

Transcripts for Case #
DCI 2007- 00026

LEE COUNTY HEARING EXAMINER MEETING

RE: DCI2007-00026

IN RE: Jay MacDuff in reference to Pine Shadows
Air Park

Transcript of Proceedings

Before Diana Parker, Chief Hearing Examiner, held
at the Hearing Examiner's Hearing Room, 1500
Monroe Street, Fort Myers, Florida, on January
23, 2009.

PRESENT:

Mr. Matt Uhle, Attorney for the Applicant
Mr. Tony Palermo, Lee County Department of Community
Development
Mr. John Fredyma, Assistant County Attorney

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1 HEARING EXAMINER: Good morning. I'm Diana
2 Parker, Chief Hearing Examiner for Lee County. This is
3 Friday, January the 23rd, continued hearing for Case No.
4 DCI2007-00026, Jay MacDuff in reference to Pine Shadows
5 Air Park.

6 Before we start, let's start with the County
7 Attorney, go around the table, please, and identify
8 yourselves for the record.

9 MR. FREDYMA: Yes, ma'am. Good morning. My name
10 is John Fredyma. I'm an Assistant County Attorney. I
11 represent the Board of County Commissioners.

12 MR. PALERMO: Hi. Good morning. I'm Tony
13 Palermo, and I work for the Lee County Department of
14 Community Development.

15 MR. ROEDER: Mike Roeder, the planner on behalf of
16 the applicant.

17 MR. UHLE: Matt Uhle, Attorney for the
18 applicant.

19 MR. FREDYMA: Madam Hearing Examiner, I don't
20 know if we have new members of the public here since this
21 is a continued --

22 HEARING EXAMINER: You might as well go ahead.

23 MR. FREDYMA: All right. If I may, by brief
24 introduction, for those of you that may have not been at
25 the first day of this public hearing, a couple of things

1 you ought to know.

2 First of all, if you want to participate in
3 today's hearing or obtain a copy of the Hearing Examiner's
4 recommendation, there are white forms at the small table
5 in front of the louvered doors up at the front here. If
6 you would fill one of those out and turn it in to the
7 Hearing Examiner, that will get you a copy of her
8 recommendation, and also will give her your name and
9 address so that if you decide to testify today.

10 If you decide that you want to make public
11 comments or you want to testify, when that time comes, the
12 Hearing Examiner will tell you when that is. Public
13 comment is taken from the podium that's up here at the
14 front. When you approach, please state your name and
15 address for the record. You can tell the Hearing Examiner
16 if you reside or own property in the area, and then you
17 can tell her what questions or concerns you have about
18 this project.

19 Today's hearing is not the final action on this
20 matter. As a result of all of the evidence and testimony
21 that's taken both from the first hearing and today's
22 hearing, the Hearing Examiner will be preparing a
23 recommendation that will then be sent on to the Board of
24 County Commissioners and there will be a public hearing
25 before the Board probably in about a month and a half to

1 two months or so.

2 What's important, though, is two things. One, if
3 you have questions, concerns or comments, you need to
4 speak here today so that you can tell the Hearing Examiner
5 what those items are so she can consider them.

6 Equally important is in order to be able to speak
7 to the Board of County Commissioners, you must speak here
8 today to preserve that right.

9 We've, I believe, completed an introduction of
10 the parties at the table and with that much of an
11 introduction, Madam Hearing Examiner, the proceedings are
12 again yours.

13 HEARING EXAMINER: All right, folks, for those of
14 you who have not been in a hearing here before, let me
15 also lay down a few ground rules. First off, if you have
16 a cell phone, turn that little sucker off. They get real
17 noisy in here when everybody's cell phone starts going
18 off, so please just turn them off.

19 Also, water only this room. If you have Cokes,
20 coffee or anything other than water, please remove it from
21 this room. All right? They get kicked over. People
22 leave them, they get kicked over, and I have a nice mess
23 that I have to clean up. Okay. So rather than spend my
24 budget on cleaning the carpet, we need it for office
25 supplies.

1 Also, looking at the crowd that we have here, if
2 everyone is going to speak today, we will probably be here
3 past lunch. So sometime between 12:30 and 1:30 we will
4 break for lunch. All right? We will also take a break
5 about every two hours to let the court reporter stand up
6 and unfocus. She has to concentrate intensely on what's
7 being said during the proceedings and so, consequently,
8 she needs time periodically to rest her hands and her
9 back and everybody needs to have a chance to stand up and
10 wake up, because you guys don't get to ask questions like
11 I do.

12 So during the proceedings, there will be no
13 talking, please, in the back of the room. We audio tape
14 these proceedings, all right. The court reporter takes
15 down the official transcript. Noise from the back of the
16 room overrides what's coming in on these microphones. It
17 also interferes with her concentration. That may be the
18 very thing you want me to know and it's obliterated on the
19 record. It cannot be reconstructed, okay? So you need to
20 keep the noise to an absolute minimum. If you need to
21 talk to your neighbor, you can go outside the door. You
22 can always come back in.

23 Now, do I have any questions from anybody on the
24 procedures?

25 If we do run past lunch, I will stop before

1 lunch, before we take our lunch break, and try to take as
2 many of you from the public who cannot come back this
3 afternoon. If you can come back, I ask that you wait
4 until after lunch to make your presentation. Okay?

5 Yes, sir.

6 UNIDENTIFIED SPEAKER: If we spoke at the last
7 meeting, will we be able to speak at the next meeting, the
8 Commissioners?

9 HEARING EXAMINER: You can speak before the Board
10 of County Commissioners if you spoke at the last hearing,
11 all right. But if you spoke at the last hearing, unless
12 you have something new to add to the record, you cannot
13 speak today.

14 UNIDENTIFIED SPEAKER: Thank you.

15 HEARING EXAMINER: Okay? Because I don't need
16 you to go back over all the information. I've already got
17 it in the transcript.

18 Okay. At this point in time if you're going to
19 testify in today's hearing, you need to be sworn in. If
20 you are an attorney and testifying to facts, you should be
21 sworn in as well. So if you're going to talk today,
22 please raise your right hand.

23 (All witnesses were sworn.)

24 HEARING EXAMINER: Now, if after you hear the
25 presentations and whatnot that we have today, since staff

1 and applicant have already given the main body of their
2 presentations, after you hear other evidence coming in, if
3 you feel the burning desire to speak and you haven't been
4 sworn in, tell me when you come up to the podium. I can
5 swear you in at that time. It's just easier to get that
6 out of the way up front.

7 All right. Now, at the last hearing, we had
8 already finished staff's and applicant's presentation and
9 had already started taking some public presentation.

10 Mr. Madden, are you still spearheading the public
11 presentation, sir?

12 MR. MADDEN: Yes, I'm still representing the Pine
13 Shadows Air Park Community Association.

14 HEARING EXAMINER: Okay. All right. So, now, I
15 understand -- I have submittals from Mr. Madden, from Mr.
16 Roeder for the applicant, and from Mr. Palermo for staff,
17 and I'm just not exactly sure how we want to proceed with
18 this.

19 MR. UHLE: We would suggest that the staff make a
20 presentation based on the Revised Staff Report.
21 Subsequent to that, that we would make a short response to
22 staff conditions and then that would open it back up to
23 the public.

24 One thing I would additionally ask is that -- I
25 think that the public input at this hearing should be

1 limited to responding to the new evidence that we put on
2 with the staff. That was discussed to some extent last
3 time. I said that I didn't have a problem with the public
4 speaking again because I thought it would be a due process
5 issue, if we didn't, but I think it should be limited to
6 the new stuff that is put on.

7 HEARING EXAMINER: Okay. Hang on just a second.
8 The only thing, I can't do that. I can't limit their
9 input because last time I encouraged people that were here
10 that could wait to speak to today to do so. At that point
11 in time, that would -- I would then be depriving them
12 because they could have spoken about everything and I've
13 never done that before. I have never limited the input
14 from the public to just what comes in at today's hearing
15 when we've had a multiple-day hearing. So, you know, they
16 have the right to make their positions known.

17 Now, one thing I do need to say to you folks,
18 too. Now, when you come up here to testify, keep your
19 comments germane to the issue. The issue being if this is
20 approved, what effect is it going to have on you, your
21 property or your neighborhood. All right?

22 Don't give me personalities, don't give me
23 neighborhood disputes. I don't need to know those
24 things. There is no way I can combat those. All right?
25 There's no way I can condition for neighborhood disputes.

1 I have no control over that kind of thing.

2 I need to know what you think is going to happen
3 to you, your property or your community if this is
4 approved. Those are the issues that I can either make
5 recommendations for new conditions or if I determine that
6 the conditions are so bad that, you know, I can't find
7 some way to make it consistent with the Comprehensive
8 Plan, then I would have to recommend denial of it to the
9 Board of County Commissioners.

10 And those are the issues. And if a neighbor
11 stands up here and starts ranting and raving, then all of
12 you start ranting and raving. I don't want to hear it,
13 you know, I mean, flat out, don't want to hear it. So if
14 you want to rant and rave, go out in the hallway and rant
15 and rave. Let them all listen to it.

16 But I will let you testify to the entire request,
17 not just the evidence that's coming in today. So you will
18 have your opportunity. And at the time you come up, you
19 will be allowed to ask your questions. Just also make
20 sure your questions are germane to the issue, what effect
21 is it going to have on you, your property or your
22 community.

23 You know, how much they're going to make on this
24 deal has no absolutely no bearing whatsoever on my
25 decision and it really is not necessary. It's irrelevant

1 information, and, you know, nine times out of ten I don't
2 allow it. Okay?

3 So, Tony, you wanted to say something before we
4 start?

5 MR. PALERMO: Tony Palermo for the record.

6 I was just going to make the same point. And
7 also be cognizant that there are people who are here at
8 this hearing who were not here at the December hearing, so
9 they should be allowed to say whatever they want, though,
10 within reason.

11 HEARING EXAMINER: Okay. All right. Staff want
12 to make a presentation based on the revised conditions and
13 whatnot in their memorandum of January 16th?
14 Thereupon,

15 TONY PALERMO,
16 called as a witness by Staff, having been previously duly
17 sworn, was examined and testified as follows:

18 MR. PALERMO: Yes, ma'am. For the record, Tony
19 Palermo.

20 Let me be brief and then I'll sort of introduce
21 the cast of characters and the issues that we can go
22 through.

23 We did give a presentation at the December 4th,
24 2008, public hearing, and there were a number of important
25 issues raised by the public regarding health, safety and

1 welfare concerns due to the circumstances of the proposed
2 development and its proximity to Pine Shadows community
3 and the Pine Shadows Airport.

4 The concerns included open storage and office in
5 proximity to the glide path of incoming and outgoing
6 aircraft. The residents also raised steady concerns
7 specifically regarding open storage and its impact on
8 their community.

9 As such, I think it's reasonable to limit heights
10 and to propose some buffering to the north. And on the
11 second page of my memo, which is dated September 16th,
12 2008 -- it should be 2009, I apologize for that.

13 HEARING EXAMINER: I didn't even catch that.

14 MR. FREDYMA: January 16th, 2008?

15 MR. PALERMO: Yes.

16 HEARING EXAMINER: Yes.

17 MR. PALERMO: I've proposed a number of revised
18 conditions, and they're just based on the Staff Report you
19 received. We also received input from the Lee County Port
20 Authority. We have representatives from the Port
21 Authority who I think should be able to give testimony and
22 be able to be cross-examined on the information they have
23 so kindly provided to staff.

24 Let me just go through the conditions that I'm
25 proposing revising and then we'll leave it to the Port

1 Authority to make a presentation. And I also want
2 Environmental Sciences to make a presentation specifically
3 on the buffer issue and on irrigation issues on the
4 buffer.

5 Starting on Page 2, pretty simple, we just go to
6 the maximum building heights and what we've proposed is a
7 two-story limit, 25 feet above existing grade. That is
8 the present regulation for the existing Commercial Planned
9 Development, and I see no reason to go above that. I
10 think that's in a wise and abundance of caution regarding
11 logistics of the airport versus the buildings.

12 We've also proposed a maximum height for the open
13 storage use, and that would be 15 feet. And I believe the
14 applicant, who can speak for themselves, is agreeable to
15 those conditions regarding maximum heights.

16 We've also, in the abundance of caution, wanted
17 to specify height means the architectural features, they
18 are not going to get additional height by getting
19 additional setbacks, and regardless whatever roof type,
20 we're going to say 25 feet means 25 feet. Again, the
21 applicant I believe is agreeable to that.

22 One issue that I think is going to be of
23 controversy is how to buffer the open storage to the
24 north, which is logistically challenging. And what I've
25 done is I've proposed the open storage be buffered

1 basically in compliance with the existing conditions that
2 are in the Commercial Planned Development, and those call
3 for a 15 foot wide buffer containing trees and shrubs and
4 that's to be provided on the exterior side of the wall.

5 The point is under the proposal you have before
6 you, you have a wall and no vegetation. I think there
7 should be vegetation on the exterior side of the wall.

8 I think for aesthetic purposes, that's important.
9 And, again, that's what was approved before. And we did
10 listen to the testimony of the public, and I thought it
11 was important to have some sort of a buffer. Again, we're
12 going to be flexible in terms of that, and I think we can
13 have our Environmental Sciences talk about a couple of
14 issues regarding the logistics of putting trees and shrubs
15 there and a proposal regarding irrigation, since that's
16 kind of a logistical challenge also.

17 And I believe the applicant has some problems
18 with what we're proposing, mainly because of an access
19 issue, but again we can let the applicant speak for
20 themselves.

21 Lastly, we would propose Conditions 25 and 26 and
22 these would be conditions regarding this development not
23 being an obstruction to air traffic and Condition 26 would
24 be regarding, if necessary, a permit for tall structures,
25 again, out of an abundance of caution, but it's also in

1 compliance with the Land Development Code.

2 Attached to this memo dated January 16th you'll
3 see a black and white version. I've provided you a color
4 version of the approach shown, and I'm going to have our
5 Lee County Port Authority testify to this information and
6 how they reached their conclusions.

7 Again, they've provided us with the expert
8 testimony to specifically address the glide path, and we
9 have responded to that with some recommendations regarding
10 heights.

11 I think it's best to let me answer any questions
12 you have, allow some time for some cross-examination and
13 then we'll move on to our other witnesses, again the Port
14 Authority and then Environmental Sciences.

15 HEARING EXAMINER: Questions of this witness by
16 the County Attorney?

17 MR. FREDYMA: No, not at this time. I think
18 we'll sort this out as you go.

19 HEARING EXAMINER: Okay. Questions by the
20 applicant?

21 MR. UHLE: Just one. Tony, the maximum heights
22 that you've provided for the -- all of the buildings and
23 open storage, how do those relate in your eyes to the
24 heights of the existing buildings on the site?

25 MR. PALERMO: The height of two stories, 25 feet,

1 as you know, I got from the 1999 resolution for the
2 Commercial Planned Development. And I think you will find
3 you don't have 35-foot buildings out there. You have a
4 number of hangar structures.

5 I believe they're in the 25 foot range, and I
6 don't know of any other -- anything else I can say about
7 that. But in terms of the heights, we're not proposing to
8 increase the heights. We're proposing the status quo, and
9 we're also proposing improvements. Because of the open
10 storage, we don't have a height limit, even though we
11 proposed a height limit.

12 MR. UHLE: But the building height in your eyes
13 is consistent with the heights of the existing buildings
14 on the site?

15 MR. PALERMO: That's fair to say.

16 MR. UHLE: Okay. No further questions.

17 HEARING EXAMINER: Mr. Madden, do you have
18 questions?

19 MR. MADDEN: My only question on behalf of the
20 Pine Shadows Air Park folks is about the 15 foot for the
21 maximum height for items stored within the open storage.
22 I think we had talked about something with maybe tying it
23 to the maximum height for DOT road worthiness. I want to
24 make sure that the restriction about no construction
25 equipment is still in the recommendation from staff.

1 MR. PALERMO: There's no condition saying no
2 construction equipment, but we would require a permit for
3 tall structures which is Condition No. 26, and that
4 addresses if you can use construction equipment and
5 require them to --

6 MR. MADDEN: I mean, storage -- in the original
7 resolution, the original resolution prohibited storage of
8 construction equipment in the open storage area. We just
9 wanted -- I think the DOT standard is something like 12.6
10 or 13 feet. We just didn't know what would be stored in
11 there, if it would be 15 foot and wouldn't be construction
12 equipment.

13 MR. PALERMO: Yes. There is a proposed condition
14 which is similar to the one in the 1999 resolution,
15 excluding construction equipment and large trucks. One
16 example, semi trailers. And I'd be open to flushing that
17 out some if there's some other vehicles or tall structures
18 that we can think of, we can always add that. But the
19 intent is no construction equipment, and we can flush that
20 out, too, but limiting it to 15 feet, that is logically,
21 just limits it to a lot of construction equipment you
22 can't have. The intention is really to limit the
23 intensity. We know it's open storage, but, again, there's
24 no construction equipment or large trucks.

25 MR. MADDEN: Thank you. That's all I have at

1 this time.

2 HEARING EXAMINER: Okay.

3 MR. FREDYMA: Follow up. John Fredyma, Assistant
4 County Attorney.

5 Tony, where would that language be that you're
6 talking about that would say no construction equipment?

7 MR. PALERMO: Page 3 of 21 under open storage
8 that's limited to Parcel C. It says, excluding
9 construction equipment and large trucks, i.e. semi
10 trailers, et cetera.

11 MR. FREDYMA: All right. That's fine. Because
12 the original resolution, if this is ultimately approved
13 the way it's drafted right now, the original resolution is
14 going to go away and this will become the controlling
15 zoning resolution?

16 MR. PALERMO: Yes.

17 MR. FREDYMA: Thank you.

18 HEARING EXAMINER: Okay. All right. Tony, I
19 don't have any questions. Thank you.

20 Who's the next county witness that's going to
21 testify?

22 MR. PALERMO: Mr. Bill Horner and --

23 HEARING EXAMINER: Okay.

24 MR. HALLEY: Jim Halley.

25 HEARING EXAMINER: Have I had you in hearings

1 before?

2 MR. HALLEY: No, ma'am.

3 Thereupon,

4 JIM HALLEY,

5 called as a witness by the County, having been previously
6 duly sworn, was examined and testified as follows:

7 MR. HALLEY: For the record, Jim Halley, Lee
8 County Port Authority.

9 HEARING EXAMINER: Spell your last name for us,
10 please.

11 MR. HALLEY: H-a-l-l-e-y.

12 HEARING EXAMINER: Okay.

13 MR. HALLEY: For Lee County Port Authority, Noise
14 and Air Space Coordinator.

15 HEARING EXAMINER: Okay. County going to ask for
16 him to be accepted as an expert?

17 MR. FREDYMA: I believe we would.

18 Here comes the answer to your question. Do you
19 have several copies or just the --

20 MR. HALLEY: Two.

21 MR. FREDYMA: Okay. Would you give that one to
22 Matt?

23 HEARING EXAMINER: You guys look it over and sure
24 I get a copy, though, before -- all right. Jim, you're
25 sworn in?

1 MR. HALLEY: Yes, ma'am.

2 HEARING EXAMINER: All right. Why don't you
3 state your position with the county and how long you've
4 been there and then if you want to be accepted as an
5 expert, tell me what your expertise is and what you're
6 testifying about today and then give me some of your
7 background, education and work experience.

8 MR. HALLEY: Yes, ma'am.

9 Again, for the record, Jim Halley with the Lee
10 County Port Authority. I'm the Noise and Air Space
11 Project Coordinator. I have been there for 19 -- 18
12 months at this point. I am requesting to be sworn in as
13 an expert witness on air space issues involving Pine
14 Shadows Air Park.

15 I have a Bachelor's degree in aviation management
16 from Florida Institute of Technology. I have two
17 semesters completed in aviation safety Master's degree
18 with a focus in human factors and accident investigation.

19 After college, I was in the Marine Corps. I was
20 a close air support specialist, so I dealt with aviation
21 there, and then upon leaving the Marine Corps, the last 18
22 months have been with Lee County Port Authority.

23 HEARING EXAMINER: Okay. You graduated from FIT
24 in 2003?

25 MR. HALLEY: Yes, ma'am.

1 MR. FREDYMA: Could you tell us just a little bit
2 about what you do as the Noise and Air Space Project
3 Coordinator?

4 MR. HALLEY: In reference to the air space, my
5 air space coordinator duties, I review all tall structures
6 for the county under the Land Development Code, reviewing
7 them against FAA, FDOT standards, whichever might apply,
8 and ensuring safe operation of aircraft and coordinating
9 with the FAA, FDOT and permit seekers, sponsor of any
10 project, any airport owners and operators to make sure
11 that everybody is on board and safety is paramount
12 obviously.

13 MR. FREDYMA: You are hired by the Port Authority
14 to do this function?

15 MR. HALLEY: Yes, sir.

16 MR. FREDYMA: I don't have any other questions
17 for Mr. Halley at this point.

18 HEARING EXAMINER: Questions by the County
19 Attorney -- I'm sorry, questions by the applicant's
20 attorney?

21 MR. UHLE: No questions.

22 HEARING EXAMINER: Okay. Any objections to him
23 being accepted as an expert in aviation safety?

24 MR. UHLE: No.

25 HEARING EXAMINER: Okay. He's accepted then.

1 MR. HALLEY: Okay. When this all came about,
2 Tony asked Bill, who referred it to myself, about an
3 issue, building structure on the western part of Pine
4 Shadows Air Park, and it's shown by the diagram, and I
5 have some other copies if nobody has a copy, if somebody
6 doesn't have a copy, I have other copies of this.

7 It's approximately 853 feet off to the west of
8 Runway 9. The runway is 927.

9 Currently there are no standards that cover or
10 protect a private use registered airport. It's not
11 licensed with FDOT, it's not licensed with the FAA, it's
12 not inspected.

13 In March of -- in October of 2003, state
14 legislator made an amendment to Statute 330, which removed
15 the licensing and regulation requirements for private use,
16 privately owned registered facilities such as Pine Shadows
17 Air Park.

18 However, prior to that change in October of 2003,
19 the standard that was used, the regulation criteria is
20 what is depicted on this map. It is a ten to one slope
21 exactly as depicted on that, from the end of the runway
22 extending out, just as shown in the -- if I can pull this
23 up here real quick -- extends out 3,000 feet. The initial
24 width is 100 feet at the end of the runway and extends out
25 to 700 feet wide, 3,000 feet out.

1 And based on that, we had calculated that on that
2 slope there would be above the airport elevation, which is
3 listed on the Miami sectional chart as 20 feet, that there
4 would be a 42.65 foot -- would be the height of that slope
5 at the eastern most part of that parcel which is where we
6 came up with the 42.65 above runway elevation or 62.65
7 above mean sea level.

8 HEARING EXAMINER: Okay. Now, you're going to
9 need to explain to me because I know nothing about this
10 kind of stuff. When you're telling me it's 42.65 feet at
11 the height of the slope above the runway, does that mean
12 then that when the plane is coming through, that that's
13 how high it is from the wheels of the plane to the ground?

14 MR. HALLEY: What's happening, I think earlier I
15 had said ten to one, but it's 20 to one, I misspoke.
16 They're protection services and for some like ours,
17 there'll be Page Field, it's governed by the FAA. For
18 other airports, it will be governed by FDOT, but for
19 something like this, it use to be covered under Florida
20 Administrative Code 1460 and that provides protection
21 surface which if an object, a tree, a building, a crane,
22 whatever, would penetrate that approach surface, that
23 would be construed as a hazard to safety.

24 HEARING EXAMINER: Okay.

25 MR. HALLEY: As a hazard to aviation operations.

1 That slope -- prior to October of 2003, that slope was a
2 20 to one slope beginning at the end of the runway. There
3 was no buffer.

4 Some airports have a 200 foot primary surface
5 extending. This began from the end of the runway for a
6 privately owned registered airport like this.

7 HEARING EXAMINER: Okay. So now let me get this
8 straight so if the building that we're talking about is
9 going to be 853 feet west of the end of the runway --

10 MR. HALLEY: Yes, ma'am.

11 HEARING EXAMINER: -- and they've got to go -- is
12 it one foot for every 20 feet out or 20 feet for every one
13 foot out?

14 MR. HALLEY: It's 20 feet out for every one foot
15 up.

16 HEARING EXAMINER: So that would be just
17 essentially 40 feet --

18 MR. FREDYMA: 42.65 feet.

19 HEARING EXAMINER: So that's where the 42.65
20 feet --

21 MR. HALLEY: Yes, ma'am, 853 divided by 20.

22 HEARING EXAMINER: So if they had a 60-foot
23 building there, then they'd smack into it?

24 MR. HALLEY: That would penetrate the approach
25 surface.

1 HEARING EXAMINER: Okay. All right. Sometimes
2 you have to draw me pictures, you know. Okay. So the
3 42.65 feet then is the maximum height that any structure
4 can be before it actually gets into the danger zone
5 essentially?

6 MR. HALLEY: Yes, ma'am. That is the maximum
7 height above runway elevation because that 20 to one slope
8 extends from the runway elevation, which, according to the
9 Miami sectional, is listed as 20 feet.

10 HEARING EXAMINER: Okay. That doesn't mean that
11 the 42.65, that's not actually where the plane is going to
12 be, he's going to be taking off at a greater angle than
13 the 20 to one? He's going to be taking off at a higher
14 angle, isn't he?

15 MR. HALLEY: Correct, ma'am. This is actually an
16 approach slope so this would be for an approaching
17 aircraft.

18 HEARING EXAMINER: Coming in?

19 MR. HALLEY: Yes, ma'am. An aircraft taking off
20 would be coming from the east side of the runway,
21 traveling west and the takeoff is at a greater -- a
22 steeper angle than an approach. An approach is a much --

23 HEARING EXAMINER: Okay. It's shallower because
24 they've got to come in and touch down?

25 MR. HALLEY: Yeah. I'm sure we've all had a hard

1 landing where, you know, you slam in. You want to come in
2 nice and -- you know, for Pine Shadows they have a
3 three-and-a-half degree glide slope, I believe is correct,
4 off of the website, and, you know, three to three-and-a-
5 half degrees is pretty much the standard of the angle
6 coming in. But you want that to be more shallow than a
7 takeoff.

8 HEARING EXAMINER: Okay. All right. I'm
9 beginning to understand a little bit now. Thank you. Go
10 ahead.

11 MR. HALLEY: We were just asked to perform the
12 calculations, what might be allowed at that location and
13 that is exactly what we came up with based on the 1460.

14 HEARING EXAMINER: So then do you agree with
15 staff's recommendation to reduce the height of the office
16 building out here by U.S. 41 to 25 feet?

17 MR. HALLEY: I agree that that would not
18 penetrate the criteria that was used in this review.

19 HEARING EXAMINER: Okay. So that would reduce
20 any potential risk --

21 MR. HALLEY: Yes, ma'am.

22 HEARING EXAMINER: -- for the approach?

23 MR. HALLEY: Less risk than going to 42.65,
24 correct.

25 HEARING EXAMINER: Okay. Okay. Questions of

1 this witness by anybody? County Attorney?

2 MR. FREDYMA: Tony first.

3 HEARING EXAMINER: Tony, do you have any
4 questions?

5 MR. PALERMO: No, no. Thank you.

6 MR. FREDYMA: I do if I may. My first
7 observation is I think we're sadly outnumbered here by
8 pilots in the audience, but be that as it may, the height
9 limitation that's being proposed of 25 feet for the office
10 building out towards 41 does not penetrate that zone. The
11 height that has been suggested as a maximum of 15 feet for
12 the storage area that would be at the easterly end, that
13 also would not penetrate that zone; is that correct as
14 well?

15 MR. HALLEY: Correct. I did all these
16 calculations from the easternmost point of that property.

17 MR. FREDYMA: Okay. Really the only other
18 question I had was, you begin your calculation, I don't
19 think you can see it on this one, but out here and that
20 you call the end of the runway, which is actually some
21 distance from the actual end of this --

22 HEARING EXAMINER: The west end, yes.

23 MR. FREDYMA: How do you determine that? Is that
24 based on the design of that particular runway?

25 MR. HALLEY: Well, if you look at an area, you

1 can clearly see the runway and lines that would indicate
2 where the runway is.

3 MR. FREDYMA: I don't know anything about that.
4 That's why I'm asking.

5 MR. HALLEY: Yes, sir. You can see the runway
6 and the lines.

7 MR. FREDYMA: So the end of that runway is
8 actually marked and considered to be not here but actually
9 a point that's further over, further to the east?

10 MR. HALLEY: Correct. I'm assuming that those
11 buildings to the west would be hangars, and I'm assuming
12 that that extended part of the paved surface to the west
13 of the runway would be the taxiing area.

14 MR. FREDYMA: There's a fuel farm there which --

15 HEARING EXAMINER: I think at one point there
16 was, but I think now they're planning on putting storage
17 there.

18 Anything else, John?

19 MR. FREDYMA: No, that was it for me. Thank you.

20 MR. UHLE: I do have one question to elaborate on
21 John's question.

22 The 853 foot calculation, did you just do that on
23 an aerial photograph or did you use any other documents to
24 calculate that?

25 MR. HALLEY: I went to the property appraiser's

1 website and got the calculation off of that and that's how
2 I got that 853.

3 HEARING EXAMINER: Let me ask something else
4 then. We had testimony, of course you weren't -- I don't
5 think you were here last time.

6 MR. HALLEY: No, ma'am.

7 HEARING EXAMINER: But we had testimony that the
8 runway is 3,000 feet long or something, okay. But that
9 most of your little prop planes, or whatever they are,
10 don't take the entire runway, but there are three jets out
11 there that do. That they literally run from one end to
12 the other end in stopping and starting, you know, in
13 taking off and in landing. Now, does that fact change
14 your opinion as far as the safety zone and the safety of
15 the incoming aircraft or outgoing?

16 MR. HALLEY: I would have to know more about the
17 aircraft, the jets we're talking about, what their takeoff
18 lengths are, what their landing lengths are. Every jet
19 has --

20 HEARING EXAMINER: Something different?

21 MR. HALLEY: -- different characteristic, you
22 know, based on a thousand different things. Weight, you
23 know, who's in the aircraft, how much fuel you have on.
24 So it would all depend on what that -- but based on the
25 criteria that's -- the most recent criteria that's been

1 applied to an airport like this, that 20 to one is the
2 protective slope, that is the approach slope.

3 HEARING EXAMINER: You use that even though it's
4 no longer a legislative or a statutory requirement?

5 MR. HALLEY: Yes, ma'am. There's no other
6 criteria back in 2003. They relinquished responsibility
7 of reviewing those airports.

8 HEARING EXAMINER: Okay. So this is a sort of at
9 risk situation for anybody that uses that airport?

10 MR. HALLEY: Yes, ma'am.

11 MR. FREDYMA: Is that still a good standard,
12 though, even though maybe not formally applicable to this
13 runway?

14 MR. HALLEY: Your 20 to one slope is something
15 that is applied to certain FAA airports, FAA regulated by
16 parts of -- their's is a 20 to one slope.

17 It does start 200 feet off the end of the runway,
18 but it is still -- it's for most larger runways.

19 HEARING EXAMINER: Page Field has that then?
20 They use the 20 to one?

21 MR. HALLEY: Page Field uses -- for one runway
22 it's a 40 and a 50 to one and the other one is it's a 34
23 to one. Those are more restrictive.

24 HEARING EXAMINER: More restrictive because they
25 have the bigger planes?

1 MR. HALLEY: Longer runways, bigger planes,
2 different approaches, you know, IOS.

3 HEARING EXAMINER: Oh, the things you learn in
4 this job. Okay.

5 Anything else? Questions, Mr. Madden?

6 MR. MADDEN: I have a few questions. I don't
7 know if it's best to step here to get it on the audio
8 tape.

9 HEARING EXAMINER: You'll be fine there.

10 MR. MADDEN: I don't want to crowd Mr. Halley.

11 Okay. Mr. Halley, again, would you tell me what
12 your job title is again?

13 MR. HALLEY: I'm the Noise and Air Space Project
14 Coordinator.

15 MR. MADDEN: Okay. And with doing that, you had
16 mentioned something about your job description includes
17 reviewing projects for public safety?

18 MR. HALLEY: For tall structures, for safety as
19 it relates to the airports.

20 MR. MADDEN: I appreciate your description of the
21 20 to one slope. The FAA restrictions that -- we said
22 that this is a registered airport and that in 2003 things
23 changed, but would you please explain for the Hearing
24 Examiner how facilities like Page Field or other ones that
25 have the same or similar restrictions, they don't use the

1 end of the runway, they use the primary surface
2 designation, correct?

3 MR. HALLEY: Correct.

4 MR. MADDEN: And I think Page Field is --

5 HEARING EXAMINER: Okay. Somebody explain to me
6 what that is.

7 MR. HALLEY: Primary surface is a surface on the
8 ground of the runway elevation that extends. For Page
9 Field there's two different sizes. One runway has one
10 that's 1,000 feet wide starting at the center line, 500
11 feet on each side of the center line, and extends 200 feet
12 beyond the end of the runway.

13 HEARING EXAMINER: So the pavement could actually
14 be 1,200 feet wide but only a thousand feet of it has
15 actually got this special pavement on it or whatever for
16 the birds to fly on?

17 MR. HALLEY: The runway wouldn't be 1,200 feet
18 wide. The runway here at Pine Shadows is 50 feet wide.
19 But, for example, for Page Field, the primary surface is a
20 surface that extends 500 feet on each end of the center
21 line, on each side of the center line along the length of
22 the runway. And it extends 200 feet beyond the end of
23 each runway.

24 HEARING EXAMINER: Okay. All right.

25 MR. HALLEY: And the approach slope for Page

1 Field or for RSW, for Southwest Florida International,
2 that begins at the end of the primary surface as opposed
3 to the end of the paved runway.

4 MR. MADDEN: So if we use a similar analysis for
5 Pine Shadows, I realize it may not necessarily apply
6 because it's consideration when there's public at the end
7 of the runway, where would the primary surface start for
8 Pine Shadows?

9 MR. HALLEY: That would start 200 feet or it
10 would end 200 feet beyond the end of the runway, so it
11 would bring that 853 down to 653, you'd divide that by 20,
12 you'd get a maximum height of that 20 to one approach
13 surface would be 32.65 if there were a primary surface
14 applied to this airport.

15 MR. MADDEN: And isn't it accurate that the
16 reason why Page Field and other similar facilities use a
17 primary surface calculation is because there is public on
18 either end of the runway, public uses, people and having
19 buildings; isn't that the reason why they use --

20 MR. HALLEY: Well, it's more for safety issues
21 for, you know -- I wouldn't say that Page Field has public
22 inhabitation, you know, on the sides and the ends of the
23 runways, but it's for a buffer essentially created.

24 HEARING EXAMINER: So if the guy over shoots,
25 he's got 200 feet to get that sucker under control and

1 stop?

2 MR. HALLEY: The primary surface isn't designed
3 for overshoots or things like that, it's just that buffer
4 around the runway from which all the approach surfaces and
5 transitional surfaces begin.

6 HEARING EXAMINER: Oh, okay.

7 MR. MADDEN: While he's on the stand, I think it
8 would be probably informative to look at the memorandum
9 that we sent to you. We have a recalculation based upon
10 that analysis that says if you were to use what we all
11 agree it's 850 feet from the end of the runway to the
12 parcel where we're talking about putting the high
13 occupancy, multi-story building, it's 850 feet from the
14 end of the runway, if the primary surface analysis, you'd
15 actually subtract 200 feet from that 850, you'd be left
16 with 650, and then the calculation here divided by 20
17 would be 32 feet.

18 HEARING EXAMINER: What's the minus 15 feet
19 though?

20 MR. MADDEN: That's for the storage, yes.

21 HEARING EXAMINER: So it's got 17 foot of
22 clearance? According to your calculation, there's 17 foot
23 of clearance at the storage area? That's between the
24 bottom of the plane and the top of whatever is in there?

25 MR. MADDEN: The top of the highest thing stored

1 in there, correct. And then we're talking about 32 feet,
2 32 foot for the calculation at the proposed building, and
3 I don't know, there is -- one of the aircraft registered
4 in there is a Lear 23 and by using this kind of analysis,
5 what kind of clearance are we talking about for a 25 foot
6 multi-occupancy building?

7 MR. HALLEY: It would be based on a 32 foot
8 height at that distance for a 25-foot building? It would
9 be 7, 32 minus 25 is 7.

10 MR. MADDEN: So the safe distance between the
11 building -- the glide path area as the regulations would
12 speak to if we use that analysis, would be a 7 foot
13 clearance between the top of the building and the bottom
14 of the plane coming in?

15 HEARING EXAMINER: That doesn't make sense.
16 You've got 17 for the property edge, which is the east
17 property edge over here, then you've got the proposed
18 building which is further away, so you have a 65 foot
19 clearance.

