when they go out and do the final inspection. So they're --

MR. YOVANOVICH: I'm sorry, Joe. I mean, Mr. Schmitt.

COMMISSIONER SCHMITT: Go ahead. I would say, if you'd put on there the height --

MR. YOVANOVICH: Let's do that.

COMMISSIONER SCHMITT: -- so that the county knows what to look for.

MR. YOVANOVICH: My consultant says I would plant at 12 under the current code, but 16-foot trees is what I need to get to the line. So why don't we agree to plant 16-foot trees?

COMMISSIONER SCHMITT: Very good.

CHAIRMAN FRYER: So then the first condition would be that at the startup, at get-go, they would plant 16-foot trees at the --

MR. YOVANOVICH: On the western boundary.

CHAIRMAN FRYER: On the western boundary, okay.

COMMISSIONER VERNON: Sorry to interrupt, but are they going to plant more mature shrubbery as well? Was that part of it?

CHAIRMAN FRYER: Not according to my notes.

COMMISSIONER HOMIAK: That's in the code already. They're at five feet.

COMMISSIONER SCHMITT: Shrubby grows fast.

MR. YOVANOVICH: So not to put too fine a point on it, what we -- where we were talking about doing that was along those homes, because they have their preserve north of that area, so it was for the --

COMMISSIONER KLUCIK: Southern boundary.

MR. YOVANOVICH: So from basically here up to here.

COMMISSIONER VERNON: Right.

MR. YOVANOVICH: I just want to make sure we're all talking the same language. That's where the enhanced buffer would go.

COMMISSIONER VERNON: Trees.

MR. YOVANOVICH: Trees.

CHAIRMAN FRYER: Okay. Then the second one -- and, again, in no particular order -- is that the ordinance will be not greater than 108 units rather than 130, and that would bring it to just shy of six dwelling units per acre.

Then the next one is that they would add a fence on the west side that you would tie in with the existing fence. Did I say that right?

MR. YOVANOVICH: Yes, and it would go along the western boundary from -- you know, basically from here to here.

CHAIRMAN FRYER: Okay. All right. Then I think I heard a commitment to this effect, that it would certainly be best practices, and I'd like to see it be a commitment, to stagger the trees in relation to the trees on the other side of the property line.

MR. YOVANOVICH: (Nods head.)

CHAIRMAN FRYER: And a 3-inch -- 3-foot vinyl fence around A/C units.

COMMISSIONER FRY: Is that for the entire development or just --

COMMISSIONER SCHMITT: West side.

CHAIRMAN FRYER: Just the west side.

COMMISSIONER FRY: Just the west side.

MR. YOVANOVICH: And I thought Mr. Schmitt wanted us just to screen those A/C units. I didn't know that you prescribed the method.

COMMISSIONER SCHMITT: Yeah. No, I said vinyl fence rather than a screening. I would -- just a short decorative vinyl fence to help muffle the sound.

COMMISSIONER HOMIAK: If they could put shrubs, it would look a lot better.

COMMISSIONER SCHMITT: If you could do shrubbery. Okay. Either way.

COMMISSIONER HOMIAK: Screening, screening.

COMMISSIONER SCHMITT: I'm fine. Screen. Use the word "screen." Thank you. I'll change.

CHAIRMAN FRYER: Screening instead of fence.

COMMISSIONER SCHMITT: Yep.

CHAIRMAN FRYER: All right. Have I -- have I omitted --

COMMISSIONER VERNON: Just the timing of the fence, from my perspective, and what's the language you want to use.

MR. YOVANOVICH: I'd like to use it as -- let me --

CHAIRMAN FRYER: Go ahead.

COMMISSIONER SHEA: While he's doing that --
(Simultaneous crosstalk.)

COMMISSIONER SCHMITT: -- to do site cleaning and clearing and leveling and --

COMMISSIONER SHEA: But on that screening, shouldn't we be putting sound absorbing in there? I mean, that's what we're after. If you just put "screening," it could be visual.

CHAIRMAN FRYER: How about sound screening?

COMMISSIONER SHEA: Yes, I like -- that's what we're after.

MR. YOVANOVICH: We would agree that we would build that fence before we went vertical.

COMMISSIONER SCHMITT: Great.

MR. YOVANOVICH: Does that make sense?

COMMISSIONER SCHMITT: Yes.

CHAIRMAN FRYER: Okay. And those are the conditions that I heard. Did I omit anything?

COMMISSIONER VERNON: You heard he said sound screening is what we're moving --

CHAIRMAN FRYER: Yeah.

COMMISSIONER SCHMITT: Something that will screen the sound, rather than just screen visually around the A/C units.

MR. YOVANOVICH: Okay. I understand. Okay.

CHAIRMAN FRYER: All right. So I think we've stated the motion. I think we're all in agreement on what the motion is. The motion -- is there a motion to that effect?

COMMISSIONER SHEA: I move.

CHAIRMAN FRYER: Who was that?

COMMISSIONER SHEA: Commissioner Shea moves.

COMMISSIONER KLUCIK: I'll second.

CHAIRMAN FRYER: Is there -- a second from Commissioner Klucik. Any further discussion?

(No response.)

CHAIRMAN FRYER: If not, all in favor of approving this RPUDZ with the named conditions as a recommendation to the Board of County Commissioners, please say aye.

COMMISSIONER SHEA: Aye.

COMMISSIONER FRY: Aye.

CHAIRMAN FRYER: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER SCHMITT: Aye.

COMMISSIONER VERNON: Aye.

COMMISSIONER KLUCIK: Aye.

CHAIRMAN FRYER: Opposed?

(No response.)

CHAIRMAN FRYER: It passes unanimously.

