

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY PLANNING COMMISSION
Naples, Florida
December 16, 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
Paul Shea
Robert L. Klucik, Jr.
Tom Eastman, Collier County School Board Representative

ABSENT:
Joe Schmitt
Christopher T. Vernon

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

PROCEEDINGS

CHAIRMAN FRYER: Good morning, everyone. I'm going to begin by sticking my neck out and wishing everyone a Merry Christmas, Happy New Year, Happy Hanukkah, Happy Holidays for anyone else. And having said that, welcome to the December 16, 2021, meeting of the Collier County Planning Commission.

Please rise for the Pledge of Allegiance.

(The Pledge of Allegiance was recited in unison.)

CHAIRMAN FRYER: Mr. Secretary, roll call, please, sir.

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 Chairman Homiak?

COMMISSIONER HOMIAK: Here.

Mr. Schmitt?

(No response.)

CHAIRMAN FRYER: Mr. Vernon?

(No response.)

CHAIRMAN FRYER: Mr. Klucik?

COMMISSIONER KLUCIK: Present.

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

CHAIRMAN FRYER: Thank you, Mr. Secretary.

Addenda to the agenda. I've spoken with Mr. Bellows this morning, and it is proposed that we move the scrivener's error matter to the end, and so the second item we'll hear would be the Cruz matter.

Are there any other addenda to the agenda, Mr. Bellows?

MR. BELLOWS: No other changes.

CHAIRMAN FRYER: Okay. So I assume there's no objection to our moving those around. It just makes sense to have the matters represented by counsel and members of the public first off. So, without objection, that's what we'll do.

The planning commissioners who are absent, those absences have been excused.

We are not going to be meeting on January 6th because we have no matters to hear. So, therefore, our next meeting is January 20, 2022. And does anyone know whether he or she will not be here at that time?

(No response.)

CHAIRMAN FRYER: Thank you very much. We hope, then, to have a quorum.

Approval of the minutes; we have none before us today for action.

BCC report/recaps, Mr. Bellows.

MR. BELLOWS: Yes. On last Tuesday the Board of County Commissioners heard the conditional use and Growth Management Plan amendment for the Iglesia Pentecostes Church. That motion -- or that motion was for denial, and that passed 4-1.

CHAIRMAN FRYER: The denial passed 4-1.

MR. BELLOWS: Yes.

CHAIRMAN FRYER: Yeah.

MR. BELLOWS: There was also the Growth Management Amendment for the Collier Boulevard mixed-use subdistrict. That was approved 5-0. The Green Boulevard conditional use and variance was approved 5-0.

COMMISSIONER KLUCIK: What was the first one?

MR. BELLOWS: The church.

COMMISSIONER KLUCIK: No, the first approval.

MR. BELLOWS: That was -- for the Green Boulevard?

COMMISSIONER KLUCIK: Yes.

MR. BELLOWS: Yes. That was a communication tower that was approved 5-0. And then the Rural Fringe Mixed-Use District, that was continued?

MR. BOSI: The Rural Fringe Mixed-Use District was tabled to a February workshop based upon a number of issues the Board of County Commissioners wanted to revisit.

COMMISSIONER KLUCIK: What was the actual issue regarding the RFMUD?

MR. BOSI: Density.

COMMISSIONER KLUCIK: For a particular petitioner?

MR. BOSI: Not for a petitioner. There was a number of individuals within the northwest receiving area that objected to the increased density for affordable housing. Even though that northwest quadrant really has very few developable acres left, there was just, I guess, an objection on principle. So we will go -- we're going to have a workshop and walk through the steps with the Board of County Commissioners, but also that workshop has been also expanded in a sense that they want to talk about the need for multifamily housing, additional housing units because of the lack of affordability, and there has been a recent issue, it seems like, within our apartment complexes of rents being raised an inordinate amount that has outpriced a number of individual workers who spoke at that meeting as well as previous meetings in terms of affordability within this -- within the county. So it's a February workshop that's going to be informative on a lot of different areas.

CHAIRMAN FRYER: Thank you.

Chairman's report; none today.

Consent agenda; none today.

***Public hearings, advertised, the first matter is PL2021000176. It's the St. Matthew's House CPUD. And you'll recall this was continued from our December 2, 2021, meeting. You'll also recall that counsel for certain adjacent neighbors and for the applicant had represented that they thought that there might be an agreed-upon solution near at hand, and so that's why we continued the matter.

All persons wishing to testify in this matter, please rise and be sworn in by the court reporter.

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

CHAIRMAN FRYER: Thank you.

Ex parte disclosures starting with Mr. Eastman, please.

COMMISSIONER FRYER: No disclosures outside of the materials in the public record.

COMMISSIONER SHEA: Staff materials only.

COMMISSIONER FRY: Ditto.

CHAIRMAN FRYER: Okay. Since my previous ex parte disclosures, I have reviewed the additional material that has been made public and had meetings with staff and conversations with counsel for the applicant and certain adjacent neighbors.

Plus, I made a second site visit to view the potential security issues which I raised two weeks ago.

Vice Chair.

COMMISSIONER HOMIAK: Nothing different except emails from last time.

COMMISSIONER KLUCIK: I simply had conversations with staff and staff material.

CHAIRMAN FRYER: Thank you. All right. Without further ado, Mr. Yovanovich, the Chair recognizes you.

MR. YOVANOVICH: I believe where we left off was the public comment was complete, and if we reached a deal, we'd present the deal. If we didn't reach a deal, I would do rebuttal and

closing. Am I correct that public comment is done unless a commissioner pulls somebody up to ask them --

CHAIRMAN FRYER: Yeah. And I just want to emphasize that we did, indeed, close public comment, and what that does is that forecloses initiatives on the part of the public to speak, but initiatives from the Planning Commission to ask anyone to speak or to be heard is always within our purview, but you are correct, Mr. Yovanovich.

MR. YOVANOVICH: What we submitted, and I believe is in your packet, is a redline of the PUD incorporating the changes requested from the Planning Commission at its last meeting. And if I can, I'll just put them on the visualizer. We'll go over them real quick, make sure I caught them all.

And I will -- before I do that, in response to your -- the Chair's questions regarding security, let me tell you what we already do as security for St. Matthew's House and the adjacent property. I hope that will satisfy the Planning Commission that we are serious about security for the property.

What we have is basically from the afternoon on through the evening, we have security on site. They're there. They walk the grounds frequently to make sure the grounds are secure and people are not vandalizing the property and are making sure it's safe. We also have video cameras on the buildings to make sure that nothing's happening to the buildings. And if you've been there, you will see we have a fence that runs the length of the old automobile ship -- automobile dealership, and we have a fence on Tract A as well. So it's not that we're not taking security seriously. We take security very seriously and, as you know, we do background checks before people could stay. So that is how we are handling security today, and we'll continue to do that.

CHAIRMAN FRYER: Commissioner Fry.

COMMISSIONER FRY: Rich, just clarifying. So I'm getting the impression it's St. Matthew's House's position that security on site is your full responsibility, but that --

MR. YOVANOVICH: Absolutely.

COMMISSIONER FRY: -- limiting homeless camps outside the borders of the parcel that you own and control is not within the realm of responsibility for St. Matthew's House, correct?

MR. YOVANOVICH: We have no legal authority to go onto someone else's property and tell somebody who's there to leave. They have that authority. If they are uncomfortable dealing with the person directly, they have the ability to call a sheriff's deputy to assist them in doing that, but we have no legal authority to do that.

And forcing us to take on that responsibility, we think, is inappropriate and can be, frankly, dangerous to us if we would have to approach people and shoo them away on someone else's piece of property. The appropriate way to handle that is to call a sheriff's deputy to assist if that happens.

COMMISSIONER FRY: Thank you for the clarification.

MR. YOVANOVICH: Yeah. So I'll go page by page as to the changes. Yes, sir.

COMMISSIONER SHEA: Can I just ask you a question on the fence?

MR. YOVANOVICH: Yes.

COMMISSIONER SHEA: Is the fence around the entire east side, both Tract A and Tract B, or just at the DeVoe building?

MR. YOVANOVICH: If you remember, there's a solid wall on part of the DeVoe property, and then there's a fence on the DeVoe property, and then there's a fence on Tract A. There is a gap. There's probably a 30-foot gap, I think, between the Tract A and the beginning of the wall on Tract B. We're happy to fill that gap to make sure that there's a continuous secured fence along the way.

COMMISSIONER SHEA: Okay.

MR. YOVANOVICH: So as you can -- as you can see -- maybe we should zoom out a little bit, Mike. Thank you. Thank you.

The first change is under the permitted use category. We made it clear that the beds can

only be on Tract A, and I believe the Planning Commission had directed and we had agreed to that all principal uses must be owned by a not-for-profit corporation. So we made that change.

Under the principal uses on Tract A, we excluded nonresidential, probation offices, refugee services, and public welfare centers. I believe that was at the request of the Planning Commission.

The next page, I think, is Tract B. We had moved to -- we had moved to an accessory use the warehousing. Originally it was a permitted use on Tract B, but we were requested to confirm that that was accessory to the principal uses, which we did. And we moved that to an accessory use on Tract B, and that allows both refrigerated and, you know, donated furniture to be stored on site as an accessory use.

We had agreed to make it clear, again, that residential care, homeless shelters, and group facilities are prohibited on Tract B. So we've said it in multiple locations throughout this document that the homeless shelter can only be on Tract A.

COMMISSIONER FRY: Rich, does that, then, limit you to your proposed size in terms of future ability to expand on Tract A if you needed to expand the homeless shelter and add beds?

MR. YOVANOVICH: We would have to come back through the public-hearing process again to go above 150 beds.

COMMISSIONER FRY: There still is space. If you wanted to add onto the building, you could apply and come back and add onto the building?

MR. YOVANOVICH: We could build a second floor. We could raze what's there today and replace it with a new structure. But to go above 150 beds, we will have to come back through this public-hearing process.

We clarified the setback under -- from the eastern boundary, which is the apartment complex, that it applies to the principal and additions to principal structures constructed after the adoption of the ordinance.

COMMISSIONER KLUCIK: I'm not getting anything on my screen, and I don't think --

CHAIRMAN FRYER: I'm not seeing you lit up either.

COMMISSIONER KLUCIK: We're not getting that.

COMMISSIONER FRY: He's talking about our monitors.

COMMISSIONER KLUCIK: It's not on mine.

CHAIRMAN FRYER: It's not on mine either.

MR. YOVANOVICH: Then if you could follow along on the screen. I hope you can see it.

CHAIRMAN FRYER: Yeah.

COMMISSIONER KLUCIK: Is this in our packet as well?

MR. YOVANOVICH: Yes, it should be. We transmitted it to the county the Monday after Thursday's meeting. We had clarified that the requested deviation as to the square footage --

CHAIRMAN FRYER: I think we'll hear you and pay more attention to you after we get this completed.

MR. MILLER: Just a second, Rich.

COMMISSIONER FRY: Thank you, Troy. Thank you, sir.

Go ahead, Mr. Yovanovich.

COMMISSIONER KLUCIK: I got on the Internet without any help today.

MR. YOVANOVICH: And then we clarified that the deviation is -- only applies to Tract A for the square footage of the -- again, the theme is make it very clear that the homeless shelter beds were all on Tract A.

We had also agreed, if you recall, that any new overhead doors would not face the adjacent residential property. We had agreed to limit hours of operation for loading and unloading to 7:00 a.m. to 9:00 p.m. Monday through Saturday. And I have a feeling that your packet doesn't have this, because I'm hearing the murmuring in the background that maybe this is the first time you're seeing it.

And that no deliveries, loading or unloading -- this is actually -- we had agreed to this with

the neighbors that no deliveries, loading or unloading, would be by tractor trailers. They didn't want the big, noisy trucks delivering.

And we had agreed and -- that at the time we redevelop the property we would put a buffer along our eastern boundary. That we had put that in in good faith based upon discussions with the neighbors, and apparently we transmitted that to the county a couple weeks ago. We're not going to take that back, but we wanted to show that we had agreed to provide a buffer along our eastern boundary even though when they bought the property there was no buffer along the eastern boundary, and they were fully aware of the uses on the property, and I'll get into that in my close.

So we have negotiated in good faith and have made revisions to the PUD that I think will hopefully address the conversations that occurred at the last meeting.

And if you have any questions of me or any of our experts, we're happy to address that; otherwise, I'll go into my closing remarks.

CHAIRMAN FRYER: Any members of the Planning Commission wish to be heard at this time? I have a number of questions.

MR. YOVANOVICH: Okay.

CHAIRMAN FRYER: And, unfortunately, I read the document that you asked me not to read, because I read it before I got your email saying don't read it. And I also got a similar but not identical one from Mr. Pires. They're very close. There are some typographical differences.

And I recognize that you have withdrawn the changes, and I am respectful of that. But I want to be sure that we all know what remains open and what you would agree to. So I'm going to go through each of these, and you can tell me -- and in some respects, this may be redundant.

MR. YOVANOVICH: With all due respect, I don't think -- I appreciate that you read it, but putting me in a position to respond to a document that I asked you not to read because --

CHAIRMAN FRYER: I'd already read it, Mr. Yovanovich.

MR. YOVANOVICH: I understand. But you're putting it in the record when I asked that it not be part of the record, because it was an agreement based upon negotiations. I was told to transmit it to you, and then I was told the agreement was taken back. So now I'm going to get on the record, you're going to ask me if I'm still willing to do these things when they won't commit to us to support something, and I don't think that's right.

CHAIRMAN FRYER: I'm absolutely going to ask you each and every one of these things, and if you want to make a record now that you're reserving rights to object or to appeal or do anything you want, go right ahead and do it.

COMMISSIONER KLUCIK: Mr. Chairman?

CHAIRMAN FRYER: Yes.

COMMISSIONER KLUCIK: What's the basis for doing that when it's not something that -- he's explained to you.

CHAIRMAN FRYER: Well, he went through about half of the things, I think, that show up in this, and I want to be sure that I know what the other half is. I didn't make notes when he went through that and I, therefore, would like to have clarification.

COMMISSIONER KLUCIK: But it's not an agreement.

CHAIRMAN FRYER: No, it's not an agreement. And I am respectful of the fact that it is not an agreement, but some of the items appear to have been agreed to, and I would like to -- even in view of the fact that it might be repetitious, I would still like to know what is agreed to and what isn't, because some of the points that he mentioned, such as the hours of operation and others that I caught, which are in this document -- and I'm not going to go through the whole document. I'm just going to go through the things that are new and are significant to me, unless there's an objection from the Planning Commission.

MR. YOVANOVICH: You know, I'm going to note on the record we negotiated those agreements in good faith based upon the reciprocal agreement that if this becomes part of the ordinance, they would remove -- they would withdraw their opposition. In good faith, I transmitted that to you. When I was told that they no longer agreed to support us even though we

had made those agreements, I don't think it's appropriate, because now you've seen it, to now ask me if I'm still willing to agree to it.

COMMISSIONER KLUCIK: And I just, you know, fall back on, you know, the principles, you know, when these things come up in legal situations that those kind of negotiations and offers are normally not, then, something that the tribunal, which we're the equivalent of, has access to, because it wasn't -- it ended up not being agreed to. And you can't hold people or pester people -- excuse me -- not pester -- you know, ask a lot of questions about things that the parties negotiated privately in good faith, and in this case thought they had an agreement and then transmitted it only with the idea that it was something that both sides agreed to, and now you're going to, you know, ask a bunch of detailed questions about it. I think --

CHAIRMAN FRYER: Well, you don't know what I'm going to ask, but I've got a -- what may be a compromised solution. I'm going to ask Mr. Yovanovich to refer to his document and simply cover the subjects. It's going to be a little repetitious, I know, because he just did, but there are issues that show up in the redlining, and I would like to hear once more for the record what he is willing to agree to and what he's not, and then we'll see what's left over.

MR. YOVANOVICH: I'll go back through what I just went back through.

Exhibit A, we agree to these revisions that will make it very clear that the homeless beds can only be on Tract A and that all principal uses have to be owned by a not-for-profit corporation.

CHAIRMAN FRYER: Okay.

MR. YOVANOVICH: We agreed under principal uses to --

CHAIRMAN FRYER: And these are still things that you're still willing to agree to, correct?

MR. YOVANOVICH: I agreed to these things in front of you--all two weeks ago.

CHAIRMAN FRYER: Keep going, please.

MR. YOVANOVICH: We agreed to exclude nonresidential probation offices, refugee services, and public welfare centers. We had agreed to that at the last meeting. We had also agreed to remove from the principal uses on Tract B --

CHAIRMAN FRYER: Before you go there, the -- no, no. Continue. Go ahead.

MR. YOVANOVICH: On Tract B, we had general warehousing, both refrigerated and unrefrigerated. We were asked to remove that as a principal use and put it as an accessory use. So we removed -- you can see on Tract B we no longer have warehousing.

CHAIRMAN FRYER: And the refrigerated, what did you say about that?

MR. YOVANOVICH: We moved it to an accessory use to be operated with a not-for-profit food bank only, the refrigerated portion. We have unrefrigerated stuff where people drop off donations that we then distribute to the different thrift stores. That would continue to occur as it is today, and that would be an accessory use. It can't be a stand-alone operation.

CHAIRMAN FRYER: What about prosecutions under SIC 9222; are you still --

COMMISSIONER KLUCIK: Can I just ask a real basic question, Mr. Chairman?

CHAIRMAN FRYER: Go ahead, go ahead.

COMMISSIONER KLUCIK: So we have -- I have Page 25 of the 555-page agenda. Is that the current version that we're looking at on the overhead? Is it the same thing, the list of permitted uses?

MR. BOSI: No. In coordination with the principal planner, the version that Mr. Yovanovich had transmitted two weeks ago did not appear in your guy's package.