20 MR. MADDEN: 65 foot clearance, okay.

21 HEARING EXAMINER: There's a 65 foot clearance is
22 what your --

23 MR. MADDEN: 65 foot clearance so you'd have a
24 25-foot building, 65 -- you'd have a Lear 23 coming in 65
25 feet over this building and I think that's what the

1 analysis sets forth, right?

2 MR. HALLEY: Yes. I didn't calculate to the
3 western most part of the property, but that 200 foot,
4 minus the 200 is 18, it does give you 90 feet, if those
5 calculations -- they look correct.

6 HEARING EXAMINER: That's using the primary --

7 MR. MADDEN: Primary surface analysis.

8 MR. HALLEY: Yes, ma'am, that would be -- if you
9 were to apply a primary surface to this airport.

10 HEARING EXAMINER: Okay.

11 MR. MADDEN: The next question we have was in all
12 the analyses that's being done here, we're assuming normal
13 conditions, correct?

14 MR. HALLEY: Not IFR you mean? Just visual -- or
15 not an engine out?

16 MR. FREDYMA: Abbreviations are going to kill us.

17 MR. HALLEY: I'm sorry.

18 MR. MADDEN: Engine out, because we do have again
19 the memorandum that you have, because the planes are
20 registered in different states under corporations and
21 everything, it's very tough for the folks at our local
22 Port Authority to know what's out there. The three jets,
23 15 multi engines and 60 single engines and the number of
24 operations is accurate according to the association, and
25 they're the ones that run the airport so --

1 HEARING EXAMINER: Okay.

2 MR. MADDEN: And I've been sworn so I'll produce
3 that for the record.

4 These regulations are set up for normal
5 operations, correct?

6 MR. HALLEY: Yes, sir.

7 MR. MADDEN: And I think what we wanted to make
8 clear is in the event of an engine out situation or
9 adverse weather conditions and still landing, is it, I
10 guess -- I don't know how to phrase it -- is the margin of
11 error decreased when you put a high occupancy multi-story
12 building out there versus what's out there today?

13 MR. HALLEY: In terms of a non-standard
14 operation?

15 MR. MADDEN: Right.

16 MR. HALLEY: To speak intelligently about that,
17 I'd have to have was it a Lear 35, the operating handbook,
18 and, you know, to understand exactly what their one engine
19 out operation looks like and their angle of attack and all
20 of that. In terms of inclement weather, I could only find
21 visual approaches for the airport. I don't know if there
22 is any kind of instrument landing approach plan on file
23 with the airport, I couldn't find one. I found that it
24 was all visual flight rules, visual approaches.

25 MR. MADDEN: In the event of turbulence, placing

1 an additional multi-story, high occupancy building at the
2 end of the -- in your role as public safety in tall
3 structures, would it be recommended by the Port Authority
4 to place the new building at the end of the runway?

5 MR. HALLEY: We don't recommend. We either
6 approve or deny. And in terms of turbulence you're
7 talking about, I'm not an aeronautical engineer so I
8 couldn't speak intelligently about any kind of turbulence
9 or anything like that. But we would review against the
10 criteria and we wouldn't recommend, we would, you know,
11 permit or not permit.

12 MR. MADDEN: I don't think we have any further
13 questions. Thank you very much.

14 HEARING EXAMINER: Okay. So what I understood
15 you to just say is that the Port Authority does not permit
16 the use at that particular location, what you're going to
17 be permitting or denying is the height of that use. So
18 you don't look at what's in the structure, you don't look
19 at what the structure is going to be used for, you look at
20 the height of the structure in relation to the operation
21 of the airport?

22 MR. HALLEY: We look at what the structure is as
23 well. For example, if it was trees, if it was a berry
24 farm, we don't want a berry farm right off the end of a
25 runway, it's a wildlife attractant, you know.

1 HEARING EXAMINER: Yes.

2 MR. HALLEY: So we are going to look at what's
3 going on. We don't want a bunch of lights, you know, we
4 don't want, you know, a thousand lights on the end of a
5 runway because that looks like a runway. But in terms of
6 a structure itself, there's not much we review in terms of
7 what the actual building is unless there's housing birds
8 but --

9 HEARING EXAMINER: Okay. Okay.

10 MR. MADDEN: Just to follow up, two things. One,
11 there's a recommendation for an 8-foot wall at the end of
12 the runway. Would it be your recommendation that warning
13 lights be put on the top of the wall?

14 MR. HALLEY: An 8-foot wall at the end of the
15 runway? Where exactly --

16 MR. MADDEN: Concrete wall at the easterly edge
17 of Parcel C on our site plan.

18 MR. FREDYMA: Not necessarily the end of the
19 runway.

20 HEARING EXAMINER: I think it might be better to
21 show him on the aerial photograph, because the Master
22 Concept Plan won't mean anything.

23 MR. HALLEY: And that's just running north-south
24 running wall?

25 HEARING EXAMINER: Is it just on the north -- I

1 mean, just on the east end?

2 MR. PALERMO: All around here.

3 HEARING EXAMINER: I thought it was on all three
4 sides.

5 MR. PALERMO: Yes, all three sides.

6 MR. HALLEY: If it's 8 feet, it would not
7 penetrate that surface either with or without a primary
8 surface applied. Eight foot doesn't even come close to 32
9 or 42. If you're asking about construction lighting,
10 never hurts, construction lighting wouldn't hurt, but it
11 would not be required by any means.

12 MR. MADDEN: Okay. And then the other thing, and
13 I don't know if it falls in your job description, but in
14 terms of the analysis that we do for runways and for uses
15 adjacent to runways, is there a percentage that's used or
16 is there a number that's used for the majority of airport
17 accidents occur on takeoff and on landing?

18 HEARING EXAMINER: Are you looking at for
19 statistics, is that what you're asking?

20 MR. MADDEN: Yes. Because we saw a couple of
21 numbers and rather than me testifying to it, because I'm
22 not an expert in the area, I didn't know if that was
23 appropriate, you're conversant with -- I mean, there's a
24 reason why we regulate tall structures in the approach and
25 departure zones of airports. Is it true that a majority

1 of aircraft accidents occur on takeoff and landing?

2 MR. HALLEY: Without assessing a percentage,
3 there are more accidents that occur in the operation of a
4 takeoff or a landing than en route, and that's one of the
5 things when we do review something like this, there are
6 protection services for schools, churches, things like
7 that that we, you know, for that and for noise issues, you
8 know, limited uses within certain areas. But in terms of
9 are there more accidents on takeoff and landing than
10 opposed to an en route operation, yes.

11 MR. MADDEN: I don't have any further questions.
12 Thank you very much.

13 HEARING EXAMINER: Anything else from County
14 Attorney or the applicant's attorney?

15 MR. FREDYMA: No.

16 MR. UHLE: No.

17 HEARING EXAMINER: All right, Jim, I think I've
18 got it. Hang around, okay, just in case I have to ask you
19 some more questions after some of the public testifies.

20 MR. HALLEY: Yes, ma'am.

21 HEARING EXAMINER: Thank you, sir.
22 County's next witness.

23 MR. PALERMO: We're ready for Environmental
24 Sciences who want to address the buffering and irrigation
25 issues.

1 HEARING EXAMINER: I was hunting for you. I
2 didn't realize you were way in the back.

3 All right, Susie, have you been sworn in?

4 MS. DERHEIMER: Yes, I have.

5 HEARING EXAMINER: Okay. Thank you.

6 Thereupon,

7 SUSIE DERHEIMER,

8 called as a witness by the County, having been previously
9 duly sworn, was examined and testified as follows:

10 MS. DERHEIMER: For the record, Susie Derheimer,
11 Lee County Environmental Sciences. I have been sworn. I
12 have been tendered an expert witness in environmental
13 planning in the past and I request to do so today.

14 MR. UHLE: No objection.

15 HEARING EXAMINER: Okay, accepted.

16 MS. DERHEIMER: I'd like to address -- I believe
17 in Tony's memorandum dated January 16th, 2009, one of the
18 conditions that was recommended was the placement of a
19 vegetative buffer along the open storage wall along the
20 north property line.

21 It was, and I'm not sure the sequence here, but
22 the applicant and myself had a discussion with regards to
23 what would be required of this buffer in terms of
24 irrigation.

25 The Land Development Code, Chapter 10-416,

1 specifically identifies the type of irrigation that needs
2 to be installed with any required buffer, be it from Land
3 Development Code or from conditions of a resolution, and
4 they requested another type of irrigation be required, so
5 that would entail a deviation from the Code.

6 I want to get that on the record, that if -- I'm
7 not sure, the applicant needs to request a deviation from
8 Chapter 10-417 if full irrigation is not going to apply.

9 In our discussions, we discussed what type of
10 irrigation, if it wasn't going to be the full blown, would
11 apply to this buffer. Environmental staff -- the
12 applicant requested hand watering, environmental staff
13 can't support hand watering, but could support with
14 detailed conditions temporary irrigation to be installed
15 within this area, this buffer area only.

16 I have come up with some conditions, I'm not
17 sure -- I want to actually ask Madam Hearing Examiner how
18 she would like that to be addressed. That's one issue.

19 The next issue is the actual planting of -- the
20 location of the buffer. Chapter 10-421(a)(5) addresses
21 the planting of buffers and easements, and I'm going to
22 approach the Master Concept Plan to identify the area I'm
23 speaking of.

24 The open storage area is proposed in Parcel C.
25 The wall on the Master Concept Plan is proposed on the

1 property line. The required buffer as conditioned by
2 staff is required on the exterior side of the wall.

3 As proposed -- where the wall is proposed now
4 would put the buffer in the right-of-way. Chapter
5 10-421(a) does not allow buffers to be placed in the
6 right-of-way. Environmental staff cannot support a
7 deviation for that request, so, therefore, any planting or
8 buffer would require that the wall be moved inside of the
9 property to allow a plantable area within the property
10 lines.

11 Another proposal which brings to light, another
12 problem was, there is a ten foot public utility easement
13 along the north property line.

14 Chapter 10-421 states that required plantings
15 cannot be placed within a public utility or drainage
16 easement unless written permission from the entities that
17 have ownership in that easement allow it.

18 Therefore, if written permission cannot be
19 obtained, then a seven-and-a-half foot plantable area will
20 be -- need to be provided outside that easement.

21 HEARING EXAMINER: Okay.

22 MS. DERHEIMER: Another option is to, which the
23 applicant brings up in their 24-hour letter, is to vacate
24 the easement. So if that easement is vacated, then that
25 plantable area can occur along the property line.

1 There's a lot of "ifs" going on here, so, again,
2 I'm not real sure how to actually word and recommend a
3 condition for this buffer.

4 HEARING EXAMINER: Okay. All right. My
5 understanding from the applicant's memorandum was that
6 they were going to seek to vacate that easement, that
7 public utility easement.

8 MS. DERHEIMER: That is my understanding also.
9 But that application, to my knowledge, has not been
10 filed. There's been no approval so we're unsure if or
11 whether or not that easement can be vacated. I'm not
12 sure.

13 HEARING EXAMINER: Okay. County Attorney.

14 MR. FREDYMA: If I may, to follow up on part of
15 that, the placement -- as Susie has indicated, the
16 placement of the buffer within the utility easement could
17 be accomplished if they vacated as she indicated.
18 Placement of the vegetation in the road easement, you
19 cannot acquire or ask for deviation or variance from that
20 part of the provision. So that is going to have to be met
21 either by deviation with respect to the buffer requirement
22 itself as well as perhaps the location within the
23 property, but you cannot put the buffer in the road
24 easement. And the placement of the wall then becomes key
25 in that consideration. And that's both in -- Susie said

1 in 10-421 and it also gets picked up in 10-416 as far as
2 no deviation or variance can be requested.

3 HEARING EXAMINER: All right. Matt, did you have
4 something?

5 MR. UHLE: I'm going to have Mr. Roeder respond
6 to this. I don't disagree with anything that John said
7 legally.

8 HEARING EXAMINER: Okay. Okay. All right.
9 Susie, have you met with Mike Roeder to try to work out
10 conditions or --

11 MS. DERHEIMER: I do have some language that --
12 for the temporary irrigation.

13 HEARING EXAMINER: Okay.

14 MS. DERHEIMER: In terms of the buffer placement,
15 that's all addressed in the Code so I'm not real sure if
16 that can be handled as per the Land Development Code in
17 terms of vacation or getting permission, written
18 permission, from the entity to place that buffer in the
19 easement.

20 HEARING EXAMINER: Okay.

21 MR. FREDYMA: I don't know who holds the rights
22 in that utility easement, whether it's dedicated to the
23 public or whether it is --

24 MR. UHLE: It is.

25 MR. FREDYMA: Is it?

1 MR. UHLE: Yes.

2 MR. FREDYMA: And I don't know where utility
3 lines are.

4 MR. UHLE: There are no lines. It's just been
5 paved.

6 MR. FREDYMA: Lee County Utilities, I know,
7 oftentimes will put utility lines actually in the road
8 right-of-way and not necessarily on the property even if
9 there's an easement there. The configurations vary with
10 property so that certainly is a possibility. How it will
11 play out, I don't know.

12 HEARING EXAMINER: Susie, why don't you give the
13 temporary irrigation conditions that you have come up
14 with? You provided those to Tony and to Mike, all right.
15 And when we have a break, you guys look these over and all
16 three of you discuss everything and then we'll go back on
17 the record at some point and clean up, finish up the
18 conditions and whatnot.

19 I do need them to see them, though, before we
20 start entering them in the record. I'd like to have their
21 input on them.

22 MS. DERHEIMER: Okay. And I'm tweaking them, so
23 I'd like to -- while this proceeds, I can type them up and
24 get a copy to both the applicant and Tony.

25 HEARING EXAMINER: Okay. All right. And your

1 issue No. 2 totally depends on what the applicant is going
2 to do, you know, what they're going to -- or what they
3 envision doing to resolve that.

4 MS. DERHEIMER: Right.

5 HEARING EXAMINER: Okay. Questions of this
6 witness by the County Attorney?

7 MR. FREDYMA: No, ma'am.

8 HEARING EXAMINER: Anything else?

9 MR. UHLE: No.

10 HEARING EXAMINER: Okay, Susie, thank you.

11 All right. Any other county witnesses?

12 MR. PALERMO: No. Thank you.

13 HEARING EXAMINER: Matt, do you want to bring
14 your witnesses up?

15 MR. UHLE: I only have one witness.

16 Thereupon,

17 MIKE ROEDER,
18 called as a witness by the Applicant, having been
19 previously duly sworn, was examined and testified as
20 follows:

21 MR. ROEDER: Good morning, Madam Hearing
22 Examiner.

23 For the record, my name is Mike Roeder with Knott
24 Consoer here on behalf of the applicant. And I have been
25 accepted as an expert witness in prior hearings and would

1 ask that you --

2 MR. UHLE: I don't think he needs to be
3 requalified.

4 HEARING EXAMINER: You were qualified the last
5 hearing, so your qualifications will carry through.

6 MR. ROEDER: Okay, thank you.

7 Just for the benefit of anybody that wasn't here
8 at the first hearing, I think it's important to explain
9 what this request is all about because we thought when we
10 started, this was a fairly simple request.

11 This property was zoned to CPD in 1998 basically
12 to legitimize existing storage use that was ongoing on the
13 property for many, many years, and it never had commercial
14 zoning up until that point.

15 And when that zoning was approved, it was
16 approved with several listed uses and conditions, but most
17 importantly that zoning allowed for open storage on the
18 front parcel where the office building and parking are
19 shown now, either open storage or mini warehouses in that
20 location.

21 The rear didn't really show any uses because at
22 that time it was used as a staging area for the fuel pump.
23 In the original design there was a fuel pump there, and
24 that's where the planes came to be fueled up.

25 Before our client bought this property, they had

1 moved the fuel pump back off the property and they
2 don't --

3 HEARING EXAMINER: Is that on the aerial
4 photograph, it's that little white speck right there?

5 MR. ROEDER: Yes, that's where it is.

6 HEARING EXAMINER: Okay.

7 MR. ROEDER: So our client said could we relocate
8 this open storage use from the front of the property to
9 the rear where we have an existing paved area and it just
10 makes more sense from a land use standpoint to have that
11 located in the rear. And we said, yes, that makes sense.

12 Now, what would you say for the front? And we
13 agreed that an office building was probably the least
14 controversial type of use you could propose there. We
15 didn't ask for any retail or fast food or anything like
16 that. We felt an office building was most logical thing,
17 so that's what drove that request is what would be a
18 replacement use for the front parcel.

19 So really that's the essence of the request.
20 Move the storage from the front to the rear and add an
21 office use in the front.

22 When we had our hearing last year, most of the
23 time was spent on the buffering along the south side of
24 the property adjoining the 20/20 preserve because there's
25 a lot of physical constraints and there had never been a

1 buffer requirement when it was first approved on the south
2 side because at that time it was zoned for mobile homes or
3 was vacant, and these buildings were already there.

4 So we spent a lot of time discussing the
5 buffering, and I think we each laid out our issues in
6 that. And we also discussed the utility issue to some
7 extent. And then in the course of that hearing, two new
8 issues came up, and one was this glide path analysis which
9 the pilot said we really hadn't done that.

10 And although we thought it was intuitively
11 obvious that given the existing buildings and the height
12 of the things we were proposing, that that shouldn't be a
13 problem, we agreed that really needs to be done to make
14 sure to everyone's satisfaction, so we asked that the
15 hearing be continued so that could be accomplished.

16 There was also a new discussion about adding a
17 buffer on the north side of the storage area because all
18 we showed was a wall at the property boundary, and the
19 original approval had required a 15-foot buffer around the
20 open storage in addition to the wall up in front. And the
21 neighbors said, well, if you had to have a buffer in the
22 front, you should have to have a buffer in the rear. And
23 we said, well, that's a reasonable issue to discuss as
24 well, and that was part of our discussion over the
25 holidays.

1 I think on the glide path issue, we agree with
2 the Port Authority staff, and I think it's pretty clear
3 that even if you accept the revised methodology of the
4 neighbors, there's still a large margin of safety in terms
5 of the height. In the rear, even if you use their revised
6 methodology, the height is 32.5 feet and we are agreeing
7 to a height limit of 15 feet.

8 In the original application, we really hadn't
9 discussed a height limit for the storage area, and I think
10 that was a reasonable topic to address, so 15 feet is
11 agreeable and so we don't have any dispute on that. And
12 as we said, even with the revised methodology it would be
13 32.5 at the eastern end.

14 We also agreed to limit the height of the office
15 building to 25 feet from 35 feet, and their revised
16 calculation would be 90 feet there, so again we have a
17 large margin of safety in terms of height and existing
18 buildings are in the neighborhood of 20 feet as it is. So
19 the idea that a 25-foot building in the front of the
20 property would create any kind of a hazard is not a
21 reasonable concern I don't believe.

22 HEARING EXAMINER: So you're saying that the
23 existing hangars are 20 feet high?

24 MR. ROEDER: Approximately. I don't have the
25 exact height.

1 HEARING EXAMINER: Okay.

2 MR. ROEDER: But they're in that vicinity.

3 MR. UHLE: That's why I asked the question of Mr.
4 Palermo.

5 HEARING EXAMINER: Okay.

6 MR. ROEDER: So, really, that really just leaves
7 the issue of the buffer, and we had told the staff we
8 could agree to a buffer if we could plant it in the
9 existing roadway easement, which is a landscaped area, and
10 this gets to be kind of a technical issue because the
11 original zoning approval had granted a deviation from the
12 right-of-way buffering requirement.

13 Normally you have a right-of-way buffering
14 requirement. That was granted a deviation because the
15 easement is owned by the homeowners and they wanted to
16 have control of that landscaping in there, and we said
17 fine.

18 We believe that in spite of the language in
19 30-10-421, there is possibly conceivably buffering in the
20 right-of-way, if you look at it as a not required buffer.
21 The LDC 34-3005 for open storage does not speak to any
22 type of vegetative buffer. It only requires an 8-foot
23 wall where the open storage fronts residential uses and a
24 6-foot wall where it fronts the right-of-way. So we
25 believe the county could take the position that the buffer

1 was a non required bonus buffer and in that context could
2 conceivably be allowed in the right-of-way because you do
3 landscape right-of-ways all over the county.

4 It's not that the county doesn't allow for
5 plantings in right-of-way, it's just that they don't want
6 to have required buffers in the right-of-way. That's
7 supposed to be the property owner's obligation.

8 But in this case, as you can see, the pavement
9 goes right up to the property line and our proposed wall
10 is on the property line and when you look at Tony's memo,
11 even from the 16th, he talked about the buffer being
12 planted on the north side of the wall. So we were not
13 thinking that this was going to be an issue until we had
14 the discussions about the irrigation with Susie and it
15 became clear that now they were taking the position that
16 the buffer, if there was to be one, had to be on our
17 property which meant tearing up the asphalt and moving the
18 wall and then we have the added issue of the utility
19 easement.

20 And I think if you heard Susie, she said they're
21 willing to agree to a 7 1/2 foot buffer instead of a 15
22 foot buffer.

23 MS. DERHEIMER: Planting area, right.

24 MR. ROEDER: So what we said in our response to
25 that was if we can vacate that easement, and we believe it

1 should be doable because it's not used for utilities and
2 we can't imagine that Pine Shadows wants to have utilities
3 extended back to their large lot subdivision, then we
4 could agree to plant the buffer in that 10-foot area and
5 move the wall and accommodate this request. And we're
6 willing to make that effort to apply for the vacation.
7 And if that happens, that would be the most reasonable
8 compromise.

9 However, if we cannot amend the -- if we cannot
10 vacate that easement, we really don't have room to set
11 back 17 1/2 feet and still have access because you recall
12 from the last hearing, the access to this parking area is
13 not going to be from this driveway, that was a mistake on
14 the plan. It's going to be from here, it's going to come
15 through here, and, in fact, part of this pavement already
16 is the driveway to go back there. That would have to be
17 -- there's only 37 1/2 feet between the right-of-way and
18 the building, and so we just don't believe it's physically
19 possible to provide the buffer outside of the existing
20 utility easement and make the plan work.

21 HEARING EXAMINER: All right. So if you had to
22 move the wall -- what you're saying is then if you have to
23 move that wall in for the open storage area 17 1/2 feet,
24 that's going to cut down your driveway area, your access
25 into the open storage area to 20 feet?

1 MR. ROEDER: Right. And that would be two hard
2 surfaces on either side of that 20 feet which is not a
3 very good situation.

4 HEARING EXAMINER: I'm sorry. Give me that
5 again. What do you mean there's two hard surfaces --

6 MR. ROEDER: Well, you have a wall on one side
7 and you have an existing building on another side.

8 HEARING EXAMINER: Oh, I see, vertical
9 structures.

10 MR. ROEDER: There's no green space or any room
11 for error.

12 HEARING EXAMINER: The 20 feet wide would be wide
13 enough to get a motor home or a boat with trailer or
14 whatnot in through there. It's at the other end that
15 you've got to actually negotiate the turns that is going
16 to cause some problems.

17 MR. ROEDER: It would be very awkward. And at
18 that point we believe it's more reasonable to just say the
19 wall is sufficient because the code would only require a
20 wall. It's only that earlier CPD that added the plantings
21 to the wall, and so we don't believe that it's beyond the
22 realm of the county's regulations to say the wall by
23 itself would suffice.

24 HEARING EXAMINER: I understand your argument.
25 However, I happen to agree somewhat with the residents

1 that, you know, they'd like something a little more
2 aesthetically pleasing than a concrete block wall.

3 MR. ROEDER: I agree. And I think the simplest
4 solution is for the county to make a finding that this is
5 not a required buffer, that the buffer could be allowed in
6 the --

7 HEARING EXAMINER: But who owns the right-of-way?

8 MR. ROEDER: The homeowners. It's part of the
9 subdivision.

10 HEARING EXAMINER: So you're still planting a
11 buffer in their property?

12 MR. ROEDER: Right.

13 HEARING EXAMINER: Well, you've got to have their
14 permission to do that, though.

15 MR. ROEDER: Yes.

16 HEARING EXAMINER: I mean, you can't go out there
17 and just plant -- plant plants on somebody else's
18 property.

19 MR. ROEDER: That's correct.

20 HEARING EXAMINER: Okay. Okay. County Attorney?

21 MR. FREDYMA: I didn't have a comment.

22 HEARING EXAMINER: I'm sorry, I saw your pen go
23 up, I thought it was an indication you wanted to talk.

24 MR. FREDYMA: I understand his argument. Because
25 you can't get the deviation to put the vegetation in the

1 road easement, then you'd have to conclude as a deviation
2 that it's not required in this instance so you could seek
3 a deviation from that part of the requirement so you don't
4 violate --

5 HEARING EXAMINER: Yes, I understand the
6 argument. It's just that, you know --

7 MR. FREDYMA: The other question that actually
8 comes up, I guess, is that I'm not sure what's going to
9 happen with that utility easement, whether they can get it
10 vacated or not, given expansion of the various servicing,
11 you know, districts for water and sewer. But it does also
12 bring up, I suppose, a question about I'm not sure they're
13 talking about just a concrete wall.

14 I mean, we've had all kinds of walls and fences
15 and other things that had architectural format to them or
16 basis to them that have made them far more palatable than
17 they would otherwise be.

18 HEARING EXAMINER: Right. There's -- some of the
19 residential developments have some really nice decorative
20 wall types.

21 MR. FREDYMA: Yes, ma'am.

22 MR. ROEDER: At the last hearing we talked about
23 on the southern boundary where we clearly have to have a
24 masonry wall for safety reasons and we would have some
25 type of a pre cast decorative wall. Then on the other two

1 sides we might match that, but it might not be masonry.
2 It might be fiberglass or something like that that was not
3 so expensive, but it would match.

4 HEARING EXAMINER: Okay. All right.

5 MR. FREDYMA: There's room for a discussion there
6 somewhere I think.

7 HEARING EXAMINER: Okay. Okay. Questions of
8 your witness, Matt?

9 MR. UHLE: Mike, can you please describe what the
10 irrigation issue is and why we're talking about a
11 deviation for that?

12 MR. ROEDER: Yes. Our client has an irrigation
13 system in the front on 41 and a consumptive use permit was
14 just revised to accommodate that. And we believe to have
15 to extend that system from the front all the way to the
16 rear and amend the consumptive use permit, he'd much
17 rather have to do it manually and be responsible for
18 guaranteeing that it survived. Clearly that's his
19 obligation to do that, and it was just a matter of saving
20 time and money to not extend that system a thousand feet
21 and go back to the water management district and amend
22 that, it just seemed like since this buffer was a last
23 minute consideration, that that was a reasonable way to
24 approach the irrigation question.

25 HEARING EXAMINER: Okay. Now, you heard the

1 county staff indicate that they're not really amenable to
2 the hand watering situation, but you all had discussed
3 some other type of temporary watering arrangement.

4 MR. ROEDER: We agree with that.

5 HEARING EXAMINER: Okay. So what is the
6 temporary watering arrangement?

7 MR. ROEDER: Temporary water would be to have a
8 permanent hose above ground that goes back there, and it
9 would be watered on a regular basis for at least two or
10 three years until the planting became established.

11 HEARING EXAMINER: All right. So, now, the hose
12 that's going out there, is it going to be like a soaker
13 hose at the far end through the buffer so that up this way
14 you've got one of those -- what do they call those --
15 timer thingies that you set the timer for three days a
16 week a certain amount of time and it turns the water on
17 and let's it soak it down and then it turns it back off
18 again until the next day; is that part of the concept?

19 MS. DERHEIMER: That's part of the concept. The
20 details haven't been worked out and that was going to be
21 part of the conditioning because it's something that the
22 county has done before. So we're open to it because it's
23 been done before, so we have certain criteria that has to
24 be met.

25 The main thing is I think was that it can be

1 installed at grade. It's not something that has to be a
2 permanent, they have to dig into the, you know, ground.

3 And we're conditioning specific type of species
4 which would be drought tolerant, cold tolerant given its
5 location. We are conditioning buffer monitoring plans so
6 the county can keep -- make sure that the temporary
7 irrigation is working and also after the irrigation is
8 removed, which will be determined based upon their
9 establishment of the buffer, how they're surviving without
10 it. So it's a pretty detailed condition that I'm working
11 on.

12 I do have one question if you don't mind in
13 regards to this irrigation condition.

14 If you were to decide that the buffer could be
15 placed within the right-of-way which is not on the
16 property, is this something that we can condition given
17 it's not on the property?

18 HEARING EXAMINER: I can't decide. I cannot
19 allow it. I don't have any control over somebody else's
20 property. The only property I've got in front of me is
21 the property in this request, within the boundaries of
22 this legal description. And so, consequently, you know, I
23 mean, as much as they want to talk about having -- putting
24 the buffer in there and whatnot, I can't give them a wink
25 and a nod on that because I don't have the authority to do

1 it. So, you know --

2 UNIDENTIFIED SPEAKER: We concur.

3 MR. FREDYMA: I think you're probably more
4 constrained if you can look at things like the location of
5 the wall, the amount of buffering that you require or
6 don't require on the outside of it. I mean, because those
7 are the things that you do control.

8 HEARING EXAMINER: Right. And I understand
9 that. So --

10 MR. FREDYMA: The other thing that also plays
11 into this at some point, a consumptive use permit, perhaps
12 part of the reason for the temporary consideration is I
13 think there's a pretty good likelihood that they're going
14 to be asked to hook up to municipal water at some point
15 because the lines are there. That was one of the other
16 issues that we have, water and sewer. Once they're given
17 that notice, they generally have, I think, statute
18 provides one year, staff has suggested, I think, 90 days,
19 if I had remember right. But, regardless, if they get
20 that request, that will change that whole issue about
21 consumptive use.

22 HEARING EXAMINER: Well, I think they're being
23 required to connect for the front parcel anyway, or the
24 applicant has agreed to connect for the front parcel
25 because they are going to have, but my understanding or

1 recollection was that there's only one bathroom in all
2 four -- all eight of those hangar buildings?

3 MR. FREDYMA: They would be required to hook up
4 municipal water or water for whatever uses they're going
5 to have on the site.

6 HEARING EXAMINER: For the entire site?

7 MR. FREDYMA: Yes, ma'am.

8 MR. ROEDER: Well, I'm not sure that's true for
9 the irrigation. I don't think so.

10 MR. FREDYMA: Unless you're able to get some sort
11 of exception to maintain an irrigation well, typically
12 you're required to hook up and use that.

13 MR. ROEDER: I'm not sure about that. I think
14 irrigation is done from wells all the time.

15 MR. FREDYMA: It is but there --

16 HEARING EXAMINER: That's a different issue. It's
17 not something that we have to worry about right here right
18 now because, you know, we need to -- all right. If the
19 temporary watering arrangement is reached, they still need
20 a deviation, do they not?

21 MS. DERHEIMER: Correct, yes.

22 HEARING EXAMINER: So you're going to have to
23 request that deviation then.

24 MR. ROEDER: Well, we would concur with that
25 approach, with that asterisk that we want to vacate the

1 easement.

2 HEARING EXAMINER: Okay. All right. So the
3 alternative is then, you know, either you do the watering
4 plan, the alternate watering plan, temporary watering
5 plan, or you vacate the easement --

6 MR. FREDYMA: If I may --

7 HEARING EXAMINER: You're still going to have --

8 MR. ROEDER: The watering plan is regardless.

9 MS. DERHEIMER: The watering is within the
10 property lines. That was my concern. I can't condition
11 the watering --

12 MR. FREDYMA: The resulting configuration of the
13 buffer in terms of what you have and where you have it --

14 MS. DERHEIMER: And the wall.

15 MR. FREDYMA: And the wall, is going to depend on
16 what you can or cannot do with the easement.

17 HEARING EXAMINER: On the easement.

18 MR. FREDYMA: And what you feel comfortable
19 recommending.

20 HEARING EXAMINER: Okay. I'll look at the
21 property.

22 Is there any kind of a fence or anything out
23 there right now, Mike, that's set on the property line so
24 I know where the property line is on this property?

25 MR. ROEDER: Well, yes, but J is somewhere in

1 there.

2 MR. FREDYMA: Isn't it the edge of the pavement
3 right now, isn't that the property line?

4 HEARING EXAMINER: Is it paved all the way to the
5 property line?

6 MR. ROEDER: Yes. Is there a fence on your
7 property line right now?

8 MR. MacDUFF: Yes.

9 HEARING EXAMINER: At the end of the runway. No,
10 I'm talking about along the roadway.

11 MR. MacDUFF: Not along the roadway.

12 MR. ROEDER: I didn't think so.

13 HEARING EXAMINER: If the pavement is the end of
14 the -- at the property's edge along the right-of-way
15 there, that will give me an idea where the -- then I can
16 guesstimate where the 10 feet back would be, et cetera, et
17 cetera. I can get a feel for locations and whatnot from
18 that. Okay.

19 Anything else of your witness?

20 MR. UHLE: I don't have any other questions. I
21 just would note at this point that we're probably going to
22 want to put on a rebuttal case based on what the neighbors
23 say.

24 In addition to that, we're going to need to
25 address at the appropriate point the case that the county

1 put on last time on the disputed issues about the buffer
2 timing and the hookup to water and sewer. I'm going to do
3 that in the closing. I'm not going to do it now.

4 HEARING EXAMINER: That will all take place in
5 rebuttal.

6 Okay. Anything else of this witness by the
7 county? Anybody?

8 Okay. Mike, anything else you want to say for
9 the record?

10 MR. ROEDER: No.

11 HEARING EXAMINER: Thank you. Wait, hang on a
12 second. County Attorney's finger came up this time.

13 MR. FREDYMA: Have you and staff talked -- I know
14 that the issue of the wall, the buffer and the location,
15 especially the storage area has surfaced as a bigger issue
16 at this point. Have you explored all the alternatives
17 that you might agree to at this point or might consider?
18 Have you had that opportunity?

19 HEARING EXAMINER: On what?

20 MR. ROEDER: On the buffer.

21 MR. FREDYMA: On the configuration and location.

22 HEARING EXAMINER: Oh, okay. On configuration
23 and location, okay.

24 MR. FREDYMA: Because you have a whole range of
25 things that are possible. It's a question of whether

1 they're approvable or recommended for approval. I'm just
2 asking.

3 MR. ROEDER: Well, again, giving some deference
4 to the fact that this is a developed site, it's a fair
5 consideration.

6 HEARING EXAMINER: I understand. Okay.

7 MR. ROEDER: The one thing that I mentioned the
8 last hearing that didn't seem to be greeted with a lot of
9 enthusiasm, there may be room to plant perhaps arica palms
10 on the outside of the wall and keep those on our
11 property. I don't know exactly where that line is, but if
12 there's any room, you know, outside, you know, on that
13 utility easement edge, but again that would probably
14 require some type of endorsement from the neighbors and
15 then it's questioned do they want that kind of a buffer or
16 don't they. They'll probably say they don't want anything
17 back there, but that's the whole question, is this a
18 reasonable idea to relocate the open storage to the rear.

19 HEARING EXAMINER: Have you all met at all with
20 the homeowners association or with any of the residents of
21 the air park to discuss the buffer issue?

22 MR. ROEDER: We had a meeting, I think it was on
23 the 19th of December, just before the holidays, with Joe
24 and several of his clients. And we discussed all of these
25 issues and actually Joe had asked for a revised plan that

1 took off our easternmost access point and showed some
2 dimensions which we supplied to them under the theory that
3 maybe they would be looking at allowing for some buffering
4 in the easement, but we didn't hear anything back on that.

5 HEARING EXAMINER: Well, we'll ask them today
6 then while they're all here. Okay.

7 All right. Anything else? Thank you, Mike.

8 Any other witnesses for the applicant?

9 MR. UHLE: No. I guess the one thing that I
10 would say is I suspect that when you start writing a
11 buffering condition, there may have to be some if/ands
12 included in a -- I think that's going to be necessary.

13 HEARING EXAMINER: Yes. I'm envisioning that
14 already from the conversations.

15 MR. UHLE: It's obviously going to be important
16 to us that nothing in the condition be written to
17 effectively preclude us from doing the vacation and
18 putting the buffer in the vacated area.

19 HEARING EXAMINER: Okay. All right.

20 Before we go to public input then, why don't we
21 take a quick ten-minute break here, folks, and we'll come
22 back and start in with public input since the applicant
23 and staff has finished their basic presentation.

24 Now, do remember that after you all finish your
25 testimony, the applicant and staff have the opportunity to

1 respond to issues and whatnot brought up by you, so they
2 will have an additional opportunity to speak. You guys
3 will not be given the opportunity to address anything that
4 they bring up because they're responding to issues and
5 concerns that you're bringing up, okay? So if you think
6 about it now, you better bring it up because you don't get
7 a second chance. After you've spoken, that's it. Okay?

8 Ten minutes, let's be back here, please, at 20
9 minutes of 11:00. Water only in this room. Thank you.

10 (A recess was taken.)