Thank you, Mr. Yovanovich.

MR. YOVANOVICH: Thank you. Good luck getting done by 1:30.

CHAIRMAN FRYER: ***All right. The next matter to come before us is PL20210001793, which is a proposed GMPA amendment regarding private property rights. It's legislative in nature, so there's no need for swearing in of witnesses and no need for us to declare ex parte communications.

With that said, we'll begin with staff's presentation.

MR. BOSI: Thank you, Chair. Mike Bosi, Planning and Zoning director.

The Florida legislature in their 2021 legislative session passed House Bill 59 to amend the Community Planning Act to require that all jurisdictions, counties, municipalities adopt a private property rights element to their GMP.

The proposed Exhibit A provides for the introduction of the private property rights element to the GMP. We have the minimum requirements that are -- the base minimum requirements that are suggested at the state level provided by House Bill 59 contained within the element. It's a single page. Most of these things, I think, are self-evident in terms of what guides us in terms of how we go about in protecting private property rights, but we are codifying it within our GMP, and the Department of Economic Opportunities has provided guidance or provided awareness that jurisdictions will not be able to amend their Growth Management Plan until the private property rights element has been adopted within their Growth Management Plan.

MR. KLATZKOW: Mike, do we have any discretion on this?

MR. BOSI: No.

MR. KLATZKOW: And we, basically, cut and pasted right out of the statute?

MR. BOSI: Correct.

MR. KLATZKOW: There you go.

COMMISSIONER SCHMITT: I have one question.

CHAIRMAN FRYER: Question. Go ahead, Commissioner Schmitt.

COMMISSIONER SCHMITT: I clearly understand what the requirement is. And just to clarify what I had heard at the permitting conference, that if an applicant has had an application in the process, small comp plan amendment or otherwise, and it's gone before the LPA, which we are, local planning authority, that it can continue to proceed. But the point of departure was the LPA. Not an application, not anything else. It had to go to the hearing, which brings into question the one that was continued on Pine Ridge. I believe if it was continued -- it had appeared before us. Now, my question is, does -- will they have to go back, and you will have to address these issues as part of that --

MR. BOSI: Because this is a requirement of a full-scale amendment, this will require a transmittal hearing with the Planning Commission and the Board of County Commissioners in an adoption hearing. We probably won't be able to adopt this till December or January. When we adopt -- any subsequent amendments that come before the Planning Commission and the Board of County Commissioners for adoption between that time, we will have to specify when they had their first LPA hearing to make sure that the Department of Economic Opportunity understands that they qualify and they were in the works before that requirement related to the --

COMMISSIONER SCHMITT: All right. Correct.

MR. BOSI: Yes.

COMMISSIONER SCHMITT: And we have to specify. So nobody can submit an

application unless it was prior to this being approved.

MR. BOSI: You can submit the application. We just would not be allowed --
(Simultaneous crosstalk.)

COMMISSIONER SCHMITT: You won't be able to send it. All right.

And I have a question on Policy 1.3. Collier County will support the right of the property owner to privacy, clear, and to -- and to execute others -- execute. That's what it sounds like -- to exclude others from the property to protect the owner's possessions and property. That's a pretty broad statement. I mean, that pretty much implies I can do what I need to protect my property. I mean, that's what the legislature intended.

MR. BOSI: I think that's what Stand My Ground is.

COMMISSIONER SCHMITT: Yep, Stand My Ground. Okay. Recommend approval as proposed.

CHAIRMAN FRYER: Is there a second?

COMMISSIONER HOMIAK: Second.

CHAIRMAN FRYER: Any further discussion?

COMMISSIONER FRY: One question from me.

CHAIRMAN FRYER: Yes. Commissioner Fry.

COMMISSIONER FRY: What difference will this make in how we conduct business?

MR. BOSI: I don't believe it will have a material difference. I believe we try to respect the individual property rights, and the County Attorney makes sure -- ensures that our actions with respect to those rights associated with the bundle of rights that are --

COMMISSIONER SCHMITT: And your staff report's going to have to reflect that these issues have been addressed, probably.

MR. BOSI: Correct.

COMMISSIONER FRY: So it's an administrative change without any negative cascading consequences in your opinion, in staff's opinion?

MR. KLATZKOW: It's nonsense. It's just the legislature just giving us nonsense.

COMMISSIONER SCHMITT: Thank you. I wasn't going to put that on the record, but thank you.

CHAIRMAN FRYER: I would go beyond that and say that these -- all the rights that are in this are already a part of the common law or the constitutional or property law, and so --

MR. KLATZKOW: It's no different than, will you guys support the Bill of Rights. I mean, yeah, okay. I mean, you know, it's --

COMMISSIONER FRY: Enough said. Thank you.

CHAIRMAN FRYER: Any further questions or comments?

COMMISSIONER KLUCIK: I will just simply say that I think it's a worthy exercise to remind everybody and to codify things that seem to be -- you know, get trampled on and forgotten about. So I actually think it's a good idea.

CHAIRMAN FRYER: Okay. Any further comments, questions?

(No response.)

CHAIRMAN FRYER: It's been moved and seconded to approve this GMP amendment at transmittal and for recommendation to the Board of County Commissioners, that they also approve it for transmittal to Tallahassee.

COMMISSIONER KLUCIK: Mr. Chairman, I will say that just -- well, I wasn't saying that I think we trample on these rights. I'm saying that our culture seems to be moving in that direction, and so I think it's worthy to highlight that these are rights and that we should respect them.

I think we actually -- I've seen -- I've been impressed that this body always seems to, you know, really, really factor in the issue of the private property -- you know, the owners' property rights. So I think we do a great job already.

CHAIRMAN FRYER: Thank you. And I agree with you.