COMMISSIONER KLUCIK: Okay.

CHAIRMAN FRYER: So the question on the floor --

COMMISSIONER KLUCIK: I'm going to ignore, then, this, because it's -- well, it's mostly the same, but we're talking about the changes. So I have to follow here, okay, on the overhead.

CHAIRMAN FRYER: My question, then, is on prosecutions, 9222.

MR. YOVANOVICH: I'm trying to do two things at once and not doing either one of

them well. What our question was -- I believe those had to do with -- and I closed the book. Give me two seconds. The 9222 -- so the only one you want to leave is the public prosecutor use?

CHAIRMAN FRYER: Well, you've got legal counsel and prosecution, 9222. And I'm okay with legal counsel, but prosecution seems like a non-sequitur.

MR. YOVANOVICH: Okay. Well, we'll take out public prosecutor and Public Defender Offices. The remainder will be -- I'll read them to you. There's only four others: Attorney General's Office, district attorneys, legal counsel offices, government, and U.S. attorney's offices. That's what 9222 is. So if the county wanted -- if we had an office building on that site and the county wanted to put those offices there, we would -- we were going to allow them to do that.

CHAIRMAN FRYER: So what would you remove?

MR. YOVANOVICH: We would take out public defenders and public prosecutors.

CHAIRMAN FRYER: Okay.

MR. YOVANOVICH: I think what you have in your packet or possibly have in your packet someone accepted some of the changes and they no longer show as strikethroughs. For instance, I'll show you what I had submitted, why I got confused. I had submitted the deletions, so everybody can see it, but what I'm showing you now is some of the version is clean, some of it is still strikethrough. So if you'll permit me, I'll just work through the strikethrough and underline, which is what I hope you have in your packet. Nothing's changing from what we already committed to to this point.

COMMISSIONER FRY: I just want to ask other commissioners. I do not think I have the strikethrough and redline in the packet.

COMMISSIONER SHEA: This didn't come in the packet. It came in a separate -- staff sent it to us a few days ago, so it wasn't in the basic packet. That came as a standalone.

MR. YOVANOVICH: Was it a supplement?

COMMISSIONER SHEA: Yes.

MR. YOVANOVICH: And so far, Mr. Shea, you can -- this is what we submitted. So if I get it wrong, you'll -- can you let me know?

COMMISSIONER SHEA: Uh-huh.

MR. YOVANOVICH: We had -- and I had met that -- we had clarified that setbacks from the eastern building would apply to principal buildings -- principal structures and additions to principal structures constructed after 1/25/2022.

We put another note on the master plan to make it clear that it's to be located on Tract A only, and we had agreed, again, to add that the 150 beds would be on Tract A only, and I believe that is it that we had agreed to and should be in your packet.

There were -- there may be -- there was another submittal that was made by me yesterday that I took back, so that was -- it was an email that I copied everybody on. You didn't get it, Mr. Fry, because thankfully I left the "v" off, so you didn't get tempted to read it -- when I said gov, so yours came back. And Mr. Vernon's came back. But I didn't get any -- didn't notice from anybody else that the email I sent to your county -- they would have been to your county emails -- came back.

CHAIRMAN FRYER: Where are you on any concessions to be made on loading and unloading and hours of operation?

MR. YOVANOVICH: They were in there.

CHAIRMAN FRYER: I'm not able to see it on the -- I'm not saying it isn't there; I'm just not able to see it because of my eyesight.

MR. YOVANOVICH: Page 9 of 9, we had agreed no overhead doors facing the adjacent residential properties. Loading and unloading would be limited to between 7:00 a.m. and 9:00 p.m., Mondays through Saturdays, so nothing on Sunday, and we had agreed to no deliveries, loading or unloading, by tractor trailers.

CHAIRMAN FRYER: Okay. Thank you. Under landscaping, buffering, fencing, and security.

MR. YOVANOVICH: Those were all in negotiations. Those are off the table. We had said that B -- you can see B on the screen. If you could see B, this is how we're willing to address landscaping. It says at the time of issuance of any development order -- actually, we had clarified. This isn't the right version. We had said SDP or SDPA. This is Tony's version. This is -- that's -- I'm reading from Mr. Pires' version on that part. We had agreed to install a buffer along our eastern boundary. When we pulled a new SDP or an SDPA, we would install a 15-foot-wide landscape buffer along our eastern boundary.

COMMISSIONER FRY: That currently does not exist?

MR. YOVANOVICH: It does not exist.

COMMISSIONER FRY: And that -- well, that seemed to indicate that you -- you mentioned the 30 feet you would connect the wall.

MR. YOVANOVICH: We had a -- we have a fence, and I said we're committed to connecting that 30 feet from Tract A to the wall, and that is in currently, or do we need to add that? It's not. We have to add that.

COMMISSIONER FRY: We have to add that.

CHAIRMAN FRYER: Mr. Klucik.

COMMISSIONER KLUCIK: Okay. So just let me have you clarify. So you said you had agreed to that paragraph, but that's no longer part of what you're willing to agree to?

MR. YOVANOVICH: We had said -- we had said we would install a buffer along the eastern boundary, and we have to do an SDPA or SDP.

COMMISSIONER KLUCIK: Okay. So that's still in play? And when you said that's no longer --

MR. YOVANOVICH: That's still in existence.

COMMISSIONER KLUCIK: -- in existence, you're saying it doesn't exist yet. It needs to be put in place?

COMMISSIONER FRY: Correct.

COMMISSIONER KLUCIK: But it exists as an agreement.

MR. YOVANOVICH: It exists --

COMMISSIONER KLUCIK: Because you spoke about it as "had." I just -- meaning that you previously had agreed to it and you still agreed it. Sorry about that.

MR. YOVANOVICH: We're still agreeing to it. We're not taking it back.

COMMISSIONER KLUCIK: Got it.

(Interruption by the stenographer for clarification.)

MR. YOVANOVICH: That's it.

CHAIRMAN FRYER: Okay. With respect to the homeless people who spend the night outdoors near by, near the property, are you in a position to identify for us where those homeless people -- showing us on a map where that problem exists?

MR. YOVANOVICH: The only thing I could -- no, they brought the issue up. They're not people staying with us. As you know, the people who stay with us stay indoors. They have a bed. They have a locker. They have food. The whole issue, if you recall, had to do with since 1988 St. Matthew's House has been providing food to people who need food, and that includes the homeless. That is not part of this PUD. And, apparently, some homeless people or a homeless person -- I don't know. They showed you a camp -- camped out in their woods. They're not our guests.

CHAIRMAN FRYER: You're not able, then, to identify for us where this problem exists?

MR. YOVANOVICH: No. It's their -- they put up on the visualizer an example of a camp. We don't patrol their property.

CHAIRMAN FRYER: Okay. Well, that's fair enough. If you don't know, you don't know, but I'm going to try to find out.

Any other questions or comments at this time from the Planning Commission?

COMMISSIONER KLUCIK: Yes.

CHAIRMAN FRYER: Go ahead, Commissioner Klucik.

COMMISSIONER KLUCIK: What was the basis for the agreement falling apart? You know, the agreement that you mentioned, you know, that you had transmitted and then -- why did that end up not being an agreement?

MR. YOVANOVICH: Well, the public-record document sent by one of the attorneys for the apartment basically said that his client has not agreed to all of the terms and has not agreed to withdraw their objection, so that's kind of how it fell apart. We did work together rather nicely up until yesterday afternoon or morning. But his client has said they will no -- they cannot agree to withdraw their objection.

CHAIRMAN FRYER: Anything further?

MR. YOVANOVICH: I'd like to just kind of talk about a few points that relate to our petition and the apartment complex. Can I go back to the podium? Do I just push "podium"?

MR. BOSI: Yes.

MR. YOVANOVICH: Got it. The yellow area is what we're in to do as a PUD. On the north side, up here, that is where the homeless shelter currently exists, and that's where we want to put the new 46 beds. There is a portion here and here, that is the old Pontiac PUD, and then this portion is zoned C-4 today. We want to bring all of that into one PUD and have unified zoning regulations applicable to the property. This piece right here, by the way, is currently zoned C-4.

We are --

CHAIRMAN FRYER: Commissioner Fry.

COMMISSIONER FRY: I don't want to interrupt you, Rich. When you're done, I have a question.

MR. YOVANOVICH: We are simply trying to continue to fulfill a mission that started back in 1988 with the feeding ministry for people who needed food, which included the homeless. St. Matthew's House has provided shelter to the homeless that want to better themselves and agree to certain rules and regulations when they stay at the shelter and, as you heard, that includes background checks and also Breathalyzers when they come back to stay in the evening.

These people are in need of services. They -- we all know it's a problem. It's a problem everywhere. It's a problem in Collier County. I don't know where you-all park. You probably don't park over by the snack shop, but if you go by there, every day you'll see 22 gentlemen sitting out there. I'm assuming they're homeless. I don't know that for a fact. It's a problem in Collier County, and St. Matthew's House has been addressing that problem with its 104 beds.

We're simply asking within the same footprint to add 46 more beds so we can handle or help more people who are on the waiting list. And who are those people who are on the waiting list? There's 12 families that are on the waiting list. Some of them -- or one of them is living in her car with a three-year-old daughter. Hopefully she's going to get in on Friday.

You have 16 males; five of them are living in a car. We don't know where seven of them are. And there's four that are currently at a mental health facility. Then you have 18 females on the waiting list; two that are living in cars, two at mental health facilities, and 14 we don't know where they are. They're probably hopefully going from sofa to sofa at someone's house; otherwise, they're living outdoors.

This has been an important ministry that has been taken up by St. Matthew's House without any money coming from Collier County. This is a not-for-profit doing, as their website says, God's work because, depending on your beliefs, we're supposed to take care of those who are less fortunate, and that is exactly what they're doing.

It's, frankly, appalling and upsetting to me that an apartment owner who doesn't live here who sent someone to talk about things she has no personal knowledge and doesn't live in Collier County is now objecting to uses that existed at the time they bought the property. They bought the property in 2016. December 14, 2016, they bought this apartment complex for 34 million, 500 dollars. I'm assuming, and they said, they did their due diligence. So they knew what's on your screen existed at the time they bought the property. They knew what the buffer situation was.

They knew what the fencing situation was. They knew everything. They knew there was a homeless shelter on Tract A with 104 beds.

St. Matt's acquired the old automobile dealership in 2013. Shortly thereafter -- and that was in May of 2013. Shortly thereafter they opened up their thrift store that you see and the loading area for delivery and accepting of donations. Currently they house their food off site. They'd like to bring that on site. All of this existed when the apartment complex was purchased by the current objector. All we're doing is adding 46 beds. All the uses that are on that site we have the right today to expand under the existing zoning and, frankly, under C-4 zoning do a lot more than what we're asking for today.

They want us to spend donors' money to put buffers in that they should have put in on their own property. They want us to buffer us when it must have been acceptable to them in 2016 to have the buffering that's there today, but now they want a buffer because we want to put 46 beds in Tract A up here. That's where we want to put 46 beds, and now they want to buffer the entire length of their boundary when it was perfectly acceptable to them in 2016 to not have a buffer. We've agreed to do that. It ain't cheap, but we'll do it.

This is an important, very important ministry. And I'm assuming you've read Tony's letter to you about the rents that are allegedly being charged to live in the Heron Point apartment complex. I think Mr. Pires said that the one-bedrooms are being rented at \$1,151 per month, and the range goes to the three-bedrooms of \$1,375 a month. That's not factually correct. How do I know that?

CHAIRMAN FRYER: You realize you're opening the door by doing this.

MR. YOVANOVICH: You can ask him any questions you want about rent. I'm perfectly fine with your pulling him up here and asking him questions about rent.

CHAIRMAN FRYER: Well, we'll see how far it goes.

MR. YOVANOVICH: That's all I'm talking about is the rent. How do we know that?

CHAIRMAN FRYER: Mr. Klucik.

COMMISSIONER KLUCIK: Well, you can finish your point. You were going to mention what the rents are.

MR. YOVANOVICH: I am. I'm going to mention what the rents are today because I think it's really important to put into consideration the apartment owner's motivations in now requiring us to spend money to put in buffers. We know for a fact that a letter went to tenants notifying them when it's time to renew their lease that their \$1,100-a-month one-bedroom is \$1,600 a month. That's a 45 percent, ballpark, increase; 45 percent increase. I don't know about most people, but I don't think anybody -- most people got a 45 percent raise last year to now be able to live in those apartments when they said it was workforce housing in their opening statement.

It's not workforce housing. The rents -- because I called. I kind of got a little excited. I said, you know, that's pretty cheap. I can maybe bring my daughter home, and she can live there. So I called. I said, what does it cost for a one-bedroom? She goes, we don't have any; we're full. But should one become available, our worst unit, which I don't know what that means, probably first floor, is \$1,570, not \$1,151. The two-bedroom worst unit --

COMMISSIONER KLUCIK: Mr. Chairman?

CHAIRMAN FRYER: Yes. Go ahead, Commissioner Klucik.

COMMISSIONER KLUCIK: I'm trying to figure out, this doesn't -- I'm trying to figure out the relevance of what they charge for rent.

MR. YOVANOVICH: Because they said to you -- this is in their documents that this is workforce housing, and somehow, by our having a homeless shelter, is affecting the value in their property, and what I'm trying to point out is that's not a true argument because they feel perfectly comfortable increasing their rents across the board by \$500 a month. We are in no way affecting the value of their property because we're a homeless shelter and we want to do 46 more beds. They made that argument, and I'm trying to dispel that argument.

COMMISSIONER KLUCIK: I did have my question.

CHAIRMAN FRYER: Okay.

COMMISSIONER KLUCIK: I just was wondering, am I right that that's the county complex right to the south where we're --

MR. YOVANOVICH: Right here.

COMMISSIONER KLUCIK: Yeah, and where they're --

MR. YOVANOVICH: That's you, us.

COMMISSIONER KLUCIK: Okay. So isn't -- I'm just trying to get a flavor. Isn't there, like, a lot of criminal -- I was trying to figure out what the objection is to the prosecutor or the defense. I mean, don't we have, like, law enforcement there with people who are, you know, criminals, you know, being held there all the time?

MR. YOVANOVICH: Yeah. You have a jail.

COMMISSIONER KLUCIK: Okay. I'm just trying to figure out how this is all relevant and why someone who lives next to a place where there's all sorts of criminal -- you know, criminals coming in, and the same kind of prosecutor or defense counsel situations seems like it's right next door anyways.

Where do these people -- you keep mentioning the objector. You keep, you know, referring seemingly to specific individuals. And I apologize, I was not at the prior hearing. Who is it that's objecting, and what land do they own?

MR. YOVANOVICH: The objector is a business entity that owns this apartment complex right here.

COMMISSIONER KLUCIK: Okay.

MR. YOVANOVICH: That's the only objector. And I would submit that adding 46 beds in the same footprint in no way negatively affects the neighborhood and negatively affects the neighbor. And we would respectfully request, based upon the prior testimony from Mr. Brooder, that the 150-foot per square foot -- the 150 feet -- square foot per person is an appropriate standard for this piece of property and for this homeless shelter. Your staff is recommending approval of the amendments. The public -- the expert testimony from your staff and from Mr. Arnold and our experts support that we have met the criteria.

And with that, we're open to answer any questions, and we're hopeful that you will submit this to the Board of County Commissioners with a recommendation of approval.

CHAIRMAN FRYER: Commissioner Fry.

COMMISSIONER FRY: Two questions, Rich. First -- and this is partly for your benefit, Robb.

Just asking you to clarify. I think when Mr. Brooder was up I asked him -- you know, one of the questions was how can you reduce the square footage per resident from 150 to 100 without an adverse effect on them, limiting their space; how can you possibly say that's a neutral change, not a negative change? And I'd just like you to clarify -- I mean, Mr. Brooder clarified, I know you weren't here, Robb, about how this space would be reapportioned. It was not reducing the space they currently have in terms of beds and bunks. It was --

MR. YOVANOVICH: I think if it's -- I would rather have Mr. Brooder --

COMMISSIONER FRY: That would be great.

MR. YOVANOVICH: -- so I don't want to mis-paraphrase what he testified to, and I think --

COMMISSIONER KLUCIK: And if I could --

CHAIRMAN FRYER: Go ahead.

COMMISSIONER KLUCIK: Could I ask a question before --

CHAIRMAN FRYER: Please. Go ahead.

COMMISSIONER KLUCIK: Now -- it was a good question, and I'm trying to remember what it was.

COMMISSIONER FRY: I have a not so good question I can ask while you're thinking about it. Before Mr. Brooder comes up, the drawing you have up there is perfect. Are you

committing to the buffer and the continuous fence on the entire border which, to me, would be a -- you know, the top, the middle, and the bottom adjacent to that apartment complex? Are you saying that would be a good --

MR. YOVANOVICH: Are you talking about from this? And it's not writing; sorry.

COMMISSIONER FRY: Yeah, if you're able to show where exactly that buffer you're offering is, is it the entire perimeter?

MR. YOVANOVICH: Yes. It's along Tract A, which is here. So it would be -- if you could follow my finger.

COMMISSIONER FRY: It cuts back all the way -- all the way from top -- north to south the entire border, we'll either have -- we'll have this 15-foot Type B buffer?

MR. YOVANOVICH: We'll have a fence and wall combination, because we already have a wall. So the fence will connect to the wall, the existing wall. And then we have a fence that will now make it contiguous the entire length.

What we said was along Tract B, which is right here, the parking lot and Lulu's Kitchen and the thrift store, if we come in and we basically redevelop those through an SDP or an SDPA, that's when we would come in and install the buffer along here where -- I don't know if you've driven into that apartment complex. There's really not much of any buffer there. So I'm assuming they were perfectly comfortable with no buffer at the time they purchased it and -- but, again, we'll put them in a buffer.