11 HEARING EXAMINER: All right. Everybody is here,
12 let's go back on the record.

13 Okay. Anything else from the applicant or staff
14 before we start public input?

15 Okay. All right. Joe, are you going to
16 orchestrate?

17 MR. MADDEN: I'd really like to not. I'm going
18 to ask that the residents who want to speak to you
19 directly come up and speak to you directly on different
20 points.

21 HEARING EXAMINER: All right. Then why don't I
22 just go through the roll.

23 MR. MADDEN: Then what I'll do is a summary at
24 the end if it's okay with you.

25 HEARING EXAMINER: All right, that's fine.

1 Okay. Folks, what I'm going to do, I've got your
2 white forms. If you didn't submit me a white form, you'll
3 have to wave at me later. If you want to speak when I
4 call your name, please come up to the podium. If you do
5 not wish to speak, you can pass at that time. If you
6 recognize, though, if you do not speak here, you cannot
7 speak in front of the Board of County Commissioners. You
8 have to talk to me because they won't let you talk to them
9 unless you talk to me first. That's just the way they've
10 got the thing worked out.

11 Okay. Jerald Ellis.

12 Thereupon,

13 JERALD ELLIS,

14 called as a witness, having been previously sworn, was
15 examined and testified as follows:

16 HEARING EXAMINER: All right. State your name,
17 please, for the record, sir.

18 MR. ELLIS: Jerald Ellis.

19 HEARING EXAMINER: Give me your address and if
20 you can -- I don't guess you can, there's no place to show
21 me where you live so never mind, go ahead.

22 MR. ELLIS: I live in the community at 18580
23 Baseleg Avenue. I'm also the president of the homeowners
24 association, and I apologize for not making the last
25 hearing. I'm a professor at FGCU and I hate to give the

1 kids too many days off. They probably don't mind.

2 HEARING EXAMINER: Torture them, yes. Go ahead.

3 MR. ELLIS: Just two points I wanted to bring
4 up. The first one, I know the expert witness for the Port
5 Authority indicated at the end of the runway they do take
6 into consideration -- or in the vicinity of airports they
7 take into consideration churches, schools and things of
8 that nature.

9 However, I'm not so sure that I see the
10 difference between a room full of 30 people here than a
11 daycare. Of course children we value them at a much
12 higher degree. However, I would hate to see a room of 35
13 people in a hearing or an office building at the end of a
14 -- the approach end of a runway and a Lear 23 fly through
15 the window with -- literally we're talking about a 20 or a
16 30 foot discrepancy between the flight path and the top of
17 that building where 30 people would certainly perish.

18 I just don't see that it's a prudent use of the
19 end of that -- now, no one disagrees that the applicant
20 should be able to build or should be able to use his
21 property. However, is that the best use of that property?

22 I actually find it irresponsible to put people on
23 the approach end of a runway so close, so beneath -- or so
24 close to the flight path. That's my first point. And,
25 again, should other mini storage or whatever, you know, be

1 constructed up in the front, I think that's the most
2 prudent use of that property.

3 Regarding the back piece of property which is
4 most closely associated with our homes which are not
5 visible on any of these drawings up here on the board, but
6 obviously that is our community and we live there and we
7 pass by every day.

8 One of our neighbors likened it to that's our
9 golf course and to ease the buffer restriction even on the
10 east side, I mean, I don't feel that also -- I don't feel
11 that to be prudent either. When we're taxiing down the
12 runway, that's like us driving on our golf course, you
13 know, hitting on the ninth green. I'm not sure that the
14 county would approve concrete barriers around golf courses
15 without some type of a buffer. So as we taxi down that
16 taxi way, why should the buffer restriction be eased there
17 either.

18 I believe that as in the original plan, the 15-
19 foot buffer that was originally slated with the
20 vegetation, I believe it should still maintain its
21 intactness even if that open storage was moved to that
22 open ramp on the back side.

23 So those are my two points and we just wanted to
24 go on record on behalf of the association with those
25 comments.

1 HEARING EXAMINER: Okay. Questions by the County
2 Attorney?

3 MR. FREDYMA: Just for the record, are you a
4 pilot as well?

5 MR. ELLIS: Yes, sir.

6 MR. FREDYMA: Okay, thank you.

7 HEARING EXAMINER: Applicant's attorney?

8 MR. UHLE: No.

9 HEARING EXAMINER: I have a couple, Jerald, don't
10 leave yet.

11 All right. Now, the applicant has indicated that
12 the ten-foot wide easement that runs inside their property
13 line there is held by the property of the homeowners
14 association. I'm assuming that's your homeowners
15 association?

16 MR. ELLIS: No, that's dedicated to the public.

17 HEARING EXAMINER: Oh, it's dedicated -- okay, I
18 missed that somewhere then.

19 MR. UHLE: It's a public utility easement.

20 MR. ELLIS: I believe there's actually a 70-foot
21 easement there that runs the width of that property that
22 we own all the way to 41.

23 HEARING EXAMINER: Yeah, that's the roadway then.

24 MR. ELLIS: Yes. And originally that 70 feet
25 was, you know, in the -- in case aircraft were going to,

1 you know, utilize that at some time which, of course, we
2 understand they cannot use that right now, but I think
3 that was the original conception on that.

4 HEARING EXAMINER: Okay. Okay. All right. Then
5 I don't have any other questions because I was
6 understanding that the easement inside was also held by
7 the homeowners association. I missed my easements there.
8 Okay. Thank you, sir.

9 Okay. Andrew Shaw.
10 Thereupon,

11 ANDREW SHAW,
12 called as a witness, having been previously duly sworn,
13 was examined and testified as follows:

14 MR. SHAW: My name is Andrew Shaw. I live at
15 18761 Baseleg Avenue in the Air Park. I am a pilot,
16 though I am not as great a pilot as most of them are
17 here. I'm rather inexperienced.

18 And I would like the Board to take into
19 consideration that we do not live in a perfect world and
20 all takeoffs and landings are not perfect either,
21 particularly with inexperienced pilots.

22 I am concerned about the safety issue, and I just
23 wanted to state that and go on the record that I have
24 spoken here in case I want to speak again.

25 HEARING EXAMINER: Okay.

1 MR. SHAW: Thank you.

2 HEARING EXAMINER: Do you have any thoughts on
3 the buffer issue, sir?

4 MR. SHAW: Well, I think the buffer issue should
5 be laid out. In other words, I don't think it just should
6 be, okay, we'll put a ten-foot buffer in there, or
7 whatever it has to be, or a fence or whatever you're
8 talking about. I think it should be something that would
9 be solid and decorative and not demeaning to the Air Park
10 because this is where we live, ma'am. We pass by it every
11 day.

12 And I've heard things said here about temporary
13 this and temporary that, and I don't think anything should
14 be temporary.

15 I think it should be laid out and if a project is
16 worth doing of this magnitude, it should be done properly
17 from the start and not have things left to chance or when
18 it's going to be done or how it's going to be done.

19 It should be all laid out perfect, maybe not
20 perfect but as perfect as can be.

21 Thank you.

22 HEARING EXAMINER: Okay. Thank you, sir.

23 Questions by anybody?

24 Okay. Thank you, Mr. Shaw.

25 Is it Priscilla?

1 MS. SHAW: Yes.

2 HEARING EXAMINER: Okay, Priscilla, did you wish
3 to speak?

4 MS. SHAW: No.

5 HEARING EXAMINER: Okay. Thank you, ma'am.

6 Joe Llamas. I hope I pronounced that right.

7 MR. LLAMAS: Yes, ma'am, you did.

8 Thereupon,

9 JOE LLAMAS,

10 called as a witness, having been previously duly sworn,
11 was examined and testified as follows:

12 MR. LLAMAS: I am a member of the homeowners
13 association, and I live at 18832 Crosswind Avenue. I also
14 own another lot in the Air Park on Baseleg.

15 My main concern -- I have two main concerns, and
16 I'm relatively new to the Air Park within the past four or
17 five years.

18 Safety issue to me is the primary issue that has
19 to be considered. During the takeoff and landing and
20 unfortunately in the last day or two days, we've had a
21 couple of incidences, not at our Air Park, fortunately,
22 but I think it was in Naples, which you've seen in the
23 news, and if there's going to be an accident, it's going
24 to either occur during the takeoff or during the landing
25 phase typically.

1 You referred, Madam Examiner, you referred to the
2 takeoff angle being greater than the approach angle. What
3 I have found is in Florida on a 90 degree day in the
4 summer, and if you're fully loaded, the takeoff angle
5 seems to diminish with the density of the air as it
6 decreases.

7 Consequently, your takeoff is going to be much
8 shallower than what you, I believe, were thinking at the
9 beginning.

10 HEARING EXAMINER: Okay.

11 MR. LLAMAS: In addition to the safety in the
12 landing and takeoff phase, there's also a 10,000 gallon
13 aviation fuel tank sitting right adjacent to that property
14 in the back, and if anything were to happen, I think that
15 fuel tank could end up being a safety issue.

16 Now, that fuel tank has been permitted and it was
17 all permitted based on current usage of properties, et
18 cetera. And the request here is to change the current use
19 of properties, and I don't believe that should affect our
20 fuel tank at all. But I do think it affects the safety of
21 people adjacent if they're going to be placing high
22 density of people in that area.

23 The final thing I'd like to discuss is the
24 property value within the Air Park itself. I have been
25 told by the tax assessor's office that the Air Park has

1 the highest per acre value of any property in that area
2 and that value is precipitated by the runway and our other
3 common areas that we have.

4 I believe we're putting that in jeopardy, that
5 tax base in jeopardy, and we can mitigate that jeopardy to
6 some degree by making a few changes or having the
7 applicant make a few changes.

8 Currently when you enter the Air Park, the road
9 that enters off of 41 is owned by the homeowners
10 association and the applicant has an easement to use that
11 road to get to his property.

12 I would suggest that the applicant give up that
13 easement and allow the applicant to put a road adjacent to
14 41 onto his property as you make the turn off. He would
15 turn off, onto our property, but as soon as he turned off,
16 he would make -- he would go onto his property running
17 adjacent to 41 and he could access his property from that
18 road. That way we would not be impacted by the additional
19 traffic that his change is going to affect on the Air
20 Park.

21 HEARING EXAMINER: Do me a favor. Walk over here
22 to the aerial photograph and explain to me exactly what
23 you're envisioning there.

24 MR. LLAMAS: Right now -- here is 41. This is
25 the road, and he has an easement on that road. What we're

1 suggesting is -- or what I'm suggesting is as soon as he
2 makes this turn onto the road, he immediately puts in a
3 driveway area here (indicating), he owns all three
4 parcels, and then he can access all of his parcels from
5 this area here and it's not affecting our area at all.

6 HEARING EXAMINER: So you want the other access
7 points then closed?

8 MR. LLAMAS: Everything would be closed from this
9 point down (indicating).

10 HEARING EXAMINER: So the property would be
11 totally --

12 MR. LLAMAS: That would be in lieu of putting
13 another road off of here (indicating). Too many cuts in
14 41 make it terrible for everybody, for the traveling
15 public anyway.

16 The final item that I believe the petitioner
17 should be willing to do -- or the applicant should be
18 willing to do would be to agree to have the concrete wall,
19 which I don't understand why the wall to the south is
20 supposed to be fancier than the wall to the north or to
21 the wall to the east. The wall to the north and the wall
22 to the east is the wall that I see when I drive in or I
23 see when I'm landing, if I'm landing to the west. Those
24 are the two walls that I see. I don't see the wall to the
25 south. And the wall to the south is a wall that's been

1 placed in there for the preserve that's next door to us.

2 Besides doing the walls, I don't think there
3 should be any deviation from any codes in order to make
4 that property more valuable at the expense of my
5 property.

6 I believe that all deviations, all parts of the
7 change should be made with application to current code and
8 that current code be enforced. That would be buffers, et
9 cetera.

10 Thank you very much. If you have any questions.

11 HEARING EXAMINER: Don't go anywhere.

12 MR. LLAMAS: I won't.

13 HEARING EXAMINER: Questions by either one of the
14 attorneys?

15 MR. FREDYMA: No, ma'am.

16 MR. UHLE: No.

17 HEARING EXAMINER: Okay. You indicated that the
18 wall to the south is supposed to be fancier. Is there a
19 condition that I'm missing?

20 MR. LLAMAS: I thought when they indicated --
21 they indicated that the wall on the east end and the wall
22 on the north end might be fiberglass or something, because
23 it would be less expensive. In other words, they want to
24 get by on the cheap as it pertains to my area.

25 HEARING EXAMINER: Okay. So you don't have a

1 problem with a decorative wall.

2 MR. LLAMAS: No, ma'am.

3 HEARING EXAMINER: You would just like to make
4 sure it's a decorative wall and something of substance?

5 MR. LLAMAS: The applicant owns the property. I
6 happen to be in the development business also. I believe
7 he should be able to do what he wants with his property,
8 but I also believe he should do it on his dime and not on
9 my dime. And that wall should be a wall that you might
10 find in various communities as I drive through Fort Myers
11 area, Magnolia Point and those places.

12 HEARING EXAMINER: Okay. I thought maybe there
13 was a specific condition requiring some kind of
14 architectural features on that wall to the south when you
15 said that and I didn't recall seeing it.

16 Okay. Anything else of this witness?

17 Thank you.

18 MR. LLAMAS: Thank you.

19 HEARING EXAMINER: Jan or Tom Norton, either or
20 both. One at a time, please.

21 Thereupon,

22 TOM NORTON,
23 called as a witness, having been previously duly sworn,
24 was examined and testified as follows:

25 MR. NORTON: Good morning. My name is Tom

1 Norton. I live at 3641 Downwind Lane.

2 I'm fairly new to the Air Park, a little less
3 than two years. I'm a retired airline pilot from
4 Northwest Airlines.

5 We looked at many, many, many air parks and chose
6 this one because of what it is and where it is. And any
7 degradation (sic) of what we bought into would be definitely
8 against my principles.

9 My major concern will be brought up by a lot of
10 other people, but one thing that I have is with an office
11 building at the end of the runway, how long will it be
12 before we start getting calls every time an airplane flies
13 by somebody's window. And what is the county going to do
14 about it two or three years from now? I can well
15 imagine. I'm going to be out of there, not the office
16 building. So I'm definitely against it.

17 HEARING EXAMINER: Okay. All right. Questions?

18 MR. UHLE: No.

19 HEARING EXAMINER: Thank you, sir.

20 Jan, did you wish to speak?

21 MS. NORTON: No, I'll pass.

22 HEARING EXAMINER: Okay. Thank you, ma'am.

23 Linda Yorde. Linda Yorde?

24 MS. YORDE: Yorde.

25 HEARING EXAMINER: Yorde, okay. Are you

1 Scandinavian?

2 MS. YORDE: No, it was changed when the family
3 came from the old country from a J to a Y. That's what it
4 sounds like.

5 HEARING EXAMINER: You're going to need to pull
6 that microphone down. You're a little bit short there.
7 Thereupon,

8 LINDA YORDE,
9 called as a witness, having been previously duly sworn,
10 was examined and testified as follows:

11 HEARING EXAMINER: State your name for the
12 record.

13 MS. YORDE: My name is Linda Yorde, and I reside
14 with my husband Roger at 18771 Crosswind Avenue in Pine
15 Shadows. This is our home and we are permanent residents.

16 We have developed, owned and operated Yorde
17 Aviation in Delaware for several years prior to moving to
18 the Keys where we lived and were part owners as well as
19 manager, secretary and treasurer of a private airport for
20 over 20 years.

21 All that is to say we've been involved in
22 aviation, airports, zoning, FAA regulations for most of
23 our adult lives.

24 We are opposed to granting the request of the
25 applicant. Some of the grounds are that additional

1 occupied development this close to the end of the runway
2 is not needed and could endanger continued operation of
3 the airfield because of noise complaints from occupants of
4 a new office professional building.

5 Small airports throughout the country have closed
6 due to similar complaints, even though runways had been
7 established long before other development occurred.

8 Other communities are spending large amounts of
9 money for noise mitigation and buildings surrounding
10 airports.

11 Due to the history of code violations, we do not
12 believe the applicant can be relied on to meet conditions
13 which are set forth in Staff Report recommendations.

14 The burden would continue to be on Air Park
15 residents to report code violations as they are sure to
16 occur. Even today there is unauthorized storage of
17 vehicles, trailers, et cetera, on the south side of the
18 property.

19 We do not believe that Runway Street, which is a
20 private street owned and maintained by Pine Shadows
21 Homeowners Association, should be utilized by the proposed
22 additional development.

23 Although the applicant currently has an easement
24 to use our road, he does not contribute to its upkeep.
25 With the number of vehicles currently using the existing

1 development, the traffic count rivals that of the
2 homeowners. What will it be with 43 new parking spaces
3 east of the proposed building?

4 However, if further development is approved, we
5 have some recommend changes to be included in this or
6 subsequent approvals.

7 All three walls of the fence surrounding the
8 outside storage area need to be reinforced, finished
9 masonry. If you do anything other than reinforced, it's
10 subject to be blowing away and being a hazard to outlying
11 things if it's not permanent. It needs to be finished, it
12 needs to be aesthetically pleasing.

13 We all drive down that road. Our mailbox is out
14 close to 41. All of our mailboxes are out close to 41.
15 We all have to look at that, whatever is approved, as we
16 go in and out. That's our only entrance.

17 HEARING EXAMINER: Okay.

18 MS. YORDE: Minimum height of the trees on the
19 north side of the fence surrounding the outside storage
20 area needs to be addressed. They cannot be allowed to
21 grow into the trapezoid. And I understand the
22 environmental person was talking about certain kind of
23 species, and they have to be used, thought of in the
24 context of what are they going to be when they grow up.

25 HEARING EXAMINER: Okay.

1 MS. YORDE: We need to address soundproofing of
2 the new building so occupants do not complain of aircraft
3 noise during direct over flight during normal operations.

4 And then in the Staff Report prepared for the
5 December 4th hearing, in Section A, I would recommend
6 that -- we recommend they remove caretaker's residence.
7 We don't need any additional residence in that approach
8 end of the runway.

9 And delete Section 5 that says no retail sales.
10 You struck it in another area, Tony, up in the Schedule of
11 Uses. I think we just didn't get it there.

12 And in the same report, where it's talking about
13 the allowable uses that could be stored in that open
14 storage, it's says, after large trucks, i.e. semi
15 trailers, add garbage trucks, large motor homes, school
16 buses, fleet vehicles, et cetera.

17 We've been involved in areas where there was
18 property zoned for open storage and a waste management
19 company started using it for their garbage collection
20 trucks. So there's no question about whether they can be
21 there or not.

22 HEARING EXAMINER: Okay.

23 MS. YORDE: And these recommendations are in
24 addition to those outlined by Mr. Palermo in his January
25 16th memo.

1 In conclusion, we urge you not to approve the
2 applicant's request. If, however, you recommend approval,
3 request you consider incorporating the above suggestions.
4 Please remember whatever you approve, we have to live
5 with.

6 UNIDENTIFIED SPEAKER: Amen.

7 MS. YORDE: And we are both pilots.

8 HEARING EXAMINER: You are both pilots. All
9 right.

10 Questions by the applicant or staff?

11 MR. UHLE: No.

12 HEARING EXAMINER: County Attorney?

13 MR. FREDYMA: I think with regard to, Matt, you
14 can tell me if I'm remembering or noting this correctly,
15 with respect to Condition -- Section 5, it says, no retail
16 sales. We deleted, I think, the last half of the -- or
17 suggested that we delete the last half of that sentence so
18 the condition would simply read no retail sales are
19 permitted on the subject parcel. And, Matt and Mike, is
20 that correct, did we do that, or is that just my
21 scribbling on my --

22 HEARING EXAMINER: I've got that marked off on
23 mine as well.

24 MR. PALERMO: We must have discussed that.

25 MS. YORDE: All that was left in the copy I saw

1 was the fueling, single operation fueling.

2 HEARING EXAMINER: Oh, yeah. Yeah.

3 MR. FREDYMA: Your intention was you don't want
4 to delete the prohibition for retail sales. You don't
5 want retail sales there?

6 MS. YORDE: I want to delete that Section 5.

7 HEARING EXAMINER: Okay. Now, you understand
8 that right now with this in there, no retail sales will be
9 ever permitted on that property unless they come back
10 through another hearing. But when you start removing
11 that, that kind of leaves it -- you know, you've got uses
12 listed up here, but, you know --

13 MS. YORDE: Intent is to remove the section
14 regarding the single fueling operation.

15 HEARING EXAMINER: Yes, that has already been
16 done. So we've got that. So retail sales are not allowed
17 on the property.

18 MS. YORDE: Okay.

19 HEARING EXAMINER: That's what you wanted, okay,
20 good, because that's what we've got right at the moment.
21 Okay.

22 MS. YORDE: Thank you very much.

23 HEARING EXAMINER: Thank you, ma'am.

24 MR. FREDYMA: Is her husband going to speak?

25 HEARING EXAMINER: I don't have a white form for

1 Roger. Roger, are you here? Are you going to speak?

2 MR. YORDE: No, she does the talking.

3 HEARING EXAMINER: She does the talking, all
4 right.

5 MR. YORDE: I'll pass.

6 HEARING EXAMINER: All right. Robert Zook.

7 MR. ZOOK: I'll pass.

8 HEARING EXAMINER: All right. Thank you, sir.
9 Richard Dobson.

10 MR. DOBSON: I'll pass till the next time.

11 HEARING EXAMINER: Okay. Now, this may be it.
12 This is the last hearing for me. You can't talk to the
13 Board unless you talk to me. And the next hearing will be
14 in front of the Board of County Commissioners. Unless
15 somebody gets real long winded here today and we end up
16 bringing this little sucker back, you know, I mean -- your
17 best bet is to -- if you have a concern, to go ahead and
18 express it because that way then you can talk to the Board
19 of County Commissioners.

20 Thereupon,

21 RICHARD DOBSON,
22 called as a witness, having been previously duly sworn,
23 was examined and testified as follows:

24 MR. DOBSON: Richard Dobson, 3740 Downwind Lane.

25 HEARING EXAMINER: Are you sworn in, sir?

1 MR. DOBSON: Yes.

2 HEARING EXAMINER: Okay. Then I don't need to
3 swear you again.

4 MR. DOBSON: Most of the things that have been
5 said here I agree with, and I just wanted to make sure I
6 could come forward if I wanted to say something.

7 HEARING EXAMINER: So you agree with all of the
8 concerns that have been raised by your neighbors about
9 this property?

10 MR. DOBSON: Yes.

11 HEARING EXAMINER: Are you a pilot, sir?

12 MR. DOBSON: Yes, ma'am. I've been there for 20
13 years.

14 HEARING EXAMINER: Do you fly one of the little
15 multi-engine I think they're calling them or single
16 engines?

17 MR. DOBSON: It's a smaller home built airplane,
18 but it's big enough so I can fly to California. It's not
19 a small plane.

20 HEARING EXAMINER: Wow. Okay. I didn't know you
21 could do home built airplanes.

22 MR. DOBSON: If you want to come out and we'll go
23 riding some time.

24 HEARING EXAMINER: Did it come in a kit?

25 MR. DOBSON: No, not really. I just built one

1 myself.

2 HEARING EXAMINER: How interesting. Okay. No, I
3 can't do that. Possible conflict of interest.

4 MR. FREDYMA: I think you could take a flight. It
5 would be okay.

6 MR. DOBSON: When you finally do it, it's so
7 great, you can see why we're so happy with the place we
8 have.

9 HEARING EXAMINER: Thank you, sir, very much.

10 It would be okay until the News Press got ahold
11 of it, and then there would be some problems.

12 Bruce MacRitchie.

13 MR. MacRITCHIE: I will pass.

14 HEARING EXAMINER: Okay. Thank you, sir.

15 Carleton Moore.

16 MR. MOORE: I'll pass.

17 HEARING EXAMINER: Where is Mr. Moore? Okay,
18 there you are back there.

19 Robert Foltz.

20 MR. FOLTZ: Yes.

21 Thereupon,

22 ROBERT FOLTZ,
23 called as a witness, having been previously duly sworn,
24 was examined and testified as follows:

25 MR. FOLTZ: My name is Robert Foltz. I've owned

1 property and lived in Pine Shadows Air Park for
2 approximately 14 years. I'm a pilot.

3 I think my point was very well presented by Mrs.
4 Yorde. She did an excellent job, but I would like to
5 reserve my right to speak in front of the Commissioners at
6 a future time. And I am on the Board, one of the three
7 Board members of Pine Shadows Air Park.

8 HEARING EXAMINER: Okay. So your concerns, you
9 don't have any concerns different than what's been spoken
10 of here by the earlier --

11 MR. FOLTZ: No. It was very well stated. I
12 think safety is the major issue. You have an occupied
13 building in an aircraft path, and that's not allowed in
14 public use airports, Page, RSW, any of those places, so I
15 don't think it should be used here. She very well brought
16 that up and I won't make it redundant.

17 HEARING EXAMINER: Okay. Thank you, sir.

18 Questions of this witness?

19 MR. FREDYMA: No.

20 MR. UHLE: No.

21 HEARING EXAMINER: All right, thank you.

22 Patricia Fife.

23 Thereupon,

24 PATRICIA FIFE,
25 called as a witness, having been previously duly sworn,

1 was examined and testified as follows:

2 MS. FIFE: My name is Patricia Fife. I live at
3 18736 Baseleg Avenue.

4 I'm not a pilot. My husband is. He's a retired
5 US Airways Captain as well as owning his own aircraft so I
6 ride a lot.

7 I'm not going to be as eloquent, I'm sorry, as
8 Linda. She's awesome. But just to reiterate a few facts.
9 And I want to let this go on record, that this is not a
10 dispute, but I'd just like to put it on record as a
11 history. If I may submit pictures of what has been stored
12 on location in the past.

13 HEARING EXAMINER: Sure.

14 MS. FIFE: So Jay and I are buddies. He knows me
15 very well because I'm the one who has to call Code when
16 somebody else has a problem. But as I said, it's not a
17 dispute. I call Jay first so that he doesn't get fined.

18 But we've really had some messes there, and if
19 we're going to have that kind of junkyard outside storage,
20 we do definitely need a buffer.

21 The buffer on the east side facing the runway, as
22 Linda says, must be substantial in construction due to the
23 fact that the airplane blast, I don't think anybody really
24 brought that up, but they sit there and check their --
25 basically their engines and so they have to --

1 HEARING EXAMINER: They rev their motors.

2 MS. FIFE: Rev it, yes. And that blast would
3 knock down just a small fiberglass wall. It needs to be
4 reinforced concrete. And the side right there at that
5 fence on the east end is also our entrance gate. That's
6 where our podium is for visitors to come in, where we have
7 to pass through every day, right at that fence line that
8 you see there.

9 HEARING EXAMINER: Oh, I see. So you guys
10 actually have a gated type community?

11 MS. FIFE: Yes, it is gated.

12 HEARING EXAMINER: Okay. That's good to know
13 since I'm going to go out there. I mean, it would be nice
14 to know I've got to knock on somebody's door to get in.

15 MS. FIFE: You can see the gate here.

16 HEARING EXAMINER: Okay.

17 MS. FIFE: So it's the place where that fence
18 line is and where that blast would be because this is
19 where they check their engines. Our gate is here and this
20 is where you want to park all the stuff.

21 There have been cranes in there in the past.
22 They don't exceed the 15 foot limit, but they put a heavy
23 strain on our roadway, which we maintain, and doesn't seem
24 to be much of a consideration but we're only 75 lots.
25 We're not hundreds like Fiddlesticks, et cetera, and we

1 maintain a lot of runway, a lot of street, and we get no
2 compensation. And we just had that road paved.

3 They use it as a drag strip to check their cars,
4 et cetera. And the additional usage because of the office
5 building, the office building wouldn't be aesthetically
6 unpleasing, but it would be difficult for people to
7 conduct business with the noise factor. You know, when
8 you're on the phone with a client and you hear vroom
9 (indicating) right over the top of you, it's not going to
10 be happy, they're not going to be happy with us and we
11 were there first, which is sad to say.

12 We are an upscale community. We're not a
13 manufactured home community. Our values are up to a
14 million dollars and more, so we do have a good tax base.
15 We have about ten to fifteen homes yet that need to be
16 built, and we're not going to get them in the tax base if
17 we have a junkyard at our entrance gate.

18 The Planning Commission, there's the Citizens
19 Commission for North Fort Myers, I imagine Mr. Palermo is
20 involved in that, and they're trying to upgrade North Fort
21 Myers so that we are no longer the recipient of the
22 junkyards, et cetera. And if we approve this, who knows
23 what it's going to lead to in the future. So definitely
24 have a buffer. Maybe a limit on what can be specifically
25 stored there and hidden behind a nice wall,

1 architecturally pleasing wall.

2 There are also, which hasn't been mentioned,
3 neighbors across the street, you can see the homes there,
4 where that outside storage would be also in their
5 backyards, and they're going to have to look at this on a
6 24/7 basis.

7 So they weren't even brought into the picture.
8 They probably weren't even notified of what's going on
9 there.

10 MR. FREDYMA: Yes, they were.

11 MS. FIFE: They were?

12 MR. FREDYMA: Yes, ma'am.

13 MS. FIFE: Okay. Individually or -- because they
14 don't have an association over there.

15 MR. FREDYMA: All properties within 500 feet of
16 the property that's before us today were given notice by
17 mail and also a notice that was given in the News Press
18 publication and there were notices and signs.

19 MS. FIFE: So they just assumed we'd take care of
20 them.

21 MR. FREDYMA: Maybe, I don't know.

22 MS. FIFE: And really, I'm sorry, Jay, I love
23 you, but, you know, he should have done due diligence when
24 he bought the property to notice that we had a resolution
25 in place and it was put there to protect us when we gave

1 our okay to have the property rezoned. That's what was
2 dangled in front of us. Look, we have a resolution, this
3 is going to protect you forever. It's going to run with
4 the deed. And all of a sudden we're asked to have it
5 changed and that's kind of scary. We weren't aware that
6 that could ever be done. We went along with the CPD
7 knowing that we were safe.

8 That's all I have to say. Thank you very much.

9 HEARING EXAMINER: Okay. Thank you, ma'am.

10 MR. UHLE: Before she goes, I didn't look at the
11 photos, but are they date stamped?

12 MS. FIFE: Yes, they are. These are mostly the
13 old ones because, of course, I brought the ugliest ones.

14 HEARING EXAMINER: These are 2006.

15 MR. UHLE: All right. As long as they're date
16 stamped 2006.

17 MS. FIFE: They are. The attorney has a whole CD
18 of pictures that I have taken for zoning, some of them
19 look like the same, but to show that today it's here,
20 tomorrow it's here, and it's still here, so they are date
21 stamped. He has the CD of the full pictures if you're
22 interested in that. These are just a few.

23 MR. UHLE: As long as they're date stamped I
24 don't object to the pictures.

25 HEARING EXAMINER: Thank you, ma'am.

1 MR. FREDYMA: I'll say one thing just for the
2 benefit of the public, any fence or wall that's erected is
3 required to meet the building code, so there are standards
4 that it has to meet in terms of wind load so you can't
5 just put posts in the ground. That is something that does
6 happen. Any wall, any fence all has to meet code.

7 HEARING EXAMINER: Is it 140 mile an hour now or
8 is it 120?

9 MR. FREDYMA: At that location, I don't remember
10 if it's 120. It may be 120. I don't remember. But I do
11 know that it must meet wind load.

12 HEARING EXAMINER: Okay. What ever wind load is
13 for that area.

14 MR. FREDYMA: Yes, ma'am.

15 HEARING EXAMINER: Christopher Kelley.

16 MR. KELLEY: I'm not sworn in.

17 Thereupon,

18 CHRISTOPHER KELLEY,
19 called as a witness, having been first duly sworn, was
20 examined and testified as follows:

21 HEARING EXAMINER: All right. State your name.

22 MR. KELLEY: My name is Christopher Allen Kelley.
23 My wife, Lisa Kelley, and I live at 3741 Runway Street in
24 North Fort Myers, Pine Shadows Air Park.

25 We are both pilots, and owners of multiple

1 aircraft.

2 I'd like to go on record so that I preserve my
3 right to speak to the Board of County Examiners if I feel
4 it incumbent to do so in the future.

5 And I'd like to state that I couldn't agree more
6 with Linda Yorde and Pat Fife, both of whom so eloquently,
7 professionally and concisely expressed their, and probably
8 many other peoples', opinions.

9 HEARING EXAMINER: Thank you, sir.

10 Do you actually, by being on Runway Street, do
11 you actually face the runway, sir?

12 MR. KELLEY: Yes.

13 HEARING EXAMINER: So then you're sort of east
14 and north from the subject property? You're going to be
15 over --

16 MR. KELLEY: My residence is actually at the
17 opposite end of Runway 9, very much at the opposite end.

18 HEARING EXAMINER: Okay. Thank you, sir.

19 Questions? All right.

20 Barry -- okay, Barry, you've spoken before --
21 Marz?

22 MR. MARZ: Yes, ma'am. I'll decline at this
23 time. Most everyone has brought out the points that I'm
24 concerned about.

25 HEARING EXAMINER: Okay. Thank you, sir.

1 Robin Howton, H-o-w-t-o -- How --

2 MR. HOWTON: H-o-w-t-o-n, yes.

3 HEARING EXAMINER: H-o-w-t-o-n. Okay.

4 Robin, are you sworn in?

5 MR. HOWTON: No, I'm not.

6 Thereupon,

7 ROBIN HOWTON,

8 called as a witness, having been first duly sworn, was
9 examined and testified as follows:

10 HEARING EXAMINER: State your name, please.

11 MR. HOWTON: My name is Robin Howton. I live on
12 3651 Runway Street.

13 As you can tell by my accent, I'm the one that
14 talks funny in the park there. But I actually have a
15 British paper and also an American flying license now.

16 My main concern is the safety, and I agree with
17 all my colleagues, what they've said here, about the park
18 and the environmental effects that we would have on us.

19 My main thing is the safety aspect. And with
20 respect to this board here today, everybody seems to think
21 that flying is an exact science. But there is one thing
22 we talked about, approaches coming in at 46 feet above the
23 recommended minimum. Excuse me.

24 One thing that you wouldn't know and every pilot
25 here would know is the fact that there's an instrument

1 inside the airplane called the altimeter which I'm sure
2 you're all familiar with.

3 Now, you can have the instrument checked, double
4 checked and triple checked and in that instrument they
5 allow 50 feet as an instrument error. During the daytime
6 you see absolutely fine. You can see 50 foot no trouble
7 at all. When it comes to nighttime, you rely 100 percent
8 on that instrument to be accurate. Even when it's
9 accurate, it can be 50 foot too low. So when you're
10 coming in on the approach, okay, you say, oh, 40 feet,
11 that's plenty. To you guys 40 feet on the highway is
12 terrific, you know, loads of room, you can get to the
13 pass. But on an airplane, at night, you can't see 50
14 foot. You rely specifically on that altimeter. And if
15 you're 50 foot low and there's only 46 foot clearance,
16 there's only one thing, you do the mathematics.

17 HEARING EXAMINER: You're aware of the building.

18 MR. HOWTON: And that's all I've really got to
19 say. But I wanted to go on record in case I would like to
20 say something later.

21 HEARING EXAMINER: Okay. Thank you.

22 Questions? Thank you.

23 All right. Do I have anyone now from the public
24 who has not spoken who would like to speak?

25 Yes, sir, I'm holding on to yours.

1 Okay. You spoke at the last hearing?

2 MR. WHITTY: Yes, ma'am.

3 HEARING EXAMINER: Okay. You got anything else
4 you want to bring up?

5 MR. WHITTY: Sure.

6 HEARING EXAMINER: All right. Just state your
7 name for me.

8 Thereupon,

9 JAMES WHITTY,

10 called as a witness, having been previously duly sworn,
11 was examined and testified as follows:

12 MR. WHITTY: My name is James Whitty. I live at
13 3641 Runway Street. I'm a little bit east of Chris Kelley
14 that was talking, right there.

15 At the last meeting there was some, oh, concern
16 about the applicant, that it was going to be a hardship to
17 put vegetation to beautify the wall on the east side
18 because it was already paved. But I'd like to point out
19 that that pavement is only about an inch thick and it's in
20 a state of deterioration already. It's been there for
21 about 20 some years. So for an individual to go in there
22 and just saw cut a 15 foot swath along there the width of
23 the property and take that inch of asphalt out, I mean, a
24 contractor could do it in a morning. It's not a big event
25 to remove that.

1 And I think in the -- I agree 100 percent with
2 Jerry Ellis. I think 30 people in an office building is
3 almost as important as having a church at the end of the
4 runway or a school. We still shouldn't allow an office
5 building I think in that close proximity.

6 And Robin that just spoke, he's 100 percent
7 right. I'm an airways inspector, and I license aircraft
8 to be able to be flown on an annual basis. And in the
9 certification for an altimeter, we're allowed to have them
10 off as much as 50 feet, and that's deemed to be accurate.
11 So, again, it is not as an exact a science as we may think
12 it is to the general public. So, again, we've all done
13 the math already. I think we're in that building by about
14 four or five feet.