Any further discussion?

(No response.)

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

COMMISSIONER SHEA: Aye.

COMMISSIONER FRY: Aye.

CHAIRMAN FRYER: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER SCHMITT: Aye.

COMMISSIONER VERNON: Aye.

COMMISSIONER KLUCIK: Aye.

CHAIRMAN FRYER: Opposed?

(No response.)

CHAIRMAN FRYER: It passes unanimously.

***The third matter is PL20210001271. It's the EAR-based amendments to the Growth Management Plan concerning sea level rise. Again, this is legislative in nature, so there's no need to swear in witnesses. There's no need to make ex parte disclosures. And with that, the Chair recognizes Mr. Sabo.

MR. SABO: Thank you, Mr. Chairman. James Sabo, Comp Planning manager.

This is straightforward, as Mr. Bosi has suggested and the County Attorney. These are EAR-based amendments, the Conservation and Coastal Management Element of our Growth Management Plan.

Just a little bit background. Legislature approved House Bill 1094. In 2015 it changed the Community Planning Act. In the 2020 legislative session, they required locals to comply with this coastal management.

The amendment requires development of strategies to address the impact of sea level rise, flood risk, storm surge, and add language for best practices. Exhibit A is attached.

The state DEO also sent us the Evaluation Appraisal Review Notification requiring us to enact these amendments to our GMP. We have until December 31st.

And the recommendation is that the Collier County Planning Commission, acting as the land planning agency, forward the proposed CCME amendments to the Board of County Commissioners with a recommendation to adopt and transmit.

I'll entertain any questions.

CHAIRMAN FRYER: Thank you.

Commissioner Schmitt.

COMMISSIONER SCHMITT: First of all, how many counties submit an EAR report? My understanding, of all the counties in Florida, there may be one, maybe two, one being Collier County, and I'm not sure the other.

MR. SABO: I don't know. I'd have to research that, but it sounds like it's just us and one other county.

COMMISSIONER SCHMITT: That's pretty much what I heard at the permitting conference as well; there's nobody that submits an EAR. And I don't even know if it's statutorily required anymore. But you have to comply with this.

MR. SABO: Correct.

COMMISSIONER SCHMITT: Objective 14.1, I'm going to ask just questions as we go down.

December 23, date to address issues related to sea level rise. And I'm going to be somewhat, I guess, critical, but I could wake up in the morning and consider it and say thank you and move on to drinking a cup of coffee. What -- what is it -- what are your plans from there?

And the second thing, it says, to remove property from the flood zone. Well, I mean, there's costs associated with that. Every one of these elements have an element of cost. But you have not categorized any cost to any of these aspects. Is that part of the -- as you go through the

planning process?

MR. SABO: We -- our understanding was we took the state legislative act from 2015 and we copy and pasted, as Mr. Klatzkow has mentioned, into our GMP the requirements from the state, and that's as much explanation as I can provide.

COMMISSIONER SCHMITT: All right. So the state -- the 14.4, the state states that the county shall consider possible impacts to climate change. Again, I woke up in the morning, I considered it, and I brushed my teeth had a cup of coffee and came to work. I mean, did they define any intent?

MR. SABO: No, I --

COMMISSIONER SCHMITT: You don't know.

MR. SABO: We just took the act, and cut and paste. It's pretty straightforward. It did not take me a long time to write this.

MR. KLATZKOW: In the meantime, they're allowing condos being build in Miami, like, one foot above sea level.

COMMISSIONER SCHMITT: Thank you. That's the next point. I mean, it's to the point of all these. And I -- my neighbor's in the legislature; I was going to bust his chops about some of these.

But it's all noteworthy stuff. But encourages the use of best practices of the developer -- developing principles, strategies, engineering solutions that result in the removal of coastal real estate property from the flood zone designations. Great, until I tell everybody on Vanderbilt Beach you have to move. That ain't going to happen, to be blunt, to use "ain't" as a correct English.

MR. SABO: Understood.

COMMISSIONER SCHMITT: So, I mean, these are all interesting, but I just find it interesting because the other aspect of it is the ongoing study that's being conducted, and the feasibility study that's being -- supposed to have out a chief's report here in October, which is on the Board of County Commissioners meeting in September.

But it's -- again, we considered it, thank you very much, and move on, because there's -- from an engineering point, there's only three ways you deal with this. One is you just don't deal with it; noted, thank you. Two, you compensate, meaning tell people they have to move and somehow they compensate. Or, three, we force compliance, and still that's going to be monies involved in whether you're hardening, whether -- whatever element you're going to perform from a standpoint of flood protecting and floodproofing buildings. It's all notable, but it's, quite honestly, physically infeasible.

MR. KLATZKOW: Yes, and we just passed a motion on a private property rights --

COMMISSIONER SCHMITT: Right.

MR. KLATZKOW: -- Comp Plan amendment just a few minutes ago which has nothing to do with these rights.

COMMISSIONER FRY: We just took them away.

COMMISSIONER SCHMITT: It's remarkable, and -- but I'm just curious, once this is approved, what's the plan after that? Policy 14.3, the county shall continue to support Chapter 161 of the Florida Statutes -- okay, fine -- which sets forth guidelines for the regulation of beach construction and reconstruction, beach and shore preservation. I mean, we do that anyways. I would recommend approval.

CHAIRMAN FRYER: Commissioner, do you think --
(Simultaneous crosstalk.)

COMMISSIONER SCHMITT: I'm just kind of curious to --

CHAIRMAN FRYER: -- politics entered into this at all?

COMMISSIONER SCHMITT: No, not at all. Not at all. I'm not suggesting that politics would get into politics. I'm just curious as to, once this gets into the Comp Plan, what does this force the staff to do? You have to come up with a plan --

(Simultaneous crosstalk.)