COMMISSIONER FRY: So you'll add it to the middle section, the middle section?

MR. YOVANOVICH: Uh-huh.

COMMISSIONER FRY: Okay. So they'll have a fence, continuous fence and wall, and then a buffer added in the middle section?

MR. YOVANOVICH: (Nods head.)

COMMISSIONER FRY: Okay. Go ahead, Robb.

COMMISSIONER KLUCIK: I remembered. Okay. So regarding, you know, trying to get to a -- I guess, an agreement, the sticking point -- I think what I'm hearing is the bottom line is if you're going to increase the number of beds, they're going to object no matter what; is that kind of the sum of it?

MR. YOVANOVICH: I got -- I got -- at the end of the day, they have not said they're going to withdraw their objections.

COMMISSIONER KLUCIK: Right. But do you think that's the sticking point?

MR. YOVANOVICH: That they're not withdrawing their objection?

COMMISSIONER KLUCIK: No, no, no, that it's the additional beds. Is that -- if that went away, is it your feeling that that's what the cause of the impasse is?

MR. YOVANOVICH: I'm not going to --

COMMISSIONER KLUCIK: Okay, yeah. That's an unfair question. All right.

MR. YOVANOVICH: You know, in fairness to Steve, Steve's been honest with me, and I've been honest with him. I don't want to put him in a bad place. I mean, he told you in his letter his client's not ready to say yes.

COMMISSIONER KLUCIK: Yeah, I can ask him that question.

MR. YOVANOVICH: Maybe we'll get to yes between now and the Board of County Commissioners, but I don't know. I don't know, in fairness to him.

COMMISSIONER FRY: And, Rich, I think when you said an SDP on Tract B, you meant for -- if you added an office building or something like that?

MR. YOVANOVICH: Any additions.

COMMISSIONER FRY: Any additions at all?

MR. YOVANOVICH: Pretty much.

COMMISSIONER FRY: Thank you. So are you ready for Mr. Brooder to come up?

MR. YOVANOVICH: Yes. Do you want to explain, Steve?

MR. BROODER: Good morning. Yes, what we talked about is through the renovation

that was completed a little over a year ago, we added square footage to the facility. So now as we're reconfigured, we can better utilize the space to accommodate the additional beds.

And we went from 15,739 square feet of usable space to 17,671 square feet. So with the additional square footage and the better utilization of space, we feel that we can comfortably and reasonably accommodate the folks with the increased beds.

CHAIRMAN FRYER: If I may follow up on that. Will there be a decrease in the number of square feet per resident and, if so, how much?

MR. BROODER: Yes. For the calculation, we're requesting the deviation to go from 150 square feet per bed to 100 square feet per bed.

CHAIRMAN FRYER: Okay. There had been -- there had been some comment made at the last hearing that if you increase density among people of all kinds but perhaps particularly among people who are stressed -- under significant stress, it could potentially result in undesirable activity. What's your position on that?

MR. BROODER: Well, with the intensive case management we have in place and adding some case managers with the increased beds, we feel we can supervise the folks that are there and, with the additional square footage, be able to accommodate them.

CHAIRMAN FRYER: Okay. Thank you.

MR. BROODER: Yep.

CHAIRMAN FRYER: Anyone else wish to be heard up here?

MR. YOVANOVICH: I just want to add one more point that the Chairman reminded me.

CHAIRMAN FRYER: Go ahead.

MR. YOVANOVICH: We didn't just pull the number 46 out of the air. For basically the 11 years that Mr. Trachtenberg has been on the board, that's been the consistent number of the people on the waiting list, 46 people, give or take, you know, one or two either way. So this is a thought-out number that we're requesting.

Will it solve the entire homeless problem, no, but it will help. And we can only do a little bit at a time. And if we continue to say we love the mission but it's the wrong location, you'll never find the right location and you'll never meet the mission, and we hope that you will recommend approval.

CHAIRMAN FRYER: Thank you. Anything further?

MR. YOVANOVICH: No.

CHAIRMAN FRYER: Okay. In view of the fact that references have been made to opposing counsel, or counsel for the neighborhood or the owner of the apartment with respect to several issues, I'm going to ask Mr. Pires to return to the dais, return to the podium, please, and address these concerns.

MR. PIRES: Thank you, Mr. Chairman, members of the Planning Commission.

With regards to -- and, generally, it is my understanding that attorneys are not fact witnesses. They argue the case on behalf of their client, but, apparently, Rich is trying to take on a role of being a fact witness today with regards to the rents.

The letter that I sent on November 22nd, based upon the information on the website, didn't -- Rich said that they showed rents were 1,151 for a one-bedroom to 1,375 for three-bedroom, but it said "plus." So it was opportunity for increases. And you may be aware of the fact that a lot of apartment complexes are increasing their rental rates.

Additionally, at the time of acquisition, there were 104 beds. There was not a proposed 40, 45 percent increase in the number of beds at this shelter. So when our clients acquired the property, did their due diligence, a couple important zoning considerations were in place: There were 104 beds, not proposed 150; the middle piece, the DeVoe PUD, is primarily C-2 uses with some other uses. The proposal is to make it all C-4. So you have that whole C-3, C-4 on top of the C-2.

Now, one of the concessions Rich would argue is that the maximum height of 75 is coming down to 50 and 60. That would be an adjustment of this PUD. But to say that our client is frozen

in time as to what he bought, that he can't come in and participate in a public process, is appalling to me. Rich used the term "appalling." This Planning Commission and the County Commission always encourages expression of support or opposition, objections from individuals. And that, quite frankly, was a chilling effort on the part, and I think that is inappropriate in this context.

With regards to some of the uses, just briefly, Rich said that we opposed legal counsel and prosecution and legal defense. Those are in there as accessory on Tract B, so those are allowed. So I'm not sure where it came from that those will be prohibited. If you look at the proposed PUD on permitted principal use on Tract B, it would be legal counsel and prosecution on that particular -- that's the version I have that was sent to the staff, I think, on December 6th or 9th.

But those are just a few of the comments. I think that we're sort of going from two -- you know, a continued hearing may get lost in the translation. But I think what's also lost is the intensification of use in the C-4. No, they were going to argue and assert that they're capping at 130,000 square feet versus the 64,000 that exists today, but the range of uses is much greater.

And, again -- so at the time of acquisition, the middle piece was C-2 plus some additional uses. There are 104 beds now. They're going up by 46. That's, again, 40-some-odd percent. And on the rental rates, my letter indicated it was plus, so it could be higher.

CHAIRMAN FRYER: Thank you. Commissioner Klucik.

COMMISSIONER KLUCIK: Yes. Just for clarification, I think what I understood, and maybe my fellow commissioners can confirm. I thought, Mr. Yovanovich, we had a discussion about that line about the lawyers. Whatever the line is; I'm not looking at it. And the discussion was --

MR. YOVANOVICH: Take it out.

COMMISSIONER KLUCIK: -- that they had limited it and took out two uses, and that's what I thought I heard.

CHAIRMAN FRYER: Yeah. And just to clarify, I believe these were my concerns, not counsel for the neighbors. So that was in response to my concerns.

Commissioner Fry.

COMMISSIONER FRY: Tony, you mentioned C-2, C-3 uses on Tract B, right?

MR. PIRES: Before it was -- well, the middle piece, the DeVoe piece.

COMMISSIONER FRY: The uses in place or the permitted uses?

MR. PIRES: The permitted use in the DeVoe, which is the middle piece, which will now become part of Tract B, were C-2 plus a few other uses; about, I think, 10 other commercial type uses. But they -- that's what was allowed as permitted uses.

Now, a confusion is the master plan says C-3. The text says C-2 in the DeVoe PUD, if -- my recollection. And I think Wayne agrees. And so now that's going to become C-4, all of -- which now the DeVoe goes from C-2 plus some additional uses to C-4 uses.

COMMISSIONER FRY: So it's your client's position that they may be harmed, detrimentally affected, by the uses that would now be permitted on Tract B as well as the additional 46 residents of the homeless shelter, correct?

MR. PIRES: As proposed, we believe that's not compatible or complementary to our client's multifamily residential use, and that's why we were asking for all these various matters to make it compatible and complementary to.

COMMISSIONER FRY: What's acceptable to you in terms of uses on Tract B, the C-2 and C-3? What was there before? What was previously there?

MR. PIRES: Well, we had -- I think we had a sense -- and, Steve, correct me if I'm wrong. We had an agreement with regards to on Tract B all C-4 general commercial permitted, and legal counsel and prosecution, used vehicle sales, and boat dealers as permitted uses. That was part of our discussion, but it was --

COMMISSIONER FRY: You are okay with that?

MR. PIRES: Well, it was part of a big package. It's not just in isolation, because it's a whole of the various aspects we were asking for as far as an agreement. But those were, again,

based upon all the other factors, the buffering and the fencing and other matters, would address the compatibility issue, and my understanding is not all of those have been agreed to.

COMMISSIONER FRY: You came very close to an agreement, as we understand.

MR. PIRES: Yes.

COMMISSIONER FRY: So I guess for all of our benefit, just clarify exactly where the disagreement remains. They have definitely made some concessions but obviously not enough for your client. So exactly where are the main sticking points, in your opinion?

MR. PIRES: Steve, do you want to -- the reason I call Mr. -- Steve Tilbrook has had more direct communications with the clients, so he can possibly articulate better.

MR. TILBROOK: Thank you.

COMMISSIONER FRY: Thank you.

MR. TILBROOK: My name is Steve Tilbrook. I'm an attorney with Ackerman Law Firm. And I apologize. I was talking to Rich when the question was presented. Could you repeat the question?

COMMISSIONER FRY: It really is you -- from our understanding, you got very close to an agreement, so much so that Rich transmitted a document thinking it was agreed, and then it was not agreed.

MR. TILBROOK: Correct.

COMMISSIONER FRY: Just be very specific, clarify exactly where the remaining disagreements are that make what has been proposed -- with the concessions they have made, what is still lacking and unacceptable to your client?

MR. TILBROOK: Well, I think we can put on the screen -- and, here, I've got a larger copy. It's the same one it's just a little larger; easier to read. Most of the items that we -- that have been addressed by Rich are in his document in an agreement. I can see it.

MR. PIRES: If I may, I have extra copies I can hand out to everyone.

CHAIRMAN FRYER: If you wish.

COMMISSIONER KLUCIK: What is this document?

MR. TILBROOK: This is simply a bullet list of items, most of which have already been included in the revised ordinance that Mr. Yovanovich submitted. And there's a few items at the bottom that are not in that but could be. So let me just go through it. And I don't think I need to go through everything, because there's basically three categories. One is buffering and landscaping, one is use restrictions, and one is commitment to collaboration on vagrancy.

As to the -- in terms of priority for our client, the buffering and landscaping are a high priority, and the commitment to collaboration are right up there as well. I'm going to scoot this on the screen. Scoot it down a little bit so we could first go through -- there we go. Right there. So --

COMMISSIONER FRY: Have they not met your -- I guess as you go through these, tell us where they have not met your requirements. My understanding from the discussion of buffering and security that they have actually complied with all of these requests.

MR. TILBROOK: Well, I think there's a little bit of confusion. We have agreed, okay. We were in agreement as of yesterday as to these items. Not all of these items were presented today, okay, as part of his proffer in terms of things he would accept, particularly for the buffering and security measures. And I'll just point out the ones he didn't mention today. I don't think they're a big deal.

CHAIRMAN FRYER: Excuse me, Mr. Yovanovich. You'll have your opportunity. If you want to make a record, you can come to the podium and make a record; otherwise, wait your turn, please.

MR. TILBROOK: I am trying to be respectful of our conversations, okay. I am trying to be respectful. I'd rather not say what we didn't agree to. I would rather say what's important to us, okay, if I could characterize it that way, because that is relevant, and it's not, I don't think, disclosing any confidences about what happened.

CHAIRMAN FRYER: Ordinarily, settlement discussions are not admissible. This is not a judicial. It's a quasi-judicial proceeding. I want to be liberal in receiving as much evidence that could potentially be relevant under our more relaxed rules. But I would ask that you try to avoid disclosing settlement discussions that could influence or prejudice either side's case.

MR. TILBROOK: Thank you. I'll try to do that.

CHAIRMAN FRYER: Commissioner Klucik.

COMMISSIONER KLUCIK: I think there's somebody ahead of me.

CHAIRMAN FRYER: There is, but did you --

COMMISSIONER KLUCIK: Well, Paul.

CHAIRMAN FRYER: Commissioner Shea.

COMMISSIONER SHEA: Yeah. I was just going to ask, is both Tract A and Tract B in an activity center?

MR. PIRES: Yes, Activity Center 17.

MR. TILBROOK: Yes.

COMMISSIONER SHEA: So what is the county's position on activity center? Don't we normally go to C-4?

MR. BOSI: Activity centers are the most intense areas designated by the Growth Management Plan. C-5 is a use that it's normally allowed to.

COMMISSIONER SHEA: So I guess I don't see the argument that it's -- it was C-2. It was inevitable that the county planned to have it move towards the C-5 level, right?

MR. BOSI: That's what's allocated by the Growth Management Plan in terms of the land-use arrangements.

CHAIRMAN FRYER: Commercial Klucik.

COMMISSIONER KLUCIK: And was that something that the public would have -- you know, was public knowledge or was part of the public record if someone was doing due diligence when they bought the property?

MR. BOSI: It has been designated since the '89 adoption of the GMP.

COMMISSIONER KLUCIK: And then my question, if I could -- and I don't know if everyone agrees, but I think as commissioners we were more interested in knowing, if you're going to show us this list, just talk about the things that haven't been accommodated.

MR. TILBROOK: I can do that. I can do that.

COMMISSIONER KLUCIK: Okay. And I don't want to speak for everybody else, but I think that would be most helpful.

COMMISSIONER FRY: That's what I'm asking.

MR. TILBROOK: Okay. That's where I was getting to.

CHAIRMAN FRYER: Let me just query the county attorney. Are we going down the wrong rabbit hole here?

MR. KLATZKOW: Oh, we're down so many rabbit holes on this one, I lost count.

I'd rather have all these issues raised and discussed and possibly resolved at this level than at the Board level --

MR. TILBROOK: Thank you.

MR. KLATZKOW: -- is how I feel. So whatever you guys want to ask, whatever you guys want to do, I'm almost always okay with it, because the Board's time is very limited. You guys are the land use. The Board not only does the land use, but they're doing everything else, and we were here till almost 8:00 p.m. the other day. It's just -- I know this is a hard process at times, but it's a good process.

MR. YOVANOVICH: Can I just -- Steve, I ask your indulgence on this. Going through his list of where we disagree, I just want to know, as he's saying that, if we meet everything he now says, are they withdrawing their objection? That's where he and I thought we were at an agreement, but that didn't happen. So I don't think it's fair to say here's what we disagree on when he's -- I don't think he's in a position to commit that if we agree to that they're going to withdraw

their objection. That's what I just want -- I think in fairness to us --

CHAIRMAN FRYER: Let me ask a question.

MR. TILBROOK: I think what I can do is tell you what's important to us. You know, that's --

CHAIRMAN FRYER: Before you do that, do you have any additional authority from your client to reach an agreement?

MR. TILBROOK: I have some additional authority from the client to reach an agreement today.

CHAIRMAN FRYER: Okay. Would it be productive for us to take an early break to see if we can't get this resolved?

MR. TILBROOK: We spoke earlier before the meeting, and I didn't get an indication from the other side that this -- that it would be productive.

MR. YOVANOVICH: Let me rephrase that.

COMMISSIONER KLUCIK: Mr. Chairman, if I could ask a very specific question.

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

COMMISSIONER KLUCIK: So I have a very specific question. And I forget your name, sir.

MR. TILBROOK: Stephen Tilbrook.

COMMISSIONER KLUCIK: Tilber?

MR. TILBROOK: Tilbrook.

COMMISSIONER KLUCIK: Mr. Tilbrook, if you were to go through this list and then Mr. Yovanovich would say, my client would agree to everything, would you be then able to say we're withdrawing our objection?

MR. TILBROOK: If I could clarify the list in the meeting, I think that we can, but there's some clarification that's a little -- that's required, and I can be specific about that.

COMMISSIONER KLUCIK: And then I guess, you know, what the Chairman has asked is, would it be productive to have a meeting [sic] so that you can figure that out so we can take action, then, once you're done?

CHAIRMAN FRYER: Would it be quicker, more efficient for you to meet privately and come back to us or to spend no more than, say, about 20 minutes of today remaining trying to get this done publicly? Either way, I think it's to the county's benefit if we can reach an agreement so it didn't -- so that it can proceed to the Board of County Commissioners.

MR. TILBROOK: I think we can -- we can answer the questions in 20 minutes, and we can tell you what our client -- their concerns are and where they would be able to go in terms of withdrawing their objection. And I did say it to Mr. Yovanovich earlier, so it's not a secret. There's no secrets. We've communicated.

MR. YOVANOVICH: You know, at the risk of harming the relationship we've established, I did not understand that this was the final list of demands to get to yes. If this is the final list of demands to get to yes, then it will be productive. But if it's another list where I say yes and his client still reserves the right, it won't be productive.

So that -- I just need to know -- and what I would ask, out of respect for my other client who's here for their hearing, perhaps we should table this. I trust Wayne and Steve to go out and talk to Steve and Tony. We can move on with the other item, get that heard, and then come back and see if we were able to reach an agreement, because I don't think it's fair for my other client to sit here for 20 minutes in silence and hope that, you know, we come back. So I would -- I would hope that we could do that to be fair to my other client, that we can have that hearing, and if there's fruitful conversations in the break, they'll come back and say we got it and, if not, we'll finish -- we'll finish where we left off.