15 So that's about all I have to say. Oh, I think
16 one other thing. I'm sorry.

17 HEARING EXAMINER: Go ahead.

18 MR. WHITTY: I think in good faith -- if the
19 building were to be allowed and a decorative wall was
20 going to be built, I think in good faith the two
21 communities should work together, our community and Jay's
22 community as it were, work together and have our Board of
23 Directors work with his people and come up with a design
24 on that wall. There's some pretty nice designs around.
25 Even when you see on the side of highways, there's palm

1 trees embossed in the side of them and dolphins and what
2 have you painted, but nice.

3 So I'd like to encourage that, that our community
4 get together with his and approve a design of that wall
5 together.

6 HEARING EXAMINER: Okay.

7 MR. WHITTY: Thank you very much.

8 HEARING EXAMINER: Let me ask you one question
9 now. When you're talking about the altimeter, why would
10 they allow it to be 50 feet off? Does it have something
11 to do with the mechanism itself?

12 MR. WHITTY: You know, the -- it's hard to
13 believe but, you know, the FAA controllers around, I know
14 a couple of them, Tony knows a few of them, even the FAA's
15 equipment is antiquated, okay. Those rules are archaic in
16 the design of our instrument system. We're not even
17 guaranteed -- we have a glide slope going into Page, and
18 we're typically -- we're on an ILS, instrument landing
19 system which is the precision system in the whole world.
20 We arrive at the airport 200 feet above the pavement, but
21 we're not guaranteed 200 feet clearance from where we
22 start that approach about six miles back. If we're below
23 glide path, if we're below glide path, we're not
24 guaranteed 200 feet clearance. We may be guaranteed 50
25 feet clearance in some places.

1 HEARING EXAMINER: Because of the existing
2 structures?

3 MR. WHITTY: That's right. So it's not an exact
4 science. You know, people use the term and we all think
5 it is, but I'll tell you, the FAA is very cavalier what
6 they allow. We're allowed to fly up the Hudson River,
7 which I've done half a dozen times in New York, right
8 where that airplane landed, we are allowed, believe it or
9 not, and I know there isn't anybody can't dispute me, to
10 fly over the Verrazano Bridge, the Brooklyn Bridge, the
11 Tappan Zee Bridge, okay, we're allowed to fly over them
12 below the minimum recommended altitude allowed by the
13 FAA. We're allowed to fly over that bridge 400 feet above
14 the bridge.

15 Now, there's nowhere in the US you can fly over a
16 residential area below 500 feet, but you cannot fly above
17 1,200 feet going up the Hudson River.

18 Now, there's thousands of airplanes -- well,
19 because then you're into the -- Idlewild, I use to work at
20 Idlewild as an aircraft mechanic, showing my age -- so I'm
21 just saying those clearances -- and you asked about the
22 altimeter, I'm off on a tangent here, those rules are
23 archaic and they've never been -- actually, I don't think
24 the technology is probably there for a more precise
25 altimeter, but none of them are in our aircraft.

1 HEARING EXAMINER: Okay. Do you guys, do you
2 have landings at night? Do you have lights along the
3 runway so you guys can land at night?

4 MR. WHITTY: Yes, ma'am, we do. We have what
5 they call ARCAL. They are pilot controlled lighting. We
6 click it three times and the lights automatically come on
7 and then they go off on a timer. 15 minutes, 20 minutes
8 later they go off on a timer.

9 HEARING EXAMINER: Okay. You better be set down
10 by that point.

11 MR. WHITTY: Yes, ma'am. Yes.

12 HEARING EXAMINER: All right. The same thing
13 with taking off, you can take off at night, too?

14 MR. WHITTY: Yes, we take off at night and land
15 at night. And as Robin alluded to, you know, all our
16 visions are degraded at night, especially all the ages
17 we're getting to be. They really are degraded at night.
18 Our vision legally, technically is degraded at night, and
19 it's worse if you smoke, you know.

20 HEARING EXAMINER: Let me ask you another
21 question then. Using the runway and stuff at night, are
22 the hangars -- do the hangars have any little lights on
23 them so you know exactly where they are when you're coming
24 up?

25 MR. WHITTY: No, they're --

1 HEARING EXAMINER: Do you have any kind of
2 lighting or anything that tells you where those hangars
3 are?

4 MR. WHITTY: There's some, I'll call it like a
5 mercury vapor light or something there up by the eaves of
6 the hangars. And they do give a visual presence of the
7 hangar, but they're not on top of the hangars.

8 HEARING EXAMINER: Okay. There's no obstruction
9 lighting?

10 MR. WHITTY: There's no obstruction lighting so
11 that shows the -- you know, the outer periphery of the
12 hangar area.

13 HEARING EXAMINER: Of the hangar area, okay.

14 MR. WHITTY: And that might be another
15 consideration, to make sure that they're kept in good
16 working order.

17 HEARING EXAMINER: So when you're coming in, how
18 do you know -- do you have to be guided then by the lights
19 along the runway?

20 MR. WHITTY: By the lights. Like Robin says, at
21 night, of course, it's black in that cockpit, and you're
22 relying on your altimeter. Now, we do have what they call
23 a VASI, a visual approach slope indicator. And if you're
24 too low, that turns red. It's about the size of a
25 mailbox, a country type mailbox. And when you're low,

1 that turns red so then you add some power to it and get up
2 above it. So you don't visually get too low.

3 So, yes, you have that. We have that to help us
4 at night because of all this altimeter error and, you
5 know, turbulence, you might be waffling in and, you know,
6 have down drafts and what have you.

7 HEARING EXAMINER: Would obstruction lights on
8 the buildings help? I mean, I realize you guys are
9 pretty --

10 MR. WHITTY: That's why if you look at all the
11 towers around, it's mandated that they all have lights on
12 them.

13 HEARING EXAMINER: I'll need to talk to the
14 county's Port Authority person about, you know, whether or
15 not it would be allowed to require -- if this building is
16 approved to require some kind of obstruction lighting on
17 it. Okay. All right.

18 MR. WHITTY: Thank you very much.

19 HEARING EXAMINER: Any other questions of this
20 witness?

21 Thank you.

22 Anyone else here who did not speak I do not have
23 a white form for?

24 Okay. Yes, sir. Do I have a white form for
25 you?

1 MR. FIFE: Last time.

2 HEARING EXAMINER: Okay. Come on up then. Just
3 don't repeat yourself. Thank you. You must be --

4 MR. FIFE: Joseph Fife. I've been sworn.

5 HEARING EXAMINER: Did you speak the last time?

6 MR. FIFE: No, I did not. I just filled the form
7 out.

8 HEARING EXAMINER: Okay. Good. Because I didn't
9 recognize. Joseph White.

10 MR. FIFE: Fife, F-i-f-e.

11 HEARING EXAMINER: Oh, you're Mr. Fife, okay.
12 Does she talk for you, too?

13 MR. FIFE: Yes, mostly.

14 HEARING EXAMINER: Okay.

15 Thereupon,

16 JOSEPH FIFE,
17 called as a witness, having been previously duly sworn,
18 was examined and testified as follows:

19 MR. FIFE: Same address if you have it. And I
20 have nothing to add. Everybody else pretty much spoke
21 exactly what I wanted to say so I have nothing really to
22 add. I'd like to preserve my right to speak the next
23 time.

24 HEARING EXAMINER: Okay. Are you a pilot?

25 MR. FIFE: Yes, retired. Retarded, retired.

1 HEARING EXAMINER: Are you the one from US
2 Airways?

3 MR. FIFE: Yes, ma'am.

4 HEARING EXAMINER: All right. Okay. Folks, this
5 is it, your last time. If you want to talk, now is the
6 time to do it because otherwise you don't talk to the
7 Board of County Commissioners if you didn't talk to me.

8 The reason the Board does that is so that I can
9 consider your concerns and try to make some kind of
10 recommendations to alleviate or address those concerns in
11 some manner, okay. Because once it gets over there to
12 them, they don't want to have to send that thing back to
13 me, and I darn sure don't want to get it back. Once I've
14 gotten rid of it, I darn sure don't want to see it again.

15 Yes, sir.

16 MR. LLAMAS: Could I just add something from here
17 without going up there because they brought up this
18 altimeter?

19 HEARING EXAMINER: Yeah, I think you're speaking
20 loud enough that I can pick you up on the microphone.

21 MR. LLAMAS: My name is Joe Llamas, L-l-a-m-a-s.

22 With regard to the altimeter, what they've said
23 is true. The problem is, is that we have to set that
24 altimeter to barometric pressure. So we have to set it to
25 something. And if you contact Page Field, you'll get one

1 pressure reading and if you tune in to Charlotte County,
2 which is about equal distance in the other direction, it's
3 frequent you'll get a different pressure reading.

4 So when you set the pressure reading in there,
5 the 50 feet is an error that's permitted in the instrument
6 but you could be off more than 50 feet if you don't have
7 the right pressure set for our location. And we have no
8 way of knowing exactly what the pressure is at our
9 location.

10 HEARING EXAMINER: All right. So even if you had
11 one of those little pressure thingies outside on the wall,
12 you couldn't set it to what that says is the barometric
13 pressure, you have to go by what one of the airports tells
14 you?

15 MR. LLAMAS: I'm in the airplane, I don't --

16 HEARING EXAMINER: Like on the side of a
17 building?

18 MR. LLAMAS: Yeah, but how do I get that?

19 MS. YORDE: That's not exact enough.

20 HEARING EXAMINER: Oh, it's not exact enough.

21 MR. LLAMAS: You need ground elevation. You need
22 the pressure at the ground, and I don't know what the
23 pressure is because I'm in the airplane. What I'm saying
24 is, I'm going to get --

25 HEARING EXAMINER: Oh, I see what you're saying.

1 I'm sorry.

2 MR. LLAMAS: I'm going to get information when
3 I'm flying from either Page Field or I'm going to get it
4 from Charlotte County. And those numbers don't always
5 agree.

6 HEARING EXAMINER: Okay. So you're actually
7 doing this when you're in flight, you're not doing this
8 before you take off?

9 MR. LLAMAS: No, no. I mean, you do it before
10 you take off, yes. But when you're in flight, you're
11 changing. I mean, if I'm flying down from Chicago, as an
12 example, I'll be setting that altimeter -- every time they
13 hand me off to another controller, he's got a new
14 altimeter setting for me.

15 HEARING EXAMINER: Oh. I'm going to have to take
16 lessons, that's all there is to it, learn all of this
17 stuff.

18 MR. LLAMAS: You may not want to fly again.

19 HEARING EXAMINER: That's what they say, once you
20 work in a restaurant, you never want to eat in one again,
21 you know.

22 Thank you. That helps.

23 Okay. All right. Joe, are you ready to finish
24 up, sir.

25 MR. MADDEN: I am.

1 HEARING EXAMINER: Okay.

2 MR. MADDEN: Again, my name is Joe Madden,
3 representing the Pine Shadows Air Park Property Owners
4 Association.

5 You know, it's kind of unique, when you -- this
6 is the first time I've represented this client, and, you
7 know, some of the stuff that you're having to take in
8 today is very difficult. And I think one of the nice
9 things I could bring to the table was I have two years of
10 flying experience, and, you know, trying to learn
11 everything that these people have been trying to deliver
12 to you.

13 The discussion just now, I'm not sure that that's
14 even completely clear to you because you're calling for
15 someone to give you the barometric pressure. You're
16 manually changing it on your dial, it's nighttime, and it
17 can drastically change the altitude that you're reading.

18 So what you're being asked to consider here on
19 behalf of the County Commission is a very -- it's very
20 problematic for a number of reasons. And I appreciated it
21 from the very first time that we spoke in my office about
22 it.

23 Anyway, having said that, I'd almost like to
24 tender Mrs. Yorde as an expert in the area of aviation
25 operations and compatibility with surrounding uses. I

1 think what you've heard from the residents here today is
2 quite a bit of practical experience of why this
3 application is probably not appropriate for this specific
4 parcel.

5 The one thing that hasn't been addressed is if
6 you look up and down U.S. 41 from Pine Shadows up to
7 Charlotte County, there's an abundance of vacant land that
8 would maybe be appropriate for an office building and it's
9 just kind of an interesting question, why would he put it
10 at the end of a runway when there are these significant
11 concerns.

12 We provided to you previously a memorandum with a
13 little different factual information than was used and
14 relied upon by the Port Authority in providing their
15 empirical data to Tony for his memo.

16 I would ask that that become part of the record
17 and that includes a larger number of aircraft that are
18 registered in the Air Park and also includes a higher
19 number of operations, takeoffs and landings.

20 HEARING EXAMINER: Is that the --

21 MR. MADDEN: That's the 24-hour memorandum.

22 HEARING EXAMINER: Okay. That's the document.

23 Yes, that will be part of the record because it's a
24 submittal.

25 MR. MADDEN: Okay. Thank you.

1 Again, we'd like to renew, on behalf of the
2 association, renew the objection to the location of a
3 multi-story, high occupancy structure to be built
4 immediately west and in the center of the glide slope for
5 the Pine Shadows Air Park air strip.

6 Yes, there are buildings at the end of it today,
7 but those are storage buildings. The CPD limits them to
8 storage uses. It actually prohibits the operation of
9 commercial businesses from those locations. Those
10 buildings by and large should not be occupied by humans
11 during the flight times of the Pine Shadows Air Park.

12 As we've heard from the residents and from the
13 Port Authority staff, a majority of all accidents with
14 airplanes occur during takeoffs and landings. And
15 depending on which way the wind is going, this area is
16 exactly where you're taking off and it's exactly where
17 you're landing.

18 There's one runway at Pine Shadows. They don't
19 have the opportunity like Page Field to use a different
20 runway. So if there's difficult weather conditions,
21 putting a high occupancy, multi-story building at the end
22 of the runway does not seem to meet the zoning standards
23 that we'll review at the end of our presentation.

24 This is also an office building with business
25 uses. 90 percent of all the Pine Shadows' operations

1 occur during daylight hours. Well, I think about 100
2 percent of all office occupancy is going to occur during
3 daylight hours. So what we're doing is we're putting
4 people in harm's way in a multi-story high occupancy
5 building at the exact same time as the maximum risk to
6 life is being incurred by the airport.

7 As to the open storage uses proposed on Parcel C,
8 residents who bought in Pine Shadows knew about the
9 existing CPD resolution. If they didn't know about it
10 while it was going through because of the unique way that
11 it was adopted, they know about it now.

12 The open storage use is allowed up on that Parcel
13 A up on the front parcel, and it has got some very strict
14 buffering requirements.

15 By moving it back to Parcel C, the association
16 continues to have concerns. By moving the open storage
17 back to Parcel C, it, in fact, moves it closer to their
18 homes and closer to their one significant amenity at Pine
19 Shadows, which is their air strip.

20 Requiring anything less of a buffer than what's
21 currently required on Parcel A we believe would be
22 irresponsible and would have a significant and detrimental
23 effect on the quality of life being compatible with the
24 adjacent uses, adjacent surrounding uses of residential.

25 As I said, we are in agreement with what Tony has

1 recommended for buffering requirements on the north side
2 of Parcel Ca, that being the wall, the wall and the
3 vegetative buffer.

4 We also think the same thing should be imposed on
5 the east side, with the exception that any vegetation on
6 the outside of the wall be limited -- be something, common
7 sense, limited to the same height as the 8-foot wall so
8 that way you don't have trees up above the wall causing
9 yet more of a hazard to aviation.

10 Mr. Fredyma has already confirmed that the
11 building code will be utilized to make sure that we don't
12 have a buffer wall that would be affected by jet blasts or
13 run ups at the end of the airport and be destroyed and
14 cause another hazard.

15 We'd also recommend that the Hearing Examiner, if
16 you're inclined to approve the open storage use, any
17 buffer wall along the east side of the project include the
18 red hazard lights indicating its proximity to the runway.

19 HEARING EXAMINER: Can I ask a question, Joe?
20 You indicated that you were okay with the fence
21 requirement and with the buffering requirement, but you'd
22 want it on both sides which is the north and the east
23 side.

24 MR. MADDEN: Correct.

25 HEARING EXAMINER: Now, my question to you is,

1 after listening to some of the testimony here, if you've
2 got planes that are sitting there revving up their little
3 motors and what not and you've got wind blowing like 90 to
4 nobody, what good is it going to do to have any vegetation
5 there, you're going to blow it slap out into the middle of
6 the Gulf?

7 MR. MADDEN: Not really, because it's -- there's
8 the jet blast but it's live vegetation. If it really is
9 maintained and is irrigated, it's live vegetation.

10 HEARING EXAMINER: It's not going to blow all the
11 -- I mean, you've got hurricane force winds coming through
12 and it takes the leaves off the trees, off the shrubs and
13 whatnot, you know, you're going to have bare branches
14 hanging out here.

15 MR. MADDEN: I'm sure there's something that
16 could be planted that would be tolerant to it because you
17 still have vegetation after hurricanes go through.

18 HEARING EXAMINER: Plant a whole bunch of cactus.

19 MR. MADDEN: Indigenous cactus.

20 We talked about -- a little bit when Tony was
21 doing his testimony about the maximum height of the items
22 to be stored in any open storage area. I think we also
23 need to go back to what Ms. Yorde said and please use her
24 memorandum in terms of garbage trucks and similar
25 obnoxious uses that just simply would not be appropriate

1 next to one of the communities that really is a jewel for
2 North Fort Myers and could, in essence, ruin their quality
3 of life.

4 I don't know which Hearing Examiner recently
5 considered, there was a case, I'm trying to think of the
6 year, it's a zoning case that was considered adjacent to
7 the Buckingham Air Park recently, it's a 2006 resolution.

8 HEARING EXAMINER: I did a case out there, but if
9 I remember correctly -- what was the request?

10 MR. MADDEN: I don't have the name of it, but one
11 of the recommendations that was in that, and I don't have
12 another copy, but we can make copies, I'm sure, it's a
13 condition that went into the resolution that discussed the
14 proximity of the airfield. And I'll read it for the
15 record.

16 "Prior to the issuance of a first Development
17 Order for the project, the applicant must record the
18 following statement in the public records of Lee County.
19 Notification of proximity to air strip. Property
20 described in Exhibit A attached hereto is located
21 approximate to an active aircraft landing strip. Future
22 owners residing on the property may experience aircraft
23 over flight activity, including noise associated with the
24 use of a landing strip of Pine Shadows Air Park."

25 MR. UHLE: What's he reading from? Is this a

1 Staff Report or --

2 MR. MADDEN: This is a zoning resolution. It's
3 Lee County Zoning Resolution Z-06-006.

4 HEARING EXAMINER: I think -- they were doing a
5 rezoning for residential uses. I think it was multi-
6 family, and I think that's the one I recommended denial of
7 and the Board changed my mind. They allowed them to have
8 it.

9 MR. MADDEN: Well, we would recommend denial,
10 too, but in the off chance that you would approve an
11 office building in the location immediately west of the
12 air strip, I think it would be appropriate that a similar
13 condition be included in the zoning resolution.

14 HEARING EXAMINER: What's the condition number?

15 MR. MADDEN: The condition number is 17.A and B.

16 HEARING EXAMINER: That's like an avocation
17 easement or notification of, okay.

18 MR. MADDEN: And we think not only would it be
19 appropriate to be recorded in the public records, we think
20 it would be appropriate to have that disclosure in any
21 professional office lease or any lease for the building so
22 that, you know, under a five year, six year, ten year
23 lease, in year two we don't have people calling Lee County
24 and saying, you know, we can't have a Lear 23 flying in
25 and out of there because it's just too darn loud for our

1 meetings.

2 As one resident said, they were there first and
3 this application should recognize that.

4 HEARING EXAMINER: Okay.

5 MR. MADDEN: In terms of some of the deviations
6 that have been requested, you know, the standard for
7 deviations include, you know, paramount considerations
8 that the deviation enhances the project and granting it
9 would not have a detrimental effect on the adjacent uses.

10 In terms of the deviation from the buffering
11 requirements for open storage that were previously
12 provided in the resolution, we just don't think that -- we
13 don't think the standard has been met.

14 The applicant talks about they can't remove
15 asphalt -- the edge of the asphalts here and there. And
16 that there would be, you know, only 20 feet. Well, the
17 applicant's proposing the open storage use. If they want
18 to realize that benefit, they need to meet the standards
19 that the county imposed previously.

20 The asphalt in this location probably wasn't ever
21 permitted by Development Order. It can be removed, as one
22 resident said, very easily. If a building modification
23 needs to be made to increase their site circulation
24 inside, that's in their hands, too. This is their
25 application. It shouldn't be something forced upon the

1 Buckingham Air Park residents so that their line of sight
2 is degraded.

3 In conclusion, you know, the Lee County Board of
4 County Commissioners is vested with the responsibility of
5 protecting the health, safety and welfare of the residents
6 of Lee County, and I think this is a case where, you know,
7 especially as we started off in December, it's been shown
8 that, you know, we need to give very careful consideration
9 to proposed uses and what the possible detrimental effect
10 is.

11 Ms. Parker, I think you have a huge
12 responsibility with your recommendation in this case
13 because as I go through the standards required for zoning
14 and looking at, you know, the condition of whether the
15 proposed use is compatible with existing and planned uses
16 in the surrounding area, I think you have, you know,
17 significant substantial and competent evidence from these
18 residents who are, for the majority, pilots who have
19 spoken, that it's not compatible. It's not compatible
20 with the existing use in the area already.

21 In terms of approval of the request putting an
22 undue burden on existing transportation, infrastructure,
23 you've got testimony also that Runway is a privately
24 maintained road. And what's being asked to be done here
25 is to put a significant additional amount of trips on it

1 with the uses that have been proposed without providing
2 any sort of funding mechanism to make up for that impact.

3 The standard of whether the proposed mix of uses
4 is appropriate at the subject location, again, you know,
5 unconditioned open storage, certainly not. The multi-
6 story high occupancy building at the end of the runway
7 probably isn't appropriate either.

8 And whether the recommended conditions on the
9 Concept Plan provide significant safeguards to the public
10 interest, I would suggest based upon what I've previously
11 mentioned to you, I don't believe that the applicant's
12 application does that.

13 This is the Pine Shadows Air Park residents
14 really last opportunity to provide you with something that
15 says please don't degrade our quality of life. Please
16 don't allow something incompatible to go there.

17 The testimony at the County Commission level is
18 really limited, and so I hope that what's been said today
19 can be taken under consideration and you can recommend
20 denial as has been requested.

21 I don't have anything further.

22 HEARING EXAMINER: Okay.

23 MR. UHLE: I would like to ask some questions.

24 HEARING EXAMINER: Okay.

25 MR. UHLE: Joe, in the graphic that you've

1 provided that's attached to your 24-hour notice, it
2 indicates that aircraft operations average 250 per month.
3 You've also testified today that 90 percent of the use of
4 this air strip is during daylight hours. How many of the
5 trips take place on a weekend?

6 MR. MADDEN: I don't know.

7 MR. UHLE: Would it be fair to assume that a
8 reasonable proportion of these trips actually take place
9 during weekends?

10 MR. MADDEN: Looking at the shaking heads, I'm
11 guessing no.

12 UNIDENTIFIED SPEAKER: Most of us are retired,
13 not weekend warriors.

14 MR. UHLE: No further questions.

15 HEARING EXAMINER: Questions by the County
16 Attorney?

17 MR. FREDYMA: No, ma'am.

18 HEARING EXAMINER: I actually don't have
19 anything, Joe. I asked you the only questions that I had
20 before so I don't actually have any questions.

21 Now, Mrs. Fife wanted to say one last thing
22 before we turn it back over to the rebuttal by the
23 applicant and staff. So let me get her up here, and I
24 think she's going to address the plants against the wall
25 that's going to be burned up.

1 State your name.

2 Thereupon,

3 PATRICIA FIFE,

4 called as a witness, having been previously duly sworn,
5 was examined and testified as follows:

6 MS. FIFE: I'm Pat Fife. I just wanted to say
7 I'm a landscape crazy nut, and he starts his airplane --
8 like anybody else would start their boat in their
9 backyard, he starts the airplane in the driveway. And so,
10 you know, our hangars are attached to our houses, it's an
11 unusual lifestyle. But, of course, I have landscaping,
12 and the trees, the palms, everything, it just bends.
13 There's no destruction of vegetation because of the
14 airplane blast. They adapt to that just like they do
15 hurricanes.

16 HEARING EXAMINER: Okay.

17 All right. Staff and applicant want five
18 minutes?

19 MR. UHLE: I don't.

20 HEARING EXAMINER: Staff need five minutes?

21 MR. PALERMO: No.

22 HEARING EXAMINER: Oh, before we do that, let me
23 do get the Port Authority person up here. Jim, can you,
24 or Bill, either one, come up here and answer some
25 questions for me?

1 Thereupon,

2 JIM HALLEY,

3 called as a witness, having been previously duly sworn,
4 was examined and testified as follows:

5 MR. HALLEY: For the record, Jim Halley, Lee
6 County Port Authority, again.

7 HEARING EXAMINER: Okay. When we were talking
8 earlier about the glide path and whatnot, you indicated
9 that there were some special concerns or special
10 consideration given to thing likes schools and hospitals
11 and churches and that kind of stuff, that I don't know if
12 there's locational criteria involved. Can you explain to
13 me a little more what you were talking about when you said
14 special considerations for those types of uses?

15 MR. HALLEY: Well, it wouldn't apply to an
16 airport like this, but for something like RSW or Page
17 Field, there's -- yes, certain areas extending out from
18 the runway that are -- it's recommended that, you know,
19 places of worship, churches, schools, things like that are
20 not put in that area.

21 HEARING EXAMINER: Because of the --

22 MR. HALLEY: Noise and accident potential.

23 HEARING EXAMINER: Okay. All right. Now, and I
24 understand that you're talking about, you know, Page Field
25 and you're talking about the Regional Airport down there

1 and whatnot, but -- and I understand that we're talking
2 probably a lot bigger airplanes coming out of the
3 International Airport, but the fact of the matter is, even
4 though this airport is not regulated or registered any
5 longer, would that not still be a concern about putting a
6 building with inhabitants, whether they be only part time,
7 eight hours or ten hours a day, or, you know, full time
8 being, you know, residents, isn't there still a concern?
9 Isn't that a recognizable concern by the Port Authority
10 for structures that are going into the glide path,
11 whatever you call the little triangle thing --

12 MR. HALLEY: Approach pattern.

13 HEARING EXAMINER: Okay, the approach pattern.

14 MR. HALLEY: Of course, it would be a concern.
15 As long as something meets, you know, whatever the
16 criteria applicable to the airport involved, though,
17 that's the criteria that's used.

18 HEARING EXAMINER: Well, let's look at it this
19 way. If this were coming in and I did the Page Park, Page
20 Commons rezoning, which is sort of that way from --
21 actually from Page Field, but if this were coming in at
22 the end of Page Field, one of the Page Field runways, even
23 though it doesn't encroach into the glide zone and all
24 that other stuff, would the Port Authority approve a
25 requested use like this at the end of a Page Field runway?

1 MR. HALLEY: We have approved things very close
2 to Page Field's runway, actually, to the point where three
3 of the four runway ends are displaced thresholds, where
4 they've had to shorten the runway because it encroached.
5 But you have U.S. 41, all up and down 41 businesses and
6 things like that going into our main runway, Runway 5. So
7 there is a lot surrounding.

8 HEARING EXAMINER: Okay. So when Page Commons --
9 when Page Field Commons, that shopping center there on Boy
10 Scout -- not Boy Scout -- Fowler Extension and 41, when
11 that came in, that came in, is that one of the ones that
12 is causing an encroachment situation into one of the
13 runways?

14 MR. HALLEY: I wasn't there when that came in,
15 but it was not one of the ones that caused the threshold
16 displacement for the runway.

17 HEARING EXAMINER: Threshold displacement, okay.
18 all right.

19 MR. MADDEN: Ms. Parker, can we make clear what
20 threshold displacement means because it really does
21 affect Pine Shadows air strip?

22 HEARING EXAMINER: Yes.

23 MR. HALLEY: What threshold displacement is, if
24 there is a safety issue, a tall structure, a crane, or
25 something permanent that's going to affect the air space

1 and affect the usable runway length. Let's say it goes
2 up, you put a building up and it's determined that now the
3 approach to that runway is unsafe, they will put a
4 displaced threshold where they will move the point at
5 which you can land farther down the runway.

6 HEARING EXAMINER: Oh, okay, farther up the
7 runway toward the other end.

8 MR. HALLEY: Yes, ma'am. And I'll show her right
9 here. So let's say you have -- let's say the runway
10 starts here, which it doesn't. So let's use this, you put
11 a building here, now that building penetrates the air
12 space, it's not safe to land there anymore. They will
13 move the landing threshold down the runway, farther away
14 from that obstacle. So it's to provide that clearance.

15 HEARING EXAMINER: So the building doesn't have
16 to be in the glide path specifically, it doesn't have to
17 -- give me the name of that thing again.

18 MR. HALLEY: The approach slope, the approach
19 surface.

20 HEARING EXAMINER: So it doesn't even have to
21 encroach into that?

22 MR. HALLEY: No, that's when it does penetrate,
23 when there is a penetration.

24 HEARING EXAMINER: Oh, when there's a
25 penetration. So if it's below the glide -- I mean, the

1 approach slope, then you're not going to have the
2 threshold displacement?

3 MR. HALLEY: It's not considered a hazard or
4 it's --

5 HEARING EXAMINER: Okay. So it's not a
6 requirement to have that, okay.

7 MR. HALLEY: When you have something that does
8 penetrate it, you just reverse calculate with that 20 to
9 one, and that's how you determine what kind of
10 displacement you have. So if it was penetrated by three
11 feet, multiply by 20, if it's 20 to 1, you'd have a 60
12 foot displacement.

13 MR. FREDYMA: We've had more recently cases on
14 the west side of 41 opposite Page Field but --

15 HEARING EXAMINER: How far is that from the end
16 of the runway?

17 MR. FREDYMA: I don't think we ever reached this
18 issue. The only issue I think we reached at that point
19 was interference with the ILS and certain heights of the
20 buildings. I think, Matt, you had a couple of cases I
21 think.

22 MR. UHLE: Well, I have not dealt with that
23 specifically, but I know that in the Ricky Stokes CPD
24 case, which I started but didn't finish --

25 MR. FREDYMA: It is finished.

1 MR. UHLE: It was finished by others. That case
2 did involve property on 41 on the west side in close
3 proximity to the airport and there was a building height
4 issue in that case and that case was deferred for quite a
5 long time until the height issues were resolved.

6 HEARING EXAMINER: Did that ever come to the
7 Hearing Examiner?

8 MR. HALLEY: Yes. I testified on that actually
9 as well.

10 HEARING EXAMINER: Okay. So it must have been
11 the other Hearing Examiner.

12 MR. UHLE: That case was approved by the Board of
13 County Commissioners. That was for a wide range of
14 commercial uses.

15 HEARING EXAMINER: But height?

16 MR. UHLE: And the height I believe was 25 feet.

17 MR. FREDYMA: Height was an issue.

18 MR. HALLEY: Height was definitely an issue on
19 that one.

20 HEARING EXAMINER: All right. Bill, can I get
21 you to come up here, please, and you may not know this off
22 the top of your head but you might and -- thank you, Jim.

23 Are you sworn in?

24 MR. HORNER: I was sworn in.

25 Thereupon,

1 BILL HORNER,
2 called as a witness, having been previously duly sworn,
3 was examined and testified as follows:

4 MR. HORNER: For the record, Bill Horner, Lee
5 County Port Authority's Planning Department.

6 HEARING EXAMINER: All right. The county's memo
7 indicates that the commercial office building will be over
8 2,000 feet from the end of the runway. How long have you
9 worked at the Port Authority?

10 MR. HORNER: Other than too long? About 20
11 years.

12 HEARING EXAMINER: Okay. Can you think of any
13 similar structures that have been approved around Page
14 Field within 2,000 feet or at 2,000 feet from the end of
15 the runway?

16 MR. HORNER: Well, if I could just say first that
17 all of the examples that Jim is giving regarding Page
18 Field or even these other standards and runway protection
19 zones, approach surfaces, et cetera, apply to FAA
20 regulated public use airports.

21 HEARING EXAMINER: I understand that. I
22 understand that. But the thing is, the key issue here is
23 the safety of the pilot, the safety of the people living
24 and people staying in those buildings, working in those
25 buildings, you know, and noise compatibility. So I think

1 the purpose of those regulations should be as applicable
2 here as they would be over there even though this is no
3 longer a registered or regulated airport. I think that
4 the key issue here is safety, and I think that's what, you
5 know, what I have to go by. So I'm trying to draw a
6 comparison between the two, and I recognize that Page
7 Field has bigger airplanes, they have multiple runways,
8 got, you know, I mean, they've got a little tower thingie,
9 I've seen that, you know. I mean, some of the things that
10 this particular air strip doesn't have.

11 But they still have to be concerned about public
12 safety, and so that's my goal right now is to find out can
13 you in your recollection of all the cases that have been
14 done, do you recall any similar cases or any similar
15 requests within or at 2,000 feet from the end of any of
16 the runways there at Page Field?

17 MR. HORNER: Well, I'm not entirely sure what the
18 Stokes' distance was, 2,400 or -- but there's a Hess gas
19 station, formerly a Hess station, then a Valero and now a
20 vacant site that possibly may be a mini storage area last
21 I think I heard.

22 MR. FREDYMA: It's proposed to be.

23 HEARING EXAMINER: Okay. And I know where the
24 Valero is because I had a case with you, I think, on that
25 particular -- a requested rezoning.

1 MR. FREDYMA: It's the same as previously a Hess.

2 MR. UHLE: You did the first iteration of Ricky
3 Stokes which was a conventional zoning case and that one
4 was denied.

5 HEARING EXAMINER: Okay.

6 MR. HORNER: We also have a -- there's a leather
7 gallery, I think, store that's just across the street from
8 our Runway 5.

9 HEARING EXAMINER: That little sucker is set down
10 in the ditch.

11 MR. HORNER: Yes. It doesn't have a lot of
12 elevation but it is a commercial facility.

13 HEARING EXAMINER: Okay.

14 MR. HORNER: Whatever its current name is. And
15 then there's the Russ Whitted Christmas tree, fireworks,
16 whatever business that's there which previously about 12
17 years ago was approved by the county inadvertently without
18 a tall structure permit. Created a major uproar. We had
19 House Representatives and federal government were
20 contacted. We had to put a stop work on it mid
21 construction.

22 HEARING EXAMINER: The name of that one was?

23 MR. HORNER: Russ Whitted, W-h-i-t-t-e-d, I
24 believe, at the time and I think it still is known by that
25 name, but it's sort of storage but they sell Christmas

1 trees and fireworks.

2 HEARING EXAMINER: That's another one that's in
3 there, okay.

4 MR. HORNER: It's very close. It's not directly
5 off the runway but it's the closest to the end of the
6 runway.

7 HEARING EXAMINER: It's a steel building?

8 MR. HORNER: Steel building, yes.

9 HEARING EXAMINER: Like a storage, okay.

10 MR. HORNER: And FAA required, once again it's
11 Page Field, so FAA required obstruction lighting on that
12 building. Some of the other structures predated
13 lengthening of the runway and changing FAA standards, et
14 cetera, and so they never asked them to go back and
15 wrestle for those construction lights or remove them.

16 But because of U.S. 41, because of our small
17 blast fence at the end of our Runway 5, the southwestern
18 end of the runways at Page Field, and because of a fence
19 along the airport boundary, our runway at Page is
20 displaced 459, I'm not entirely sure what -- we had a
21 change in it about three years ago on the distance, but
22 459 feet I recall.

23 So our runway is shorter and what shortening the
24 runway does is reduce the types of aircraft that can use
25 that runway for liability or manufacturer's reasons as

1 well. So I don't recall, and I think the Russ Whitted
2 place is within 2,000 feet off the end of the runway, but
3 it's there. And U.S. 41 is there, but they all predate
4 our extension of the runway and new regulations.

5 So as a general statement, FAA regulates things
6 in the approach surface for public use airports, Page and
7 RSW. They limit uses in the runway protection zone and
8 underneath the approach surface within a certain distance
9 off the end of the runway. They limit those uses to -- if
10 it's a new, clean green field area, they would limit those
11 uses to ensure that there are some frangible, whatever
12 NAVAIDS and so forth are frangible, they wouldn't allow
13 homes, for example, and they don't even allow public
14 roads. We have to circle -- when we extended our runway
15 at RSW, we had to circle our then called perimeter roads
16 out of the runway protection zone. But we already had
17 pre-existing storage units in that area.

18 HEARING EXAMINER: All right. There's storage to
19 the east, too, at the east end of Page Field, isn't there?
20 There's a little tiny short past the runway?

21 MR. HORNER: Yeah. But those are hangars and the
22 Port Authority has constructed those. Those have gone
23 through extensive FAA review and approval, and they're not
24 directly off the ends of the runway.