MR. SABO: That's a great question, Commissioner. And if -- the word "consider" doesn't have a lot of teeth to it, so, yes, agreed. Well, we considered this, and it sounds like a good idea to go in this direction. Unless we have money or funding to support some sort of action, that's just what we'll do; we'll consider it.

COMMISSIONER SCHMITT: As I said, woke up in the morning, thank you, go -- now drink a cup of coffee, then brush my teeth, then come to work.

No, that's -- it's interesting. I'm just curious as the -- this will be -- the changes will be noted, and I recommend approval. I just don't know what -- there's no other action required for you to follow up with any type of report and noticing to the state what you intend to do in order to combat climate change or anything else.

MR. SABO: That may be future legislation in the statutes, but --

(Simultaneous crosstalk.)

COMMISSIONER SCHMITT: I mean, it truly is something that the county's been talking about for years in regards to shore protection and other type of elements. And I could talk for a half hour on my experiences in the Army Corps of Engineers and the kind of things that that brings, and, of course, what it brings to the county, both funding but also a significant change in beach access and other type of things with the county because of federal funds.

But with that, I would recommend approval, and it will look nice on the shelf with these nice new words in it.

CHAIRMAN FRYER: Thank you.

Commissioner Shea.

COMMISSIONER SHEA: So what's the definition of a coastal area? Does everybody know whether they're in the coastal area or not? It just says "in coastal areas."

COMMISSIONER SCHMITT: Either the --

(Simultaneous crosstalk.)

THE COURT REPORTER: I can only get one at a time.

MR. SABO: There's a Coastal Construction Control Line. That's one. There's a Coastal High Hazard Area that Mr. Summers uses. That's another.

COMMISSIONER SHEA: Are they different?

MR. SABO: Yes.

COMMISSIONER SHEA: So which one are we talking about here?

CHAIRMAN FRYER: It's going to be something that the staff is going to have to further define.

COMMISSIONER SHEA: Well, it just seems -- I'm like you. I just see so much silliness in there. I mean, is this saying that by December 23 you have to develop plans that will address those issues? Inappropriate and unsafe development's not defined. You're going to define that by December 23rd. "When opportunities arise," are you going to define what an opportunity is by December 2023? Is that what I'm reading?

MR. SABO: That's what the legislature has put forward to us, and we -- that 2023 deadline, you know, we may be done by then. We may not. I don't know that there's any penalties.

COMMISSIONER SCHMITT: Well, in reality, the ongoing feasibility study being conducted by the Army Corps of Engineers meets the requirement. Whether you choose to become a nonfederal sponsor, whether you choose to proceed is irrelevant. But, frankly, the feasibility study meets the requirement. You considered it. And you could cite that as considered. And I'm not sure if you're aware of that ongoing study.

COMMISSIONER SHEA: The one the Corps' doing?

COMMISSIONER SCHMITT: Yes.

COMMISSIONER SHEA: Savarese is doing it. Michael Savarese is doing it.

CHAIRMAN FRYER: Commissioner Fry, go ahead, sir.

COMMISSIONER SHEA: Can I finish?

CHAIRMAN FRYER: Oh, I'm so sorry. Of course.

COMMISSIONER SHEA: Yeah. The -- I just -- I'm more of an engineer, so I get into the details of Federal Emergency Management Agency. They establish a flood zone, but they have multiple flood zones. So which flood zone is it? I mean --

COMMISSIONER SCHMITT: I think Jamie French probably could highlight that. He's our floodplain manager. I'll give him that. How's that for a title today?

MR. FRENCH: Thank you, Joe, Commissioner Schmitt. Again, Jamie French, for the record. Deputy department head. And, for the record, I am a certified floodplain manager, so thank you for the acknowledgment. But I am not the floodplain administrator for this county. Luckily I've been able to pass that on to staff, so -- folks much more qualified than me.

The -- Commissioner Shea, you spoke of definitions, and those definitions for those flood zones, coastal construction lines, those are already identified within our Land Development Code under definitions. They exist under 1.802. So they're identified. And we do -- and the short answer is, is that -- and I know this from experience and working on the recovery of Hurricane Michael a few years ago up in the Panhandle.

There are a number of communities throughout the state of Florida that do not recognize NFIP, and they don't practice NFIP. And the state has made a valiant effort to mitigate claims and mitigate response. And as a result of this -- and I'm only speaking for me in my professional opinion -- is this is just one step forward to force many of those communities through model floodplain ordinances that we have adopted as well as through the Florida Building Code and development standards to ensure the safety of our communities throughout the state of Florida.

So we believe that just looking at this, this is just another element that will be a consideration that will be brought in through the land development planning aspect versus only the Florida Building Code as well as through flood insurance policies.

But so you know, Collier County is considered by the floodplain office through the Department of Emergency Response, Collier is one of those model communities. So many of these things that we're talking about here we've already initiated. We are in a study right now.

When Amy was heading up the Capital Planning group before she moved up to the County Manager's, she's been intimately involved with FGCU and the University of Florida for the past three years. So we're involved with the studies that are going on with FGCU and the University of Florida, and there will be more to come as we start to formulate those plans.

We don't believe that some of those plans belong in a GMP language because they're far too specific, and that will be in policy making. And so you'll see those come forward in future years. But to the credit of staff and to answer your questions, we are working on this right now.

COMMISSIONER SCHMITT: And we're already in the NFIP.

MR. FRENCH: Right. And if you remember, through Naples One, we talked about that lim wall, and that's your limited -- and that's a new definition that has been brought in to be defined as far as types of construction and types of uses that can exist within those lim wall areas that are just beyond that are on the landward side of that Coastal Construction Setback Line.