CHAIRMAN FRYER: Okay. It's been requested, then, or suggested that we could table or continue this to another date certain with the earnest hope that it could be worked out in a way that would garner the support of the counsel, both counsel, and could --

COMMISSIONER KLUCIK: I thought it was later today.

COMMISSIONER HOMIAK: After this next item.

CHAIRMAN FRYER: Oh, you want to table it till later today?

MR. YOVANOVICH: Hear my next item, and Wayne and Steve will go out with Steve and Tony and go over the list, and if that's truly the list of -- the final list of demands, maybe we can agree. Maybe we can't. I don't know.

CHAIRMAN FRYER: Yeah. I'm amenable to that. Does anybody object to it?
Commissioner Klucik.

COMMISSIONER KLUCIK: I guess I'd like to make a point. I'm just -- did you prepare this list that we -- that was handed out?

MR. TILBROOK: Yes.

COMMISSIONER KLUCIK: Okay. So I understand that maybe, you know, you want to say, well, "what this means is," but beyond that, you prepared the list, and so I'm just trying to figure out, is there really much more to it?

MR. TILBROOK: Not much more to it.

COMMISSIONER KLUCIK: Okay. Well, great. It sounds like this break would be very beneficial.

CHAIRMAN FRYER: All right. Then we will table this until after we -- well, we'll table it until we hear a report back from the client with respect to the potential for an agreement. In the meantime, we'll go to the Cruz matter, and then, as time permits after the break, of course, we will take up the staff-initiated matters. So without objection, this matter stands tabled. Please keep us informed.

MR. TILBROOK: Thank you.

CHAIRMAN FRYER: Thank you.

All right. And it's now 10:13. We'll stand in recess until 10:30, please.

(A brief recess was had from 10:13 a.m. to 10:29 a.m.)

MR. BOSI: Chair, you have a live mic.

CHAIRMAN FRYER: Thank you. Let's return to our session.

***And we have a matter that's tabled, and we are going, then, to the Cruz Road PUDZ. It is PL20210000101. And all those wishing to testify on 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.

COMMISSIONER KLUCIK: Mr. Chairman?

CHAIRMAN FRYER: Go ahead.

COMMISSIONER KLUCIK: Just a housekeeping matter. Is the item that we have in the agenda packet the most up-to-date and accurate version?

CHAIRMAN FRYER: Well, we'll find out when we get to the -- you can ask that as a first question after we make our ex parte disclosures.

COMMISSIONER KLUCIK: Okay.

CHAIRMAN FRYER: If you don't mind.

Mr. Eastman?

MR. EASTMAN: No disclosures.

COMMISSIONER SHEA: Staff materials only.

COMMISSIONER FRY: Staff materials, public record.

CHAIRMAN FRYER: Staff materials, meetings with staff, public record.

COMMISSIONER HOMIAK: I spoke to Mr. Yovanovich and Mr. Vanasse.

COMMISSIONER KLUCIK: Just staff discussions and staff material.

CHAIRMAN FRYER: Thank you.

All right. Did you want to lead off with your question before --

COMMISSIONER KLUCIK: Right. Yeah, I just -- to avoid the last time, are the

documents that we have, you know, the ones that we're going to be seeing from petitioner and -- or is there an updated version?

MR. BOSI: Mike Bosi, Planning and Zoning director. Unlike the other item, which was continued and there was multiple submittals, this is the most current version, and we're confident that what's in your packet is what's going to be presented by the applicant.

COMMISSIONER KLUCIK: Thank you.

CHAIRMAN FRYER: Thank you.

Mr. Yovanovich, go ahead, sir.

MR. YOVANOVICH: Okay, great. For the record, Rich Yovanovich on behalf of the applicant, which is Toll Brothers. I have Chris Adams from Toll Brothers here, if you have any questions for him; Patrick Vanasse is our land planner from RWA; Joel Blikstad is the engineer from RWA; Ted Treesh is our transportation consultant; and Stephanie Healy is our ecologist.

I'm going to do, like I normally do, an overview of the project, and if you have any specific questions for our consultants, I will -- obviously you can ask those questions.

The property is 9.96 acres. It is located on County Barn Road. And, as you can see to our immediate north, is the county's transportation fleet management facility, and to the south -- right? I don't know what happened to the -- right here. I give up. That's also the county's property. So it was originally acquired for drainage purposes by the county.

Our request is to rezone the property from Estates to a residential PUD with a maximum of 60 dwelling units, which is a density of 6.02 dwelling units per acre. We will be either constructing townhomes or multifamily dwelling units, we will have an amenities area tract which is designated on the master plan before you, and we will have a preserve tract on the property as well.

The -- you can see where it says AA. That's our amenities tract, and that's related to one of our deviations regarding parking for the amenity tract to allow parking in the right-of-way kind of where you see the number 2. It's -- we're going to put some parking there for the amenity tract.

The preserve exceeds the required preserve, because we're also required to provide some floodplain management regarding this project to accommodate other people's water besides ours. So our preserve area is greater in size than is required under the Comprehensive Plan and LDC.

The development standards are on this table, which you've seen these similar type standards before for multifamily as well as for a townhome project. Our zoned height is 30 feet. Our actual height is 40 feet. That's consistent with Estates zoning near by.

There are three proposed deviations. One is to reduce the private street right-of-way from 60 feet to 55 feet. You've seen this type of deviation on several projects even going as low as 50 or 40 feet for private roadways. This will work and will provide for the necessary utilities within the project as well.

The second deviation is to allow -- and I already hit this one -- to allow some on-street parking in front of the amenity center. And also, the last deviation, which you've seen in other projects, is we have a sidewalk on the side of the street that there's actually a residence instead of putting a sidewalk on a portion of property that nobody's going to really utilize the property.

This density-wise is a little bit different. We're considered residential infill. You've seen these projects before. Because we're under 20 acres, as part of residential infill, you can ask for up to three units per acre. The first unit of the three has to be a TDR so, as you know, I think we're required to buy seven -- seven TDRs as part of this project to get to the 6.02 units per acre.

We had a neighborhood information meeting for the proposed project, and I think that it's a fair summary that there was concern about drainage, and I think -- hopefully, we answered those questions appropriately. And they were from mainly the residents of this Woodmere project. I'm not sure they understood that we weren't developing the property immediately adjacent to them, and I think at the NIM we clarified that we are one parcel away.

So with that, that's an overview of our proposed project. If you have any specific questions regarding -- oh, I have to clarify one thing. When we did our original traffic study, we

still had single-family as an allowed use. So the max -- the peak trip number, the trip cap, was higher. We need to reduce that in the PUD to 37 peak-hour trips. I think your staff report reflected that, but we need to take care of that in the document. And with that, that's the overview of the proposed project, and we're happy to answer any questions.

CHAIRMAN FRYER: Thank you. That very thing was going to be my one and only question, so I'm glad I don't have to ask it. Commissioner Shea.

COMMISSIONER SHEA: Could you indulge me a little bit and explain how the TDR process works here for this particular situation?

MR. YOVANOVICH: Sure. Under the infill, you start with the base of four, and then you can go up to seven. So for each three units that you can go to the seven to get to -- we're asking for 60 units. We're not asking for the full 70. So each time we increase three units, one of those has to be through the acquisition of a TDR, which is a Transfer of Development Rights from the sending lands. The county, when we adopted the Comprehensive Plan for the TDR program, were looking for opportunities for people to buy TDRs, and the residential infill became one of those opportunities, so there would be additional market for people who had their development rights taken away. So we will buy a unit for each -- so we're going to go 20 units, so we're going to buy seven.

COMMISSIONER SHEA: Okay.

MR. YOVANOVICH: That's the math.

CHAIRMAN FRYER: Any other questions? Comments? Vice Chair.

COMMISSIONER HOMIAK: Did you -- are you able to put the deviations on the master plan?

MR. YOVANOVICH: Sure.

COMMISSIONER HOMIAK: List them.

MR. YOVANOVICH: That's right. And I forgot to tell Patrick this. We will -- and Commissioner Homiak pointed that out. Most of the time, maybe every time, on the master plan, we not only -- we don't refer just to the number. We actually write out the deviations on the master plan, so we will add that to the master plan so you don't have to go back to the document to --

COMMISSIONER HOMIAK: It's easier, plus they're after that when you're reading through.

MR. YOVANOVICH: Right. It's much simpler when it's right there instead of having to go back to the document, and we will add that to the master plan. Thank you for reminding me of that.

CHAIRMAN FRYER: Thank you. Commissioner Fry.

COMMISSIONER FRY: Rich, there's an opposition letter in our packet. It's from William Jones. In Item No. 8 he says, we have a parcel about the same size as this one near by with the same zoning. We can build a total of two residences, which I believe is Estates, one per two-and-a-quarter acres. Going from two to 60 seems out of reason.

So just clarify the justification for going from the Estates one per 2.25 up to 7. You started at 4 and then you --

MR. YOVANOVICH: Right. This property is within the urban area of Collier County, so it was always anticipated that there would be changes to the existing zoning. Some of it was ag. Some of it was Estates, as you know. And there would be a rezone to implement the new Comprehensive Plan. So that's what we're going through right now is to go through the process of rezoning it. If you -- I think -- I think I can -- I don't. We were going to have -- there we go. If you go -- if you drive up and down County Barn Road, you will see that the projects that front County Barn Road have been rezoned primarily from ag to multifamily projects or the county's fleet management. So on this side of County Barn Road, there are several multifamily projects, and this is consistent with those projects as well.

COMMISSIONER FRY: The properties below you that you're not developing, the two

parcels, looks like a front lot and then like a flag -- a flag lot behind it, what -- how can they be developed assuming approval of yours? Exact same opportunity for them as for you to --

MR. YOVANOVICH: The "them" in this case is Collier County.

COMMISSIONER FRY: Ah.

MR. YOVANOVICH: And so I believe they would -- they had acquired this for drainage improvements, so there is a process. The county may have to go back to the original person that it was taken from to get consent to develop it.

COMMISSIONER FRY: Is that both parcels to the south of you?

MR. YOVANOVICH: Yeah, both of those are the county's.

COMMISSIONER FRY: Thank you.

CHAIRMAN FRYER: Anything further from the Planning Commission?

(No response.)

CHAIRMAN FRYER: Anything further, Mr. Yovanovich?

MR. YOVANOVICH: No, sir.

CHAIRMAN FRYER: Okay. So just to clarify, the 46 trips, peak p.m. trips, goes down to 37, right?

MR. YOVANOVICH: That is correct.

CHAIRMAN FRYER: Okay. Thank you very much.

If that's all we have from the applicant at this time, we'll ask for staff for its report, please.

MR. BOSI: Mike Bosi, Zoning director.

Staff has reviewed the petition. We find it consistent with the Growth Management Plan, that there's capacity and concurrency within the surrounding area for all the infrastructure impacts being proposed with the proposed amendment. It is compliant with the infill provision in which we are requiring the first of the three units that are eligible to be requested to be associated with the TDR, and that's -- that's a left -- that's a remnants of the original RFMUD program to help spur on the demand for TDRs to make those individual property owners in the sending land whole creating a market for those TDRs to be purchased. And we find it consistent with the land-use pattern that currently exists within the area, as the applicant has stated. It's an eclectic mix of Estates zoning, RMF-6, multifamily residential, and conditional uses within the area. Based upon all of those consistencies, staff is recommending approval, and we do recognize the inconsistency within the PUD of the 47 trips and -- and -- or 48 trips down to 37, and we would concur with that change.

CHAIRMAN FRYER: Thank you.

Commissioner Shea.

COMMISSIONER SHEA: Question. Maybe you can explain a little. It looks like more than half of the property is considered primary wetlands. I don't quite understand how that -- in the floodplain mitigation part, how they work on this property. It just seems like there's a lot of the land that isn't in a good area for development.

MR. BOSI: There is a process for wetland mitigation, but the way that we've arranged the preserves in the location of where the development is going to be located, concentrated to the front part of the parcel, we found that it is consistent, more than meets the preserve requirements, and there is a mitigation process that is associated with any of the impacted wetlands that would be associated with it. So we do find it consistent with our environmental policies.

CHAIRMAN FRYER: Thank you.

COMMISSIONER SHEA: But the primary -- to me, primary wetlands is a pretty important piece of land.

CHAIRMAN FRYER: Indeed, it is.

Let's hear from Ms. Cook.

MS. COOK: Good morning. Jaime Cook, your director of development review.

So with this application, they are going to have to go through South Florida Water Management District for an ERP and, as Mr. Bosi said, to mitigate for the loss of wetlands in the habitat. So the primary -- the wetlands fall under the jurisdiction of DEP and the South Florida

Water Management District. So they have the final say in how much can be impacted as well as the mitigation expense to the applicant.

COMMISSIONER SHEA: I'm going to ask you another question while you're here. I'm just trying to understand, when they go through the environmental sensitive species analysis, just about every one of them are there, and the comment is always left -- conversations with the Florida Wildlife group. What does that -- that means that we're approving something in hopes that they'll have conversations with the Florida Wildlife?

MS. COOK: So there is a Florida Statute that we were not allowed to hold up zoning petitions for outside agency permits. When they come back in for their Site Development Plan, before they can begin any kind of clearing or any kind of construction on the property, they will actually have to have those permits or authorizations to impact from the agencies in place, and they will have to give us copies of those permits.

So this gives -- they can go through their zoning action, and then this gives them time to work with the agencies, that if the agencies believe there are impacts to listed species, the agency has time to do their full review before they can actually start construction.

COMMISSIONER SHEA: But we won't see any of that? We have to approve that assuming that's going to take place and be managed by the regulatory agencies involved in the permitting?

MS. COOK: Yes. And our staff does look at that during the review of the SDP or the plat, and it's required to be submitted to us before our preconstruction meeting.

COMMISSIONER SHEA: Do we have the authority -- if we don't like what the permitting agency has agreed to, we don't think it's stringent enough, do we have our own rules that can add additional constraints?

MS. COOK: We do not because we are not the authority on listed species or wetlands.

COMMISSIONER SHEA: Well, the only reason I ask is that I've been here a year and a half, and I've never seen so many listed species on a piece of property with half of it floodplain. It just seems like it's a very environmentally sensitive piece of property. And I'm sure probably all around them it's the same thing --

MS. COOK: Yes.

COMMISSIONER SHEA: -- but that's why I ask all the questions.

MS. COOK: Happy to answer them.

CHAIRMAN FRYER: Commissioner Fry has a question for you, Ms. Cook.

COMMISSIONER FRY: Jaime, I think those are very relevant questions. So just give us an idea, so when they go through the mitigation process, they're eliminating some primary wetlands or, obviously, keeping a reasonable amount of preserve. Will they pay money? Will they preserve land elsewhere in the county? What's a typical outcome from a mitigation proceeding?

MS. COOK: It could be one or both of those things. They could be paying money or they could be buying credits to a mitigation bank for an area that's already being preserved.

COMMISSIONER FRY: The idea being that they did not harm one area without offsetting that harm either through money that's used for offsetting that harm or preserving land --

MS. COOK: Correct.

COMMISSIONER FRY: -- correct?

Okay. The other question has to do with the endangered species, as Commissioner Shea mentioned. Been a lot of articles lately about the gopher tortoise and how they are -- basically, they come through in some of our applications, and we're asked to just approve it based on the fact they're going to be relocated, and now they're talking about the challenges and the expense of relocating, and there are fewer and fewer areas where they're relocated. What is the fate of the endangered species that go through the DEP permitting process in that all these habitats are going to be wiped out, part of them, on part of -- a lot of this property by the development? So what is the -- what is the offset that is reached by the DEP for those permits?

MS. COOK: Well, specifically for the listed species, it's going to go through Florida Fish and Wildlife Commission. They will issue a permit to relocate or if -- let me back up.

So prior to them clearing, if they found gopher tortoises on the property, they will have to go out and do an additional assessment before they can clear. Florida Fish and Wildlife will have staff come out, evaluate the site as well, and then they will issue them a permit to relocate any gopher tortoises that are found on site.

COMMISSIONER FRY: I don't remember -- were there gopher tortoises on this site? I don't believe so. It was a wetland.

MS. COOK: Okay.

COMMISSIONER FRY: I'm talking about the ones that are on this site and, as Paul mentioned, there are a number of them that are -- that would be impacted. So what is their fate? What is their fate?

MS. COOK: It's going to be a similar process. You know, for listed bird species, they're going to move anyway. They're transient animals, so they're going to be moving anyway. They may not permanently be residing on this property. They may just have been flying over the site or landed on a tree during the listed species survey itself.

But they will have to do additional surveys. They will have to work with the agencies on what exactly that mitigation is.

COMMISSIONER FRY: Okay. Thank you.

CHAIRMAN FRYER: Thank you. Mr. Eastman.

MR. EASTMAN: With respect to the native preserve requirements, I think Rich had mentioned that he's doing above and beyond. And normally South Florida would want to have an area -- conservation area in a preserve. And sometimes the county also will want a conservation easement over that same area. That will be the case here?

MS. COOK: Correct, yes. So our Land Development Code requires a specific percentage of the native vegetation on site to be retained. That can be overlapped with a district permit; however, our requirements are slightly different than theirs. For example, the Water Management District allows 5 percent of the exotic coverage to remain in one of their preserves. Collier County Land Development Code says must be 100 percent exotic free. So they'll be required to follow the more stringent rules even if there are overlying easements, conservation easements for the same part of the project.

MR. EASTMAN: And in designating the conservation areas, you, and along with South Florida, try to pick the most important wetlands. Those are the ones that you want to preserve?