25 There are warehouse facilities off the southeast

1 corner of the airport, our approach to Runway 31, and
2 those had gone through FAA review and approval. They're
3 some distance off the end of the runway.

4 An incident that occurred with those was that one
5 of the warehouse owners had an antenna placed on top of
6 the roof in addition to the height that it had previously
7 been approved, it was less than 50 feet, the county didn't
8 require permits for it, and there was a tremendous uproar
9 from pilots, from flight training schools, from the tower
10 and from the Port Authority and it was tried twice, and
11 they took the antenna down and relocated it to a place
12 where it wasn't going to be directly -- that would be an
13 issue here and probably should be a condition on any
14 approval, if this is approved, that additional things to
15 the height of the building, antennas, I don't think the
16 county allowed signs but any signs or whatever, would have
17 to go through at least an additional notice to the folks
18 of Pine Shadows. And until we change our regulations,
19 which we're in the process of doing, in the Land
20 Development Code the airport hazard district is being
21 rewritten, it would have to come back to us as well.

22 HEARING EXAMINER: What's happening over behind
23 the Page Field Commons? OAK is doing some development in
24 there. What is that?

25 MR. HORNER: That's going to be our future

1 general aviation terminal. The Port Authority operates
2 what the FAA calls fixed base operator. It's essentially
3 a general aviation terminal where pilots come in, use the
4 restrooms, get a bite to eat, snacks, whatever. And right
5 now we have funding and approval to prepare the aprons for
6 that and that's what actually -- then the retaining pond
7 with its rip rap to discourage birds, et cetera.

8 HEARING EXAMINER: Yes.

9 MR. HORNER: It has been constructed but they're
10 preparing to pave an apron around it. We don't have
11 funding, total funding yet for the proposed terminal,
12 which has been designed and is awaiting. There ultimately
13 will be another hangar there. But they have been
14 reviewed, they're all outside, not only the approach
15 surface off the ends of the runway, they're called
16 transition, then there's the primary surface essentially
17 following the highest point of the center line of the
18 runway.

19 There are transitional surfaces that go off to
20 the side of public use airport. It's a steeper angle, but
21 they address other uses. Anyway, all of the recent,
22 meaning the last 25 years, structures constructed at Page
23 or RSW have gone through FAA review and are compliant with
24 parts of the federal regulations for those airports.

25 HEARING EXAMINER: Any questions of this witness?

1 MR. UHLE: Yes. Bill, the projection from the
2 residents is that aircraft operations average 250 per
3 month at this location. Since the analogy has been drawn
4 to Page Field, can you give us some idea of what the order
5 of magnitude would be at Page Field?

6 MR. HORNER: What is it, 76,000 per year divided
7 by 12? 77 divided by 12 months. Significantly more, but
8 Page Field has two runways.

9 HEARING EXAMINER: 650 or 600 and a quarter or
10 something.

11 MR. HORNER: Yes, significantly more. And I
12 guess I should add if an obstruction is there for one or
13 two or 50 or 100 aircraft, it's still an obstruction.
14 We've determined there is none using -- well, current
15 requirements have no criteria. Even using the previous
16 state requirements, it has no obstruction.

17 There may well be noise. But I guess the
18 question arises if there's an office building at the
19 proposed location, yes, there is the right-of-way for U.S.
20 41 that separates that office building from the
21 residential uses just across the road.

22 The argument can be made is a potential crash
23 more likely --

24 HEARING EXAMINER: In the building or --

25 MR. HORNER: -- in the building or across the

1 road in a residential area.

2 HEARING EXAMINER: Questions of this witness,
3 County Attorney?

4 MR. FREDYMA: No, ma'am.

5 HEARING EXAMINER: All right. Thank you, sir.

6 MR. MADDEN: That's kind of new evidence. Can we
7 provide a little something to that --

8 HEARING EXAMINER: Well, since I opened it up,
9 let's go ahead and get it on the record.

10 MR. MADDEN: If you do need any testimony to this
11 fact, the residents can do it.

12 What they discussed with me early on is they have
13 attempted -- Pine Shadows has been here for a long time
14 and some of this development has come in since they've
15 been there with this runway. So what they've done is
16 they've modified their approach. What they've done with
17 their flight path and their approach is they've actually
18 modified it to where they come down U.S. 41 right-of-way
19 and make their final -- turn to final here and this is
20 where they're coming in for final approach. So they're
21 actually taking a steeper turn to avoid going over the
22 homes and the mobile homes and to keep the sound down.

23 So what the Port Authority has discussed in terms
24 of maneuvers and normal operating, this is actually a more
25 dangerous move that they're doing over this exact location

1 for the office building to minimize the impact on
2 surrounding residential uses.

3 So, no, I don't think it's accurate what's being
4 told. It's not likely that they would -- upon an accident
5 on approach, that they would land here. It's more
6 appropriate that it would be here after the turn. On
7 departure, of course, it's another situation.

8 And I think it's also appropriate to point out
9 that most of what Mr. Horner was discussing in terms of
10 uses that were developed around Page Field are largely
11 storage and uninhabited uses and they're not office
12 buildings. Even the conversion of the Valero or the Hess
13 station is going to mini storage is my understanding.

14 HEARING EXAMINER: I'll look at the cases. I
15 want to go back and look at the Page Park Commons there.
16 I want to look at that, too, and see what was done in that
17 case as far as the FAA because, I mean, a lot of times the
18 issue comes up and they got their permit and that's as far
19 as it gets delved into because nobody is really objecting
20 to it.

21 So there's only been -- I can think of three
22 cases in which I have had testimony from folks about the
23 proximity of a structure to a runway, a private runway
24 specifically, that is raising some concerns.

25 All right, Matt, if you want to continue.

1 Thereupon,

2 MATT UHLE,

3 called as a witness, having been previously duly sworn,
4 was examined and testified as follows:

5 MR. UHLE: Let me begin with a broad but
6 essential point here that Mike touched on today and has
7 touched on at some length in the previous hearing, which
8 is that this property already has entitlements and, of
9 course, the property in the front that's proposed to be
10 used for the office building today is currently permitted
11 for open storage. So, in effect, what the people who are
12 objecting to this case are arguing for is that that parcel
13 should be maintained as an open storage facility which
14 county staff fully believes is not the most aesthetically
15 attractive feature of that, will affect drive-by traffic
16 to a far greater extent than moving it to the back. And
17 my recollection is that the record in this case does
18 reflect that the North Fort Myers Community Panel was in
19 support of moving the facility for precisely that reason.

20 I'm going to break this argument down into
21 several different parts. And I want to start by
22 responding to the resident testimony and then when I get
23 done with that, I'll go back to the issues that we had
24 with the staff from the previous hearing relative to the
25 sewer issue and the buffering to the south.

1 The issues that they've raised here today
2 obviously pertain to two different parcels, one of them
3 being the parcel proposed for the office use and the
4 second being the parcel to the east that's being proposed
5 for the relocated open storage.

6 Let me start with the office use. Concern has
7 been expressed that that's a safety problem. From a --
8 purely a building height perspective, that's illogical.
9 If you look at the aerial photograph, obviously it shows
10 you that there are existing buildings located between this
11 parcel and the end of the runway. So when you keep
12 hearing about how this office building is going to be
13 built at the end of the runway, people who read the
14 transcript need to understand that it's not literally at
15 the end of the runway, it's separated from the end of the
16 runway by a whole bunch of buildings that are
17 approximately 25 feet tall already.

18 So it's simply not logical to say that a building
19 height that's consistent with the building heights that
20 are already out there on a building located further from
21 the air strip than the existing buildings presents a
22 problem.

23 Of course, that's not the only argument that
24 they're making. They're introducing a new argument today
25 that it's the presence of people within the office

1 building that presents the problem. And I think that that
2 manifests itself in their testimony in two different ways.
3 One of them has to do with complaints about noise and the
4 other has to do with safety.

5 As far as the safety goes, safety really is a
6 function of the height of the building, and so I simply
7 don't accept that having people in the building, it might
8 put a few more people at risk, but it doesn't endanger the
9 pilots anymore. It means that the people who are in the
10 building are slightly more at risk, but as I'll describe
11 in a minute, there are plenty of analogies to areas around
12 this particular property as well as Page Field and
13 International Airport that suggests that putting people in
14 office buildings around airports is not only not really a
15 problem, but it's something that the county, in fact,
16 encourages in its Comprehensive Plan.

17 In terms of noise, we're talking about, according
18 to them, 250 over flights in a month which is eight a day.
19 That is not a lot. There is no particular reason to
20 believe that that would present a huge problem with people
21 calling the county and trying to close the airport,
22 particularly relative to what happens at other airports.
23 These are relatively small planes, and it's not a lot of
24 flights.

25 In terms of the impact on people in general, let

1 me talk about what's already out there. The testimony
2 shows and the aerial shows that we've got residential uses
3 that are immediately to the north of this property.
4 There's a fire station that I believe is to the north of
5 this property. There's commercial property immediately to
6 the southwest. There's residential property immediately
7 to the west of U.S. 41. And the county is going to have
8 its own preserve with people recreating immediately to the
9 south of the subject property.

10 So just if you look at this particular location
11 and the use and you're hypothesizing people in the office
12 building, I submit to you that there's plenty of human
13 activity out here already and the amount that we're adding
14 to it, and we're only talking about 9:00 to 5:00 during
15 weekdays, is not particular substantial.

16 With regard to -- let's talk about the other
17 analogies here. The Page Field analogy. We have
18 established, I think, that the traffic using Page Field is
19 vastly in excess of what is generated by this particular
20 facility, but I think when you read the cases and you
21 drive around and you look around, you're going to come to
22 the conclusion fairly quickly that we're talking about
23 buildings of a similar height or even greater height in
24 some cases than what we're proposing here, and we're
25 talking about uses like retail uses that generate more

1 traffic and probably have more people on site than the
2 office building in addition to the storage uses and the
3 other kinds of uses that were described during the
4 testimony. So that particular argument does not persuade
5 me much.

6 And then finally if you talk about the
7 International Airport, if you look at the county's
8 regulations and the permitted uses in the airport and
9 Tradeport land use categories, those are uses that permit
10 a wide range of commercial uses that have a nexus to the
11 airport. That permits things like hotels. And you're
12 talking about in an area that has much larger planes and
13 far more of them and has much more of a noise problem.

14 The county actually as part of its economic
15 development plan encourages those kinds of uses in those
16 areas. What the county consistently has done is say we
17 don't want residential uses where the people have to live
18 with the noise 24 hours a day, seven days a week and are
19 likely to complain. That the county acknowledges is a
20 problem and so the county through its planning efforts has
21 done its best to discourage that. But I don't think
22 you're going to find anything in the Comprehensive Plan
23 that suggests that office uses near county airports are
24 inappropriate uses.

25 Let me now talk about the proposed storage area

1 and whatever safety issue there is there. We've got two
2 different computations that have been done, one by the
3 residents and one by the county. The county indicates
4 that we have a, I believe it's 27 foot clearance, the
5 residents indicate that it's a 17 foot clearance if you
6 establish the 15 foot height requirement which we have not
7 objected to.

8 Those are fairly substantial and have to be
9 viewed in the context of -- 15 feet is not a lot of
10 height, just like go out to the property and walk around
11 it, that's six feet right there, and you're only talking
12 about nine feet over and above my head. That's not much.

13 So, you know, it's not like that's even
14 consistent with the minimum standard that the county
15 usually uses for buildings. That's a very low height.
16 And as far as I'm concerned, it's a substantial margin for
17 error, particularly when you look at what already exists
18 on the property with the existing buildings.

19 We're talking about stepping down the height from
20 the existing buildings, which makes sense, because the
21 closer you get to the runway, the more you have a problem.
22 But we're cutting down the height from the existing
23 buildings.

24 So you have to assume that the people who would
25 theoretically crash into this particular use have to

1 somehow get over those buildings. If you assume that
2 they're flying so low that they crashed into the
3 buildings, the open storage on this particular property is
4 not the problem.

5 So it's kind of hard to imagine somebody flying
6 over the building and then suddenly plunging and crashing
7 into the open storage that's ten feet lower. So we don't
8 think there's a legitimate concern.

9 With regard to the buffering, I guess I don't
10 have a whole lot to say that hasn't been said already. I
11 think the Hearing Examiner is going to wind up writing a
12 condition that has some ifs and thens in it because there
13 are a number of different scenarios there.

14 I understand that the residents have a concern
15 about the drive-by experience and their impact on the
16 quality of life, but if this application is denied, in
17 fact there still will be an open storage building and it
18 still will be located on 41 as well as on their private
19 road and they will drive by it every day so it's the same
20 drive-by experience. The only question is what kind of
21 buffer are you going to provide and if the Hearing
22 Examiner does what the staff suggests and puts in the wall
23 with the trees, that's the same buffer that is in the
24 existing approval so there's no diminution of that
25 particular argument.

1 Let me now go back to the arguments that we had
2 with the county at the first hearing. And those basically
3 broke down into two things. One of them had to do with
4 buffer timing on the south side primarily and the other
5 had to do with the timing of required sewer hookups.

6 The buffer issue basically had three different
7 components and it's important that everybody understand
8 that they have three different factual situations.

9 In the first case, the issue had to do with the
10 buffer to be located to the south of the office building.
11 The staff wants us to build the buffer more or less
12 immediately even before we have any approvals for the
13 office building.

14 The information that you got at the previous
15 hearing about the nature of the county facility to the
16 south of this location is that there was going to be a dry
17 detention area located right around in here (indicating)
18 and that the rest of the property in that area would be
19 used either for parking or for bathrooms.

20 And so in a nutshell, what the staff is proposing
21 we do is that we buffer our green space. As you can see
22 from the aerial, it's green space in every sense of the
23 term, literal as well as regulatory. That we preserve the
24 view of the people using the dry detention bathrooms and
25 parking area from our green space.

1 Now, I have to say, I've never heard that one
2 before, but I don't accept its logic and I don't think the
3 Hearing Examiner should either. We're perfectly willing
4 to agree to build the buffer that was in the Staff Report,
5 but we should not have to build it until our office
6 building is under construction just the way everybody else
7 would be in Lee County.

8 The second portion of the buffer condition had to
9 do with that portion of the buffer that's immediately
10 south of the existing buildings. Currently there is no
11 buffer there. It was not required. The staff proposed
12 essentially a condition which requires us to retrofit
13 that.

14 The rationale that I heard for that at the last
15 hearing is that we are doing you a favor by permitting you
16 to move your open storage and put an office building in
17 front so the quid pro quo for that should be in part that
18 you have your buffer put in even though you didn't have
19 one before and you're not changing anything in this area.

20 We have accepted the notion of doing the buffer,
21 but I don't necessarily accept that argument because the
22 fact of the matter is that moving the open storage from
23 the front to the back, not necessarily from the residents'
24 here perspective but from the community as a whole
25 perspective is a positive thing and I don't think the

1 county wants to push this argument too far because if
2 ultimately what they say is you don't do that, we'd rather
3 have the status quo, I don't think most of the people in
4 the community are going to agree that the status quo is
5 better.

6 Then, finally, we have the buffer along the south
7 side of the paved area where we took the position that
8 we're -- we know we have to build a wall when we put in
9 the open storage, but we don't think we should have to
10 build a wall until then. The staff disagrees.

11 It's our position that the view that you would
12 have from the Prairie Pines Preserve of a wall, to the
13 extent that you could even see it, and I think the
14 testimony shows that there's plenty of indigenous
15 vegetation within the preserve that would not be removed,
16 so the likelihood that you could even see the pavement is
17 fairly minimal. There is also the drainage easement
18 between the two properties.

19 The question, I guess, that we have is what's
20 more of an aesthetic problem, looking from the county
21 property through the trees, over the easement to whatever
22 you can see of the pavement or is it better to see a
23 wall.

24 And in our opinion, the wall does nothing until
25 it has something to shelter, and so we believe that the

1 wall should not be required until we actually have some
2 open storage.

3 And, finally, with regard to the sewer hookup
4 issue, our position on that is simply that we should have
5 to comply with the requirements in Florida statutes and in
6 the county ordinance, no more, no less.

7 I believe when the Hearing Examiner reviews the
8 applicable law on the issue and looks at the letter that
9 was written by North Fort Myers Utilities, that you will
10 find that it does not meet the criteria for a letter that
11 triggers the hookup requirement.

12 If, in fact, you do reach that conclusion, then
13 the only reason to require the hookup would be you'd be
14 going over and above what the county requirements are, and
15 I would maintain that you would have to find some facts in
16 the record that would make some sort of compelling
17 argument that this case should be treated differently than
18 everybody else gets treated and we shouldn't have to hook
19 up our one bathroom in the one warehouse.

20 I submit to you that the evidence shows something
21 completely different. That there are minimal impacts out
22 there and so there's no reason why any requirements over
23 and above what's in the code should be imposed on them.

24 I don't really have a lot of comments other than
25 that unless you want me to go through any particular

1 proposals made by either the staff or the residents.

2 I'll conclude by saying that we agree with the
3 Staff Report as amended by Tony's most recent memo with
4 the exception of the timing questions that I've described
5 and the one issue about how we're going to handle the
6 vegetation on the north side of the north wall which I'll
7 admit is a difficult situation, but I think it can be
8 accommodated through sort of a conditional condition as it
9 were.

10 If you have any questions, I'll be happy to
11 answer them.

12 HEARING EXAMINER: Anything?

13 MR. FREDYMA In terms of what?

14 HEARING EXAMINER: Questions.

15 MR. FREDYMA: I've heard his rebuttal and summary
16 so not really.

17 HEARING EXAMINER: I don't have any either.

18 MR. FREDYMA: I do have a comment that I would
19 make which would come as a result of Tony's summary as
20 well which is I know we don't like to hold the record
21 open, but it may be worthwhile to hold it open long enough
22 to produce a cleaner version of where we are and again
23 showing those particular conditions that are still at
24 issue and probably more particularly the deviation for the
25 buffering and the wall.

1 MR. UHLE: Yeah, we have not seen that and I
2 would not disagree with that.

3 MR. FREDYMA: I guess my preference, without
4 offending the Hearing Examiner, is I think I'd like to see
5 staff and the applicant take a shot at giving you
6 something that you can pick and choose from.

7 HEARING EXAMINER: I'd rather have them do it all
8 the way around.

9 MR. FREDYMA: They'd probably be happy to do
10 that. And to the extent that they can agree, then give
11 you that, and to the extent that they don't, they would
12 indicate that as well. But I think that would probably --
13 similar to other cases, that would be an appropriate
14 approach with respect to that.

15 HEARING EXAMINER: I had already decided that we
16 pretty much were going to have to leave this record open
17 because I do not want to take it on myself to try to draft
18 up some buffering condition.

19 MR. FREDYMA: And probably the only other
20 comments I would have I should think before going back to
21 Tony and to Susie, I think that Mrs. Yorde has two
22 conditions in there that I think have some merit that are
23 not already addressed.

24 One is the addition of soundproofing. The other
25 may be with respect to the type of other vehicles that

1 might be precluded from the storage area if you recommend
2 approval of it.

3 I'm not sure whether trees are an issue as far as
4 height, given what would probably be planted there anyway,
5 but -- and then the only other comment I would have is
6 with respect to the hook up of sewer.

7 I think if I understand the argument that Matt
8 has made, the letter that's been provided from the utility
9 company is just one of indicating that there is
10 availability but not one of requiring hook up.

11 HEARING EXAMINER: Right. Right.

12 MR. FREDYMA: And under the state law what
13 triggers the requirement to hook up is the letter from the
14 utility company telling them that they need to do so. And
15 I think the statutory period is one year. Staff has
16 suggested a shorter period of time. I think Matt is
17 correct in his analysis, but I would defer to staff with
18 respect to their desire on the timing. But I think what
19 Matt has indicated is correct, that I don't believe that
20 they've actually been requested to hook up in accordance
21 with the terms of the statute. I think that's a very fair
22 statement.

23 MR. UHLE: One thing I guess I would say, I think
24 we would probably not have a problem with Mrs. Yorde's
25 request on garbage trucks and possibly not school buses

1 but large mobile motor homes, I can't agree with that.
2 That's too vague. And, in fact, it's perfectly possible
3 that motor homes could be one of the uses on the site.
4 But to the extent that there would be a concern that this
5 is turned into some sort of a garbage transfer station, I
6 think that could be addressed by including her language in
7 that. That's not we're trying to do.

8 MR. MADDEN: Could we ask that dumpsters be
9 included in that, too, please?

10 HEARING EXAMINER: What dumpsters?

11 MR. MADDEN: Dumpsters not be permitted in open
12 storage, too. Keeping with that idea that not being a
13 garbage transfer spot. There would be a smell associated
14 with it.

15 HEARING EXAMINER: Okay.

16 MR. FREDYMA: They wouldn't be able to be full
17 anyway.

18 MR. UHLE: We wouldn't have that permitted as a
19 use as far as I'm concerned.

20 HEARING EXAMINER: Okay.

21 MR. FREDYMA: Those are the only comments that I
22 would have at this point in summary from staff.

23 HEARING EXAMINER: Okay. Tony, do you have any
24 concluding remarks?

25 MR. PALERMO: Tony Palermo for the record.

1 But, no, I have nothing in rebuttal to Mr. Uhle's
2 statement. I think our Environmental Sciences does also.
3 I'll just comment on the issue of leaving the record open.
4 That might be the cleanest way to come up with the
5 conditions and maybe come up with some areas of agreement
6 and disagreement and also provide copies in advance to Mr.
7 Madden and his group just to keep him in the loop.

8 We'll make some time to do that. I think we can
9 get that accomplished because we do need to come up with a
10 deviation wording and we're probably going to tweak the
11 buffer condition. Might not agree but I think we can come
12 up with something better. And I think we have some
13 rebuttal on some issues.

14 HEARING EXAMINER: All right. Susie, anything?

15 MS. DERHEIMER: Yeah. I'd just like to comment
16 on a few of the comments that Mr. Uhle made during his
17 conclusion.

18 The comment about the requirement for the south
19 buffer, I might just -- again I just want to reiterate I
20 did read this during my previous presentation, but the
21 Land Development Code requires buffering and screening to
22 apply to all new developed and existing landscapings that
23 do not comply with the provision of this section be
24 brought into conformity to the maximum extent possible
25 when the vehicle use area is altered or expanded or the

1 building square footage is increased.

2 So staff did apply this portion of the Code,
3 worked with the applicant to bring the buffer up to the
4 maximum extent possible and the 30 foot Type F buffer was
5 again retrofitted and brought into the maximum extent
6 possible, so there was a code that we did follow in order
7 to require that buffer. It wasn't just because we --

8 HEARING EXAMINER: Okay. I think one of the
9 issues that he was concerned most about, though, was the
10 timing of the installation of that buffer.

11 MR. UHLE: It's exclusively timing. We have no
12 issues with the staff as to the contents of any --

13 MS. DERHEIMER: I just wanted to make it more
14 clear of why staff did require that buffer.

15 HEARING EXAMINER: Can you give me an idea why
16 staff is requiring it before they get a Development Order,
17 building permit?

18 MS. DERHEIMER: Again, that was not an
19 environmental staff condition, it was more of a
20 compatibility condition, but I can just in terms of when
21 we do require buffers on say like Commercial Planned
22 Developments, there are many times when the permitted
23 buffers are required around the development prior to all
24 of the development internally taking place and that is a
25 compatibility issue so this is not a case where, oh, this

1 is the first time it has been applied. It has been
2 applied to perimeter buffers.

3 HEARING EXAMINER: And your other issues?

4 MS. DERHEIMER: Well, I was going to address the
5 conditions, but I think that we have determined to leave
6 the record open so --

7 HEARING EXAMINER: I think that would be better.
8 That way we don't sit here and try to reword this thing
9 and me get it all down.

10 MS. DERHEIMER: I did have a few comments about
11 the public's concerns about the buffers and also the --
12 I'm not sure if Madam Hearing Examiner is going to
13 consider the buffer along the east property line because
14 that was not a condition of staff's, but I would like to
15 address that in terms of the plantings and what's going to
16 be there.

17 I'm not sure how much wind is created by the
18 backlashes of the airplanes, but landscaping does require
19 mulch, so I do see that might be a problem with creating a
20 mess if the wind is significant.

21 Also, I can see vegetation being flexible. I am
22 worried about initially, though, when the buffers are
23 first installed, they don't have the root system
24 established to hold themselves in place, so that might be
25 an issue, too, along the east side. I just wanted to put

1 that on the record.

2 And then one more issue would be the deviation
3 request for the temporary irrigation. If a buffer was to
4 be required along the east side, again that temporary
5 irrigation would be placed at grade. If the wind is
6 significant, I could see that might -- throwing whatever
7 type of -- so there might be some issues with that also.

8 HEARING EXAMINER: Okay. Okay. My leaning at
9 this point, I know that the residents would probably like
10 something green along that end, but my leaning at this
11 point is not to require a vegetative buffer there simply
12 because I think that eight planes a day revving their
13 engines up and blowing backwards on these little plants
14 and stuff eventually is going to take a toll and you're
15 going to end up with a bunch of dead plants at which point
16 in time you guys aren't going to be happy with that
17 neither.

18 So I think it's just better not to even have
19 plants there. I don't think the conditions are conducive
20 to them actually being, you know, viable over a period of
21 time. I really don't. I'm real concerned about requiring
22 something that's going to end up being more of an eyesore
23 than just a decorative wall would be at the end of the
24 runway.

25 So as far as that issue is concerned, you know --

1 anything else?

2 MS. DERHEIMER: No.

3 HEARING EXAMINER: All right, County Attorney,
4 one other?

5 MR. FREDYMA: I think Mike Pavese from Public
6 Works had a final comment.

7 HEARING EXAMINER: All right. Is it Parks?

8 MR. PAVESE: Yes, ma'am.

9 I'm going to try to answer one of your questions
10 and kind of revisit some things that Matt revisited.

11 HEARING EXAMINER: Okay. All right. Now, are
12 you sworn in, Mike?

13 MR. PAVESE: Yes, ma'am.

14 Thereupon,

15 MIKE PAVESE,
16 called as a witness, having been previously duly sworn,
17 was examined and testified as follows:

18 MR. PAVESE: For the record, Mike Pavese, Lee
19 County Public Works. I was previously sworn in at the
20 last hearing.

21 And I guess first, I'd like to, from my own
22 personal perspective, I guess I'd like to apologize to Mr.
23 MacDuff if I've ever made you feel like we were doing you
24 a favor allowing you to exercise your right to come in
25 here and amend your zoning. It wasn't my intent to make

1 you feel that way, and I don't think that's the case on
2 behalf of Public Works.

3 But what we are doing as, you know, as a combined
4 effort here is attempting to allow Mr. MacDuff to develop
5 his property to the fullest extent possible while at the
6 same time protecting the health, safety and welfare of the
7 general public.

8 Madam Hearing Examiner, I can just tell you that,
9 I think we talked about this last time, our objective in
10 requiring the applicant to plant the buffer on the south
11 side of the parcel adjacent to U.S. 41 was in the interest
12 of being proactive in giving the buffer a chance to mature
13 over time.

14 As you know, I was in here probably 11 years ago
15 doing this first CPD, and we can see that the parcel is
16 still vacant. So, you know, we could have -- if we would
17 have had a similar condition back then, not that that it
18 was appropriate then because of the existing condition of
19 the property to the south, we would have had 10 or 11
20 years of maturity.

21 I think it goes without saying, the objective in
22 requiring the buffer to be planted south of the existing
23 buildings is going to be evident to you when you go out
24 there and look at it because we have since cleared our
25 property and are developing an amenity for the public as

1 we speak.

2 HEARING EXAMINER: A manatee?

3 MR. PAVESE: Amenity.

4 HEARING EXAMINER: Oh, an amenity. I thought you
5 were putting a manatee out there, and I couldn't figure
6 out where the heck that was coming from. Sorry.

7 MR. PAVESE: Based on the testimony that I heard
8 today from, I believe it was a gentleman in the back,
9 this -- the perimeter of this storage area may -- there
10 may be an opportunity to modify that based on the
11 deteriorating condition and the diminimus substance of the
12 construction of that. But that's going to be up to you.

13 I believe that when you go out there, you'll see
14 that we're probably cleared back, I don't believe there's
15 much, if any, vegetation that's separating our parcel from
16 this paved area at the present time.

17 The last thing that I wanted to comment on was
18 something that I guess I testified to at the first hearing
19 regarding the sewer hookup. Mr. Fredyma can elaborate on
20 the statute, but my understanding in talking with the
21 North Fort Myers Utilities Company is that they don't send
22 out a letter of availability when the utility is in place,
23 they don't do it. So if they did do that, if they did
24 make a practice, the property owner would have had that
25 letter eons ago when the sewer was available there.

1 And I believe I stated if you follow Mr. Roeder's
2 rationale that, well, we'll hook it up once we get within
3 a year of getting the letter, it will never get hooked up
4 because you'll never get the letter.

5 The objective in asking them to hook up now is to
6 facilitate the removal of this septic field to accommodate
7 the buffer. That's the objective.

8 HEARING EXAMINER: Okay.

9 MR. PAVESE: Not to mention that it's, you know,
10 in the benefit of the public to be on central sewer rather
11 than a septic field, septic tank.

12 And I think that's about all I've got unless you
13 had any questions.

14 HEARING EXAMINER: Questions, County Attorney, of
15 this witness?

16 MR. FREDYMA: No, ma'am.

17 HEARING EXAMINER: Questions by the applicant's
18 attorney?

19 MR. UHLE: I don't have any questions. But
20 unless conditions have changed in the last couple of
21 months, I think you're going to find the clearing on the
22 county's property only extends to about the second or
23 third building. It does not extend all the way to the
24 paved area.

25 HEARING EXAMINER: Okay. I'll look at it.

1 MS. DERHEIMER: There has been extensive exotic
2 removal within the vegetated areas that are outside of the
3 entrance clearing and the exotics have also been removed
4 from the drainage ditch. So I just recommend that when
5 you perform your site visit, take a look at actually
6 there's not a lot of existing native vegetation on the
7 preservation property. It's very open and you can look in
8 it.

9 HEARING EXAMINER: Okay. I'll look at that when
10 I'm out there. I'll take me some hiking boots so I don't
11 get bit by snakes.

12 MR. PAVESE: Just so there's no misunderstanding
13 as to our position, we absolutely support the condition
14 requiring the establishment of the buffer south of the
15 buildings immediately. I've given you reasons -- my
16 position on why I think it would be beneficial for this
17 piece and possibly this piece, but I'd leave that to your
18 discretion, but we're absolutely adamantly supporting the
19 establishment of the buffer south of the buildings. And I
20 believe Tony has also added a condition that will require
21 the screening of the -- when you go out there, you'll
22 notice that at least one of these -- the terminus of one
23 of these driveways between these buildings --

24 HEARING EXAMINER: All right. Guys, you all
25 can't be talking when we're talking because I can hear

1 with two ears but then I'm not hearing nothing. You all
2 need to take it outside. Joe.

3 MR. PAVESE: We would support a condition that
4 would require the enclosure of any and all trash
5 receptacles that are located at the end of these
6 driveways. When you go out there, you'll see that there's
7 some miscellaneous dumpsters or trash receptacles that are
8 visible to the south. That's it.

9 HEARING EXAMINER: All right. All right.

10 County Attorney, any last --

11 MR. FREDYMA: Just a brief observation. If you
12 choose to recommend the installation of the buffer along
13 the south side, then I understand the reason for requiring
14 hookup to the sewer sooner because that septic area
15 apparently is in the way of where the buffer would go.
16 But, otherwise, I would have to agree with Matt that all
17 they got at this point was a letter saying that if and
18 when you're ready, we have the capacity. And it's not an
19 absolute guarantee because things change. But if they're
20 not sending out letters, I guess I'm not sure why they're
21 not because --

22 HEARING EXAMINER: It's a statutory requirement
23 if they want hookup, well --

24 MR. FREDYMA: Just because they dig and bury the
25 line doesn't mean it's in service. And the property

1 owner, unless they're a professional engineer and go down
2 to the plant to see what's working, they wouldn't have any
3 idea that the time has come for them to hook up. I think
4 that's a very fair request.

5 HEARING EXAMINER: Thank you.

6 Matt, any final?

7 MR. UHLE: No.

8 HEARING EXAMINER: All right, folks, I don't know
9 what I'm going to do in this case. I need to look at the
10 property. I need a name of somebody to call, a name and
11 phone number of somebody to call so I can get in your
12 gate. I don't want to be walking around.

13 MR. MADDEN: We'll get it down for you.

14 HEARING EXAMINER: All right. I'll have one of
15 my secretaries call and let you know when I'm coming so
16 you can open the gate and let me in.

17 MR. FREDYMA: Can you also get onto the subject
18 site without -- I don't think you need --

19 HEARING EXAMINER: I don't need to get inside the
20 gate to get on the subject property, but what I want to do
21 is look at the area around. I'll go and look -- you know,
22 drive up the next road, look at those homes and stuff to
23 get an idea of exactly what the neighborhood looks like,
24 what the view is going to be from everybody that's going
25 to be affected by the request. But I don't know yet what

1 my decision is going to be. Thank you.

2 MR. MADDEN: Even if it's completely gratuitous,
3 you did indicate your inclination not to require any
4 plantings on the easterly wall?

5 HEARING EXAMINER: Yeah.

6 MR. MADDEN: We respectfully renew our request
7 that architectural consideration be given to that.

8 HEARING EXAMINER: I understand that. I'm just
9 concerned about suddenly generating a whole different
10 problem for code enforcement and for -- is it -- who was
11 the lady that was making the phone calls, Mrs. --

12 MS. FIFE: Fife.

13 HEARING EXAMINER: Mrs. Fife, okay.

14 MS. FIFE: I like that idea.

15 HEARING EXAMINER: So that she doesn't make a
16 nuisance of herself. All right.

17 I've got several other large cases, one case that
18 I've got an expedite request on, so we need to leave the
19 record open on this, so this is probably not going to come
20 out until -- my decision on this may not come out until
21 sometime in March. All right. Just letting you guys know
22 ahead of time.

23 Everybody that's here that's left a white form
24 with me, whether you spoke or not, will get a copy of my
25 recommendation to the Board of County Commissioners, and

1 you will receive notice from the folks across the way when
2 it's scheduled in front of the Board of County
3 Commissioners.

4 It can be anywhere from two to six weeks after my
5 decision comes out. It's just according to how it falls
6 in their schedule, in the Board's hearing schedule. And
7 it will be a Monday. Board always does zoning hearings on
8 Mondays, all right, on a Monday morning at 9:30.

9 All right. Are we looking at the 6th of February
10 for -- that's two weeks from today -- for this or do you
11 think you're going to need more time?

12 MR. PALERMO: No, that's plenty.

13 HEARING EXAMINER: Mike?

14 MR. PAVESE: That allows us to go back and forth
15 a couple of times. That will be fine.

16 MS. DERHEIMER: That's fine.

17 HEARING EXAMINER: All right. So then I will
18 leave the record open until Friday, February the 6th, 5:00
19 p.m. And it's going to be for the revised conditions on
20 the Staff Report, okay, I mean, a compilation or whatnot
21 and for new conditions.

22 Now, if you guys can't agree on this buffering
23 condition, submit separate and I'll make a decision from
24 there as usual.

25 MR. FREDYMA: That would include whatever

1 deviations are necessary?

2 HEARING EXAMINER: Right. And the deviations,
3 right, you know. The new conditions and new deviations.

4 MR. PALERMO: There will be conditions and
5 deviations?

6 HEARING EXAMINER: Yes. Definitely look at the
7 deviations and add that new one in as well.

8 All right. Anything now from anybody at the
9 table?

10 MR. PAVESE: Mike Pavese. I just have a
11 question.

12 HEARING EXAMINER: Yes, sir.

13 MR. PAVESE: I guess for Mr. Fredyma, in light of
14 the last comment he made about the sewer, is my
15 understanding of the statute correct that when sewer is
16 available and the property owner is notified that it is
17 available, they have one year to hook up?

18 MR. FREDYMA: Yes.

19 MR. PAVESE: Okay. So would it be fair to say
20 that since they've been notified, they will be required to
21 hook up to the system within one year from the date they
22 received the letter?

23 MR. FREDYMA: I'm not comfortable with the format
24 of a letter that -- if you want the letter of possible
25 availability, of capacity -- it's actually a letter of

1 capacity because it's not necessarily --

2 HEARING EXAMINER: I think the specific language,
3 that it sort of indicates that it needs to contain, I
4 think that was the argument that was made at the last
5 hearing, that their specific language. You need to have
6 whoever -- what attorney represents Public Works? Is it
7 one of the land use attorneys?

8 MR. FREDYMA: Yes, we do. But you're also
9 talking about a different franchisee. You're talking
10 about North Fort Myers Utility for part of it.