So, again, there's a great deal more enhancements that are coming throughout the entire state of Florida that are already in place. And, again -- but we've never really had any type of, I want to say, language that existed on the planning side that really enhance this. So, it's -- again, we'll be bringing this back to you in future years.

COMMISSIONER SHEA: So when I read something like 14.4, under this you're going to come back on how we're going to consider potential future impacts of climate change. Things like -- you're going to address those types of things. This document is just saying what our plan is going to do. It's not saying what our plan is, right?

MR. FRENCH: And I would defer to Mr. Bosi, but I think this is just the -- more so language that says we're going to commit to a plan in the future.

COMMISSIONER SHEA: In the future, okay.

CHAIRMAN FRYER: Thank you.

Commissioner Fry.

COMMISSIONER FRY: Jamie, I'm just looking to learn something here. I see repeated reference, you mention the coastal construction, and they've struck out "setback" and they call it the Coastal Construction Control Line. Is that actually a line on a series of maps that -- a certain setback from the ocean, I mean, from the gulf that --

MR. FRENCH: It is.

COMMISSIONER SCHMITT: It's on the Future Land Use Map. It's clearly identified in the Future Land --

COMMISSIONER FRY: Is it a few feet from the beach, or is it --

COMMISSIONER SCHMITT: It depends on where you're at in the county.

COMMISSIONER FRY: It varies.

MR. FRENCH: It's based on the topography, and those studies and those -- and we do go through a series of map updates. And I remember being first involved when Joe was heading up the organization, and we're still in the appeal process from 12 years ago with FEMA on where we've independently gone through and assessed what they've presented to us as best available data. And based off those questions, that model may change, that map may change.

But typically what happens is that FEMA and the U.S. Army Corps of Engineers, they may use a third-party contractor to come in and to assess, and that's recently been done. And so once it's -- once it's filed in D.C., then we have an appeal period. And we've been following that through our floodplain management staff.

COMMISSIONER FRY: So the idea is that there's a line, and you really -- this is saying you can't build between that line and the gulf and the coast unless it's some kind of special purpose that's needed? And that's what -- I'm looking at 10.4.7.

MR. FRENCH: It defines standards of construction and types of uses that can exist within those areas. It doesn't necessarily say you can't construct, because you can, but there's --

COMMISSIONER FRY: Right. There's exceptions.

MR. FRENCH: There's steps that you need to follow in order to be able to construct in those areas.

COMMISSIONER FRY: Thank you.

COMMISSIONER SHEA: Vanderbilt Beach is --

CHAIRMAN FRYER: All right. No one else is signaling. Are we -- Mr. Bosi?

MR. BOSI: Oh, just to let the Planning Commission know, 1.08 is our definitions section of our LDC, and it does define the coastal zone. It's a pretty lengthy definition. But it refers to all lands and territorial waters west of SLOSH Zone 1 line, approximately U.S. 41 for most of the county, including waters and submerged lands of oceanic bodies and estuary bodies. It goes on for another couple sentences. But we do have a definition within our LDC for what defines the coastal zone.

CHAIRMAN FRYER: Thank you.

No one is signaling. Anyone else want to be heard at this point? If not, I'd entertain a motion.

COMMISSIONER SCHMITT: Recommend approval as written.

CHAIRMAN FRYER: Is there a second?

COMMISSIONER HOMIAK: 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 HOMIAK: Aye.

COMMISSIONER SCHMITT: Aye.

COMMISSIONER VERNON: Aye.

COMMISSIONER KLUCIK: Aye.

CHAIRMAN FRYER: Opposed?

(No response.)

CHAIRMAN FRYER: It passes unanimously. Thank you.

COMMISSIONER SCHMITT: Go forth and study.

CHAIRMAN FRYER: ***Then we go to old business, and I don't believe we have any old business, which takes us to new business. And this was the work product of our County Attorney. And if memory serves, it was by unanimous consensus on our part that we requested the County Attorney to draft a proposed resolution to serve as an addition to our rules of procedure as permitted by Section 2-1159 of Board of County Commissioners Resolution 98-167.

Now, personally I believe the whereas clauses in the proposed resolution clearly set out the reasons why -- at least the reasons that we cited why we believe there's a need for clarification and action to address the recent proliferation of 11th-hour requests for continuation.

But before I open it up for discussion, I'll look to the County Attorney, sir, and ask if you have any additional comments or opening remarks to offer us.

MR. KLATZKOW: No. This will be your policy. This is just a proposal. I mean, this was a joint effort between my office and staff and, you know, it's your prerogative.

CHAIRMAN FRYER: Thank you.

Okay. I'd open it up for questions and comments from the Planning Commission.

COMMISSIONER FRY: One question.

CHAIRMAN FRYER: Commissioner Fry.

COMMISSIONER FRY: Did we in our -- in our discussion of this, Jeff, did we come up with the \$1,000 fee, or is that something that was arrived at by your department? I'm just curious.

MR. KLATZKOW: That was a staff recommendation.

COMMISSIONER FRY: Staff recommendation. So the intent of that fee is that it's -- it allays more of the cost to the county of the readvertisement, et cetera, but it's not prohibitive or punitive to the applicant; kind of a middle ground.

CHAIRMAN FRYER: It's not -- it's not a fine. It's cost recovery.

COMMISSIONER FRY: Cost recovery.

MR. BOSI: And one of the other aspects we did not include was a draft, but we didn't go in -- didn't propose, but we did want to discuss with you. We thought one of the -- that maybe is more punitive -- and it's not monetary, but it's time. And if you ask for a continuation, if you -- if the regulation was or what the rule was, you could not come back within a six-week period, one, you would require them -- one, have to readvertise their petition for when it would be going back to the Board of County Commissioners but, two, you'd be taking up the thing that's probably a little bit more valuable to them, and that's time.