MS. COOK: Correct. So our Land Development Code has a -- basically a criteria listing of how to pick your preserve area, and wetland habitats rank higher than upland habitats. So, ideally, we would like them to keep the wetlands, and then we also like them to try to maintain their preserve in an area that may be contiguous to other preserves that are in the area. So if one of the neighboring parcels has a preserve, we'd like them to ideally try to connect to that so that there's better movement for wildlife.

MR. EASTMAN: Interesting. And I'm glad you bring up that point with contiguous preserves to adjoining property. And then, do you discourage fences in those situations where you've got preserve to preserve?

MS. COOK: Ideally, we don't want them to do it, but our Land Development Code does not prohibit it.

MR. EASTMAN: Thanks.

CHAIRMAN FRYER: Any other questions on environmental?

COMMISSIONER FRY: Just a --

CHAIRMAN FRYER: Go ahead.

COMMISSIONER FRY: Just a statement, Jaime, that you find the environmental outcome and impacts from this project acceptable?

MS. COOK: Yes, sir.

COMMISSIONER FRY: Thank you.

CHAIRMAN FRYER: Thank you, Ms. Cook.

MS. COOK: Thank you.

CHAIRMAN FRYER: Anything further from staff? Mr. Bosi?

MR. BOSI: None further, sir.

CHAIRMAN FRYER: Okay. Do we have any public comment, Mr. Youngblood?

MR. YOUNGBLOOD: Mr. Chairman, I have one speaker with us today, Eric Gross.

CHAIRMAN FRYER: All right. Mr. Gross, please approach the podium. Identify yourself, and let us hear from you.

MR. GROSS: Hello, ladies and gentlemen. I'm Eric Gross, and I live on Charlemagne Boulevard, which is not too far away from the site that you're looking at for development.

What I see -- because directly behind my yard, my backyard, is woods, all of it is wooded. And there is a tremendous amount of wildlife in those woods. I have bird feeders up. I also feed the raccoons. I know what I see, because we also have a canal running in my backyard that runs all the way across the backyards of all the houses. And in those canals, amazing bird life, amazing life -- I mean, creatures that I've never seen before are there.

And what's happening is that as we take out all these parcels of wooded property, the animals have nowhere to go. So where they're going is, they're coming to my house. They're coming to all the houses that have access from, like, a canal or from other wooded parcels, and they're trying to live there.

You reach a saturation point where they're digging up your backyard. There's fights. The coyotes, there's, like, 70 or 80 coyotes that are living in the property directly behind me. The howling every night is amazing. I enjoy it; a lot of people are afraid.

But County Barn is under assault. Every place that -- as you drive down County Barn, every area is being developed. A lot of it hasn't even begun to be developed, but you see the "for sale" signs up and, yet, they've already dredged the roads through, but there's no development. So I don't know if the projects are at a standstill. I'm not sure what's going on. But County Barn on the side of this project is being under assault.

So for them to say, the owners here and the developers, that they're going to put in a 60-acre apartment -- a 60-lot apartment complex and nothing is going to be disturbed, and the animals are going to be provided for by the laws and the mitigating factors that keep the animals happy is not going to happen. What's going to happen is that the animals are going to flee, because the trucks and the amount of building equipment that comes in and makes horrendous noise -- I mean, it's offensive to me; it's offensive to all homeowners -- goes on for six to eight months, maybe even a year that we have to put up with this noise. The animals will not tolerate it. They will leave, and they have no place to go.

So the only thing I can say to you in leaving with this -- with this idea is that it's a huge deal to wipe out these woods. It's a huge deal. Because you're not just doing this parcel. Drive down County Barn. The whole side of the street is being stripped of the woods which is vital to the animal life that's in the area. And I just hope that if you have a chance, you do take a drive down County Barn and look at that piece of property. It's only 10 acres. It's not that big. But it's a beautiful piece of wooded property, and that's the kind of thing that must be preserved if we're going to keep the animals within our area, and they're leaving, and I hate to see it happen.

CHAIRMAN FRYER: Commissioner Fry.

COMMISSIONER FRY: Mr. Gross, I mean, I personally find it painful also as we see woods and wetlands and things developed over and -- but our role here -- I'm going to ask the county to speak to the inevitable growth we have here. I mean, I think we're kind of at a rock and a hard place here. None of us up here, I think, want to see woods torn down, but we also know people are moving here. And so what the county's trying to do is balance preserving as much as we can but developing where it makes sense.

So I'm going to ask the county to kind of give Mr. Gross some context on why this is not a

bad -- let's just say we don't want to lose the woods but why the growth is better here and that the outcome from, overall, the success of the county in preserving enough space for wildlife and water and natural lands.

CHAIRMAN FRYER: Mr. Bosi.

MR. BOSI: Mike Bosi --

COMMISSIONER FRY: Sorry to put you on the spot, Mike, but...

MR. BOSI: -- Planning and Zoning director.

This is squarely within the urbanized area. Where Mr. -- where the speaker lives, Charlemagne Boulevard within the Riviera Golf Estates, it's a traditional -- it's a golf subdivision. At one point in time those were woods. They were cleared. A property owner owned that. They had rights associated with it. They developed it. They preserved the county requirements. This property is none different.

At the end of the day, all of the properties along County Barn Road will be developed. When they're owned with private ownership, they're allowed to develop with the allowances that are provided by the Growth Management Plan and the Land Development Code.

We have open-space requirements. We have preserve requirements. Those will have to be maintained. But at the end of the day, all of those properties that are along County Barn Boulevard [sic] will be urbanized. It is squarely within the urbanized area. It's anticipated by the Growth Management Plan that it will be. There will be -- there is open space and preserve requirements associated with it. But at the end of the day, this is a private piece of property with a bundle of rights. We have assigned zoning with -- we have assigned zoning and an allocation within our Growth Management Plan for how it can be developed. It's complying with that.

I understand the attachment to empty wooded lots but, unless you own them, another person own them -- owns that property, has a bundle of rights that's associated with it. The zoning provides for that, and we're here to make sure that they adhere to the regulations and develop as to what is in accordance to the Growth Management Plan and the Land Development Code would allow for.

COMMISSIONER FRY: I would just add the corollary to that -- and thank you for that explanation -- that we have -- in the Rural Estates, we have the RLSA, the Rural Lands Stewardship Area, where, in effect, we're developing about a quarter of it and preserving three quarters of it, including the most sensitive wetlands and habitats and such.

So it's imperfect. I don't think any of us disagree with you, but I think what Mr. Bosi's saying is this is a strategic area that will be developed, and this is according to the plan.

MR. KLATZKOW: We have a program, Conservation Collier. Its focus has been more towards the eastern part of the county, but there's no reason why it couldn't be for this part of the county, and if this is something you're passionate about, I would start looking in on their meetings and having discussions with them, because it is a program for Collier County to purchase environmentally sensitive areas. And if you're looking to preserve this, it's really citizen action. Right now there's been very little citizen action on Conservation Collier. And, again, the focus has been eastern Collier County rather than preserving, basically, the incorporated area.

MR. GROSS: Can I just add that there's a site that many of you possibly know about called Nextdoor. It's on your -- one of your apps, and you can -- it links you to your neighborhoods and your neighborhood. And on Nextdoor about a month ago, when that sign went up for this project, I brought it up to the neighborhood and to the surrounding neighborhoods by putting it on Nextdoor, and I had 70 people respond to my sign, which I just put up on the screen so they could see what was going on. Seventy people responded. They would like to be here, but they're older. A lot of them can't sit down and wait an hour and a half or two hours to be heard, and they're working; many people work. So just because I'm here standing to you, it's not that others wouldn't like to be here. They would.

MR. KLATZKOW: We have the ability for people to call in the meetings, essentially.

MR. GROSS: They're working.

MR. KLATZKOW: Well, I understand. It's an imperfect world.

MR. GROSS: Yes.

MR. KLATZKOW: Mr. Bosi's absolutely right in everything he said. What I'm saying is giving you a potential solution to, you know, what you perceive is a problem, and that would be for the county to start picking up some of these lots. That's not going to happen unless you and other people get involved in the process.

MR. GROSS: I appreciate that. I really do.

MR. KLATZKOW: So I'm giving you a potential solution. It's -- I don't know what else to say.

MR. GROSS: One more thing. Is there anything that could be done, for example, the roadkill that's going on on County Barn? It's only a two-lane road.

MR. KLATZKOW: I take that road all the time. I have never seen roadkill.

MR. GROSS: Oh.

MR. KLATZKOW: It's an odd road, actually, the way it's developing, but -- so, oh, by the way, the fact that you have coyotes says something, because the panthers should normally get rid of the coyotes, but --

MR. GROSS: I've seen a panther once.

CHAIRMAN FRYER: I'm going to suggest -- thank you, Mr. Gross.

MR. GROSS: Okay. Thank you very much. Thank you.

CHAIRMAN FRYER: Thank you for speaking to us.

Mr. Youngblood, do we have anybody else who's registered?

MR. YOUNGBLOOD: No.

CHAIRMAN FRYER: We do not.

All right. Anybody in the room who has not registered yet would like to be heard on this matter?

(No response.)

CHAIRMAN FRYER: Seeing no one, we will close the public comment portion of the hearing and ask Mr. Yovanovich if you have a closing or a rebuttal.

MR. YOVANOVICH: Just briefly. You know, you've read the staff report and you've heard the testimony that we are consistent with the Growth Management Plan and the Land Development Code, and this is where development's supposed to occur, and we request that you make a recommendation of approval to the Board of County Commissioners.

CHAIRMAN FRYER: Commissioner Klucik.

COMMISSIONER KLUCIK: I don't really have -- it would be after he's done.

CHAIRMAN FRYER: Okay. Anything further, Mr. Yovanovich?

MR. YOVANOVICH: No, sir.

CHAIRMAN FRYER: All right. Go ahead, Mr. Klucik.

COMMISSIONER KLUCIK: I guess I just wanted to say that I certainly understand when me or anybody else or our gentleman who just addressed us -- when we see things that are happening, you know, near us, all of a sudden, you know, we pay attention -- we pay attention, and, you know, we raise our voice, and I think that's good. And in this situation, though, you know, we have a system in place, as it was already mentioned. We also have a system in place where we are already by, you know, regulation, we're already trying to make sure that we preserve certain places and have green spaces in areas. This is a designated area, as we've heard, where it's going to be urbanized, period.

And you're, apparently, living in an area that was already -- you know, was already developed. And it's very difficult to hear people talk about someone else's land that's near by and as pretty as woods, and not just pretty, you know, they enjoy the wildlife, all of the things that you mentioned, all of those are legitimate things. But someone else owns it, just like someone owns -- you know, owned your land and decided to develop it.

And I just -- I can't let that pass and not point out that you're living in an area where that

has already happened, and then you're trying to prevent someone else from doing exactly what, you know, someone did so that you can live the way that you want to live.

And I am just mentioning it because I just can't let that go unaddressed because -- and I think I'm going to start making a point every time that we have -- we have -- I'm impressed that we go out of our way to make sure that we're addressing environmental issues in this county. And so to that end, I just make that point.

And I appreciate very much that people come to the meetings. I've been on the other side as the citizen who comes to address the people that are making decisions, and I very much appreciate hearing the point of view. But I'm -- obviously, I'm responding to what I heard.

CHAIRMAN FRYER: Thank you.
Commissioner Shea.

COMMISSIONER SHEA: Just a quick question for Rich. There's no affordable housing in this at all. Is that something that's a possibility? Or how did you deal with that?

MR. YOVANOVICH: Well, we are within the Growth Management Plan. Most of the times where you guys get me is when I'm doing a Growth Management Plan amendment to increase density. This is not a request to change the Growth Management Plan. We're utilizing the -- and I don't mean "get me," you know, just -- that's usually when there's also a request for affordable housing.

CHAIRMAN FRYER: Thank you.
Mr. Eastman.

MR. EASTMAN: Rich, you might have said that, you know, there's more supply, which will help with the problem, more supply of housing, period.

MR. YOVANOVICH: Well, there will be, but, you know, I don't want to misrepresent that it's going to fall within the price points that --

MR. EASTMAN: No.

MR. YOVANOVICH: -- I was being asked about, but -- so, you know, as you know, there is more supply for -- I'll call it workforce housing that's coming forward, and there will be more, I'm sure.

CHAIRMAN FRYER: Thank you.

Anything further? No one else is signaling at this time. And you don't have anything further to say?

MR. YOVANOVICH: No. I'm just waiting for the motion.

CHAIRMAN FRYER: Okay. And a motion would be in order at this time. Anyone care to make it?

COMMISSIONER KLUCIK: I'll move that we adopt the petition as presented by the petitioner with whatever -- if they made any changes while speaking with those changes.

CHAIRMAN FRYER: Reduction in peak p.m. to 37, I believe. Is there a second?

COMMISSIONER HOMIAK: I'll second.

CHAIRMAN FRYER: And, Commissioner Shea?

COMMISSIONER HOMIAK: As long as the --

MR. YOVANOVICH: We're going to add the notes on the master plan, yes.

CHAIRMAN FRYER: Commissioner Shea, further discussion?

COMMISSIONER SHEA: We didn't talk about the deviations at all. Probably a question for Mike. It seems like every time -- the one thing we always eliminate is the two-sided sidewalks. Should we -- what is the -- what was the logic of having that on both sides, and what is the logic of constantly deleting that from almost everybody's application?

MR. BOSI: We support the -- we support the elimination of sidewalks on both sides when there is an absence of residential units in the area that is being proposed for the deviation. That's the only -- that tends to be the --

COMMISSIONER SHEA: So if there's development on both sides, you want a sidewalk both sides?

MR. BOSI: Yes.

COMMISSIONER SHEA: And that's a policy. Okay.

MR. BOSI: Yes.

CHAIRMAN FRYER: Thank you. Any further discussion?

(No response.)

CHAIRMAN FRYER: If not, all those in favor of the application as presented with the change on the peak p.m. trips to 37, please say aye.

COMMISSIONER SHEA: Aye.

COMMISSIONER FRY: Aye.

CHAIRMAN FRYER: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER KLUCIK: Aye.

CHAIRMAN FRYER: Opposed?

(No response.)

CHAIRMAN FRYER: It passes unanimously. That's 5-nothing. Thank you very much.

MR. YOVANOVICH: I'm going to go check and see if they made any progress.

CHAIRMAN FRYER: Please do.

MR. YOVANOVICH: I'll be right back.

CHAIRMAN FRYER: Mr. Bosi.

MR. BOSI: Just a comment for the Planning Commission. Based upon the discussion that we just had related to the environmental sensitivity and the preservation related to wildlife and wetlands, just a reminder, 70 percent of Collier County is placed either in state or federal preserve. We spend all of the time within this dais trying to make the determination of the best way to evaluate land use for the 30 percent remaining. And we do have a robust open-space and preserve requirement contained within our Land Development Code and our Growth Management Plan. It's not replicated. It's not the equivalent of an undeveloped piece of property, but we do have provisions that provide for allocations of open space and preserve areas. And it is -- and I understand, there's difficulty when people associate that undeveloped property as preserve land, their wildlife areas. But, eventually, the property owner finds that it's -- there's a higher and better use for it.

But just wanted to provide, you know, that context, that, you know, 70 percent of our land will never be developed because of the classification. And we -- and I think the county, and the Planning Commission supports that we do a robust job of making sure that the residential developments that do come out will have that open-space requirement and that feel that is the Collier County and why so many people find it so attractive to be here.

CHAIRMAN FRYER: Commissioner Shea.

COMMISSIONER SHEA: Just another educational question for me. You say 70 percent of the county. You don't -- do you include a golf course acreage in that -- does that land get committed to being -- usually in a PUD they could probably eliminate the golf course and put something else there, so it's not considered in conservation?

MR. BOSI: No, the golf courses would never have a conservation easement upon it. When I say 70 percent, that's 70 percent of the land area that's dedicated within state or federal preserves. That doesn't include the open spaces that's associated with individual developments.

When it comes down to it, at the end of the day when the county reaches towards buildout, it will be 20 percent to 80 percent development to open space. When you include the required water management areas, the open-space areas, we have a very demanding percentage for both open-space and preserve areas, but that number that I quoted is only federally and state-protected land outside of what's set aside within the individual developments.

CHAIRMAN FRYER: Commissioner Klucik.

COMMISSIONER KLUCIK: Thank you, Mr. Chairman.

And on that point, I think that, as well, that the private initiatives for the privately held

conservation areas is not included in that 70 percent federal and state?

MR. BOSI: Correct.

COMMISSIONER KLUCIK: So in addition to the 70 percent, we have -- what is the name of the organizations that own -- that hold that land?

MR. BOSI: You mean Conservation Collier?

COMMISSIONER KLUCIK: Right.

MR. BOSI: Yes.

COMMISSIONER KLUCIK: Well, aren't there some privately control as well? Is Conservation Collier privately controlled?

MR. BOSI: It's -- Conservation Collier is a government program, but I do believe that --

COMMISSIONER KLUCIK: Aren't there some private companies that also --

MR. BOSI: Yes.

COMMISSIONER KLUCIK: -- are, you know, perpetually preserving land? And so that's in addition to the 70 percent. That's the only point I was making. And so the golf courses is within whatever, the 28 percent or 25 percent.

MR. BOSI: Correct.

CHAIRMAN FRYER: Thank you.

COMMISSIONER FRY: I'd like to make a motion that Mike Bosi never be allowed to leave Collier County again. Do I have a second?

COMMISSIONER SHEA: Second.

CHAIRMAN FRYER: I think we all feel the same way. Should we -- I mean, looking at the clock, it's -- maybe the most efficient thing for us to do would be going into one staff initiated or not?

MR. BOSI: I would say -- I would suggest whether it be the scrivener's error or the murals, I think those were rather efficiently put together by our staff, and the issues that are associated with them are rather narrow. I think we can go through those relatively quickly.