11 The letter is submitted in response to the zoning
12 application that says tell us about water and sewer.

13 HEARING EXAMINER: Right.

14 MR. FREDYMA: And typically what they do is they
15 go to whoever the servicing utility is and say, you know,
16 with this amount of proposed development, do you have
17 capacity for us.

18 HEARING EXAMINER: Right. And they say yes or
19 no.

20 MR. FREDYMA: Now, this case is probably a little
21 different insofar as there is an existing business on
22 site. We have -- this happens from time to time, but I
23 guess I would have assumed, I know always a dangerous
24 thing to do, that once a new line is installed, that the
25 utility company, because I think that's how they do it on

1 the Cape, not that this is the Cape, they send the
2 property owner a notice and say, congratulations, the
3 water and sewer line is now available, please make sure
4 that you hook up. And they either give you a list of
5 contractors, then they tell you, oh, and by the way, don't
6 forget, you've got to pay us the impact fee and the hookup
7 fee.

8 And I'm not looking to make this difficult for
9 anybody, but I don't think that the letter of availability
10 is necessarily --

11 HEARING EXAMINER: Rises to that level.

12 MR. PAVESE: And that's my point is that if the
13 intent of the statute is that when the utility company
14 makes the service available, the intent of the Florida
15 statute is to have the adjacent property owners hook up to
16 that facility within one year, then why wouldn't we
17 require them to do that because the facilities have been
18 in place for more than a year. That's my point.

19 MR. FREDYMA: Then we should have sent them a
20 letter.

21 MR. PAVESE: John, they don't do that. That's
22 what I'm telling you.

23 HEARING EXAMINER: Well, they may want to change
24 their operations, okay?

25 MR. PAVESE: Thanks.

1 HEARING EXAMINER: All right. Okay, folks, this
2 hearing is closed then. Thank you all for coming.

3 (Hearing concluded.)
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1 STATE OF FLORIDA)

2 COUNTY OF LEE)

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4 I, Roberta June Bishop, Registered Professional
5 Reporter, do certify that I was authorized to and did
6 stenographically report the foregoing proceedings, and
7 that the typewritten transcript, consisting of pages
8 numbered 1 through 174, is a true record.

9 Dated this 23rd day of Feb, 2009.

10

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Roberta J Bishop
Roberta June Bishop, RPR, FPR

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LEE COUNTY HEARING EXAMINER MEETING

RE: DCI2007-00026

IN RE: Jay MacDuff in reference to Pine Shadows
Air Park

Transcript of Proceedings

Before Diana Parker, Chief Hearing Examiner, held
at the Hearing Examiner's Hearing Room, 1500
Monroe Street, Fort Myers, Florida, on December
4, 2008.

PRESENT:

Mr. Matt Uhle, Attorney for the Applicant
Mr. Tony Palermo, Senior Planner
Mr. John Fredyma, Assistant County Attorney

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ORIGINAL

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1 HEARING EXAMINER: I am Diana Parker, Chief
2 Hearing Examiner for Lee County. This is Thursday,
3 December the 4th. This is Case No. DCI2007-00026, Jay
4 MacDuff in reference to Pine Shadows Air Park.

5 Okay. Before we commence with the opening by
6 County Attorney, let's identify ourselves, please, for the
7 record starting with the County Attorney.

8 MR. FREDYMA: Yes. My name is John Fredyma,
9 Assistant County Attorney.

10 MR. PALERMO: Good morning. My name is Tony
11 Palermo with Lee County Zoning.

12 MR. ROEDER: Mike Roeder with the applicant, the
13 planner.

14 MR. UHLE: Matt Uhle, attorney for the
15 applicant.

16 HEARING EXAMINER: Okay. County Attorney have
17 comments for the record?

18 MR. FREDYMA: Yes, ma'am, very briefly. Thank
19 you.

20 Once again, good morning. My name is John
21 Fredyma. I'm an Assistant County Attorney. I represent
22 the Board of County Commissioners, but I'm also here to
23 assist the county staff, the applicant and the Hearing
24 Examiner to ensure that the record in this case is
25 complete.

1 If you'd like to participate in today's
2 hearing or obtain a copy of the Hearing Examiner's
3 recommendation, we ask that you fill out one of the white
4 forms at the small brown table over next to the louvered
5 doors.

6 Some of you have already done that, and those
7 forms have been given to the Hearing Examiner. Anybody
8 else that hasn't done so and again wants a copy of the
9 recommendation or wants to speak, if you'd fill one out
10 and turn it in to the Hearing Examiner.

11 At the conclusion of the staff's presentation,
12 the Hearing Examiner will open the floor to public
13 participation. It's at that time that you'll have an
14 opportunity to address the Hearing Examiner. All public
15 comment will be taken from the podium up here. When you
16 approach, please state your name and address for the
17 record and tell the Hearing Examiner if you reside or own
18 property in the area. You also can tell the Hearing
19 Examiner what questions, concerns or comments you have
20 about this case.

21 This is a rezoning and today's hearing is not the
22 final matter or final action on this matter. As a result
23 of all of the evidence and testimony that the Hearing
24 Examiner takes today, she will be preparing a
25 recommendation that will be sent forward to the Board of

1 County Commissioners for a final public hearing probably
2 in about a month and a half to two months from now.

3 But what's important to know and important for
4 you today is that if you would like to have your thoughts
5 considered, you must speak here today. More importantly,
6 if you want to speak to the Board of County Commissioners
7 at their public hearing, you must speak here today to
8 preserve that right.

9 We've already completed an introduction of the
10 parties at the table. I believe with that much of a brief
11 introduction of the process, I'll go back to the Hearing
12 Examiner and she will take over from there.

13 HEARING EXAMINER: All right, folks. First off,
14 if you have anything but water in this room, please remove
15 it. Do not bring anything but water in this room.

16 We will be taking a break. If the hearing runs
17 past two hours, we will take a break to allow the court
18 reporter to stand up. Thank you, sir. Take it and you
19 can leave it outside or hand it to my secretaries and
20 they'll stick it on something so you can pick it up on
21 your way out. About every two hours we'll be taking a
22 break to allow the court reporter to stand up to unwind,
23 okay. You all will be able to go to the restrooms which
24 are outside the door.

25 If you happen to find a machine here, please only

1 bring water back in this room. People bring stuff in,
2 forget it, it gets knocked over, spills all over my
3 carpet, then I have to clean it. Okay.

4 Also, if you have a cell phone, please turn that
5 little sucker off, all right, for the duration of the
6 hearing.

7 Now, after staff and applicant have made their
8 presentations and I have asked the questions that I feel
9 need to be asked, I will then call up the public. I have
10 your white forms here. If I do not have your white
11 form -- you know, I'll go through the ones I have. If I
12 do not have your white form and you want to talk, just
13 come up to the podium after we've gone through the list I
14 have and just bring me your white form at that time.
15 Okay?

16 As the County Attorney has indicated, please keep
17 your comments germane to the issue at hand. If this
18 rezoning request is approved, what effect is it going to
19 have on you, your property or your community.

20 I can't help it if you don't like the developer.
21 I can't help it if you don't like your neighbor and your
22 neighbor likes the developer. Okay? Those are things I
23 have no control over.

24 My control extends only to the effect you feel
25 the request is going to have on your lives, your property

1 or your community. Okay?

2 Those are things that I can add conditions to try
3 to ensure that you guys are happier. All right?

4 Do I have any questions of anybody on the
5 procedures?

6 Now, if this runs past lunch, I will stop before
7 lunch and take whatever public input for those folks that
8 cannot attend after lunch. Okay? But if it runs past
9 lunch, we will be here for a while. All right? But I
10 don't think it's going to run that long.

11 All right. Do I have any questions from anybody?

12 All right. If you intend to speak in today's
13 hearing, you need to be sworn in. If you're an attorney
14 and testifying to facts, you should be sworn in as well.
15 So at this point in time, raise your right hand if you're
16 going to talk.

17 (All witnesses were sworn.)

18 HEARING EXAMINER: Okay. Now, if I've not sworn
19 you in and you feel an absolute burning desire to speak
20 after we get this hearing started, you know, tell me when
21 you come up so I can swear you in at that time.

22 Okay. Applicant ready to go forward?

23 MR. UHLE: Yes.

24 HEARING EXAMINER: Okay.

25 MR. UHLE: For the record, Matt Uhle representing

1 the applicant.

2 The Hearing Examiner should have received in a
3 timely fashion our 24-hour notice.

4 HEARING EXAMINER: Yes.

5 MR. UHLE: It does point out that we do have some
6 issues with the Staff Report on items of timing and
7 relative to sewer and water hookups and installation of
8 a buffer. Other than that we are in agreement with the
9 Staff Report.

10 Mike will be making the presentation here today.
11 When he's done, I may or may not, but probably will have
12 some concluding remarks relative to the outstanding issues
13 with the Staff Report.

14 With that I'll turn it over to Mike.

15 HEARING EXAMINER: Okay. Mike.

16 Thereupon,

17 MIKE ROEDER,

18 called as a witness by the Applicant, having been
19 previously duly sworn, was examined and testified as
20 follows:

21 MR. ROEDER: Good morning, Madam Hearing
22 Examiner.

23 My name is Mike Roeder, Director of Planning at
24 Knott Consoer on behalf of the applicant, and I've been
25 found as an expert witness in previous hearings and ask to

1 be --

2 MR. UHLE: Planning and zoning.

3 MR. ROEDER: Planning and zoning expert.

4 HEARING EXAMINER: Okay. Any objections from
5 staff?

6 MR. PALERMO: No.

7 HEARING EXAMINER: County Attorney?

8 MR. FREDYMA: No, ma'am.

9 HEARING EXAMINER: All right. Accepted.

10 MR. ROEDER: Thank you.

11 This is a request to amend an existing CPD
12 approval that was approved in October of 1998. I have to
13 say I think I may have set some kind of record for the
14 amount of time to accomplish what I believe is a very
15 simple change.

16 This is a 4.65 acre parcel in North Fort Myers
17 called the Pine Shadows Air Park. It's part of a plat
18 that includes the Pine Shadows Aviation Community where
19 there are homes behind this that have access to a private
20 runway and many of the homes have their own airplanes.

21 And when this property was developed back in the
22 1980s, the original developer constructed many of these
23 warehouse/hangars, and I believe it was for the intention
24 of storing airplanes in them at the time, but as time went
25 on, the people who actually bought and developed Pine

1 Shadows had their own hangars on their property and really
2 didn't utilize these, so they became general storage type
3 facilities. And when the original developer ran into some
4 legal difficulties and this property became, I guess, in
5 foreclosure, a group of the residents that lived in Pine
6 Shadows purchased these and actually came to us because
7 they realized that at that time the property was zoned
8 AG-2 and didn't really allow for this type of use. And
9 that's when the property was zoned CPD to allow for
10 general storage which is outlined in the original
11 condition -- I mean the original resolution attached to
12 the Staff Report. That's Z-98-069. And that's what we're
13 here today to amend.

14 Approximately four years ago our client purchased
15 these properties from the original zoners, the people that
16 bought it out of the court, and wanted to see what could
17 be done about the existing zoning because -- if I can go
18 to the aerial. Here are the hangars.

19 This used to be a platform for fueling the
20 airplanes. There used to be a fuel dispensing system here
21 and this was where the planes would come in and get their
22 fuel. Well, that has been relocated off site so this area
23 is no longer used for that purpose.

24 The original zoning approval for this whole site
25 said that this front part that's vacant now on U.S. 41

1 could be used either for open storage or mini warehouses.
2 And when the current applicant, Jay MacDuff, who's here
3 today and can answer questions, approached us in 2006 and
4 said can I come back and amend the zoning to relocate this
5 open storage from the front to this existing pad in the
6 back, we thought, well, yeah, that seems like a pretty
7 good idea given that we didn't think too many people would
8 want open storage on 41, and now that the pad in the back
9 was available.

10 In fact, I had a meeting with the staff, Pam
11 Houck and Brian Kelner, on October 31st, 2006, I just
12 checked the file this morning. When we first discussed
13 it, we discussed in terms of an administrative -- well, it
14 would be a full fledged amendment but it was something
15 that they wouldn't require a new site plan for, that we
16 could just take the existing site plan and change some of
17 the notes on it.

18 HEARING EXAMINER: Okay.

19 MR. ROEDER: And I thought that was going to be
20 our simple request. And we also talked at that time,
21 well, what do you do with the front piece, and we agreed
22 that a professional office building was probably the least
23 objectionable use that we could propose for that area, and
24 that's what the current plan allows for.

25 Well, our client also wanted to talk about the

1 buffer of the open storage because now, subsequent to that
2 original zoning, the county purchased the land to the
3 south, it's now part of the Prairie Pines Preserve. It's
4 going to be basically no development there, a natural
5 area, and our client thought, well, maybe the county would
6 consider a wooden fence instead of a concrete block wall
7 because there will be no residential neighbors and that
8 was added to our request.

9 And when we added that to the request, the staff
10 said, well, we're going to need a new site plan because
11 now we're getting into some details that haven't been
12 looked at before, and that was the beginning of this long
13 odyssey to get here today.

14 It's a 4.65 acre parcel, and the maximum
15 development will be 55,000 square feet. And the new
16 office building which is under these market conditions a
17 distant hope would be approximately 12,000 square feet.

18 The big request here is to relocate the open
19 storage from the front of the parcel to the existing
20 concrete pad in the rear, approximately one acre in size.
21 And then again we're still asking for some modification of
22 the buffering requirement that we'll be discussing in a
23 second.

24 I've looked at the Staff Report. Would agree
25 completely with the analysis of the Lee Plan issues. I

1 would only make two comments on that.

2 On Page 12, Tony makes the comment under Policy
3 4.1.1 that "The plan provides for intensive commercial
4 development in proximity to residential uses." Well, I
5 think the buildings are fairly large, but I would argue
6 that the storage activity is not an intensive commercial
7 use. It's a pretty darn passive use. And even the
8 addition of the office building I wouldn't qualify as an
9 intensive commercial use but in any event --

10 HEARING EXAMINER: I'm sorry, where did you find
11 that?

12 MR. ROEDER: On Page 12 in the discussion under
13 Policy 4.1.1.

14 HEARING EXAMINER: Oh, okay.

15 MR. ROEDER: He's finding this consistent, and
16 I'm just saying I don't believe we would call this an
17 intensive commercial use.

18 And we have also brought this before the North
19 Fort Myers Community Panel, and the staff comments on that
20 on Page 15. Actually, we're there twice. The last time
21 was November 6th, 2007. But we had appeared probably nine
22 months before that in front of a smaller group. And in
23 both cases the North Fort Myers Community Panel thought
24 this was a very good idea to relocate the open storage to
25 the rear. They like the idea of an office building on 41,

1 and I believe that the minutes of that meeting reflect
2 that.

3 As Matt indicated, we really only have two issues
4 from the staff -- Revised Staff Report that was dated
5 November 25th, because the original Staff Report was fine.
6 And I think there's possibly a third issue to address some
7 of the concerns of the neighbors who are here today.

8 HEARING EXAMINER: Mike, hang on just a second.
9 All right. Tony, was there actually a Staff Report, a
10 revised full Staff Report sent out, or was it just -- is
11 Mike's reference to the 25th the memo that you sent to me
12 dated the 25th?

13 MR. PALERMO: Tony Palermo for the record.

14 You have the November 18th, 2008, Staff Report?

15 HEARING EXAMINER: Right.

16 MR. PALERMO: There is not an updated Staff
17 Report. There's only the November 25 memo from me.

18 HEARING EXAMINER: Okay. I was going to panic
19 here.

20 MR. ROEDER: It's just a short memo, yes.

21 HEARING EXAMINER: Okay. All right. I needed to
22 make sure that we, you know, that we all had the same
23 Staff Report here. Okay.

24 MR. ROEDER: Okay. If you'll look in the backup
25 material, there's quite a bit of discussion about utility

1 connections, and I just need to give you a little brief
2 background on that.

3 From the beginning we had said that when the new
4 office building was developed, it would connect to water,
5 central water and sewer which is reasonably available in
6 the area. We have letters of availability, and that's
7 never been a point of disagreement.

8 What we were debating was -- on this point there
9 was some confusion. I was under the impression in the
10 beginning that each one of these warehouses had its own
11 bathroom facility, and I was trying to make the point that
12 they should be able to continue utilizing that in the
13 future because it was such a small volume of effluent and
14 very minimally used.

15 We were going back and forth on whether that was
16 acceptable under the LDC and the Lee Plan, and then I came
17 to the understanding that we really only have a single
18 bathroom in the newest building that was constructed by
19 our client approximately four years ago, this building
20 (indicating).

21 And when we discussed that with the client and
22 what the staff was asking for, he said, well, I'd be
23 willing to connect that to central sewer. He wasn't going
24 to debate that.

25 However, we wanted to do that in conjunction with

1 the development of the office building and not have to go
2 to the trouble and expense of connecting a very
3 infrequently used bathroom facility to central sewer
4 immediately.

5 MR. UHLE: Mike, before you go on, I want this to
6 be clear. When you say there's one bathroom, do you mean
7 there's one bathroom for all eight of those buildings?

8 MR. ROEDER: Well, yes. The first seven were not
9 required to have bathrooms by anybody and only because in
10 2004 Mr. MacDuff went through a Development Order process,
11 which was never done on the others, the county said you
12 have to have a bathroom there and he got a Development
13 Order approval and a Health Department approval for a
14 septic system for that one building.

15 HEARING EXAMINER: Where is that septic system
16 located, Mike, on the site?

17 MR. ROEDER: You can see the tank, that is the
18 mound right here, it's on the site plan.

19 HEARING EXAMINER: Okay, let me see. Okay, I see
20 it.

21 MR. ROEDER: And if you read the staff's
22 conditions, they want that reference removed and the
23 building reconfigured so that there's room then to put the
24 full 15 foot buffer that would normally be required. And
25 we don't disagree with that condition if it is timed to

1 coincide with the development of the office building.

2 That's really the key issue here.

3 And our proposed condition would say make us
4 comply with Ordinance 9101, which is the relevant
5 regulation that addresses existing development and not new
6 development, because we believe we have an existing
7 development that was fully reviewed and approved by the
8 county and that when the office building is built, our
9 client is willing to comply with this condition to remove
10 the septic tank and reconfigure the building and provide
11 the desired buffer on the south side as outlined in
12 there.

13 HEARING EXAMINER: Okay. So you're willing to
14 reconfigure the building, remove the septic tank now or
15 when you -- how are you going to reconfigure the building
16 and remove the septic tank and not connect this one
17 bathroom up to the sewer?

18 MR. ROEDER: At that point we would.

19 HEARING EXAMINER: Okay. But my problem is that
20 typically you reconfigure the building in plans before you
21 actually get out there and start digging around and
22 planting that sucker.

23 MR. ROEDER: Well, we would ask our site planner
24 to give the staff a new plan that showed the building
25 reconfigured, that showed the septic tank eliminated, that

1 showed the expanded buffer just so it's clear in the
2 resolution that that would happen when we develop the
3 office building.

4 HEARING EXAMINER: Okay. So then you would do
5 all of this after -- or prior to the Board's approval?

6 MR. ROEDER: Yes.

7 HEARING EXAMINER: Okay.

8 MR. ROEDER: The Staff Report asks us to submit a
9 new site plan by December 13th. And we're not disagreeing
10 with that. It's just a question of the timing of the --

11 HEARING EXAMINER: The timing for the connection
12 of the bathroom in that mini warehouse hangar situation,
13 okay.

14 MR. ROEDER: And I have to say one other thing,
15 and that is I've talked to two engineers and they said for
16 an ultra low volume facility like this, and Jay says this
17 bathroom might be used once a week, if that, it's very
18 physically difficult to make that connection since you
19 don't have enough flow for a pump to really function. You
20 need flow for that to really work. It really is
21 impractical to connect it until you have more volume. And
22 so I think from a legal and a practical matter, it doesn't
23 make any sense to make that an immediate requirement.

24 HEARING EXAMINER: So now the pump that you're
25 talking about is a lift pump, it's going to be located

1 closer to the actual connection; is that correct?

2 MR. ROEDER: Well, I'm not an engineer, but I
3 understand once the office building were built, then the
4 whole thing can be reconfigured to function in a more
5 feasible manner.

6 HEARING EXAMINER: Okay.

7 MR. ROEDER: They can be interconnected and --

8 HEARING EXAMINER: So the pump is simply to move
9 it out to the main line, though?

10 MR. ROEDER: Yes. And that's only required if it
11 was on its own, but in conjunction with the office park, I
12 think it can be redesigned so that it all works.

13 HEARING EXAMINER: Okay.

14 MR. ROEDER: And if you read 9101 it says you
15 must connect within one year of receiving a letter from
16 your utility which --

17 HEARING EXAMINER: Right.

18 MR. ROEDER: -- you know, has not been issued.

19 HEARING EXAMINER: There has not been a notice of
20 availability issued to the property owner?

21 MR. ROEDER: Well, we have a letter of general
22 availability, but we don't have the specific letter we
23 believe is referenced in 9101.

24 MR. UHLE: I'll be discussing that. There are
25 specific statutory requirements as to what goes in that

1 letter, and it's our opinion that the letter that's
2 included in the Staff Report does not meet the statutory
3 standards.

4 HEARING EXAMINER: Okay, is not sufficient, okay.

5 MR. ROEDER: I think they're envisioning a very
6 explicit instruction that you have sewer available, you
7 need to hook up.

8 HEARING EXAMINER: Okay. All right. I'll let
9 Matt go into that then.

10 MR. ROEDER: Right. The second question relates
11 to the buffers and we don't really have any disagreement
12 with what the staff is requesting but for the timing.
13 Again some background. As I said, originally, we were
14 hoping to request a simple wooden buffer considering that
15 it would be adjacent to an undeveloped natural preserve.

16 When we talked to the staff, they said, well, we
17 may be doing controlled burns. If we're doing controlled
18 burns, we don't want a wooden fence there, it could be a
19 hazard. So our client agreed early on that the wall along
20 the southern boundary would be a concrete wall.

21 Now, the one thing I would ask is the Staff
22 Report talks about a concrete block wall, and we're more
23 inclined to have a pre-stress concrete wall that you see
24 all the time now, they're more attractive and just as
25 functional and less expensive.

1 And the way this is written, we would have the
2 option of having something other than concrete on the
3 other two sides but it would match the design, maybe
4 fiberglass although my client says he may just do
5 concrete, he's going to look at that, but the Staff Report
6 gives us the option of something other than concrete on
7 the other two sides but it has to be eight foot opaque
8 wall that would match.

9 And again we've talked about the reconfiguration
10 of the building and the septic tank to provide the 15-foot
11 buffer on the -- next to the office building. Where it
12 got interesting is staff wanted some buffering where
13 possible along the existing warehouse buildings, even
14 though those are existing, and we have a very unusual
15 situation, that there's a 40-foot drainage and public
16 utility easement that runs along the entire southern
17 boundary and the LDC doesn't really allow you to put a
18 buffer in that kind of an easement.

19 So the Staff Report says where possible we want
20 you to put plantings in there. And we said, okay, we
21 agreed to that. But now the Revised Staff Report, as you
22 read it, says that within six months of the zoning request
23 at a minimum, we have to get the DO and subsequent
24 commercial permit for the required buffer plantings and
25 the wall, which would be along here. It goes up here,

1 too.

2 And our concern again is although our client
3 hopes to have this open storage business going as soon as
4 possible, to require the wall before the business is
5 obtained and running seems premature and burdensome. So
6 we're asking that the buffer for the buildings and the
7 storage area and the wall be done simultaneously when the
8 storage operation goes and gets its Development Order for
9 the wall and the buffering when he's prepared to go into
10 that business, and that the buffering in the front for the
11 office building be a requirement when that Development
12 Order is obtained rather than within six months.

13 So it's just a simple matter of we'll put the
14 buffers in when the new uses are installed but not before,
15 and that's the normal sequence of events in Lee County,
16 and I don't see why we should be departing from that
17 practice here.

18 Finally, I did speak with the attorney for some
19 of the neighbors about their concerns. I'm not sure we
20 can satisfy all of them. Two that he mentioned, he said
21 that the neighbors would be much more in favor of having
22 access to this front piece directly from U.S. 41, and, you
23 know, that's a matter for state DOT permitting and with
24 the access existing the way it is, it's virtually
25 impossible to say DOT would ever allow for that. And I

1 don't think it's -- I mean, if we could have that, we'd be
2 happy to take it, but I'm not at all convinced that could
3 happen, and we didn't even put it on our plan.

4 The second thing is the existing resolution
5 called for a 15 foot vegetative buffer around the proposed
6 open storage in the front, and when that was proposed to
7 be relocated to the rear, that buffering was not part of
8 the request because that whole area is paved to the
9 property line and where there's right-of-way drive in the
10 first resolution, there was a deviation granted that that
11 would be maintained as is by the Pine Shadows property
12 owners. That's their property and they wanted to be
13 responsible for that and that was agreed the first time
14 around, that there would be no additional buffer in there.

15 Here it borders up, you can see on the aerial, to
16 the runway, it's all paved, and here the staff is agreeing
17 that we just have the wall because over time this 40-foot
18 buffer is going to grow into vegetation again. It was
19 overgrown when we started this, and our client removed all
20 the exotic vegetation about a year ago, but over time it
21 will grow in with native vegetation, we assume, and so
22 you're going to have a 40-foot vegetative area here to
23 begin with.

24 HEARING EXAMINER: Mike, is that easement
25 actually used or is -- I mean, is it just a platted

1 easement that's not used?

2 MR. ROEDER: Well, I think in the rainy season
3 there's water in there.

4 HEARING EXAMINER: So it's like -- actually like
5 a drainage ditch.

6 MR. UHLE: It's just a large ditch.

7 MR. ROEDER: Yeah, it's a big swale.

8 HEARING EXAMINER: Okay. I was thinking that
9 we're talking, you know, electric lines, cable lines,
10 sewer lines, you know, whatever. Okay. So it's just a
11 big ditch. Okay.

12 MR. ROEDER: Now, what I did talk to the attorney
13 for the neighborhood, our client would be willing to do
14 some landscaping in this green area if that would help the
15 situation. In fact, Jay has recommended arica palm which
16 grow very fast and grow high. And he's willing to put
17 those along there if that's agreeable to everybody.

18 He'd like to not have to irrigate those because
19 his lines aren't even close to that, but he would make
20 sure they were watered by hand. But that's something
21 we're willing to offer as an additional condition if that
22 helps to restore the buffer that is now not part of the
23 plan because it wasn't any property that we controlled any
24 longer, but that's something to be discussed.

25 So I guess in conclusion, it's been now over two

1 years to get to this point. It took us a long time to get
2 the legal approved, but in balance, it's a very similar
3 request to relocate the open storage from the front to the
4 rear which we think is much more consistent with the goals
5 of North Fort Myers to make 41 more attractive. It puts
6 the storage on an existing impervious surface and with the
7 proper buffering and walls, we don't believe it will be
8 any direct impact on the neighbors.

9 We understand that the closest home in Pine
10 Shadows to this open storage would be over 2,000 feet.
11 And we believe the addition of the office building does
12 not raise any issues of any consequence.

13 It's consistent with the original -- and I would
14 mention also that the front parcel right now is approved
15 for either open storage or mini warehouses, and this
16 change would take both of those uses off the front, which
17 I think is considered a positive development.

18 HEARING EXAMINER: Okay. So at this point,
19 though, all the existing hangar, mini warehouse, they're
20 actually in use as mini warehouses?

21 MR. ROEDER: Well, I wouldn't call them mini
22 warehouses. I'd call them single warehouses.

23 HEARING EXAMINER: Warehouses.

24 MR. ROEDER: Yes.

25 HEARING EXAMINER: Okay. Not minis, okay. Maxi

1 warehouses.

2 MR. ROEDER: Maxi warehouses.

3 HEARING EXAMINER: What kind of materials are
4 actually stored in these things at this time, Mike; do you
5 know?

6 MR. ROEDER: Well, I would ask Jay to respond to
7 that. Each one is a little different, a lot of different
8 tenants that they have there. A lot of different items.

9 HEARING EXAMINER: All right. There's no wall up
10 there right now around these hangars?

11 MR. ROEDER: No. There's some good photos there
12 that you can see.

13 HEARING EXAMINER: Somebody will have to tell me
14 what I'm looking at because I'm not sure. I went out on
15 the site back in '98 but that's a long time ago.

16 MR. ROEDER: The only thing that's changed,
17 they've added one more hangar since then. But it's been
18 there now I'd say probably 25 years I'm going to guess.

19 MR. UHLE: Mike, does the property to the south
20 look like that?

21 MR. ROEDER: Well, no. Actually, Tony has got --
22 this shows it totally vegetated, but here you can see
23 where they've been doing site work for the new Prairie
24 Pines Preserve. They are going to be putting in a welcome
25 center and restrooms.

1 HEARING EXAMINER: Right there by the front
2 parcel or the --

3 MR. ROEDER: Yes. It's not going to abut the
4 open storage area. As far as we know, the open storage
5 area is going to be still -- but up in front, and that's
6 why the staff was asking for some more plantings along
7 there. But there's quite a bit of clearing that's been
8 done in the front here.

9 HEARING EXAMINER: Okay. So they're actually
10 going to have structures there themselves.

11 MR. ROEDER: Yes.

12 HEARING EXAMINER: The county is.

13 MR. ROEDER: Yes. That's underway right now.

14 HEARING EXAMINER: Okay.

15 MR. ROEDER: The main entrance to this over 2,000
16 acre --

17 HEARING EXAMINER: Do we have -- I'm sorry. Do
18 you have a site plan for the county's property there? Do
19 they have it?

20 MR. ROEDER: I think maybe somebody here.

21 HEARING EXAMINER: All right. Mr. Pavese, do you
22 have a site plan of the -- all right, he'll present that
23 then when he comes up.

24 Thank you.

25 MR. ROEDER: There's a little attachment here,

1 but I don't see a real site plan.

2 HEARING EXAMINER: Mine was so dark, it was hard
3 to see anything, just the print.

4 MR. ROEDER: So I believe that's basically the
5 request and the issues. And if you have any questions,
6 I'd be happy to answer them.

7 HEARING EXAMINER: Okay.

8 MR. UHLE: Mike, just one question. With regard
9 to the easement on the south side of the property, we've
10 acknowledged that there's a ditch there. But is the
11 northern boundary of the ditch consistent with the
12 boundary of the easement or is there sort of upland
13 property to the north of the ditch that's included in the
14 easement?

15 MR. ROEDER: Well, that I'm not sure, but we show
16 a small strip here where there's room adjacent to the
17 easement for the modified buffer plantings and that's what
18 staff is requesting and it's going to be a case by case
19 determination where there's room to do that.

20 HEARING EXAMINER: Okay. And that's outside the
21 easement, though?

22 MR. ROEDER: That would be outside the easement.

23 HEARING EXAMINER: Okay. That's what it looks
24 like in here, too. Okay.

25 MR. ROEDER: As I said, I believe over time the

1 easement will become again vegetated, and I'm not sure to
2 the extent it's native vegetation if the county will see a
3 need to clear that or not. We did take all the exotics
4 out.

5 HEARING EXAMINER: Anything else, Matt?

6 MR. UHLE: I don't have any other questions.

7 HEARING EXAMINER: County staff.

8 MR. PALERMO: Tony Palermo for the record.

9 I thank you for your presentation. Just to --
10 turn to Page 3 of the Staff Report and I just want to go
11 through one condition which is No. 5, no retail sales.
12 This is just to clean up something because you mentioned
13 the aircraft field dispensing system. It's been moved,
14 it's not on the property anymore.

15 MR. ROEDER: Right. And we didn't expect that to
16 be on there.

17 HEARING EXAMINER: Then we need to take off that
18 reference?

19 MR. PALERMO: It's gone. Let's do that.

20 MR. ROEDER: I told Tony it's no longer there.
21 He thought I might want to get it back but I don't think
22 that's the case here.

23 HEARING EXAMINER: All right.

24 MR. PALERMO: That's all I have.

25 HEARING EXAMINER: County Attorney, questions?

1 MR. FREDYMA: No, ma'am, not at this time. Thank
2 you.

3 HEARING EXAMINER: I have several actually,
4 Michael.

5 All right. Looking at the Master Concept Plan or
6 the site plan here, I guess it's the Master Concept Plan,
7 go to the second page which shows the eastern half of the
8 property where the actual -- that one, yes. Now, the
9 first one, the one to the west shows the cross hatched
10 area which has the proposed buffer there along the
11 easement. All right. But that doesn't extend all the
12 way. Is there a reason why it got left off?

13 MR. ROEDER: No, I think that was oversight. To
14 the extent we have room, we would be continuing that.

15 HEARING EXAMINER: All right. Now, I'm a little
16 concerned about that comment, to the extent you have room.

17 MR. ROEDER: Between the building and the
18 easement.

19 HEARING EXAMINER: Okay. Well, it looks to me
20 like you've got plenty of room.

21 MR. ROEDER: I believe you're right.

22 HEARING EXAMINER: All right. Okay. Don't give
23 me a heart attack here.

24 MR. MADDEN: We're trying to understand that,
25 too, so could you just show on the site plan where we're

1 talking about?

2 MR. ROEDER: We're talking about this area here
3 extending along next to these two hangars.

4 HEARING EXAMINER: All the way over to the paved
5 area? Where does the wall come in?

6 MR. ROEDER: The wall would be here (indicating).

7 HEARING EXAMINER: The wall starts there at the
8 edge.

9 MR. UHLE: Just to clear this for the record,
10 this is on the south side.

11 MR. ROEDER: Yes, south side.

12 HEARING EXAMINER: Right. I'm sorry, it's not
13 the east? It's the east end but it's on the south
14 property. Okay, as long as it's on the easement, okay.
15 I thought we've got this thing in upside down, I'm in real
16 trouble.

17 So that buffer would be extended across over to
18 where the wall picks up then on the currently concreted
19 portion where the open storage is to go?

20 MR. ROEDER: Yes.

21 HEARING EXAMINER: Then the wall is going to go
22 around all three sides of the open storage?

23 MR. ROEDER: Right.

24 HEARING EXAMINER: Okay. Okay.

25 MR. FREDYMA: Will there be an opening?

1 MR. ROEDER: Yes. There has -- well, I assume
2 the opening would be right here where this driveway is.

3 MR. FREDYMA: No opening on the easterly
4 boundary?

5 MR. ROEDER: No.

6 MR. FREDYMA: That will -- as it shows now, it
7 opens out into --

8 MR. ROEDER: Originally, the planes came in there
9 and got fuel and there's a fence there now.

10 HEARING EXAMINER: So it's fenced off?

11 MR. ROEDER: Yes.

12 HEARING EXAMINER: All right. Do they still use
13 that fueling facility?

14 MR. ROEDER: Yes, but it's no longer on this
15 property.

16 HEARING EXAMINER: Right. I understand that.

17 MR. ROEDER: I believe they do. Now, people who
18 live there can tell you.

19 HEARING EXAMINER: I'll ask some of the public
20 then to make a statement on that.

21 So the intent then is to actually have direct
22 access into the open storage site and not have to go
23 through the warehouse area?

24 MR. ROEDER: Yes.

25 HEARING EXAMINER: Okay.

1 MR. MADDEN: Again, just for the purpose -- is
2 that shown on the site plan because we've never seen that
3 before?

4 MR. MacDUFF: No, the entrance would be where the
5 entrance is now.

6 HEARING EXAMINER: Let me look.

7 MR. MacDUFF: Enter along the side of the hangar.

8 HEARING EXAMINER: There's an indication here
9 that there's a curb cut.

10 MR. ROEDER: Right here. Okay.

11 HEARING EXAMINER: Okay. I need your name for
12 the record.

13 MR. MacDUFF: Jay MacDuff.

14 HEARING EXAMINER: Okay. You're the property
15 owner. So your testimony is then that the entrance is
16 actually going to be between the two easternmost hangars
17 and then they'll come east and then -- to access --

18 MR. MacDUFF: Between Runway Street and the
19 hangar there is a road there.

20 HEARING EXAMINER: All right. I clearly have to
21 go do a site visit. Okay. So then that wall is going to
22 be solid all along the north boundary?

23 MR. MacDUFF: Yes.

24 HEARING EXAMINER: All right.

25 MR. FREDYMA: Question if I may.

1 HEARING EXAMINER: Yes.

2 MR. FREDYMA: John Fredyma, Assistant County
3 Attorney.

4 There's a drawing here for the north side of what
5 will be the new storage area. Is that intended to be a
6 new access point?

7 MR. ROEDER: Are you talking about the driveway?

8 HEARING EXAMINER: I think that's what we just
9 discussed was not -- if the wall is going to be solid all
10 the way through there.

11 MR. ROEDER: It's going to be a solid wall, so I
12 guess that driveway is really not going to function any
13 longer.

14 HEARING EXAMINER: Okay.

15 UNIDENTIFIED SPEAKER: Is there one there now?

16 MR. FREDYMA: When you look at the aerial, it
17 doesn't look like there's actually one there.

18 HEARING EXAMINER: Pull off area or something.

19 MR. ROEDER: Yeah, there's not one there and
20 there won't be. That will be cleared up on the new site
21 plan. Good point.