So just for one of the considerations, if you wanted to -- if they asked for a continuation, pushed them out a specific period of time, that may be more punitive, and it would result, in my perspective, in probably a greater hesitation to ask for that continuation if you penalize them not just monetarily but from a time perspective.

COMMISSIONER FRY: But right now we're upping the fee from \$250 to \$1,000; is that right?

MR. BOSI: I believe it's 500 to \$1,000.

COMMISSIONER FRY: It's 500. Doubling the fee.

CHAIRMAN FRYER: Thank you.

Commissioner Vernon.

COMMISSIONER VERNON: Yeah. A few things caught my eye, but one of them was the thousand dollars, and I don't think the thousand dollars is going to be a deterrent at all. So we either need a -- if we're going to use it as a -- not punitive but as a deterrent so it happens less than

it has, I think we --

MR. KLATZKOW: The thousand dollars is to just cover our costs. That's the only purpose of it. If you're looking for something more punitive, I think Mr. Bosi's idea as to give them a greater length of time to sit on it would be appropriate.

COMMISSIONER VERNON: Again, you know, I know there's a fine line between deterrent and punitive. I'm trying to deter them from doing this as much as they have been. And so I think the six weeks, as long as that's legal, I think that's probably a good idea as opposed to trying to amp up the number even to, you know -- such big numbers are involved in some of these projects, I don't think a dollar fine is going to really change their decision of whether they want to push it back for strategic reasons.

MR. KLATZKOW: Yeah. And the structure of this, I took what staff had and then I restructured it, really, using both the federal and state continuance policies. So it's sort of my thought process, you're a quasi-judicial board. There's not that much difference between you guys and a county judge. When somebody asks for a continuance, this is your docket. This is time. You want to kick them out three months, it's okay by me, because they've got other people in line. You know, you could say, okay, you've got to continue [sic], but then you go to the back of the line on this, whatever time that might be. But, again, this is your policy.

CHAIRMAN FRYER: And before I call on other commissioners, if I may, following up on the language that the County Attorney just used, I suggest that we call this a continuance policy rather than a continuation policy. Would anybody object to that?

COMMISSIONER VERNON: No.

CHAIRMAN FRYER: Okay. All right.

Commissioner Schmitt.

COMMISSIONER SCHMITT: Yeah. My biggest concern is exactly what Jeff said. In the past when this happens, it -- the person that gets hurt is the next person in line, because the staff works to get this -- the petitioner to this point, to get to public hearing, and to present it to us, and then they continue. My concern is, hey, go -- yeah, go back to the end of the line, because you've had six other petitions now in line.

I would like to leave that up to staff to say you have -- I now have five petitions in the queue, and you're behind them, because they were disadvantaged, and one of those petitions could have had the place that these people just got here to continue. That's what I'm trying to make sure, that this is painful for them to do it.

(Simultaneous crosstalk.)

COMMISSIONER SCHMITT: I can't think of a way to put that into words other than it gives staff the right to determine where this will be placed in the queue. If there's sufficient justification, whatever may have happened, misadvertisement or some, you know, community wasn't notified, those are mitigating and extenuating circumstances. But I want to make sure that those who were in line aren't disadvantaged because now this guy's coming back again two weeks from now. So I don't know how --

COMMISSIONER SHEA: Can we just say "next available slot"?

COMMISSIONER SCHMITT: Next available slot.

COMMISSIONER SHEA: Then that gives staff the right to determine.

COMMISSIONER SCHMITT: Gives you the latitude. Thank you. That's good wording.

COMMISSIONER KLUCIK: Well, to me, that -- actually, I think that binds -- that binds staff more than I think we should, because what that says is they would be entitled to a certain spot. I think we can -- if we give them -- like, you can't come back for a certain period of meetings or weeks --

COMMISSIONER SCHMITT: Well, they're going to be entitled anyway. They have every right to appear before the Planning Commission to present their petition.

COMMISSIONER KLUCIK: No. But what I'm saying is if you say the next available

slot, then the staff has to give them the next available slot, and they -- which I think they now have flexibility to schedule how they need to and how they see fit. And to bind them to give them the next available slot, I think, is actually going beyond what they even need to do now.

CHAIRMAN FRYER: Yeah. I think we need to be cautious in our wording here because in the final analysis, the order of agenda belongs to us as the Planning Commission, and staff makes a recommendation, and applicants usually rely on that. But when the agendas come to us for action, you know, addenda to the agenda is an item on our agenda, and that's a place where we need to speak up, and if we think that the order that staff has assigned to a matter that's been continued is inappropriate, we can override that.

COMMISSIONER KLUCIK: And I think if we bind them -- if we bind -- we would be binding ourselves as well, because then we would be obligated to give them the next available slot, and if we wanted to swap somebody for a good reason, we wouldn't necessarily be able to do that.

CHAIRMAN FRYER: What about the next appropriate spot?

COMMISSIONER VERNON: Well, I -- can I jump in?

CHAIRMAN FRYER: Please.

COMMISSIONER VERNON: Yeah. I just think what Jeff and Mike are recommending, and I think Robb's supporting, is that -- I mean, we can always do an exception, but make it at least six weeks. So I don't like the idea of putting staff in the position of having a subjective decision to make on this issue.

Again, going back, what are we trying to accomplish here? We're trying to reduce if not eliminate these last-minute continuances. So what's the best way to do that? And I think it's they see this in writing, it's going to be six weeks. Now they have to redo this, redo this, redo this automatically. And we can -- if we want to give an exception for good cause, we can, but I like it that it's in writing it's going to be six weeks or more.