CHAIRMAN FRYER: Let's do. Let's do it. Without objection from the Planning Commission, let's do it. And let me look at my notes here.

***All right. The first of these two is PL20210002604. It's a staff-initiated Land Development Code amendment to amend scrivener's errors and erroneous or obsolete cross-references.

Mr. Bosi, you may proceed. It's legislative in nature.

MR. BOSI: And Mr. Sean Kingston will be here to present the item.

CHAIRMAN FRYER: Thank you.

Mr. Kingston, you have the mic.

MR. KINGSTON: Hello. I am Sean Kingston, a senior planner of the Land Development Code section in the Planning and Zoning Division.

This LDC amendment corrects scrivener's errors and cross-references. It updates cross-references related to various Land Development Code sections including the Florida Building Code, the Florida Fire Prevention Code, the Florida Statutes, and the Florida Administrative Code chapter and rule citations. The Development Services Advisory Committee reviewed the amendment and unanimously recommended approval on November 3.

I am here to answer any questions you may have.

CHAIRMAN FRYER: Thank you. Anyone have any questions of Mr. Kingston?

(No response.)

CHAIRMAN FRYER: I had spoken with staff with respect to an issue having to do with fire district language, and we agreed informally, subject to Planning Commission's approval, to alter that language slightly in recognition of the unique situation in Goodland.

Mr. Bosi, do you want to address that or, Mr. Kingston?

MR. KINGSTON: This is related to the Goodland zoning overlay or the fire district or both?

CHAIRMAN FRYER: It's on, I think, Page 317 of staff material 6C. The unique situation is that the hamlet, if you want to call it that, of Goodland receives fire suppression support from the City of Marco Island Fire Department, which is not a district.

MR. KINGSTON: Oh, I understand, I understand.

CHAIRMAN FRYER: So I just wanted a slight --

MR. KINGSTON: Different jurisdiction.

CHAIRMAN FRYER: I had suggested we said fire district or department and Mr. Bosi, I think, had offered language that I was equally satisfied with. What was that?

MR. BOSI: And I believe that was Mr. French that offered the specific nomenclature that you were looking for.

CHAIRMAN FRYER: Okay.

MR. BOSI: It was the -- not the fire district having authority.

CHAIRMAN FRYER: Oh, yeah. There is a --

MR. KINGSTON: The fire district --

CHAIRMAN FRYER: Mr. French has been thrown under the bus, so we're going to ask him to crawl out from under there.

MR. FRENCH: Good morning. For the record, Jamie French, your deputy department head for Growth Management Plan.

What I might offer is that you just refer to it as the fire authority having jurisdiction so that way it would --

CHAIRMAN FRYER: I'm absolutely fine with that because it addresses the Goodland situation.

MR. FRENCH: So whether it -- in the event that they're served by Greater Naples or by interlocal agreements, City of Marco, but that still falls under the Greater Naples Fire District for their -- at least plan review and --

CHAIRMAN FRYER: Yes.

MR. FRENCH: -- response.

CHAIRMAN FRYER: Okay. Anybody not happy with that change?

(No response.)

CHAIRMAN FRYER: Okay. Then any -- no one is signaling at this point. Any further discussion on that. If -- Mr. Kingston or Mr. Bosi, anything more from staff on this?

MR. BOSI: And I was just speaking with Mr. Kingston, and recognizing that it's in a number of different areas within the proposed amendments, we'll make that change wherever "the district," and we'll replace that with "authority."

CHAIRMAN FRYER: Thank you very much. Without objection from the Planning Commission, now would be an appropriate time to entertain a motion on the scrivener's error provisions. I have nothing further on it.

COMMISSIONER FRY: Move to approve with the one revision just reviewed.

CHAIRMAN FRYER: Is there a second?

COMMISSIONER SHEA: 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 KLUCIK: Aye.

CHAIRMAN FRYER: Opposed?

(No response.)

CHAIRMAN FRYER: It passes unanimously, 5-0. Thank you, Mr. Kingston and Mr. Bosi.

***And, Mr. Yovanovich, do you want to be recognized and give us a status report?

MR. YOVANOVICH: Sure. I think -- I don't know where Tony and Steve are. But, unfortunately, we're down to one item. And I don't know if they want me to disclose what the item is. But, otherwise, if we can't -- we're down to one item that we think is just -- we just can't agree to it and, otherwise, we'll just -- we'll take our chances on your vote based upon what we've presented and agree to the additional changes today. But we're down to one item, and I don't know if I'm allowed to tell what that item is.

CHAIRMAN FRYER: Well, Mr. Pires is here. He could signal to you whether --

MR. YOVANOVICH: I'm asking. The answer's no, I can't tell them what the one item is?

CHAIRMAN FRYER: Come to the mic, sir.

MR. YOVANOVICH: The one item --

MR. TILBROOK: Thank you, Board. And thank you, Rich, for taking the time to speak with us.

We did reach out to our client. It was -- there is a concern about impacts to the fencing, the buffering, and the gate system that they believe have occurred over the years associated with vagrancy. I'm not going to say specifically St. Matthew's House, because we don't have evidence of that, and our client has asked for assistance repairing the vehicle gate. That is the issue that we've come down to that we can't reach agreement on. Everything else we have reached agreement on.

CHAIRMAN FRYER: Okay. Commissioner Klucik.

MR. YOVANOVICH: I think the ask -- and correct me. It was a number ask, right? It was a monetary ask.

MR. TILBROOK: We had an estimate that we talked about this morning, and our client has told us just -- you didn't know this, but -- that he doesn't know that that's an accurate estimate. So there isn't a specific ask in terms of number. It's just to repair it.

MR. YOVANOVICH: And our position is, that gate's been broken for many years, and I don't think that gets shifted to us. But that's holding up their withdrawing their objection. So we're -- as I said, we think we've made a lot of concessions to the buffering requirements, hours of operation and delivery, and we would request that you recommend approval to the Board of County Commissioners.

CHAIRMAN FRYER: Commissioner Klucik.

COMMISSIONER KLUCIK: Thank you, Mr. Chairman.

So I'm going to refer to the sheet that the neighboring counsel in opposition are objecting. You have that?

MR. YOVANOVICH: I've seen it. I know the gate's not on that list.

COMMISSIONER KLUCIK: Well, because I want to refer to specific language in it.

MR. TILBROOK: It's on the screen.

COMMISSIONER KLUCIK: Yeah, it's on the screen. So I'm looking at "exclude offender rehabilitation agencies nonresidential." And I think these issues are clear to you, but they're still not clear to me, so I just want clarification. So that means that you could have residential offender rehab agency there?

MR. YOVANOVICH: I think. And Steve -- and I'm going to trust Steve, because I have no reason not to. I think he told me that we had already agreed to everything under the additional buffering and security measure category, and the additional-use restriction --

COMMISSIONER KLUCIK: No, I'm asking for clarification --

MR. YOVANOVICH: I'm sorry.

COMMISSIONER KLUCIK: -- on what the language means. So when I see "exclude offender rehab agencies nonresidential," that means residential would not be excluded?

MR. TILBROOK: Offender rehabilitation agency nonresidential, we're going to remove that.

MR. YOVANOVICH: You've removed that objection?

MR. TILBROOK: Yes. We are agreeing to remove the objection to offender rehabilitation agency nonresidential.

COMMISSIONER KLUCIK: And how about self-help agencies?

MR. TILBROOK: That one we would like to keep in. I know we had some discussion about it. So it's our preference to keep that one in. But the term is "agency," and we had a discussion about self-help services versus self-help agency. And the word under the coding that you use references "agency." We do not have an objection to self-help services. I think that's --

COMMISSIONER KLUCIK: Because the broader point that I'm going to bring up -- and I'm not sure if this is the -- I mean, it's certainly related to that specific question, and so I'm going to make the broader point.

It also would go to 9222 as to the exceptions. I don't think there should be any. And my whole point is, first off, adjacent or extremely close to this apartment complex we have bail bondsmen, we have substance counseling, we have juvenile detention, and WIC services provided by the county. That's all already adjacent to this property. So I don't understand how that's an objection that's in any way valid as far as saying that it's noncompatible or somehow not fair, for lack of a better term, to the apartment complex owner or residents.

And what I would also say is we have a private entity, arguably, but generally doing amazing work that the government actually can't do. Because the government can't love people. St. Matthew's House loves people, and they provide services that the government similarly provides. And I'm not saying that the people who work in government settings aren't caring and concerned about the people. But the St. Matthew's House is free to love these people, and they do, and they provide amazing services to people in a much -- in what I would argue, in a much nicer setting and a setting that's better than how the government can provide them. And it's not really a dig against government. It's just a fact about government.

And then I would say, this is envisioned and is and has always been thought of as a comprehensive center that provides the kind of services that St. Matthew's House provides. Nothing that's being proposed is not in accord with what everyone expects St. Matthew's House to be providing, especially at a place where there's residential homeless housing.

All of these services that -- and that's great, you know. And I'm sorry, I don't mean -- if you're excluding, you know, some of the list, that's great, because that's getting more towards what I'm concerned about.

I think we shouldn't approve this with any of the restrictions related to those kind of services being eliminated, because where are you going to allow these wonderful services to be provided in a comprehensive manner where everything that these people need, these clients need, is available? And by saying we can't do this and we can't do that, we don't like this, we don't want, you know, things -- things that are right next door anyways, I think I would -- I think they're going to be in a much -- what I would say it's a more favorable setting within St. Matthew's House. It's actually nicer and better for the neighbors to have those things within St. Matthew's House.

So I actually think -- you know, I'm actually kind of -- I'm not offended or appalled, I guess, because like I said previously on the previous matter, I certainly understand neighbors being concerned about changes next door. That's normal. I just am so excited about the work St. Matthew's House does. I hate to think that we're going to hamstring them from providing comprehensive services.

So I actually hope that we'll move forward, kind of eliminating some of the restrictions on the kind of services when we have our motion. But I'll -- obviously, I don't want to throw things off so that we don't get to an agreement, but that's my thought.

MR. YOVANOVICH: Well, we're not going to get to an agreement today. So what we're requesting is that you vote up or down what we presented to you today. And we're okay

about taking out the district -- I'm sorry -- public defender and prosecutor offices. We're okay with that. I think that's probably the only change that we didn't have in the PUD from what I presented. We're happy to exclude those from the 9222. Did I get the right number of twos? But we're asking you to vote on what I presented on the screen and just remove those two uses and leave in everything else we had. And I think it's time. We just need to know. Enough's enough. We're not going to reach an agreement today.

COMMISSIONER KLUCIK: And I want to say that my comments -- and I want to kind of, like, label them as dedicated to one of the board members, Father Orsi, who's a dear friend of mine. Father Michael Orsi from St. Agnes Parish.

CHAIRMAN FRYER: Thank you.
Commissioner Fry.

COMMISSIONER FRY: The third paragraph, the third area on the sheet is commitment to collaboration on vagrancy. I did not hear any mention of agreement in that area, but it doesn't seem to still be -- is it no longer a sticking factor?

MR. YOVANOVICH: Look, none of these uses today, other than the ones that I already put into the document and presented, we're agreeing to today. If we get to an agreement between now and the Board of County Commissioners -- we are always going to collaborate with our neighbors. We welcome them to call us and say, we have an issue. We will always have those conversations. It doesn't need to be in a PUD.

COMMISSIONER FRY: Right. I guess the question is for you, Mr. Tilbrook. Do you have evidence that the gate was damaged by people associated with St. Matthew's House?

MR. TILBROOK: I do not.

COMMISSIONER FRY: Okay. Thank you.

MR. TILBROOK: On the collaboration, we appreciate the collaboration. We look forward to the collaboration. We felt compelled to put it in the list because we haven't had collaboration, but we look forward to it in the future. Whether or not it deserves to be in an ordinance, I think, for us it's better if it is, but I think we can have collaboration in either way.

CHAIRMAN FRYER: Mr. Eastman. I'm sorry.

MR. EASTMAN: I was going to ask Karl's question, too, about evidence of the gate. When did this become an issue in this objection? When did you first hear about damage to the vehicular gate?

MR. TILBROOK: Our client has expressed to us concerns about the whole security system in general. We were not aware of the specific deficiency at the gate until the last few days.

MR. EASTMAN: What -- is it vehicular damage to the gate, or is it -- what type of damage is it to the gate?

MR. TILBROOK: I don't know. It's not functional. It's open, and it doesn't close, and it doesn't function. So I don't know specifically what kind of damage.

MR. EASTMAN: Most frequently that's damage that's done with a vehicle. So does it seem possible or improbable that a homeless person would drive a vehicle, damage the gate, park it, and then go sleep in the woods on your client's property?

MR. TILBROOK: There's a lot of ways a gate can be damaged, and our client is asserting that they would like assistance with the repairs at the gate. That is all I've been asked to communicate, and I wish I could give you more.

MR. EASTMAN: Thanks.

CHAIRMAN FRYER: Thank you.
Commissioner Klucik.

COMMISSIONER KLUCIK: Yes. Just -- sir, Mr. Tilbrook? Mr. Tilbrook, I just -- do you understand the larger point I make about the scope and the comprehensive nature of the services that St. Matthew's is trying to provide here?

MR. TILBROOK: Yes. We do not dispute the good work that's done by St. Matthew's House. We don't, but this is rezoning.

COMMISSIONER KLUCIK: Right. But --
(Simultaneous crosstalk.)

COMMISSIONER KLUCIK: Excuse me. Excuse me. Excuse me. Excuse me.

MR. TILBROOK: We spent a whole hearing --

COMMISSIONER KLUCIK: Excuse me.

MR. TILBROOK: -- putting evidence about impacts.

CHAIRMAN FRYER: Sir, please let the commissioner speak.

COMMISSIONER KLUCIK: So I had a very specific question that you didn't answer, and I'm happy to let you make your other point.

Do you understand my concern about the -- what I would say is a necessity to offer comprehensive services? And so that by -- you know, by hindering that -- and I understand your client has been moving in a good direction in discussing it. But do you understand my broader point that the comprehensive nature of what St. Matthew's House does requires them to have a facility in an area like this that offers these services together comprehensively? I'm not asking you to agree that I'm right in this particular issue, but do you understand the idea that there needs to be a place where they can do something like that? It allows them to actually accomplish their mission.

MR. TILBROOK: I expect that having a comprehensive character to this facility is helping them benefit their mission. That is obvious, but there are impacts. And we spent an entire hearing articulating and providing evidence of what those impacts are. Whether they're traffic, whether there are other impacts, and whether or not it complies with your criteria for a rezoning. And that's really why we're here. We would like to resolve this, but it's our assertion that it doesn't meet the criteria for a rezoning and that there are impacts that haven't been mitigated.

COMMISSIONER KLUCIK: Thank you.

CHAIRMAN FRYER: Thank you. No one is signaling at this time. It would be appropriate for a motion to be made, if anyone cares to.

COMMISSIONER KLUCIK: I'd be happy to move, as Mr. Yovanovich asked, that we present it -- that we approve it as presented without -- it has nothing to do with this document. It was how Mr. Yovanovich presented it. And I don't know, there was, I think, taking out two items from 9222.

MR. YOVANOVICH: Correct.

COMMISSIONER KLUCIK: The prosecutors and the defense counsel; is that right?

CHAIRMAN FRYER: Thank you. Is there a second?

COMMISSIONER SHEA: Second.

COMMISSIONER HOMIAK: So nothing on this sheet?

CHAIRMAN FRYER: Unless it's already been specified in what --

MR. YOVANOVICH: Several of those things are already in the document that I presented. For instance, the buffering, and I had committed to the gap in the gate -- I mean in the fence. We had committed to that, so it will be continuous, so...

CHAIRMAN FRYER: Commissioner Fry.

COMMISSIONER FRY: Just in terms of deliberation --

CHAIRMAN FRYER: Yeah.

COMMISSIONER FRY: -- I wanted to state for public record, I mean, I think we have an undeniably beneficial mission to the county, as you've underscored, Robb. I get a sense that, you know, you can't quite agree on everything, but I would consider your efforts, Mr. Tilbrook, Mr. Pires, to be successful on behalf of your client in that you have negotiated quite a sizable basket of concessions, and I also commend the applicant team negotiating in good faith. I feel -- I feel you've gone far enough to earn my vote for this.

The buffering, I think, is even one where I think you've gone above and beyond in terms of it was there when they bought it; do you really owe them buffering? I'm not so sure that you do; however, I think it's an -- I think it's a positive for the project and also for them, beneficial. So I plan to vote in favor.

CHAIRMAN FRYER: Ms. Gundlach, did you wish to be heard?

MS. GUNDLACH: Yes. I just wanted to -- for the record, Nancy Gundlach, principal planner with the Zoning Division.

I just wanted to clarify for the record -- because there were some statements made that the PUD document, PUD ordinance that was included in the CCPC Accel agenda was not the current -- was not the correct one. It was correct. We attached the one that exists a week prior to this hearing, and the changes that were -- that were contemplated today were changes that were emailed yesterday. And, obviously, we can't include those in a document that was published a week ago.

CHAIRMAN FRYER: Thank you.

Commissioner Klucik.

COMMISSIONER KLUCIK: Yes. And I would like to just mention that I think you heard me say that I -- you know, I don't want to say that objection was appalling and that I do think -- you know, I actually think -- you know, I mentioned the concessions, both sides, but certainly that the objector has -- you know, they did, you know, concede on some points. And so I certainly don't want my passion for the St. Matthew's House to be seen as, you know, anything other than that. And I'm glad that -- you know, obviously, they were very close to agreement, and there's sticking points sometimes, and that's just how it is.