22 MR. FREDYMA: Thank you.

23 MR. PALERMO: Madam, Hearing Examiner.

24 HEARING EXAMINER: Yes.

25 MR. PALERMO: I forgot to mention, but you have

1 Attachment C, which is the Environmental Sciences staff
2 report. It actually has the buffer to the south sort of
3 hatched out. You might want to make reference to it, but
4 it mentions a Type F buffer, and then those spaces where
5 you were mentioning, well, there's some room to do some
6 buffering, that's what Environmental Sciences pointed out
7 on this plan. So you need to have that when you're
8 evaluating it.

9 HEARING EXAMINER: Right. I actually have an
10 Attachment B. Wait a minute. No, it doesn't do any
11 different. So Attachment C.

12 MR. FREDYMA: Starts as a memo.

13 HEARING EXAMINER: Right. I just have to find
14 it.

15 MR. PALERMO: And we'll get into that when we do
16 our presentation, when Environmental Sciences does its
17 presentation.

18 HEARING EXAMINER: Okay. All right.

19 So right now, Mike, there is no use of this front
20 parcel, it has not been used for storage?

21 MR. ROEDER: It has not been used ever for
22 anything really.

23 HEARING EXAMINER: Okay. So it's a vacant unused
24 parcel. Okay.

25 I think that's all the questions I have.

1 Anything else from anybody at the table? Okay.

2 Do you want to do cross-exam now or do you want
3 to wait?

4 MR. MADDEN: I think we'll just wait.

5 HEARING EXAMINER: Okay. All right.

6 I need to talk to your client. I need to ask him
7 a couple of questions before you -- Mr. MacDuff.

8 Thereupon,

9 JAY MacDUFF,

10 called as a witness, having been previously duly sworn,
11 was examined and testified as follows:

12 HEARING EXAMINER: You are under oath, sir?

13 MR. MacDUFF: Yes.

14 HEARING EXAMINER: State your name, please.

15 MR. MacDUFF: Jay MacDuff.

16 HEARING EXAMINER: Okay. Mr. MacDuff, I asked
17 the planner what type of uses are already occurring inside
18 these warehouses, and he indicated that you would be the
19 correct person to answer that question. Can you respond
20 to that, please?

21 MR. MacDUFF: The rear two hangars have boats and
22 automobiles.

23 HEARING EXAMINER: All right. Okay. The rear
24 two being the easternmost?

25 MR. MacDUFF: Right.

1 HEARING EXAMINER: Okay.

2 MR. MacDUFF: Boats are in this one, cars are in
3 this one. There's appliances in this one. Cars in this
4 one. A builder in this one that stores equipment. A
5 gentleman that stores toys in this one, motorcycles.
6 These two are used for automobile restoration. This guy
7 stores his construction equipment. This gentleman stores
8 personal effects. Two RVs, restaurant supply and
9 Riverside Bank stores their personal effects in this
10 building.

11 HEARING EXAMINER: Okay. So their business
12 records and whatever?

13 MR. MacDUFF: Yes.

14 HEARING EXAMINER: Now, the restoration, the
15 automobile restoration, was that allowed, Tony, in the --

16 MR. PALERMO: Tony Palermo for the record. I
17 believe there was a specific condition.

18 HEARING EXAMINER: In the previous --

19 MR. PALERMO: In the previous resolution which
20 addresses both open storage, what you can and can't store
21 there. Addresses mini warehouse facilities. I think
22 there's a condition, yes, Condition 7 is open storage and
23 Condition 8 is mini warehouse.

24 HEARING EXAMINER: But this is not mini
25 warehouse, this is --

1 MR. MacDUFF: There is a stipulation in there.

2 HEARING EXAMINER: This is warehouse.

3 MR. PALERMO: Hold on.

4 MR. FREDYMA: In the schedule of uses in the
5 original resolution.

6 MR. MacDUFF: The gentleman has been there for
7 about 13 years.

8 MR. UHLE: If you look the schedule of uses, the
9 automobile restoration is specifically --

10 HEARING EXAMINER: Yes, it is. I see it now.
11 Okay. Now, then we have public warehouse. And -- all
12 right, the mini warehouse, okay. All right.

13 Any questions of this witness? That's the only
14 testimony that I wanted to elicit from him. Anything from
15 anybody? Anything you want to say for the record, sir?

16 MR. MacDUFF: No.

17 MR. MADDEN: We would like to ask some questions.

18 HEARING EXAMINER: Okay. Cross-examination based
19 on what I just --

20 MR. MADDEN: Based upon the uses that --

21 HEARING EXAMINER: The uses that were what?

22 MR. MADDEN: The uses that we were just talking
23 about.

24 HEARING EXAMINER: Okay. That he just
25 discussed?

1 MR. MADDEN: Yes. And what the original
2 resolution required.

3 HEARING EXAMINER: All right. Go ahead and come
4 up here and ask your questions and then I'll stop you if I
5 think you're going too far afield.

6 MR. MADDEN: Okay. My name is Joe Madden. I'm
7 representing the Pine Shadows Air Park residential
8 community to the rear.

9 I've got a photograph taken November 26th, 2008,
10 by one of the residents. If they need to substantiate it,
11 they can say they took it.

12 My question, sir, is you just indicated what the
13 uses are. We just referred to automotive restoration. I
14 don't know that Mr. Palermo read the whole condition from
15 the original resolution, but I think it's being more or
16 less duplicated in this recommendation. I'm just curious
17 what all these vehicles are for?

18 MR. MacDUFF: Half of those vehicles are people
19 that are doing the restoring on the vehicle and the other
20 front up here are people that -- a gentleman parks his
21 trucks in this side. But the other half, the vehicles
22 they actually do the restoring.

23 HEARING EXAMINER: So part of the vehicles on the
24 site then belong to the workers?

25 MR. MacDUFF: Yes.

1 HEARING EXAMINER: And the other part belong to
2 -- are vehicles that are being repaired -- restored?

3 MR. MacDUFF: Restored there at night and left
4 there.

5 HEARING EXAMINER: Okay.

6 MR. MADDEN: We'd just like to introduce this
7 photo and also ask that that original condition be read
8 out loud in terms of what restoration is allowed.

9 HEARING EXAMINER: All right, Tony, read the
10 condition.

11 MR. PALERMO: Automobile restoration limited to
12 restoration and maintenance of privately owned automobiles
13 by their owners who are tenants of the property owner.

14 HEARING EXAMINER: Okay. All right. So you want
15 to show it to the -- any objections to the photograph?

16 MR. UHLE: I imagine he's going to put witnesses
17 on. I think that --

18 HEARING EXAMINER: All right. Why don't you just
19 submit it, Joe, when you get --

20 MR. MacDUFF: The gentleman that does the
21 restoring the cars, he's actually in the process of moving
22 out, too. So he has his own building down the street.
23 I'm not sure how much longer he's going to be there.

24 HEARING EXAMINER: Okay. On top of which I'm not
25 sure that this is not more of an issue for Code

1 Enforcement.

2 MR. MADDEN: We just wanted to make sure that
3 whatever was moving forward --

4 HEARING EXAMINER: Okay. All right. Any other
5 questions of this witness?

6 Thank you.

7 Anybody else? Matt.

8 Thereupon,

9 MATT UHLE,
10 called as a witness by the Applicant, having been
11 previously duly sworn, was examined and testified as
12 follows:

13 MR. UHLE: Matt Uhle for the record. I just
14 have a few brief comments. One of them is factual, and
15 the other I would say is -- the rest of it is argument.

16 A factual comment. I want to talk briefly about
17 the condition of the county property to the south. I know
18 you're going to go out there, but I was out there
19 yesterday and the fact of the matter is that when you look
20 at that aerial photograph there, it gives you no sense of
21 what the county property looks like right now.

22 The part of it that's being developed for the
23 amenity center, as normally happens during the development
24 process, looks like a moon scape and the moon scape
25 extends from the right-of-way line to approximately here

1 (indicating).

2 HEARING EXAMINER: Second tier -- or the second
3 row of warehouses?

4 MR. UHLE: It does not extend to the area that
5 would be immediately abutting the open storage.

6 HEARING EXAMINER: Okay.

7 MR. UHLE: There are basically two issues that
8 we've identified with the Staff Report, and they both
9 involve timing. On the question of the sewer, Mike has
10 identified most of the facts that are relevant to that.

11 When you read the Staff Report, I'm sure you
12 encountered a fairly dreary series of memos of e-mails
13 regarding what the law is on the question of requiring
14 existing developments to hook up.

15 Most notably, there's a memorandum from Mr. Owen,
16 the County Attorney, that addresses that and I don't
17 disagree with anything that's in his memo.

18 There is not a question of what law applies in
19 this case. The question is how the law applies to the
20 facts.

21 When you, as I'm sure you will, look at, I
22 believe it's Florida Statute 381.00655, and the county
23 Ordinance 9101 that addresses the subject of existing
24 developments hooking up, you will see that they do talk
25 about what has to go into the letter that's sent by the

1 utility companies that triggers the 12-month period for
2 hookup. And among other things you will find, and this
3 should not surprise you, that the letter is supposed to
4 put people on notice that they have 12 months to hook
5 up.

6 The letter that you'll find of availability, the
7 general zoning letter that we got that's included in the
8 zoning package, doesn't do that. So it's our opinion that
9 that letter does not comply with the requirements of the
10 statute.

11 And so any attempt to require us to do a more or
12 less immediate hookup is not based on the statute but is
13 based on some kind of planning considerations, over and
14 above what's in the statute. And under the facts of this
15 case as laid out by Mr. Roeder, given the incredibly
16 minimal flows that are being generated by the one bathroom
17 today, we do not believe that it's appropriate to require
18 our client to spend that kind of money until the law
19 requires it.

20 So when you look at the 24-hour notice, it
21 indicates that we think the Hearing Examiner should just
22 write an opinion -- or a condition saying that we'll
23 comply with the relevant ordinance and statute, and I
24 don't think anybody can reasonably disagree with that.

25 So that's our position on that.

1 With regard to the buffer, we have no substantive
2 difference with the staff as to what the buffer should be,
3 but we do have some issues about when it should be
4 required, and that really breaks down into three different
5 factual situations.

6 First of all, you've got the property immediately
7 to the west where the office building is supposed to go.
8 In this case, the aerial photograph shows the condition of
9 the property very nicely. It's a green field. It's got a
10 septic tank, it's got a little bit of a buffer along 41.
11 It's not unsightly.

12 Our position on that is that we should be
13 required to put in the buffer when we construct the office
14 building, the same way everybody else is required to put
15 in a buffer when they build something.

16 The notion that we should put in a buffer prior
17 to that when we don't even know when or if this office
18 building will be built to protect the people, the
19 aesthetic qualities for the people who are using the
20 county amenity facility to the south of that makes no
21 sense to us.

22 I mean, if there were something unsightly on that
23 property, maybe, but there isn't. So we have a problem
24 with requiring the installation of the buffer until Land
25 Development Code normally would require that.

1 Now, with regard to the portion of the property
2 that extends from the office building parcel to the open
3 storage parcel where the warehouses are, in that
4 particular case, what the staff is requesting is a
5 retrofit. It doesn't have anything to do with any of the
6 requests that we're making here today.

7 As a result of that, we would probably be
8 justified in objecting to any kind of buffer there because
9 there isn't one now. We're not changing that property
10 any.

11 Nonetheless, we understand that the warehouses do
12 have a certain aesthetic quality that the county may be
13 concerned about so we have not objected to the notion of a
14 retrofit.

15 But we don't want to have to do it right up front
16 as some sort of a separate project where we've got a
17 Development Order just to do a buffer for the warehouse
18 parcel. So our request there would be to do that
19 particular buffer at the same time that we do basically
20 the buffer for the office building so we can do all the
21 landscaping at one time.

22 And then finally there's the storage area.
23 Obviously once again we understand there needs to be a
24 substantial buffer for the storage area, both for the
25 residents and for the people using the county facility,

1 although as I pointed out here, the amenity center does
2 not extend out here. This area is heavily wooded so I
3 assume that whatever trails the county puts in there are
4 not going to be immediately adjacent to the property line
5 and so there already would be substantial visual obstacle
6 there.

7 But be that as it may, we have no problem putting
8 up a wall. But until there's something stored on the
9 property, there is no aesthetic problem. All you have
10 there is this big slab of concrete. It's not that great
11 looking, but it's not horrible. So why we should put a
12 wall around something that just looks like a parking lot
13 with no vehicles in it doesn't make any sense. So we
14 think that that particular part of the condition should
15 require us to put in the wall before any storage takes
16 place.

17 I have no problem with that. But to build a
18 little prison, as it were, around this piece of pavement
19 that doesn't have anything on it is, in our opinion,
20 unreasonable.

21 So those are our concerns with the Staff Report.
22 Again, that's not an issue of substance. It's not an
23 issue of how it will look in the long run. It's purely an
24 issue of timing thing. These are reasonable requests and
25 we would ask you to make those changes.

1 Thank you.

2 HEARING EXAMINER: Okay. County Attorney?

3 MR. FREDYMA: A question for Matt.

4 HEARING EXAMINER: Factual or argumentative?

5 MR. FREDYMA: You know, the problem is when you
6 testify as to facts and you also make legal argument, I'm
7 not sure where the line is and you, as an attorney, know
8 that attorneys like bright lines.

9 HEARING EXAMINER: All right. Ask your question
10 and let's find out whether it's factual or argumentative.

11 MR. FREDYMA: Not intended to be. The issue
12 about the letter as far as hookup, am I understanding that
13 the distinction that you're making is what you have thus
14 far, I think it's attached as M to the Staff Report, is a
15 letter of availability of the fact that lines are there or
16 will be there, not a letter that says please hook up? Is
17 that essentially the difference?

18 MR. UHLE: It's a letter that doesn't meet the
19 requirements of the statute triggering the need to hook
20 up. It does satisfy the county's zoning requirements that
21 establish the capacity is available.

22 MR. FREDYMA: I understand the distinction. So
23 if you get a letter from them that says -- from North Fort
24 Myers Utilities or Lee County Utilities that says,
25 congratulations, the lines are in place, please hook up,

1 then the one year starts, correct?

2 MR. UHLE: And the letter would have to say your
3 one year has started today.

4 MR. FREDYMA: That's fine. Thank you.

5 MR. UHLE: That's the distinction.

6 MR. FREDYMA: That's fine.

7 HEARING EXAMINER: Okay.

8 MR. PALERMO: I have a question.

9 HEARING EXAMINER: Yes.

10 MR. PALERMO: Tony Palermo for the record.

11 Matt, do you know specifically if your client has
12 received a rejection letter from North Fort Myers
13 Utilities for sewer?

14 MR. ROEDER: No, they never answered.

15 MR. PALERMO: The second question is more
16 philosophical, but say I owned a single family home in
17 North Fort Myers, and I'm on well and septic and North
18 Fort Myers Utilities is kind enough to provide sewer
19 service to my neighborhood, including in front of my
20 street. Do I have to hook up to water-sewer even though I
21 personally only have one bathroom?

22 MR. UHLE: If the law requires it, yes;
23 otherwise, not.

24 MR. PALERMO: You say if the law requires it.
25 That's not an answer.

MR. UHLE: I've laid out the parameters in the statute and ordinance when the law requires it. If the law requires it, then you have to; otherwise, not.

MR. FREDYMA: I think if the utility sends them the letter that says it's now there, please hook up, your year starts.

HEARING EXAMINER: Whether you have one bathroom or five, okay.

MR. FREDYMA: It doesn't matter.

HEARING EXAMINER: Okay.

MR. UHLE: We have no objection.

HEARING EXAMINER: Okay. Anything else?

Any other witnesses, Matt?

MR. UHLE: No.

HEARING EXAMINER: All right. County staff ready to make their presentation?

MR. PALERMO: Yes.

HEARING EXAMINER: I'll let you ask --

MR. PAVESE: I have a question.

HEARING EXAMINER: Okay. I'll let you ask your question when you come up and make your presentation, Mike, okay? It will be easier to do it that way. That way it will give us some basis for the question.

Thereupon,

TONY PALERMO,

1 called as a witness by Staff, having been previously duly
2 sworn, was examined and testified as follows:

3 MR. PALERMO: Good morning.

4 Tony Palermo for the record. I'm a Senior
5 Planner with the Lee County Department of Community
6 Development.

7 Madam Hearing Examiner, I have a presentation to
8 give and I'll do what I usually do which is I'll give you
9 some exhibits to go in the record, put together staff's
10 facts and analysis of those facts and give you some
11 concluding thoughts.

12 MR. UHLE: I think you ought to qualify yourself
13 as an expert. We accept him.

14 MR. PALERMO: Good job. Thank you.

15 This is a request to amend the Pine Shadows Air
16 Port Commercial Planned Development.. It is a little over
17 four acres in size, this property. And there are
18 essentially three issues to this development.

19 Number one is whether or not to put open storage
20 in the front of the property or in the back.

21 Number two is the placement of an office facility
22 in the front of the property on U.S. 41 frontage.

23 And, number three, is the modification of the
24 buffer to the south.

25 Staff did receive a number of opposition phone

1 calls regarding this application. There was some interest
2 in this application. And the objections were really --
3 they are three fold again. Number one is an objection to
4 the open storage use closer to residential uses. There
5 was some question about the notice of this particular
6 rezoning, whether the signs were done properly or whether
7 there were rezoning signs on the property. And, number
8 three, whether the applicant has the authorization to
9 rezone this property is the issues that were brought up by
10 the public.

11 What you have before you right now is, as I
12 mentioned before, you have the November 18 Staff Report.
13 You have the November 25 memo from staff. And you have
14 the applicant's 24-hour notice letter. So you have
15 everything you need.

16 Let me discuss some of the exhibits. First, I'll
17 discuss, we have two aerials and it's already been pointed
18 out that they are not aerials from last week or last
19 month, so the conditions in the ground have changed a bit,
20 but that does accurately describe the zoning and the land
21 uses around the property.

22 Two, I'll go through some photographs that were
23 taken by me and I'll give you some context over here. I
24 was at the Prairie Pines Preserve looking at the property
25 and looking at the warehouse hangar buildings. Here is a

1 closer look of me on the preserve property. Again I'm
2 looking to --

3 HEARING EXAMINER: Northward.

4 MR. PALERMO: Yes. -- to the facility. I
5 traveled -- I'm on this property right now. I'm at the
6 back near the runway about here, and I'm looking at both
7 the hangar facilities, and this is the preserve over here.

8 HEARING EXAMINER: Okay. So you're looking west
9 now?

10 MR. PALERMO: Right.

11 HEARING EXAMINER: Standing at the rear of the
12 property.

13 MR. PALERMO: U.S. 41 would be way over here. I
14 got away from the preserve and went to the local access
15 road.

16 HEARING EXAMINER: Okay.

17 MR. PALERMO: And that shows again U.S. 41 is way
18 over here. This is U.S. 41 around the property. So
19 that's the context of these pictures.

20 MR. UHLE: Tony, if you don't mind if I can ask
21 just one question.

22 MR. PALERMO: No problem.

23 MR. UHLE: The middle picture there of -- can you
24 identify where the drainage ditch is on that?

25 MR. PALERMO: It's very wet, but -- it's a wet

1 day, but it's this stuff right here. You can see the
2 trees here and you can see probably a fence here, and it
3 dips down here and then up here back on the grass.

4 HEARING EXAMINER: So part of this upland area
5 then is still part of the 40 foot wide easement?

6 MR. PALERMO: That's my understanding, yes.

7 HEARING EXAMINER: All right. Thank you.

8 MR. PALERMO: The last thing I'll give you are
9 property appraiser records. And, again, we just wanted to
10 establish the owner of the property, Jay MacDuff, is here.
11 He's on the ownership records. And I'm also going to give
12 you a copy of the ownership records for Pine Shadows Air
13 Park Owners Association, which shows the ownership of the
14 airstrip and some of the common areas in Pine Shadows.

15 HEARING EXAMINER: So what you've just handed me
16 is the ownership records?

17 MR. PALERMO: From the property appraiser's
18 website. It just lists out who owns the property, answers
19 that simple question.

20 HEARING EXAMINER: Okay.

21 MR. PALERMO: Let me get you the facts of the
22 case, and Mr. Roeder did an excellent job summing up what
23 the issues were and what the complex history was and how
24 we got to where we are today.

25 We received this zoning case on April the 3rd,

1 2007. And it was not found sufficient for hearing until
2 October 15th, 2008.

3 The property is and was in the suburban future
4 land use category. It has Commercial Planned Development
5 zoning. The zoning resolution, and you've got a copy of
6 it, is Z-98-069.

7 It is the Pine Shadows Air Park. You have
8 offices, you have these warehouse buildings. It is
9 located on U.S. 41 and Runway Street.

10 The property is not in the coastal high hazard
11 zone and the property is served by Lee County Utilities
12 for potable water. It is also served by North Fort Myers
13 for sewer service.

14 South of the property is Prairie Pines Preserve.
15 North of the property you will find single-family homes.
16 You will find a fire station. And nearby the property you
17 will find an aircraft landing strip when you visit the
18 site.

19 We move on to the recommendation, and there's not
20 much to say about it because we agree on a lot of the
21 issues and on most of the issues. I think the issues are,
22 as Mr. Uhle has described, issues of timing and not of
23 substance. And I appreciate the applicant's position.
24 It's a fair position. But, again, we take a different
25 position.

1 We've talked about changing Condition No. 5
2 saying there will be no retail sales permitted on the
3 subject property. And I'll let the Staff Report speak for
4 itself in terms of the conditions, but we have taken the
5 old conditions and modified them accordingly.

6 Let me move on to my analysis, which is, number
7 one, consistency with the Lee Plan, compatibility with the
8 surrounding land uses and concurrency.

9 But first let me address really the two issues of
10 timing. And one of those issues is the issue of sewer
11 connection. And staff wants water and sewer connections
12 as a condition of this rezoning amendment, as a condition
13 of them getting their entitlements to more valuable uses
14 which are the open storage and the office uses. And our
15 position is those should take place today and not later at
16 the Development Order stage.

17 The site, as the applicant has correctly stated,
18 utilizes septic tanks for sewer service. North Fort Myers
19 is the sewer provider per the December 13, 2007, letter
20 from the utility and that is Attachment M.

21 I've also provided the Hearing Examiner a map of
22 the North Fort Myers Utility service area and it shows a
23 force main on U.S. 41 in proximity to the property, and
24 that's an important fact to keep in mind.

25 The service lines also provide sewer service to

1 nearby developments. And I looked it up on the map. Tara
2 Woods gets sewer service. Carefree Resort sewer service.
3 Heritage Lakes sewer service. Sable Springs sewer
4 service. Again, that's Attachment M, the map showing all
5 the places that get sewer service from North Fort Myers
6 Utilities.

7 The applicant does not believe the existing
8 development as it stands should be required to connect to
9 central sewer service as of yet.

10 Staff's opinion is that both new and existing
11 businesses must connect to both potable water and central
12 sewer service and staff recommends a condition mandating
13 both immediately. Otherwise, we could wait indefinitely.

14 Central sewer is mandatory within 365 days of the
15 date of that connection point is available on site, and
16 this is a requirement per Florida statutes and per Lee
17 County ordinance.

18 The applicant is arguing, well, they only have
19 one single bathroom, which is the same argument you could
20 make if you had one single family home with one bathroom.
21 And as the Hearing Examiner knows, there are hundreds, if
22 not thousands, of people within southwest Florida, within
23 the state of Florida, who have water and sewer lines right
24 in front of their houses and it's an expense for them to
25 hook up to that water and sewer line but they are required

1 to do it even if they are a single-family home. And the
2 same should go for a commercial business in our opinion.

3 Land Development Code, Section 10-353(a)(5) says,
4 "Developments must connect to sanitary sewer operated by a
5 franchise service provider," in this case Lee County --
6 North Fort Myers Utilities, "where service is available."
7 Available is defined as located in a public right-of-way
8 or easement adjacent to any portion of the property.

9 This requirement is for any size development,
10 residential, commercial or industrial. That's one of the
11 reasons we are recommending that new development and
12 existing development not use septic systems but use the
13 sewer service that is available. And the Hearing Examiner
14 does have attached correspondence from the Director of
15 Development Services, the County Attorney's office and
16 County Attorney's office regarding the issue of mandatory
17 connections.

18 I would also point out, if we could move on to
19 the Lee Plan, this might not necessarily be in my Staff
20 Report, but if you go -- if you look in the Lee Plan under
21 Standard 11-2, which is the standard for sewer, you'll see
22 under -- there's a list of policies, 1, 2, 3, 4, 5. Under
23 2, you will find that if a utility has sufficient capacity
24 to provide service to a development in this case, then the
25 development must connect to that central sewer utility if

1 there's existing infrastructure adequate to accept the
2 effluence of the development within a quarter mile of any
3 part of the development. Obviously, this is within that
4 quarter mile.

5 No. 3, moving on, under that standard again,
6 that's Standard 11-2 of the Lee Plan, I asked specifically
7 is there a rejection of service letter. And that's
8 important because if there's not sufficient capacity or
9 infrastructure, in this case sewer within a quarter mile,
10 the developer must provide proof in the form of a clearly
11 stated rejection of service. Again there's no letter
12 saying that.

13 If you look under No. 4, where it discusses the
14 option of, well, what if you don't have sewer, well, you
15 have to use septic tanks. But if you look under No. 4, it
16 clearly says that a septic tank can be established on a
17 temporary basis. And when the time comes, when there is
18 sewer available to a property, that septic tank is not a
19 permanent feature, it is a temporary feature.

20 HEARING EXAMINER: Does that define temporary?
21 Does it give a specific --

22 MR. PALERMO: That's a good question.

23 HEARING EXAMINER: -- amount of time?

24 MR. PALERMO: I don't have a definition of
25 temporary.

1 HEARING EXAMINER: So it's not a date specific
2 situation?

3 MR. PALERMO: Correct.

4 HEARING EXAMINER: Okay.

5 MR. PALERMO: Let me move on and consider these
6 policies and you'll find these policies in the Lee Plan
7 under Goal 56, which is sanitary sewer infrastructure.
8 Again, the goal here is to protect the public health,
9 safety and welfare and environmental quality by
10 encouraging the provision of sanitary sewer service and
11 waste water treatment.

12 You'll find that Lee County Utilities, that
13 furthers that goal and these private utilities like North
14 Fort Myers Utilities, that also furthers that goal.

15 I think it's interesting, if you look under
16 Policy 56.2.1, which is not in the Staff Report, I'll read
17 this into the record because it says, "It is hereby
18 declared that in the interest of preserving public health
19 and of preserving and enhancing environmental quality, it
20 is in the public interest to abate and cease use of septic
21 tanks and waste water treatment package plants where and
22 when central sewer is available."

23 Let me move on. I'd like the Hearing Examiner to
24 really consider the May 1 memo from David Owen, Mr. Uhle
25 mentioned it and said he agrees with it, because it goes

1 to the Land Development Code, it goes to the state
2 statutes that are relevant here.

3 If you look on Page 3 of the memo, I think this
4 is really the important part, it says, and I quote, "There
5 is a state law and a county ordinance that also may be
6 applied for mandatory connections to central waste water,
7 particularly in those cases where the connection is made
8 post development of either the residential or commercial
9 enterprise." This again is a post-development case, and
10 we've also made the case that there is existing lines --
11 there are existing lines in the public right-of-way
12 adjacent to the property on U.S. 41.

13 Move on to issue No. 2, and again it's an issue
14 of timing and not an issue of substance. And we
15 appreciate the applicant and we appreciate their position
16 of putting a healthy and meaningful buffer next to a
17 public preserve. And again the issue is timing, whether
18 that buffer should take place now, whether we should go a
19 little above and beyond the requirements that are normally
20 required and have that buffer, because the existing
21 development, the existing slabs of concrete I think do
22 have an important impact visually and aesthetically on not
23 only just the public who lives there to the north and
24 lives there nearby, but there's going to be a new public
25 preserve there and that's owned by all of us, and I think

1 that's of interest to all of us.

2 HEARING EXAMINER: Tony, I have a question about
3 that now. I understand the position that you're taking,
4 okay. But is the county putting up any kind of buffer on
5 their property?

6 MR. PALERMO: You'll have ask them what they're
7 doing exactly with their property.

8 HEARING EXAMINER: It seems to me that if it was
9 so important that these buildings not be seen, that the
10 county would want to be taking some type of affirmative
11 action in ensuring that those buildings aren't seen.

12 MR. PALERMO: And I'm sure there's going to be
13 plantings on the property, but I'll let Public Works speak
14 for themselves.

15 HEARING EXAMINER: All right. I'll let Mike
16 Pavese testify to that then. Thank you.

17 MR. PALERMO: But it will not be a moon scape,
18 though, much longer.

19 MR. FREDYMA: If I may interject. Typically, the
20 requirement for buffers falls on the person who creates
21 the use that creates the issue. So you buffer from the
22 commercial use outward to the outside world.

23 HEARING EXAMINER: And I understand that, but
24 that's not the reasoning he's using.

25 Okay. Continue.

1 MR. PALERMO: Okay. Madam Hearing Examiner, to
2 protect the integrity of this preserve through buffering
3 and other limitation, I think it's important to protect
4 this now public resource, and staff is concerned about
5 any potential for negative impacts to the natural
6 resources to the south and negative impacts to
7 environmental resource.

8 Our environmental staff I think correctly used
9 these policies which are in their Staff Report, but if you
10 look at Policy 107.2.10, which requires development
11 adjacent to aquatic and other natural preserves and
12 recreation areas to protect the natural character and
13 public benefit of these areas, including, but not limited
14 to, scenic values for benefit of future generations, and
15 you'll see Environmental Sciences four concerns regarding
16 the applicant's proposed development and their
17 recommendations in terms of what kind of wall should be
18 there, what kind of buffering should be to the south, and
19 again it's almost like the same argument that we're making
20 with the utilities. It's an issue of timing, whether
21 those buffers or whether those connections should take
22 place immediately or whether they should wait perhaps
23 indefinitely for the right number of Development Orders,
24 the right kind of Development Orders to take place.

25 We want to have some insurance that if they're

1 getting an entitlement to more and better zoning, that
2 some actions be taken in the public interest.

3 Let me move on, though, and these are issues we
4 agree on, you'll see staff's analysis of the Lee Plan and
5 Smart Growth criteria starting on Page 9.

6 On Smart Growth I'll just make a couple of
7 comments that I think it's correct to say that this
8 development does direct development to infill community or
9 an infill area and that's beneficial as far as Smart
10 Growth is concerned.

11 I would also point out that the applicant met
12 with the North Fort Myers Planning Panel. I personally
13 went to one of those meetings and the North Fort Myers
14 Panel was supportive of the applicant's position in
15 support of this resulting amendment.

16 We also provided the Staff Report and comments to
17 the Lee County Port Authority. They have an interest in
18 airports obviously, but no comments were received on this
19 application.

20 To me it's good the staff also coordinated with
21 the Lee County Department of Public Works and the Parks
22 and Recreation Department because of the preserve to the
23 south and we appreciate their comments and we appreciate
24 their participation today.

25 Moving on, if you look on Page 11 you'll see the

1 Lee Plan analysis which Mr. Roeder said he agrees with so
2 I won't go into depth about that. But I think the key
3 policies here are Policy 5.1.5, which is protecting
4 residential neighborhoods, and Policy 139.9.5, which is
5 protecting the established residential neighborhoods and
6 improving the area's existing character.

7 Moving on to compatibility, I think the issues
8 have been discussed. The issues really are Prairie Pines
9 to the south and the residential uses to the north and
10 east.

11 If I can make a comment about open storage. This
12 application, this amendment, takes open storage off of
13 U.S. 41, which I think is beneficial. It was supported by
14 the North Fort Myers Planning Panel, and I think it would
15 improve the drive-by experience not to have either an
16 eight-foot wall or an open storage area.

17 I would also point out that if you go to the Land
18 Development Code under Section 34-3005, that's where open
19 storage is addressed, and it says, and I quote, "All
20 commercial or industrial outdoor storage must be shielded
21 behind a continuous visual screening at least eight feet
22 in height when visible from a residential use or
23 residential zoning district and six feet in height when
24 visible from any street or right-of-way easement." This
25 is one of those cases where it's clearly visible from a

1 residential development and a wall is appropriate.

2 Move on to concurrency. Really there are no
3 concurrency issues. There are no level of service issues
4 on U.S. 41. No change in access points. And the
5 Department of Transportation did have an opportunity to
6 comment, but there really are no comments because we are
7 maintaining a level of intensity and we are not creating a
8 level of service problem on U.S. 41.

9 The only other concurrency issue is water and
10 sewer, and both are available and both, I think, should be
11 required to connect, our position is sooner rather than
12 later.

13 Let me conclude by saying this amendment's
14 request is consistent with the Lee Plan as conditioned.
15 The request is compatible with the surrounding
16 neighborhood, again as conditioned. As conditioned, the
17 mix of uses is appropriate.

18 The amended request will not adversely affect the
19 environment, including a public preserve to the south as
20 conditioned. Urban services are available and connecting
21 to both water and sewer is recommended.

22 This is commercial infill property on a major
23 arterial road near public preserve and in proximity to
24 residential and commercial uses. So staff recommends
25 approval as conditioned.

1 I would be happy to answer any of your questions
2 or any questions by the applicant.

3 HEARING EXAMINER: County Attorney, questions of
4 your witness?

5 MR. FREDYMA: Very briefly.

6 Tony, is it a correct statement that when you
7 have a project that comes in for rezoning, one that's part
8 existing and part redevelopment, that you can require them
9 to upgrade to current standards?

10 MR. PALERMO: Yes.

11 MR. FREDYMA: And is that some of the issues that
12 we've heard today, issues of buffers and -- I guess
13 buffers primarily and water and sewer?

14 MR. PALERMO: Yes, those are two common issues,
15 water and sewer and buffers. For example, someone could
16 propose to redevelop a Commercial Planned Development and
17 there's a Type D buffer required on the right-of-way. We
18 can recommend an enhancement to that Type D buffer.

19 MR. FREDYMA: And at this point county has not
20 asked for anything to occur with respect to the existing,
21 I want to call them a buffer building, but the steel
22 buildings that are on site?

23 HEARING EXAMINER: The warehouses?

24 MR. FREDYMA: The warehouses.

25 MR. PALERMO: We're not requiring any changes to

1 buildings if that's what you're asking.

2 MR. FREDYMA: Right. But the proposed two-story
3 building, that would, in fact, have to meet the commercial
4 design standards if it's constructed?

5 MR. PALERMO: Yes, that's what they would have to
6 do.

7 MR. FREDYMA: And the storage area that's being
8 proposed would have to have the requirements that are
9 typically associated with an open storage area?

10 MR. PALERMO: Correct.

11 MR. FREDYMA: I guess I'm going to leave it at
12 that at this point. Thank you.

13 HEARING EXAMINER: Questions by the applicant?

14 MR. UHLE: I don't really have any questions. I
15 would like to say that if you read David Owen's memo, it
16 draws a clear distinction between the law relative to
17 existing development and the law relevant to new
18 development. Most of the Lee -- and the Chapter 10
19 requirements that Mr. Palermo has referred to, in my
20 opinion, and I believe Mr. Owen's applied only to new
21 development, I believe the only authority that requires
22 hookups of existing development are Ordinance 9101 in the
23 Florida statute.

24 HEARING EXAMINER: I'll check all of that out.

25 MR. UHLE: I can see where that would be a

1 distinction that a non lawyer might have trouble making,
2 but that's what it says and we agree.

3 I don't have any other questions.

4 HEARING EXAMINER: Okay. Tony, let me look and
5 see if I have anything in here.

6 Okay. I don't have any questions of you either,
7 Tony. Thank you. I think the Staff Report was very
8 complete.

9 MR. PALERMO: Thank you very much. Let me move
10 on to --

11 MR. MADDEN: I have a couple of questions.

12 HEARING EXAMINER: Yes, I'm sorry. You'll need
13 to come up, though, Joe.

14 MR. PALERMO: If I may, we obviously would like
15 the five photos admitted as well as the two aerials.

16 HEARING EXAMINER: I've already done that.

17 MR. PALERMO: Thank you.

18 MR. MADDEN: And I'm Joe Madden, representative
19 of Pine Shadows Air Park Property Owners Association, Inc.

20 Mr. Palermo, I want to thank you for the
21 opportunity to ask just a couple of questions. As you
22 explained it to the Hearing Examiner, open storage is a
23 permitted use currently under the CPD for the property?

24 MR. PALERMO: That's correct.

25 MR. MADDEN: And the applicant's proposal, does

1 it move the open storage closer to the adjacent
2 residential use?