COMMISSIONER SCHMITT: I like that wording with the discretion up to the Planning Commission if it's going to be less.

CHAIRMAN FRYER: Mr. Bosi and then Commissioner Fry.

MR. BOSI: And I appreciate that, Commissioner Vernon. And what I also think you're able to do with that six weeks -- that six-week period is you're able to provide that rational nexus as a justification to that period that it requires. And it's for the protection of the public, and it requires that the petition is readvertised. It requires that the notification to the people who came to the meeting that was being continued will be notified of when that meeting is being continued again so, therefore, it's not an arbitrary time period. It's a time period that you've chosen specifically because the end result is a requirement for readvertising that petition. So, therefore, I think you're justified and protected in terms of how you've arrived upon the time frame if you do seek a continuation.

And remember the Board of -- or the Planning Commission is going to evaluate whether it's good cause or not good cause. So you're the ones who will make the determination if you find it's not good cause, and then, therefore, they will have to obligate themselves to that six-week continuance, and that's simply to allow for the public to be notified of the new date.

CHAIRMAN FRYER: Commissioner Fry.

COMMISSIONER FRY: So, I mean, the objective of this is to reduce wholesale and egregious continuances. Now, in addition to doubling the fine, we've also had them submit in advance in writing that's then distributed to us and to select people at staff's discretion. We've asked them to have the representatives all available here to present and justify their continuance.

So I guess I'd be supportive of the six-week as long as we're not -- we could, in cases where we felt it was an excusable continuance, where we could schedule it more quickly. So as long as that's the intent we have here, that we could go -- that's our standard is six weeks, but we could decide to schedule it sooner.

MR. BOSI: And I think it was added at the -- or at the Planning Commission's discretion.

COMMISSIONER VERNON: That's what Joe suggested, that we actually put those

words in, six weeks.

COMMISSIONER FRY: The standard is six weeks, but at our discretion, or it could be reduced --

MR. BOSI: If you're continued beyond the six-week period, you -- and it's a five-week period, you'll have to readvertise, so that's why we've chose -- that's why we suggested six weeks. But what Joe had said, that that is at the discretion of the Planning Commission. That would be -- that would be the time frame unless there's extenuating circumstances in the perspective of the Planning Commission.

COMMISSIONER VERNON: Yeah. I mean, the way I'd word it is that it is going to be six weeks, comma, unless the Planning Commissioner decides otherwise, and that gives us the discretion, if we think it's appropriate, to let them back before us quicker.

COMMISSIONER SCHMITT: I mean, there may be reasons a petitioner -- people can't show up for whatever reason, and it's a legitimate reason.

COMMISSIONER KLUCIK: Is that how it's worded now?

COMMISSIONER FRY: It's not in there at all.

COMMISSIONER SCHMITT: There is no provision now. They just -- they can ask for --

COMMISSIONER KLUCIK: No, I mean, in what we're considering, is that wording in there now, or do we need to modify what's before us?

COMMISSIONER SCHMITT: We need to modify.

COMMISSIONER FRY: Jeff, you did not include that verbiage in this draft.

MR. KLATZKOW: No. I mean, after this discussion I'll get together with Mike, and we'll make some changes and we'll bring them back.

COMMISSIONER VERNON: And I have some minor changes that, if it's okay with the Planning Commission, fellow commissioners, I'll just chat with them about it. I don't think I need to discuss it.

There is one more thing that I would like to discuss, though, and that's No. 2 of these three points of what's good cause to continue it, where denial of the continuance creates injustice for the requesting party. You know, as an attorney, I think you could always find some type of injustice, you know. I'm not going to get paid as much.

MR. KLATZKOW: Yeah. A lot of this language I pulled out of existing judicial policies for continuances.

COMMISSIONER VERNON: Yeah. So I don't know. To me that's a little fuzzy. So I don't know how --

CHAIRMAN FRYER: What about severe -- severe injustice?

COMMISSIONER KLUCIK: Would you believe me if I told you --

COMMISSIONER SCHMITT: We're surrounded by three attorneys here. No, four now.

COMMISSIONER VERNON: You know, I don't know what the right language is. I mean, I'd like to -- if it's okay with the Planning Commission -- just chat with you off-line -- because you're going to be bringing something up again -- and see if we can clean that up a little bit.

CHAIRMAN FRYER: That's fine. Yeah, this is coming back to us, and so further comments should be directed to the County Attorney or staff or both. What --

MR. KLATZKOW: Would you prefer unduly prejudices?

COMMISSIONER VERNON: It's almost like unfair prejudice. Everything's prejudice. So unfair, unduly, something like that. Unfair prejudice.

CHAIRMAN FRYER: Well, we'll see this again in redline form.

Any further comments before we send it back for further review?

(No response.)

CHAIRMAN FRYER: All right. Then let's have a motion to continue this matter to a date certain, I think, if we can. Can we not?

MR. KLATZKOW: Oh, you'll have it at your next Planning Commission.

CHAIRMAN FRYER: Okay. Continue this to the next Planning Commission meeting for us to consider a second draft of this --

MR. BOSI: September 2nd.

COMMISSIONER FRY: So moved.

CHAIRMAN FRYER: Is there a second?

COMMISSIONER SCHMITT: Second.

CHAIRMAN FRYER: 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 HOMIAK: Aye.

COMMISSIONER SCHMITT: Aye.

COMMISSIONER VERNON: Aye.

COMMISSIONER KLUCIK: Aye.

CHAIRMAN FRYER: Opposed?

(No response.)

CHAIRMAN FRYER: It passes unanimously.