CHAIRMAN FRYER: Thank you. No one else is signaling at this time, so I'm going to make a final statement about how I'm going to vote and why.

I am a regular contributor to St. Matthew's and will continue to be because of the wonderful work they do. It's an essential organization to our county. It's never going to fulfill the full need, no matter how many additional beds it has. One hopes that other organizations will come up to the plate and add resources that the government can't on its own provide. So my hats off to St. Matthew's. It's a wonderful organization, and it's badly needed in our county, and they're doing a terrific job.

But I must vote against and I will vote against this for the sole reason of inadequate security provisions. And the other reasons that I put in the record are also of concern, but my most significant one has to do with an inability to add anything to the -- bring anything to the table on additional security.

So that's how I'm going to vote, and it's been moved and second. So is there any further discussion? Mr. Klucik.

COMMISSIONER KLUCIK: Yes. I would just note that I didn't hear that as a sticking point in the end from the parties, so -- the concern that you just expressed.

CHAIRMAN FRYER: Well, we can call them back, but I don't think there's -- I think Mr. Yovanovich was pretty clear that there's been no agreement on additional security.

COMMISSIONER KLUCIK: No. What I'm saying is is they had come to an agreement, and that hadn't been the reason for the impasse, the reason that you're voting against it. And that's fine. I'm just noting that.

CHAIRMAN FRYER: Noted.

MR. YOVANOVICH: Their concern was would we collaborate with them on how to address people who might be -- who might be camped out. Would we work with them to figure out a solution to that problem. That was -- do I have it right, Steve, that was the concern?

MR. TILBROOK: That is an aspect of the security. We also have -- Steve Tilbrook. The issues for security were fencing, and we also had security cameras and monitoring. While we have a general agreement on security cameras and monitoring, that is not part of the conditions that are in your record today.

CHAIRMAN FRYER: Yeah. And that's what we have to work with, the record today, and maybe by the time it gets to the --

COMMISSIONER HOMIAK: Can't you put it in? Can't we put it in?

CHAIRMAN FRYER: Well, we could move to amend, sure. I mean, we have a right to

do our own resolution, and we could move -- we could move to amend to approve with the addition of security provisions, if that be the wish of the Planning Commission.

COMMISSIONER KLUCIK: I just point out my original --

COMMISSIONER HOMIAK: We're not approving it anyway. We're just advising. It's not our approval.

CHAIRMAN FRYER: That's true, yeah. You're right. Do you want to make a motion to amend?

COMMISSIONER HOMIAK: Yes.

CHAIRMAN FRYER: Do so.

COMMISSIONER HOMIAK: I'll make a motion to amend to include -- do you want to include the security cameras?

CHAIRMAN FRYER: Yes. And the language that I'm looking for is what was in the document that was withdrawn. But, for clarity, Mr. Yovanovich, is there a way that that language can be provided to the court reporter --

MR. YOVANOVICH: Let me read it to you.

CHAIRMAN FRYER: -- and to the Planning Commission? Thank you.

MR. YOVANOVICH: It says, within six months install and monitor security cameras for homeless shelter and accessory social service or commercial use adjacent to residential uses. That's the language.

CHAIRMAN FRYER: Thank you. All right. Any further discussion?

MR. YOVANOVICH: I don't know if it's getting added. I'm just telling you that's what the language was.

COMMISSIONER FRY: Doesn't that negate the need for the amendment?

CHAIRMAN FRYER: No, I don't think so, because that's not on the table.

COMMISSIONER KLUCIK: But we're voting on the amendment first, and then we'll vote on the --

CHAIRMAN FRYER: The amendment needs to be seconded first. That's what I was trying to say as I'm knocking everything over here. So there's -- it's been -- the amendment has been moved and made clear. Is there a second to it?

(No response.)

CHAIRMAN FRYER: If not, I'll second it. So the amendment has been moved and seconded. The vote is going to be on the amendment, not the main motion. So all those in favor of the amendment, please say aye.

Aye.

COMMISSIONER HOMIAK: Aye.

CHAIRMAN FRYER: Opposed?

COMMISSIONER SHEA: Aye.

COMMISSIONER FRY: Aye.

COMMISSIONER KLUCIK: Aye.

CHAIRMAN FRYER: Okay. Did I hear three negatives? Okay. So the amendment fails by a vote of 2-3.

COMMISSIONER FRY: And, Mr. Chairman, I would just say, I think it's a great concept. It just wasn't one that was specifically brought up by the opposition. And my reason I voted no is I believe it ought to be negotiated or confirmed with -- between the parties before they go to the Board of County Commissioners, just not one that I feel that we should throw in there at the end here.

COMMISSIONER SHEA: I agree with that also, and the apartment complex could also do that. So why does that concession have to be on the part of the applicant? If they want cameras, they can put them up themselves, too.

CHAIRMAN FRYER: Well, we've had a vote, and the vote was not to include that.

So now we come to the main motion. If there are no further amendments forthcoming,

it's -- the main motion has been moved and seconded. Is there any further discussion?

(No response.)

CHAIRMAN FRYER: If not, all those in favor of the main motion, please say aye.

COMMISSIONER SHEA: Aye.

COMMISSIONER FRY: Aye.

COMMISSIONER KLUCIK: Aye.

CHAIRMAN FRYER: Opposed?

Nay.

COMMISSIONER HOMIAK: Oh, I'm sorry. Aye.

CHAIRMAN FRYER: How are you voting?

COMMISSIONER HOMIAK: Opposed.

CHAIRMAN FRYER: Okay. So it passes, 3-2.

MR. YOVANOVICH: Thank you.

CHAIRMAN FRYER: Thank you very much.

MR. PIRES: Thank you.

MR. YOVANOVICH: Thank you.

CHAIRMAN FRYER: ***All right. Our next matter which maybe we can get in before regular 12:00 noon lunch -- is staff prepared?

MR. BOSI: Staff is prepared, and I would say that I don't think it's more than a half an hour discussion.

CHAIRMAN FRYER: Does anybody object if -- we might go a little past noon; we may not.

COMMISSIONER KLUCIK: Let's do it.

CHAIRMAN FRYER: Let's do it, then. Very good.

***So the fourth and final matter today is PL20210002450, and this is an LDC/CA having to do with murals and creating a county public art committee. Again, this is legislative in nature. So no ex parte disclosures are required and no swearing in is required.

With that, I'll turn it over to Mr. Bosi.

MR. BOSI: And this is an amendment that was brought to us from the Bayshore CRA, and Ms. Laura DeJohn, I believe, has been retained as a consultant for the Bayshore, and she will introduce the item.

CHAIRMAN FRYER: Thank you. We recognize you.

MS. DeJOHN: Good morning. Thank you. Again, Laura DeJohn. I'm a consultant with Johnson Engineering here today on behalf of the Bayshore/Gateway Triangle CRA office.

And what you are being asked to consider is a Land Development Code amendment and administrative code amendment that has worked its way through many channels to get to you. I do not have a PowerPoint. I'm just going to briefly highlight what the changes are that are being proposed and the source of these changes.

So the summary material for this Land Development Code amendment, the summary that staff prepares, explains that there has been language in the Land Development Code allowing murals in the Bayshore/Gateway Triangle CRA area since 2012. So it's already been on the books.

Over this period of time, as the CRA continues to grow and develop, the county and the CRA have worked together to make sure standards and procedures for review and implementation of the creation of murals in the redevelopment area is getting refined.

So there's been many steps leading up to this point. The Bayshore/Gateway Triangle redevelopment area plan was adopted by the Board, as you know, in 2019. The vision for that area emphasizes the cultivation of the area's artistic and cultural identity.

The Board of County Commission also adopted a Bayshore/Gateway Triangle CRA Public Art Pilot Plan earlier this year, July 2021. And this plan is basically providing the guidance for the Land Development Code amendment and administrative code amendment that you're considering today.

So within that Public Art Pilot Plan adopted by the Board, they authorized these amendments to take place. They also endorsed the idea of creating a public art committee, and by board action just earlier this week on Tuesday, the Board did vote and approve to establish a public art committee.

So the themes that you're seeing in this refinement of language in the Land Development Code are rooted in those board-authorized and board-endorsed plans, and the goal is to help move this initiative forward with, you know, better parameters and better explanation on the review and procedures associated with creation of murals in the Bayshore/Gateway Triangle area.

The amendments go through Growth Management Plan staff review -- or Growth Management Department staff review, so this has been vetted leading up to the point appearing before you. It also went through the Development Services Advisory Committee as well.

CHAIRMAN FRYER: Thank you.

Commissioner Klucik.

COMMISSIONER KLUCIK: Yes. So we're talking about murals on privately owned buildings.

MS. DeJOHN: Yeah, the criteria we're talking about apply to murals that are in public view from public right-of-way or funded by public dollars.

COMMISSIONER KLUCIK: In public view. So if I own a building that falls in one of the correct categories, I have to ask a government committee on how to express myself?

MS. DeJOHN: So --

COMMISSIONER KLUCIK: No. It's a really easy question, because -- it's a yes or no.

MS. DeJOHN: Within the Bayshore/Gateway Triangle area, yes.

COMMISSIONER KLUCIK: Right. So, I mean, are you -- are you legal here? Are you a lawyer, or are you here representing the organization otherwise?

MS. DeJOHN: I'm a certified planner.

COMMISSIONER KLUCIK: Certified planner.

MS. DeJOHN: And I will, you know, reinforce the fact that we're talking about amending language that already exists, so...

COMMISSIONER KLUCIK: Well, I see all the blue language is new, correct?

MS. DeJOHN: Right. So murals being allowed as public art within the Bayshore/Gateway Triangle redevelopment area was specifically described as being allowed on commercial, civic, and institutional buildings previously.

COMMISSIONER KLUCIK: Well, wait. Let me just back you up. So I think what we had is murals were allowed, and there's a committee, a CRA, and the CRA is what? CRA advisory board. That's who currently holds the power, right, to approve or disapprove?

MS. DeJOHN: To review, yes.

COMMISSIONER KLUCIK: To review. For approval or disapproval, correct?

CHAIRMAN FRYER: No. The CRAAB is recommendatory.

MS. DeJOHN: Right. They were the body where a mural formerly would go for review, and that is being -- there was a stay put on that and -- for the refinement of standards and adoption of a plan, and that has now occurred. So now its implementing measures are to refine how that --

COMMISSIONER KLUCIK: This is to comply with litigation?

MS. DeJOHN: No.

COMMISSIONER KLUCIK: Okay. So the stay was -- and when you say "stay," I think litigation. But you're saying it was a --

MS. DeJOHN: They were Code Enforcement Board matters.

COMMISSIONER KLUCIK: Okay. Here's my point. My point is what we have now -- so the existing -- so what we have now has been stayed because it was seen as not workable or not --

MS. DeJOHN: Well, there were -- you know, there were violations being accrued and, therefore, the --

COMMISSIONER KLUCIK: When private actors speak, the government can't tell you how to speak. They can tell you how big your speech can be, you know. They could -- I guess they could say you can't use neon colors, I suppose. Maybe that could pass muster. And what I'm seeing here is we're imposing a committee that actually is going to say, We don't like that art. You can't do it.

Now, if that's what this says, then I'm really concerned about it. And I'm assuming there's lawyers involved, but I also -- and I know, you know, there's -- there is room for some disagreement as far as First Amendment and how it applies to this kind of thing. But I -- I get a little nervous when we have a committee saying what I think is important to express, and the committee doesn't like what I think is important to express on my building, and, you know -- and you approve what somebody else does want to express. And can you answer that? Why is this a good idea to have a government committee with government authority -- maybe it's not a government committee, but a committee that has government authority, ultimately, dictate the content of the speech? Because this to me seems like it's a content of speech, which is you can't say this, but you can say that, and I have a real problem with that.

CHAIRMAN FRYER: And what the commissioner is referring to, of course, as I'm sure practically everyone knows, is the First Amendment in the U.S. Constitution which guarantees the right of free speech. So we need to turn to our esteemed county attorney and let us know where we are on this.

MR. KLATZKOW: I'm not a big fan of murals just for that reason, all right, because I remember years ago somebody in Naples put up a sign. It was a coffee shop; what was it called?

MR. BOSI: Bad Ass Coffee.

MR. KLATZKOW: Bad Ass Coffee, and I had a commissioner up on the dais just go ballistic over that. I mean, what some people view as artistic, other people view as smut. I don't know what else to say.

So we are not a fan of this. Now, from my personal standpoint, there's a difference between publicly funded art and non-publicly funded art. Publicly funded art you've got the absolute right to say yes or no to it, so I have no objection to that. But is this going to work without a challenge? Well, I guess we'll address that then, but I'm not a big fan of it; never have been.

CHAIRMAN FRYER: Thank you.

Commissioner Fry.

COMMISSIONER FRY: I guess my question for the commissioners, staff, attorney is how different is this from an architectural review board in that areas have standards that they want upheld, and so they hold people to go through an application process to uphold those standards, and the art would be a part of the overall look and feel of the Bayshore Triangle. You've put a lot of effort and they have a very well organized group there. I know Ms. Forester has spoken before us before.

So have you -- I'm assuming this idea has been floated to the residents. You've had public meetings. So tell us why you think this idea will fly without significant challenges, as the attorney mentioned.

MS. DeJOHN: Right. I mean, the alternative is that no expression occurs on the sides of buildings, that -- you know, the architectural standards, the limitation on colors, the rules about what goes on the building restricts any type of art.

COMMISSIONER FRY: Well, as of now, that's the case; no art allowed.

MS. DeJOHN: So no art has been allowed. And this is a mechanism that has developed the prior mechanism that was already in place to allow murals to, like you said, be -- you know, this has been since 2012. I mean, we're talking almost 10 years have gone by. A public art consultant was commissioned. A year-long process was engaged with public surveys, public meetings, public engagement to determine what are the desires of the community. Murals happen on all the different variety of the way public art can be implemented. Murals rose high on the list

when surveys were conducted as something the community wanted to see. And we're talking about the Bayshore/Gateway Triangle area in this discussion. So that work has been done.

And, I mean, you know, the review today is to look at those strike/underlines, also acknowledge that this is implementing and in conformance with a board-approved plan, Public Art Plan, to not have art decisions made by a CRA Advisory Board but through a public art committee that has now been formed as of Tuesday, and then ultimate decision by the Board of County Commissioners. That public art committee is advisory.

MR. KLATZKOW: Laura, I think you've done a great job. Don't view this as criticism. But the definition of a mural, I don't know what the distinction between graffiti and a mural would be. It just falls right square within the definition. And, again, I commend you on the work you did. I don't know a way around it. I agree with Commissioner Klucik. It's -- you can have murals, but be careful what you wish for.

CHAIRMAN FRYER: I'm of the same view, and I don't like the word "marking," because it's so broad. Certainly, I think it would include graffiti. I wonder, would it include a political sign? I just don't know. So the definition -- and I also agree with the County Attorney, Ms. DeJohn, you do great work, so this is not in any way to be a criticism of you or anybody else. It's just the definition, in my view, of mural, any drawing, artwork, inscription, or marking that is marked, etched, drawn, painted, that paints with a very broad brush. And it goes, I think to a point that is arguably perilously close to a constraint on freedom of speech.

And so that's one concern I have. And I'll call on you in a moment, Commissioner Klucik. But the other concern I have is the juxtaposition or the dissonance, if you will, between this new definition of mural -- it's very broad -- and then 4.02.16.H, which talks about murals, and it refers to murals as being allowed as public art, but yet the definition of mural goes way beyond public art. It includes markings.

Commissioner Klucik.

COMMISSIONER KLUCIK: Right. And, yeah, I just think it's -- you either -- you either allow murals or you don't. I agree with what our County Attorney has said that it's different. It's absolutely different. If we're talking about a wall that is owned by the government, then the government can, you know, can -- within certain limits, they can say whatever they want to say, and so there's broad -- I think relatively broad allowance for the government to dictate that speech and say I don't like -- you know, the committee, whatever, whoever the authority is can say I don't like that or that's not something that the community would like or, you know, whatever, and they can put up what they want to put up.

I think what -- as a first step, if we're not going to do anything else -- if we're actually going to entertain this, then I would say this whole thing has to be reviewed, or I would ask that we -- as a board here, that we direct the County Attorney to review this to see if anything that's being proposed is actually content regulation, because content regulation means what is the message. Can the message be restricted by the -- can the private actor's message be restricted by this private board? Because if any of this says that that is true or can be interpreted that that's what authority, you know, is being given, then you can't do it. I mean, we could do it, but then we're going to get sued, and I don't think it's good public policy, so I would definitely militate against it.

MR. KLATZKOW: We're of the same mind here. This is like a light switch. It's either on or it's off. And if you're going to put it on, that's fine; we will have murals. I will tell you that somebody will put up a mural that people are not going to like just -- you can't get 100 percent of the people to like 100 percent of things. There will be complaints about it, and there's nothing you're going to be able to do about it after the fact. That's after the fact.

Now, before the fact, Commissioner Klucik is absolutely correct. I don't know how you say -- I don't know how you say no -- if it's not publicly funded, I don't know how you say no to somebody saying I want to put this on my wall. I don't know how you say it. I'm sorry. If we're doing this, it's fine, we will have murals. And I'm not opining whether that's a good idea or a bad idea. I'm just saying be careful what you wish for. That's all.

CHAIRMAN FRYER: Commissioner Fry.

COMMISSIONER FRY: Again, I just -- for clarity, you can't -- you can't put a mural on your wall currently, correct; is that correct?

MS. DeJOHN: Correct.

MR. BOSI: Correct.

COMMISSIONER FRY: So this is opening up an avenue with controls to allow murals but with some type of a mechanism in place to try to make sure that they aren't offensive, I guess; that they pass the muster test of this public art committee or board --

MS. DeJOHN: Public art committee.