Very quickly, I'm going to want to introduce -- and I mean very quickly, because I want to get out of here as much as you do -- another matter of new business that came up today, and I'm just going to say it in a sentence, and we can -- we all can weigh in on it or not, and it has to do with the 500-foot notification limit that exists in many parts of the unincorporated county. I would like us to ask staff to come back with a recommendation for enlarging that for us to discuss and consider.

COMMISSIONER SCHMITT: Can I add to that?

CHAIRMAN FRYER: Please.

COMMISSIONER SCHMITT: I would ask, in doing that, if staff could go back and look at the record, because this is -- had come up in the past -- and just look at the reasons why. And it goes back many years. There may have been reasons why we limited it to 500 feet, and I -- because at one time I know we talked a thousand, and it's a thousand for commercial; is it not?

MR. BELLOWS: It's a thousand if you're in the rural area of the Estates.

COMMISSIONER SCHMITT: But I -- I just caution, because -- if you could go back and look and see why -- if there's any type of record as to -- we did discuss this in the past. Not me, personally, on the Planning Commission, but I remember as part of staff this had been discussed, and it was settled on 500. Just come back with that as well.

CHAIRMAN FRYER: I think that's certainly reasonable. The thing that concerns me is that everybody in Canopy didn't get notice, and that just seems fundamentally wrong.

COMMISSIONER SCHMITT: Just to highlight -- and I mean, I can think of the same things. In communities the size of Fiddler's Creek or Lely or some of the other communities, somebody says, well, we weren't notified -- and Lely is 8- or 9,000 units. I mean, if it's on the corner of 41 and Collier Boulevard, do you notify the guys over there -- it's --

MR. KLATZKOW: The idea is that you notify the neighbors.

COMMISSIONER SCHMITT: Notify the neighbors.

MR. KLATZKOW: Not the neighboring community.

COMMISSIONER SCHMITT: Correct.

MR. KLATZKOW: That was the idea. And we have talked about this before. The 500 -- it was not just made up. There were graphics showing what this would mean --

(Simultaneous crosstalk.)

MR. KLATZKOW: -- as far as to how many addresses would take place and what have

you. But staff will bring it back. But keep in mind the idea is we're notifying the neighbors who are going to get impacted of what's going on, not the neighboring community, which as Joe said, could be just extensively large.

COMMISSIONER KLUCIK: Mr. Chairman?

CHAIRMAN FRYER: Yeah. Go ahead, Commissioner.

COMMISSIONER KLUCIK: In this particular instance with the Canopy being notified, so what I would say is, you know, unless there was, you know, a really obvious screwup with our notification process that staff did not send out, you know, the notifications required, which I think they -- you know, I don't have any reason at this point to think that we didn't do the proper notifications with the 500 feet.

You had a parcel right there adjacent that was wooded. That's owned by the association. So the association was sent a letter. And then all the people that are adjacent and within 500 feet, you know, the 40 or 50 homes, all got a letter, and that's just in Canopy.

And there's a sign right on one of the main roads that everybody's traversing on both corners or, you know, both sides of that. And so I think the idea is the community has a chance to know something's happening so that they can raise, you know, concerns if they want to. And the idea that all 200 homes or whatever would -- you know, would need to be notified, I think that seems to go beyond making sure people have a meaningful chance to be aware that something's happening, especially with the signage, and we did -- you know, the signage, apparently, was increased in size.

And, you know, I certainly am in a community where we have these things going on all the time, and everybody starts buzzing about it, and not everybody gets a letter about it.

CHAIRMAN FRYER: Would anyone object if we asked the staff to take another look at this?

COMMISSIONER SCHMITT: No, I have no objection.

COMMISSIONER VERNON: No, I think it's a great idea. And along Joe's comments, look at how we came up with the 500 feet. There's also -- I know we had a discussion last year about it -- I think it came up -- about the rural areas, and I remember Paul making some -- I just kind of remember the thousand feet. And so can you take a look at that discussion, too, because that will sort of help me if we know what thoughts we've already had on this issue, even if it was just on the rural.

COMMISSIONER HOMIAK: We just changed it, though.

MR. BOSI: Yeah, you just changed the notification requirements for all Estates lots from 1,000 feet to one mile.

COMMISSIONER SCHMITT: That's a lot.

COMMISSIONER VERNON: That is big.

MR. BOSI: It is. And one of the things that you guys have to remember -- have to remember, everything that we do that adds cost doesn't get pushed to the developer. It gets pushed to the end user. And we have an affordability issue in this county. And just -- I'm not saying anything other than every action has a reaction, and understand that some of these things that we ask for have a cumulative effect in terms of what they -- what they're -- the end result in terms of purchasing and the price of a home. Just -- and we will most certainly provide that -- the original 500 feet and then the discussion about the 1,000 feet and beyond, provide you a backdrop, and see if you would like us to take some actions upon it.

CHAIRMAN FRYER: Thank you.

COMMISSIONER VERNON: And I think that will help us look at things comprehensively and not sort of knee-jerked and inconsistencies.

CHAIRMAN FRYER: Good. Thank you. You've got our input, and we look forward to hearing back from you.

Is there any further new business?

(No response.)

CHAIRMAN FRYER: If not, any public comment?

(No response.)

CHAIRMAN FRYER: I don't think there are any members of the public remaining here, so I take it there are not.

COMMISSIONER SCHMITT: We have six more minutes to keep Terri here, so we can keep on talking.

CHAIRMAN FRYER: No. We're going to be merciful. Without objection, we are adjourned.

There being no further business for the good of the County, the meeting was adjourned by order of the Chair at 1:24 p.m.

COLLIER COUNTY PLANNING COMMISSION



EDWIN FRYER, CHAIRMAN

8/19/21

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

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