MR. KLATZKOW: This is just like our bus advertising where we have to be very, very, very careful in delineating what can be and what can't be used on bus advertising, because once we go just a little bit too far, then it's everything, all right. And so we're very, very narrow in what we do, and it's basically just public service announcement type stuff that we allow on it.

And so this is -- this is more than this. Commissioner Klucik's right. It's content based, all right. I don't like -- I don't like what this mural has to say, because by mural, it's artwork. Art says something. I don't like what this says so, therefore, we're going to deny what you're putting on this wall. I can't defend that.

Now, if you want to have color schemes that everybody has to comply with, like we don't want to see black walls, which we have that, I believe, in our architectural features, you can do that, all right. I mean, you could be color specific because that's content neutral.

COMMISSIONER KLUCIK: Mr. Chairman, if I could interrupt just to answer your point earlier that the difference with an architectural review committee is the architectural review committee, if you allowed, you know, "God bless America," you would have to allow "Let's Go Brandon." You know, I mean, it's just that's -- because you can't -- you can't make those distinctions under the First Amendment. Under the First Amendment you can't have a -- and this is a government actor. I think in an HOA you probably can. But I'm talking about when the government is involved, you can't tell people this is good, this is bad. And the converse of what you said is true, too. You could have the people on the committee are, you know, kind of, you know -- I don't know, it wouldn't be a surprise if some of them are, you know, very progressive and then they want -- they love, you know, murals with a progressive or a transgressive kind of mural to get people to think, you know -- because we see that all the time. You know, you put something that is obnoxious just because -- to say, hey, we're in the artsy section, and we want people to know that we're different.

MR. KLATZKOW: And that's fine. And architecture's like -- again, Ray will correct me if I'm wrong. We do not allow neon lights in Collier County, but that's content neutral because we don't say what your neon lights can say or can't say. So we just don't allow neon lights. Architectural review is we don't allow this color, we don't allow this type of feature. If you're going to have windows, they've got to be separated by -- it's all content neutral.

A mural, by definition, is content based, all right. And you can have these things. I mean, they're all over Fort Lauderdale. They're in other areas, you know, that we're all familiar with. And you may like nine out of 10 of them. You may find that 10th to be horrible, but that 10th gets to stay there just as well as the other nine do. So just -- this is what we're doing.

COMMISSIONER FRY: I was going -- I know, Eric, you want to speak. I wanted to ask Laura -- it looks like there's an exemption for private murals that are not within view of the public right-of-way, the public roads, correct?

MS. DeJOHN: That's correct.

COMMISSIONER FRY: So if I have a -- if you pass this, and I have a property that doesn't face anywhere I can see it from the road, I can put whatever I want on that wall under this plan?

MS. DeJOHN: Right. Like the internal courtyard of the restaurant or, you know, anything not viewable gets to be painted however that owner wants to paint it.

CHAIRMAN FRYER: That almost makes it worse.

Commissioner Shea.

COMMISSIONER SHEA: Just to back up, I'm not sure I fully understand. Right now murals are not allowed? If we don't -- if we just reject this, are murals allowed? And what --

MS. FORESTER: Hi. For the record, Deborah Forester, CRA director.

So the murals were allowed, I believe, in 2012, and the Bayshore CRA, we really didn't have any real activity on murals.

COMMISSIONER SHEA: When you say "allowed," you mean by something written somewhere as a code?

MS. FORESTER: In the code in the overlay it allows murals only in two locations in the county. One is in Immokalee CRA and one is in the CRA Bayshore/Gateway CRA, Community Redevelopment Area.

So in 2018, I believe, we had a couple of murals that went forward on Bayshore Drive. We did not have any in place. We didn't have an application in place. We didn't have any, really, review process in place. The two owners came to the advisory board and said, we'd like to put up a mural. Everybody said, that's great. Go ahead and do it.

Then when they did it, because we did not have a process in place, it became apparent that there were some violations to the code. It didn't follow the size. It didn't follow the requirement. It couldn't cover up windows and doors. And so at a joint meeting with the CRA advisory board and the Board of County Commissioners, the Board decided that we weren't going to allow any more murals in that area until we came up with a process, and this process had led us to today.

We have -- as Laura mentioned, we had gone through a public art planning process. The Board adopted a pilot project that could be used throughout the county. On Tuesday night they approved the establishment of a public art committee. I think the reason we wanted to go with a public art committee -- and the requirements on that is for people that have a background interest in art, architecture, have design background, so that our advisory committee wasn't making a recommendation that this is quality, that it meets the standards of what that size should be and things like that. I agree there are going to be --

COMMISSIONER KLUCIK: I'm sorry. Could you repeat what you just said. I didn't -- did you say it does or it doesn't?

MS. FORESTER: The public art committee doesn't meet the intent of the mural code, so --

COMMISSIONER KLUCIK: No. You had mentioned that this art committee was going to weigh in on or not weigh in on, and then you listed a couple things. I'm just -- if you could say what --

MS. FORESTER: Okay. I can't probably back up in my mind exactly what I said, but I think what I was trying to say is that that public art committee's responsibility is to review an application to make sure it complies with the code that we're bringing forward to you today.

COMMISSIONER KLUCIK: Right. Okay. You had mentioned some criteria, I thought.

MS. FORESTER: Well, the criteria like the size, the complements, the building character, and follows the vision of the CRA, I would say. Laura's going to give me the exact code, if you want, too.

CHAIRMAN FRYER: While you're looking for that, Commissioner Shea.

COMMISSIONER SHEA: So there's only two places in the county that murals are allowed?

MS. FORESTER: Yes.

COMMISSIONER SHEA: That's kind of interesting, I guess, for me.

CHAIRMAN FRYER: Mr. Johnson.

COMMISSIONER SHEA: That's probably a question, yes, for Eric.

MR. JOHNSON: Well, actually, I just wanted to make a statement. Eric Johnson,

principal planner for zoning. Not an attorney, but as a planner it's my understanding that, with respect to murals, you could regulate them based on time, place, and manner. If you look at the proposed changes that are being made to the text, you'll see that it doesn't talk about -- any of the changes doesn't talk about what the speech says. We're proposing to change, you know, No. 4, which is proposal No. 3, murals are permitted on sections of buildings where the mural will not negate the purpose of the building's design treatments listed in LDC section 5.05.08.D.5.

Number 6, the building owner or property owner associated, where applicable, is responsible for mural maintenance and shall submit a mural maintenance plan to the County Manager or designee.

Number 7, the mural will complement the design of the building in color, shape, and location. This is an attempt to try to stay away from any kind of issue with respect to the speech or what's being shown on this -- on the mural.

This Land Development Code amendment is also -- has a companion administrative code amendment which outlines the process by which one would obtain a mural.

So I think the conversation is good and the conversation is valid but, in my opinion, these changes that are being proposed are not related to speech.

CHAIRMAN FRYER: Why wouldn't it arguably prohibit a political sign? What about a person who says that's a marking?

MR. JOHNSON: Well, obviously, you know, when trying to define what a mural is, it's good to have different components to what a mural is and what a mural is not. And so if the -- if it's this Planning Commission's direction to not have marking as being part of the definition, then I don't think staff would have a problem with that, if I hear anything.

But I mean, a mural as far as I know, painting on the side of a building or a structure, Ms. Forester wanted to have more flexibility in what is a mural and what isn't a mural, so that was an attempt here. But like when you go to different places throughout the country, the states, and cities, you know, you see what murals are and, basically, it could be all sorts of things. In my opinion, there are many, many paintings with different types of paints that are used, temporary or permanent.

COMMISSIONER SHEA: Well, why aren't -- I guess I'm confused. If it's such a good thing, why aren't we listening to something that would change the county regulations to allow this to apply everywhere? It always bothers me when a couple of little areas have a different set of standards.

MR. KLATZKOW: Because, by definition, we only want them in blighted areas. The Immokalee CRA and the Bayshore CRA, by definition, those are blighted areas.

CHAIRMAN FRYER: And the intention is laudable, but we've got to somehow be consistent with freedoms of speech. We know that the folks in -- well, take the Bayshore/Gateway Triangle area, they want to upgrade themselves and they want to prohibit certain things that they might find offensive. But, you know, you've got to be really careful when you go in that direction.

Commissioner Klucik, you're still --

COMMISSIONER KLUCIK: Yes. Could you -- and here's what I'll tell you. If you know, my particular suggestion was that we look at this, and we have a review by our attorney to see if it was, you know, time, place, manner, whatever -- what was the list? Is that what you said?

MR. KLATZKOW: That's what I said.

COMMISSIONER KLUCIK: Yeah. That's kind of the Supreme Court language. And if that's all this is, then I have -- you know, then I'm really not going to have an objection to it, but what I would say is I think it would be good to add a proactive statement that this committee shall not, you know, weigh in on the content or make any decisions based on, you know, the content of the mural or the message of the mural.

What I would ask is, very basically, the BGTCRA Public Art Pilot Program is in the LDC 4.02.16.H. I guess, does the Public Art Pilot Program, does that -- or I doubt the LDC section has that in there, but does -- the Public Art Pilot Program, can we see that? Does that have language in

there that would tend to implicate, you know, content-based decision making? So does the --

MS. DeJOHN: Yeah. The pilot plan has explanations of a mural program and guidelines -- general guidelines for PAC review.

COMMISSIONER KLUCIK: Okay. Do you have that language? Can we look at it? Is it long? Well, then, you know, here's what I think -- I don't want to take up the time because I don't think we're going to get a -- I don't think it looks like we're going to get a positive vote on this today. I would suggest maybe that we do that, if we could ask the attorney to look at this document as proposed as well as -- you know, obviously, part of that would be looking at this Public Art Pilot Program, because it's saying that whatever is submitted -- whatever mural is submitted has to comply with the Public Art Pilot Program requirements. And so then it would be important that that Public Art Pilot Program doesn't also contain, you know, things that potentially offend the First Amendment.

MR. KLATZKOW: Yeah, we could take another look at it if you'd like. I mean, if that's the Planning Commission's -- I'd rather take another look at it and bring it back then you guys say no. I'll just put it that way.

CHAIRMAN FRYER: Yeah, I think that's a fair assessment. I'd entertain a motion at this point. No one is signaling.

COMMISSIONER KLUCIK: Yeah, I would --

CHAIRMAN FRYER: Well, let's get a motion on the floor, and then we'll let you speak, Mr. Johnson.

COMMISSIONER KLUCIK: I'll move that we not vote on this today and knowing that we're asking our attorney to take a look at it and, specifically, whatever it is that we're going to adopt and any other regulations or guidelines that are implicated or referenced also don't walk into the First Amendment concerns that we --

CHAIRMAN FRYER: Point of clarification. Would that be a request that we continue indefinitely?

COMMISSIONER KLUCIK: No, until such time as the attorney is able to get us --

COMMISSIONER FRY: January 20th.

MR. KLATZKOW: Your next meeting is when?

MR. EASTMAN: The 20th.

MR. KLATZKOW: Oh, that's plenty of time. You'll have -- just continue it to your next meeting.

CHAIRMAN FRYER: Okay.

COMMISSIONER KLUCIK: Okay. Yeah, that will be my motion, then, that we continue it to the next meeting --

CHAIRMAN FRYER: Is there a second?

COMMISSIONER KLUCIK: -- and we direct the attorney to give us that report back or his opinion.

COMMISSIONER HOMIAK: Is this from the new Public Art Plan or -- what's on the visualizer?

MR. JOHNSON: This -- yes, correct.

COMMISSIONER HOMIAK: This is new --

MS. DeJOHN: This is the adopted Public Art Plan from July 2021 adopted by the Board.

COMMISSIONER KLUCIK: Item J right there doesn't pass the test. It can't be political, religious or --

CHAIRMAN FRYER: Okay. We have a motion. Is there a second? I'll second it.

COMMISSIONER SHEA: Second.

CHAIRMAN FRYER: Well, let's have the record show that Commissioner Shea seconds. Any further discussion on this?

COMMISSIONER FRY: Yes.

CHAIRMAN FRYER: Go ahead, Commissioner Fry.

COMMISSIONER FRY: I just wanted to allow Mike to speak first.

MR. BOSI: Just as we're continuing it, can we -- January 20th is the next CCPC. So just for advertising purposes, if we can continue it to that date specific, our advertising will still be valid. Instead of the next public meeting, just clarify that it's January 20th.

CHAIRMAN FRYER: January 20 it is. And before we vote -- and I've got Mr. Commissioner Klucik lit, but I also want to hear from Mr. Johnson, who's been waiting.

MR. JOHNSON: Sure. I just wanted to say that -- I wanted to clarify some comments that I made in my pitch for trying to propose this. It's been my experience, my personal experience, that I've only seen murals that are painted, that sort of thing. Even though the definition has different components to it, my personal experience is that it's only, you know, paint. So that's all. Sorry.

CHAIRMAN FRYER: Thank you.

Commissioner Klucik.

COMMISSIONER KLUCIK: Yeah. Looking at these general design guidelines A, B, C, D, and J, for sure, are all not going to, you know, pass muster. Those are definitely content-based judgments.

And so if you don't think that the -- I mean, the First Amendment is designed expressly to make sure that "A" can never rule, so that my building -- everyone can have a mural. I own a building. I want to say something that doesn't have the support of the community. The First Amendment is only -- it doesn't exist to -- you don't need to protect what the community supports, the speech community -- the community supports. The only speech that the First Amendment protects is speech that the community probably is not going to want to hear. And so that's kind of a classic example. So A, B, C, D, and J, right off the bat.

So what I would say is, please don't bring something back to us that doesn't eliminate things like that.

CHAIRMAN FRYER: Commissioner Fry.

COMMISSIONER FRY: I appreciate the legal conversation, and I'm not -- I'm certainly not looking that we perpetuate something that doesn't hold up, right. I just wanted to signal my support for the concept that I think the Bayshore CRA has done a great job of re-branding, and this is an attempt to continue branding as an art district and, I think, increasing the flavor of it and the attraction of it, and I'm all for that, supporting that, if we can, without getting ourselves into legal trouble, so...

CHAIRMAN FRYER: Commissioner Klucik.

COMMISSIONER KLUCIK: And I would say that if it is a government-owned building, then A, B, C, and D probably would, you know, be appropriate, you know. If the government controls the property. But on property that isn't controlled by the government, those criteria are just untenable as a First Amendment analysis.

CHAIRMAN FRYER: Ms. DeJohn, did you want to be heard?

MS. DeJOHN: No. I'm absorbing all the comments so that we come back with something that you find enjoyable.

(Simultaneous crosstalk.)

CHAIRMAN FRYER: We've got a motion and a second. I want to say one final word and then unless --

COMMISSIONER KLUCIK: Yeah. I want you to have the final word, so can I say something first?

CHAIRMAN FRYER: Please, go ahead.

COMMISSIONER KLUCIK: And I mentioned this to Mr. Bosi when we had our little preliminary meeting.

So I moved to Florida from Bavaria, Germany. And in Germany they have these beautiful villages. And, you know, along the main little streets where all the people are going to walk and the courtyards, they have these amazing murals and stucco walls. And there's, like, one village

that that's all it is. Oberammergau, they have, you know, like dozens of buildings. They have these beautiful murals.

And so when I moved to Ave Maria, I was like, well, this is like maybe this town could do something like that. I could put a mural. I live right on Ave Maria Boulevard. Everyone who drives into town drives right by my house. And so I thought that would be really cool. And every time I thought about it, I was like, no, no, because as soon as you let me put what I like up, you have to let my neighbor put what he likes up.

And that's -- so I kind of -- I love the idea of having public art. I just do. And so it has nothing to do with an animus against public art, and I just wanted to make that clear.

CHAIRMAN FRYER: Thank you. As a final word, I would urge my fellow planning commissioners to approve this motion because I don't think that it would look particularly good optically, if you will, for us to pass this the way it is, and it might hamstring the county without first being scrutinized by our able County Attorney and his staff. So having said that, unless there are further comments, we'll call the question.

COMMISSIONER KLUCIK: I would just add --

CHAIRMAN FRYER: What about my final word?

COMMISSIONER KLUCIK: Well, it's in direct response.

COMMISSIONER HOMIAK: No, no more.

MR. EASTMAN: You lied, you lied.

COMMISSIONER KLUCIK: It's in direct response. And I guess I would ask, I would have -- I guess am surprised that this didn't have, you know, specific legal scrutiny, you know, so you did make a recommendation to us. And I just -- you know, why didn't the process have that included? And it's not a criticism. It's a question. Maybe we could avoid it in the future, whatever. You have a million things going on, and I understand some things slip through or whatever, but I -- that's all.

CHAIRMAN FRYER: Fair enough. All those in favor of the motion to continue this to January 20, please say aye.

COMMISSIONER SHEA: Aye.

COMMISSIONER FRY: Aye.

CHAIRMAN FRYER: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER KLUCIK: Aye.

CHAIRMAN FRYER: Opposed?

(No response.)

CHAIRMAN FRYER: It passes unanimously.

Thank you, Ms. DeJohn.

MS. DeJOHN: Thank you.

CHAIRMAN FRYER: Okay. Under old business, we don't have any before us. Under new business, there's none. Any public comment, Mr. Youngblood? He's shaking his head in the negative. So there's no public comment. Therefore, without objection, we stand adjourned.

There being no further business for the good of the County, the meeting was adjourned by order of the Chair at 12:17 p.m.

COLLIER COUNTY PLANNING COMMISSION



EDWIN FRYER, CHAIRMAN

These minutes approved by the Board on 2/17/22, as presented or as corrected _____.

TRANSCRIPT PREPARED ON BEHALF OF U.S. LEGAL SUPPORT, INC., BY TERRI L. LEWIS,
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