3 MR. PALERMO: That's a good question because
4 there is an adjacent residential use on U.S. 41 frontage
5 to the north, and they would be impacted by open storage
6 on U.S. 41. There is mobile home development way over on
7 the other side of U.S. 41 that would be impacted by open
8 storage on U.S. 41 frontage. And the proposed amendment
9 would move that storage to this block of slab which would
10 have more of an impact on these residential developments
11 to the north. So I don't know if those are equal distance
12 or further away, but it shifts from one place to the
13 other.

14 MR. MADDEN: And in the proposal, the buffer
15 requirement around the open storage use, has that been
16 enhanced from what was required under the previous CPD?

17 MR. PALERMO: No, there's no enhancement. It's
18 the requirement that's in the Land Development Code as I
19 read during my presentation which requires an eight-foot
20 wall or structure to block visually that open storage.

21 MR. MADDEN: Can you put on the record what's
22 currently required for open storage on the front parcel?

23 MR. PALERMO: They would have to follow the same
24 Land Development Code, which I cited, 3005, and under open
25 storage, there's a limitation that they can't have any

1 construction equipment or large trucks, i.e. semi
2 trailers, et cetera.

3 MR. MADDEN: I've got a copy of Zoning Resolution
4 98-069 for Mr. Palermo's reference. I'm specifically
5 looking at Condition 7.

6 MR. PALERMO: Open storage use is limited to
7 Tract F-1 and must be completely enclosed by an eight foot
8 high painted concrete block or pre cast masonry wall. In
9 addition, a 15 foot wide buffer containing a minimum of
10 five trees and twelve shrubs per 100 linear feet must be
11 provided on the exterior side of the masonry wall.

12 MR. MADDEN: Okay. And the condition that's
13 being proposed in this zoning where we're moving the open
14 storage closer to the Pine Shadows residential
15 development, are we increasing the buffer or decreasing
16 the buffer required of the open storage?

17 MR. PALERMO: We're still requiring the wall but
18 we're decreasing the buffer since you are eliminating the
19 15 foot wide buffer containing the five trees and shrubs.

20 MR. MADDEN: If we're decreasing the buffer, sir,
21 when we look at Lee Plan Policy 139.9.5, would you be able
22 to testify, would it be your expert opinion that we're
23 improving the area's existing character next to the
24 residential neighborhood with available storage?

25 MR. PALERMO: Again, when you look at this

1 development, I think you are -- you have to balance the
2 needs of everybody and under the status quo, you could
3 have open storage on U.S. 41, utilizing those particular
4 conditions. And the conditions have changed because you
5 have a change in locations and you have Land Development
6 Code requirements which simply require an eight-foot
7 wall.

8 MR. MADDEN: My point is just the buffer
9 requirement that's being proposed here is -- do you agree
10 it's less than what is currently in place for the
11 property?

12 MR. PALERMO: One could argue that.

13 MR. MADDEN: So you do agree?

14 MR. PALERMO: Yes, I agree with that. That's
15 fine.

16 MR. MADDEN: And decreasing the buffer adjacent
17 to an established residential neighborhood, is it your
18 opinion that improves the area's existing character?

19 MR. PALERMO: I think moving the open storage,
20 which could have been on U.S. 41, increases the overall
21 character.

22 MR. MADDEN: My question, though, does decreasing
23 the buffer enhance the residential character?

24 MR. PALERMO: If you exclude all the other facts,
25 then you could make such a statement, but I'm not going to

1 make such a statement.

2 MR. MADDEN: I have no further -- let's see. The
3 testimony that you started with gave us some surrounding
4 uses in the area. My reading of the Staff Report, it's
5 almost silent as to the runway use immediately east of the
6 new proposed open storage area. In your consideration did
7 you individually consider the clear zone requirements or
8 the glide path or the approach to the airport in saying
9 that open storage immediately adjacent to the end of the
10 runway was appropriate?

11 MR. PALERMO: It's as appropriate as office
12 buildings or warehouse buildings or hangar buildings. I
13 think the property can be used for open storage and I did
14 take that into account and I did share this with the Lee
15 County Port Authority, which had no comments from it. And
16 I heard nothing from the public in terms of open storage
17 would be this hazard to the public health, safety or
18 welfare.

19 But it's an issue I considered, whether open
20 storage would be appropriate in that area, and as limited
21 in this resolution and since there's already open storage
22 allowed in this commercial property, it was something
23 considered.

24 MR. MADDEN: What is the maximum height of things
25 that can be stored in the open storage area?

1 MR. PALERMO: I don't have a height limitation,
2 but that would be covered under the Land Development Code,
3 and the question alludes to, say, you have a 100 foot
4 construction crane, would that be --

5 MR. MADDEN: We know construction equipment is
6 excluded. But I'm just wondering, you know, what we've
7 got here is we've got a height limitation of around 35
8 feet and then 25 feet for the balance. Does the zoning
9 staff think it's important to put a height limitation for
10 the open storage area?

11 MR. PALERMO: That's something worth considering,
12 but it wouldn't make much sense to put a 100-foot
13 structure or something stored such as a crane or some
14 other thing in the middle of a runway. But there are Land
15 Development Code requirements that should protect that and
16 there are rules regarding privately run airports, whether
17 you can have structures or buildings or antennas or other
18 things that are higher than, say 50 feet or 100 feet.
19 That's a good question to raise.

20 MR. MADDEN: Would it be appropriate to condition
21 this -- that it has an eight foot surrounding wall, would
22 it be appropriate to condition it if open storage was
23 approved, condition that nothing could be stored higher
24 than eight feet?

25 MR. PALERMO: I don't know if eight feet would be

1 reasonable because under normal circumstances you could
2 have a 25 or 35-foot building, and I don't know if that's
3 unreasonable.

4 MR. MADDEN: What is the purpose of just having
5 the buffer at eight feet then?

6 MR. PALERMO: Eight feet is to block visually any
7 person from seeing the open storage, just observing
8 normally. It would be unreasonable to build, say, a 40
9 foot or 50 foot wall to block something visually. So an
10 average person is no more than eight feet so an eight-foot
11 wall is reasonable.

12 MR. MADDEN: No further questions.

13 HEARING EXAMINER: Any redirect?

14 MR. FREDYMA: If I may.

15 Tony, based on a couple of comments that have
16 been made thus far, with respect to Deviation 2 and the
17 eight foot high concrete block wall that's proposed, and
18 if necessary you could ask environmental staff as well,
19 but would there be an objection to changing that so that
20 that one part reads an eight foot high concrete and then
21 as it appears in Condition 7 in the former zoning
22 resolution, in parens block or pre cast?

23 MR. PALERMO: Yes, let's let some of the other
24 staff members address that because the material of the
25 wall was kind of an important consideration.

1 MR. FREDYMA: Okay. But from your standpoint,
2 would that otherwise be an objection to that minor change?

3 MR. PALERMO: That is not a big deal to me, but
4 let's let them talk about what the material of the wall
5 should be.

6 MR. FREDYMA: Fair enough. And then the other
7 question, I guess to follow up on something that Joe
8 Madden talked about, height limitation with respect to the
9 storage area. Would it be reasonable to have a height
10 limitation of something in the order of eight to twelve
11 feet in height?

12 MR. PALERMO: I'm not sure because a building
13 could be 25 or 35 feet.

14 MR. FREDYMA: I understand that. But, typically,
15 don't we put buffers around storage areas so we don't
16 look at the stuff as opposed to a building which is
17 usually going to be a little more appealing to look at?

18 MR. PALERMO: Yes.

19 MR. FREDYMA: So would it be reasonable to expect
20 a limitation somewhere eight to twelve feet in height?

21 MR. PALERMO: Again, I don't know because I don't
22 know the nature of the stuff that's been in open storage.
23 But just generically, yes, it would serve the public
24 interest to have some sort of height limitation. What if
25 it's eight feet or ten feet, I'm just not going to make

1 that call right here.

2 MR. FREDYMA: That would be a reasonable
3 condition?

4 MR. PALERMO: Yeah, that sounds reasonable.

5 MR. FREDYMA: A suggestion I guess we would
6 offer.

7 I understand that it does prohibit construction
8 equipment and large trucks such as semi trailers, but who
9 knows what else you could get that would be tall and given
10 the proximity to the runway, it may be a reasonable
11 condition.

12 HEARING EXAMINER: Okay.

13 MR. FREDYMA: Thank you.

14 HEARING EXAMINER: Questions? Anything else,
15 Matt?

16 MR. UHLE: No.

17 MR. PALERMO: Move on to our Environmental
18 Sciences presentation to make and then we'll move on to
19 Public Works and they also have a presentation unless you
20 want to break.

21 HEARING EXAMINER: Do you guys want to duke it
22 out on who's going first?

23 MS. DERHEIMER: I don't have a limitation, I just
24 want to make --

25 HEARING EXAMINER: All right. And we'll take a

1 break after Susie's testimony then.

2 Thereupon,

3 SUSIE DERHEIMER,

4 called as a witness by Staff, having been previously duly
5 sworn, was examined and testified as follows:

6 MS. DERHEIMER: Good morning.

7 For the record, Susie Derheimer, Environmental
8 Sciences. I have been sworn and I have been tendered as
9 an expert witness in the past and I request to do so today
10 in environmental planning.

11 HEARING EXAMINER: Any objections from the
12 applicant?

13 MR. UHLE: No.

14 HEARING EXAMINER: Okay, accepted.

15 MS. DERHEIMER: I'll first address Mr. Fredyma's
16 question about the wall. Environmental staff does not
17 have a concern with it being concrete or masonry. I have
18 discussed this with 20/20 staff and Parks and Public Works
19 and they have no objection to that.

20 MR. FREDYMA: Thank you.

21 MS. DERHEIMER: I would also like to discuss just
22 a comment that was made during the applicant's testimony
23 regarding the ditch in the easement between the existing
24 proposed development and the preserve to the south.

25 HEARING EXAMINER: Okay.

1 MS. DERHEIMER: The ditch did contain vegetation,
2 substantial vegetation, and the property owner did clear
3 the exotics which was predominantly all the vegetation in
4 that easement.

5 With the comment of the regrowth, it's not
6 guaranteed whether it would be native or exotic vegetation
7 regrowing in that ditch.

8 Therefore, using -- just to put on the record,
9 using that vegetation as a buffer would not be an
10 insurance to staff that that would provide a substantial
11 buffer. Also, it is in an easement. The Land Development
12 Code, Section 10-421, does specifically state that
13 vegetation, either planted or in an easement, cannot be
14 used as required plantings. So I just wanted to put that
15 on the record.

16 I would like to discuss a little bit the
17 Environmental Staff Report, which is Attachment C, I
18 believe, to the overall Staff Report and refer, Madam
19 Hearing Examiner, to the exhibit.

20 There was some discussion during the applicant's
21 testimony again about exactly what would happen if
22 conditions -- what the buffer would look like, and
23 environmental staff did do an exhibit to show -- to
24 illustrate what the conditions that staff is recommending
25 in terms of the Type F buffer on Parcel A, and then

1 plantings within Parcel B and the wall within Parcel C.
2 And, again, generally that's what environmental staff is
3 recommending.

4 We reviewed the buffer requirement based upon the
5 deviation request by the applicant. Deviation No. 2 does
6 request a deviation from the Land Development Code from
7 Section 10-415 -- I'm sorry -- 416(d), which requires a
8 Type F buffer to be planted between any commercial
9 development and a public preserve.

10 In the Environmental Staff Report staff discusses
11 the Land Development Code, Section 10-416(d), which reads,
12 and I'll quote, "Requires buffering and screening to apply
13 to all new development and existing landscapes that do not
14 comply with the provisions of this section to be brought
15 into conformity the maximum extent possible when the
16 vehicle use area is altered or expanded and the building
17 square footage is increased."

18 Staff did review for this Land Development Code
19 requirement. The proposed project is increasing the
20 development square footage and it is changing the
21 configuration of the parking.

22 We looked at the development as a whole, and so
23 when reviewing for the buffer requirement, environmental
24 staff did take into consideration the existing conditions
25 of the site.

1 The most extreme interpretation of this code
2 would be requiring the applicant to provide a Type F
3 buffer between -- along the entire south property line.
4 But given there are existing structures, there is existing
5 asphalt parking or surface in the back of the site, we did
6 take that into consideration in the buffer requirement and
7 our conditions and recommendations do work with the
8 existing conditions of the site. And environmental staff
9 feels that this condition and recommendation meet the
10 intent of the Land Development Code, 416(d), which
11 requires the site to be brought up to the maximum extent
12 possible to conform with the landscaping code.

13 And really that's all I have.

14 We do have again Mike Pavese with Public Works.
15 We have Ms. Cathy Olsen with 20/20 if further questions
16 are concerning the preserve and what's going to happen on
17 the preserve to the south.

18 HEARING EXAMINER: Okay. Questions of your
19 witness by the County Attorney?

20 MR. FREDYMA: Just briefly.

21 Susie, are you familiar with some of the cases,
22 building cases more recently along the slough, Six Mile
23 Cypress? Are you the right person to ask or is Tony?

24 MS. DERHEIMER: I'm not sure. You've got to be
25 case specific because I deal with so many.

1 MR. FREDYMA: There have been several rezonings
2 in the past year and a half or so with redevelopment or
3 development along the slough and abutting that, obviously,
4 is preserve areas and portions that are owned by the
5 county. I guess my question was the importance of those
6 buffers to what someone would otherwise consider just
7 vacant land.

8 MS. DERHEIMER: Well, I think in this, and I'll
9 try to relate it to this circumstance. Those buffers not
10 only again are there to provide aesthetic value but also
11 in sense of the preserve, it's to buffer, you know,
12 activities from wildlife and help soften like noise and
13 visual aspects into the proposed development.

14 So in this case, let me point out, the preserve
15 to the south is going to be -- in the front part of the
16 portion it's going to be the entrance, and again I'll have
17 20/20 staff or Mike Pavese talk about that, so in this
18 case the buffer will provide aesthetic value to the public
19 that comes to the park, that's utilizing the park.

20 And then in the portion where the actual existing
21 habitat vegetation is remaining, which is from here to
22 here, provides not only aesthetic value to those
23 individuals that are using the park but also to the
24 wildlife that utilizes the existing habitat.

25 I don't know if that's where you're going with

1 that --

2 MR. FREDYMA: That's fine. And the requirement
3 still falls on the commercial property owner/developer --

4 MS. DERHEIMER: Correct. The Land Development
5 Code places the buffering requirement on the commercial
6 development when it's proposed to the preserve. The
7 preserve does not have a buffer requirement to adjacent
8 properties.

9 MR. FREDYMA: Thank you.

10 HEARING EXAMINER: Questions by Applicant?

11 MR. UHLE: No.

12 HEARING EXAMINER: Joe, questions?

13 MR. MADDEN: I just have one question or two
14 questions. Environmental Sciences, your responsibility is
15 to look over vegetative buffers, correct?

16 MS. DERHEIMER: Yes, the vegetation that's being
17 placed in the buffer.

18 MR. MADDEN: And the testimony previously was
19 that the open storage area on the front of this parcel is
20 required to have an eight-foot wall plus a fifteen foot
21 vegetative buffer.

22 Putting just an eight-foot wall around open
23 storage, in your opinion, is that more buffer or less
24 buffer from Environmental Sciences standpoint?

25 MS. DERHEIMER: From Environmental Science, it's

1 less vegetation planted in the buffer, or in this case,
2 vegetation versus no vegetation.

3 Can I expand on the reasoning why? I mean,
4 really the buffer in this sense is more a compatibility
5 issue so I'd like to defer most of those questions or
6 anything to Tony, but also in terms of looking at it from
7 a Land Development Code requirement, again, I refer back
8 to 10-416 that requires the site to be brought up and to
9 conform to the maximum extent possible.

10 In reviewing this site, the asphalt surface runs
11 within two to three feet from the drainage easement line,
12 and it runs -- I believe it runs up to the property line.
13 If not, it does run up to the easement line here. So
14 given existing conditions, there is no room to put in
15 vegetative plantings unless we remove asphalt surface.

16 And, again, that is the same with the east
17 property line. So in interpreting whether we're going to
18 require vegetative planting or not based upon the previous
19 zoning condition, we did look at existing conditions in
20 bringing it to conforming to the maximum extent possible.

21 HEARING EXAMINER: To the maximum extent
22 possible, okay. All right.

23 Let me ask one question of you now, Susie. It
24 seems that the key dispute here between the applicant and
25 staff is not the amount of vegetation or anything else,

1 but the timing of the placement of that vegetation, the
2 timing of the installation.

3 Does Environmental Sciences have any thoughts --
4 you've heard both sides now. You've heard the applicant's
5 arguments and you've heard, you know, the staff's
6 position. Have any thoughts on the benefits or the
7 disadvantages to placing the vegetation early or late?

8 MS. DERHEIMER: I really can't say that that
9 would be per Environmental Science review. That's again
10 more of a compatibility issue. I did -- and again I did
11 write the condition, but that was at the request of zoning
12 and in conferring with, of course, the preserve to the
13 south, so I'd like them to answer the question of the
14 timing because it relates to the preserve to the south.

15 HEARING EXAMINER: Okay. So, in other words,
16 then Environmental Sciences does not have a position
17 either direction on when the plants come in as long as
18 they are there when the use is there?

19 MS. DERHEIMER: In terms of per Environmental
20 Sciences' review, I can just say from an environmental
21 perspective, having the buffer there, given existing
22 conditions, is more beneficial than not having the buffer
23 there. Do you see what I'm saying?

24 HEARING EXAMINER: Okay. For the existing
25 conditions?

1 MS. DERHEIMER: Yes. Because if we're asking for
2 the buffer to be placed in prior to any actual new
3 development occurring, then given that there's no existing
4 buffer now, it's better to get that buffer in as soon as
5 possible because there is activity happening on that site.

6 HEARING EXAMINER: Okay. You're specifically
7 speaking around the warehouse areas?

8 MS. DERHEIMER: Yes. Well, I'm specifically
9 speaking where the existing development is.

10 HEARING EXAMINER: Right. Right. Okay.
11 County Attorney, questions?

12 MR. FREDYMA: I need to follow up a little bit on
13 that. Susie, if this project came in right now or if this
14 paved area was not here, and it came in for the
15 Development Order to add the paved area, would the
16 requirement for the buffer be part of the DO to do that?
17 In other words, if you were to pave this for an open
18 storage area, would the Development Order to do that
19 require the buffer to be put in place in conjunction with
20 that activity, with that construction work?

21 MS. DERHEIMER: Not per the Land Development
22 Code, but as per the zoning resolution. It would be a
23 matter of interpretation because of the moving of where
24 the --

25 MR. FREDYMA: Ignore for the moment the moving of

1 the -- you want to establish a storage area here right now
2 and there was nothing there but grass, they came in and
3 they got a Development Order to add pavement to this
4 area --

5 MS. DERHEIMER: As per the Land Development Code,
6 no, vegetative plantings aren't required so, no. But
7 given the existing zoning resolution, we'd have to look at
8 that. It was made a requirement as part of the zoning
9 resolution.

10 MR. FREDYMA: Let me stop you. I think we have a
11 misunderstanding. If this were just grass right now.

12 MS. DERHEIMER: Right.

13 HEARING EXAMINER: And they have the approval but
14 the approval did not require them to do anything up front,
15 it just says, okay, you can do that, you can use that.

16 MR. FREDYMA: You have this property and the use
17 open storage is allowed here per the Master Concept Plan,
18 if they come in to get the Development Order to pave this,
19 included in that Development Order is going to be the
20 buffers and the wall and all those things that are
21 pertinent to it; is that correct?

22 MS. DERHEIMER: Uh-huh.

23 MR. FREDYMA: That would be correct?

24 MS. DERHEIMER: Right.

25 MR. FREDYMA: Okay. And --

1 HEARING EXAMINER: Now, let me stop you.

2 Included by Land Development Code requirements or included
3 because that would be the logical sequence of doing this?

4 MS. DERHEIMER: Ask me the question one more
5 time. There's so much information coming in.

6 MR. FREDYMA: Again, if they come in -- assuming
7 for the moment that this is -- not here, but they have a
8 zoning resolution that allows them to do open storage
9 based on this Master Concept Plan in this area. The
10 property owner comes in to get a Development Order to add
11 the pavement for the storage area. Included with that DO
12 per the LDC, would that also require that they put the
13 buffer, the wall, all those pertinent components to that
14 in order to get the DO to do this?

15 MS. DERHEIMER: Yes.

16 MR. FREDYMA: Okay. And to begin using this as
17 open storage, would the Certificate of Completion have to
18 be issued that says, yes, the paving is done, yes, the
19 wall is done, yes, the buffers are done before they can
20 begin using it?

21 MS. DERHEIMER: Yes, they will need a Certificate
22 of Compliance, yes.

23 MR. FREDYMA: All right. That's part of -- and
24 the other question I have that sort of relates to that,
25 as this sits right now, assume for the moment that this

1 use is approved and they do nothing for the moment, is it
2 a correct statement that they could wait close to five
3 years, almost five years before they actually try to begin
4 this use?

5 MS. DERHEIMER: I'm not going to answer that
6 question. I'm not sure on the expiration date of
7 approved.

8 MR. FREDYMA: On the Master Concept Plan it says
9 five years.

10 MS. DERHEIMER: Right. I'd defer to Tony on that
11 one.

12 MR. FREDYMA: Specifically would that not be the
13 case, as long as the Master Concept Plan is valid, they
14 have time?

15 MS. DERHEIMER: Yes.

16 MR. FREDYMA: So they could wait almost five
17 years to do that?

18 MS. DERHEIMER: Yes. If the five years is what's
19 the official, yes.

20 MR. FREDYMA: And if they got their Development
21 Order, how long is the Development Order good for? Six
22 years sound right?

23 MS. DERHEIMER: I don't do Development Orders, so
24 I apologize, I'm not sure of the exact date or time frame
25 on that.

1 MR. FREYMA: Well, if we do the math, it could be
2 11 years before anything actually got put here?

3 MS. DERHEIMER: Yes. You could add the Master
4 Concept Plan to the -- yes, if they got the Development
5 Order at the end of the Master Concept Plan time frame,
6 then they have another umpteen years to develop, yes.

7 MR. FREDYMA: But in the meantime, out of a
8 hypothetical, you have concrete there now and the impact
9 from that now --

10 MS. DERHEIMER: Yes.

11 HEARING EXAMINER: You have the impact from the
12 concrete. You do not have the impact from the uses,
13 though; is that correct? In his hypothetical, until all
14 this stuff is done, can they start storing stuff on that
15 property in your understanding of the regulation?

16 MS. DERHEIMER: Until they get the approvals,
17 they cannot start storing stuff. Please stop me if I'm
18 incorrect, Tony. It's going a little bit above my head.

19 MR. UHLE: Now, I'm going to have to change the
20 hypothetical.

21 MS. DERHEIMER: Oh, no.

22 MR. FREDYMA: Did you ever want to go to law
23 school?

24 MS. DERHEIMER: No.

25 MR. FREDYMA: Hypotheticals are very common.

1 MR. UHLE: In the real world -- we're dealing
2 with a real world condition and not a hypothetical one,
3 and I have a concern with the series of questions that
4 were just asked, but since they've been asked, let me ask
5 a hypothetical, differently. Let's suppose there is grass
6 on the property that we're talking about here, and we have
7 no approval for open storage and we want to come in and we
8 want to pave it so there will be a parking lot. No open
9 storage, just a parking lot. Does the Land Development
10 Code require us to put up a wall to buffer the parking
11 lot?

12 MS. DERHEIMER: Yes, in a way, yes. Because if
13 you have parking, then the requirement for a Type C or F
14 buffer -- if you're 125 feet away from a residential lot,
15 you're required to do a C or F buffer so the C would
16 require a wall.

17 MR. UHLE: Are you 125 feet away?

18 MS. DERHEIMER: Yes.

19 MR. UHLE: Are you sure?

20 MS. DERHEIMER: Yes, this is residential use
21 right here.

22 MR. UHLE: Would we be required to install a wall
23 on the side approximate to the Prairie Pines?

24 MS. DERHEIMER: That would be a Type F
25 requirement.

1 MR. UHLE: So we would not be required to put in
2 a wall?

3 MS. DERHEIMER: No, it's just a Type F.

4 MR. UHLE: And the same would be true --

5 MS. DERHEIMER: Because that's still -- it's kind
6 of 125 feet away from a single-family residential lot,
7 so -- well, I guess, if this is 20, there would be a
8 matter of interpretation based upon that proposal and
9 whether that wall would be required there or not because
10 of the parking use.

11 MR. UHLE: But it would not be required abutting
12 the Prairie Pines project?

13 MS. DERHEIMER: No, a Type F would be required.

14 MR. UHLE: Just the area that would be county's
15 interest?

16 MS. DERHEIMER: Right.

17 MR. UHLE: No further questions.

18 MR. FREDYMA: One more follow-up.

19 HEARING EXAMINER: Okay.

20 MR. FREDYMA: The wall that's proposed along the
21 north side that's out in the -- appears to be within the
22 ten foot wide public utility easement, does the
23 deviation -- you can probably tell me better than I can,
24 this way -- does the deviation allow for that because --
25 is that a required wall?

1 MS. DERHEIMER: Actually, the deviation
2 conditions just address this -- the south property line.
3 So the deviations don't address this.

4 MR. FREDYMA: I guess my concern is if there's a
5 wall that's required there because of the open storage,
6 I'm not sure that it can be within the public utility
7 easement without a deviation. I'm not sure that a
8 deviation can be issued under that circumstance.

9 MS. DERHEIMER: And there would be also a concern
10 about its being a drainage easement, too, so the wall
11 actually may -- and this is addressed in the Land
12 Development Code when you do -- when walls are proposed,
13 that they cannot interfere with any type of drainage and
14 things like that. So that is looked at at the time of
15 Development Services - or development review by
16 Development Services.

17 HEARING EXAMINER: So then they may have to
18 relocate that wall to the south side of that easement?

19 MS. DERHEIMER: Correct.

20 HEARING EXAMINER: That ten foot wide easement on
21 the north property line.

22 MS. DERHEIMER: Yes.

23 MR. FREDYMA: The issue here, though, is that if
24 this goes through rezoning with this shown on the MCP, it
25 may be argued after the fact if we don't address it now

1 that --

2 HEARING EXAMINER: I understand. I mean, they're
3 going to have to revise the Master Concept Plan anyway.
4 That's one of the other things that they will just have to
5 do is to correct that, the location -- the depicted
6 location of that wall to south of that buffer, that
7 easement on the north property line, right.

8 Any other questions of this witness?

9 MR. FREDYMA: No, ma'am. Thank you, Susie.

10 HEARING EXAMINER: All right, folks, let's take a
11 ten-minute break. Let's be back here, please, at a
12 quarter after 11:00. As I said, water only in this room,
13 please. We will continue with staff's witnesses at that
14 time.

15 (A recess was taken from 11:05 a.m. to 11:15
16 a.m.)

17 HEARING EXAMINER: Okay. All right, folks, let's
18 go back on the record.

19 Any questions of -- anything else of Susie
20 Derheimer before we go on to Mr. Pavese?

21 MR. PALERMO: I want to make one comment.

22 HEARING EXAMINER: Okay.

23 MR. PALERMO: Tony Palermo for the record.

24 I just happened to remember that just based on
25 our last conversation, but a Development Order is good for

1 six years and you can ask for two-year extensions twice,
2 so a Development Order could hypothetically be as long as
3 ten years.

4 HEARING EXAMINER: Okay. One of those
5 hypotheticals again, okay.

6 MR. PALERMO: No more hypotheticals.

7 HEARING EXAMINER: All right. Mr. Pavese. Are
8 you sworn in?

9 MR. PAVESE: Yes, ma'am.

10 HEARING EXAMINER: Okay.
11 Thereupon,

12 MIKE PAVESE,
13 called as a witness by Staff, having been previously duly
14 sworn, was examined and testified as follows:

15 MR. PAVESE: I'm trying to get this site plan
16 ready for you here.

17 HEARING EXAMINER: It's a little crinkly but I
18 think I can get an idea.

19 MR. PAVESE: Yeah, and I can walk through it.
20 For the record, Mike Pavese, Lee County Public
21 Works.

22 Madam Hearing Examiner, I've previously been
23 tendered as an expert witness in zoning and land use
24 planning, and I would request to be tendered as such
25 today.

1 MR. UHLE: No objection.

2 HEARING EXAMINER: Okay. Accepted.

3 MR. PALERMO: I don't object either.

4 MR. PAVESE: And I'm here today as a
5 representative of Lee County Public Works and Lee County
6 Parks and Recreation to talk to you about the Pine
7 Shadows' amendment and how it relates to -- how it relates
8 to our project. And I'm also here representing Lee County
9 Utilities with regard to the utility infrastructure that
10 seems to be a significant part of our discussion here
11 today.

12 The first thing I'd like to address -- and I can
13 also tell you that, as you may remember, ten years ago
14 when I worked for the Department of Community Development,
15 I handled the '98 amendment, so I'm well familiar with the
16 previous request and the resolution that we've discussed
17 today and I'm also familiar with the sensitivity of this
18 particular piece of property and how it relates to the
19 Pine Shadows Air Park which it's part of.

20 But the first thing I'd like to do is I had a
21 question for Mr. Uhle. Would this be the appropriate time
22 to ask that question?

23 HEARING EXAMINER: Yes, go ahead and ask your
24 question, then we'll figure out if we need any other
25 background on it.

1 MR. PAVESE: Well, during your testimony, Mr.
2 Uhle, you drew a distinction between two letters. One is
3 a letter of availability which is required as part of the
4 county's planned development application, and then the
5 other letter that you referred to is one that's sent out
6 by the utility provider to a property owner when sewer
7 service is available in the vicinity of their property; is
8 that correct? Do I have a correct understanding of that?

9 MR. UHLE: Yes. There is a statutory provision
10 that describes what needs to go in that letter.

11 MR. PAVESE: Okay. So my next question is, do
12 you know who provides sewer service in this area?

13 MR. UHLE: North Fort Myers Utilities.

14 MR. PAVESE: Would it surprise you -- well, let
15 me first back up and ask you, do you know if it's
16 customary for North Fort Myers Utilities to mail out a
17 letter of availability to property owners within their
18 service area once utility infrastructure is available to
19 serve their property?

20 MR. UHLE: I have no idea what they do. All I
21 know is what's in the statute.

22 MR. PAVESE: Thank you.

23 And the reason I brought that up is because Mr.
24 Uhle was making the distinction between these two letters
25 and if, in fact, the letter that is supposed to be mailed

1 by the utility company indicating availability of service
2 is never -- it's not a customary practice for the utility
3 to send that, his distinction really has no relevance
4 because if the letter is never mailed out, consequently,
5 they never receive it, consequently, a 365 day time clock
6 doesn't start ticking and, consequently, they would never
7 have to hook up to sanitary sewer service.

8 MR. UHLE: That's exactly right. That's the
9 whole point.

10 HEARING EXAMINER: Okay.

11 MR. UHLE: That's what the statute requires.

12 MR. PAVESE: I would go on record as saying that
13 we concur with staff's recommendation regarding to the
14 connection of the sewer service to the existing
15 development in the time period prescribed in the Staff
16 Report.

17 And I want to ask the Hearing Examiner, have you
18 had a chance to look through this entire Staff Report and
19 attachments?

20 HEARING EXAMINER: Oh, yes. Oh, yes.

21 MR. PAVESE: Okay. Just for the record, I'd like
22 you to go to Attachment 1.

23 HEARING EXAMINER: Are we talking 1 or are we
24 talking L?

25 MR. PAVESE: I'm going to tell you where it is.

1 HEARING EXAMINER: Tell me what it is.

2 MR. PAVESE: Excuse me, Attachment I.

3 HEARING EXAMINER: Okay.

4 MR. PAVESE: I'm going to first of all reference
5 an e-mail from the applicant's representative, Mr. Roeder,
6 to Pete Eckenrode on October 15th, which says, "Pete, as
7 you can see" -- and this is in regard to the sewer issue
8 we're discussing -- "As you can see, this question is
9 reaching a critical threshold."

10 HEARING EXAMINER: Slow down, slow down. Okay,
11 go ahead.

12 MR. PAVESE: "We do not agree that the existing
13 development would (or should) tie into central sewer and
14 we have told the staff that we would probably withdraw the
15 request before we would agree to that." The rest isn't
16 really critical to my point.

17 The response that Mr. Eckenrode gave to the
18 applicant's representative, and I'll point out for the
19 record, that Mr. Eckenrode is the Lee County Development
20 Services director. He states in his reply, the first
21 sentence, "I have looked into this and concur with staff's
22 opinion that the existing buildings must discontinue their
23 use of individual on site waste water treatment and
24 disposal systems and connect to the central sewage system
25 within 365 days of the date that the connection point is

1 available on the site."

2 Now, I can tell you that that 365 day period has
3 come and gone since sewer has been available there.

4 HEARING EXAMINER: Do you know the exact date
5 that the lines were --

6 MR. PAVESE: No, ma'am, I don't have that
7 available.

8 HEARING EXAMINER: Okay.

9 MR. PAVESE: And I just want to touch on a couple
10 of things with regard to existing development and how new
11 requests or new application or new permitting pertains to
12 existing development in regards to the requirements of the
13 LDC. And as part of my position now, I coordinate and
14 process all Development Orders for Lee County capital
15 improvement projects, so I've become more familiar with
16 the system and how regulations are applied to existing
17 uses. And I can tell you that Mr. Fredyma made some valid
18 points when he said that when existing uses come in for
19 upgrades, and that being rezoning or a new development,
20 that they are required to upgrade to certain standards at
21 the discretion of the Development Services director.

22 In other words, he could apply standards, he
23 could choose to not require certain compliance with
24 different standards based on his professional reasonable
25 discretion. So what the applicant is being asked to do is

1 not by any stretch of the imagination unreasonable.

2 They're not being asked to do anything different
3 than anyone else would with regard to existing development
4 with the exception of those specific characteristics that
5 may be different based on what type of existing use is on
6 site. In this case they have a warehouse development and
7 an existing concrete pad and some open space up front next
8 to U.S. 41.

9 I can tell you that ten years ago, that parcel up
10 front was the subject of a rezoning to allow the uses for
11 which it's approved for now. I believe one is open
12 storage and one is warehouse development.

13 Mr. Roeder indicated that those uses would go
14 away, and he seemed to imply that that was being done for
15 the benefit of the, I guess the Pine Shadows people, but
16 in reality, I mean, it was approved for that ten years
17 ago. They haven't developed it as of this point, so my
18 guess would be that there's probably not a specific need
19 or desire for that use at that location.

20 With regard to our particular property being
21 the -- what's now known as the Prairie Pines Preserve, I'm
22 going to step over here and just kind of orient you to
23 what we have here.

24 HEARING EXAMINER: Can you get me, not right this
25 instance, but later today a reduced copy of this little

1 sucker?

2 MR. PAVESE: Sure.

3 HEARING EXAMINER: Can you get a reduced because
4 it's going to have to go in the file so it can be used in
5 front of the Board of County Commissioners.

6 MR. PAVESE: I'll try to find one for you.

7 HEARING EXAMINER: All right. And I'll tell the
8 girls to expect it.

9 MR. PAVESE: Basically, this is the rough layout
10 of what we're doing on the property, and it is cleared
11 right now to a certain extent. As Mr. Uhle implied, it
12 looks kind of like a moon scape there. And essentially
13 what this project is going to consist of is a parking lot
14 designed for people that have horse trailers so that they
15 can bring their horses here and they can park their cars,
16 ride their horses, and I believe we will have a hitching
17 post and a couple of wash stations for the horses. And
18 really the only other above ground structure besides that
19 is a small maintenance building with restrooms over here.

20 HEARING EXAMINER: So there's not going to be any
21 kind of an interpretive center or --

22 MR. PAVESE: No.

23 HEARING EXAMINER: Okay. It's actually strictly
24 just a parking lot --

25 MR. PAVESE: Yes, ma'am.

1 HEARING EXAMINER: -- and a place to tie the
2 horses.

3 MR. PAVESE: Yes, ma'am. And I heard the term
4 amenity center, too, and I figured they were probably
5 talking about this parking lot. Nothing like that. Just
6 a restroom for maintenance, a couple of hitching posts
7 over here, a couple of wash stations for the horses and
8 then a boardwalk and equestrian trail that goes to the
9 east of our property.

10 Now, this is not the entire boundaries of this
11 property. This is just what we're developing now. In
12 fact, this property extends from back kind of a reverse L
13 shaped design.

14 HEARING EXAMINER: How much land is actually
15 encompassed by the boardwalk and the parking area?

16 MR. PAVESE: I'd have to -- I can find that out.
17 I can look on that for you.

18 HEARING EXAMINER: Okay. But it's not half of
19 the property even?

20 MR. PAVESE: No, ma'am. No, ma'am. It's a
21 small --

22 HEARING EXAMINER: It's a small section, okay.

23 MR. PAVESE: Yes. It's probably one-fourth of
24 the --

25 HEARING EXAMINER: Do you know how long that

1 boardwalk is?

2 MR. PAVESE: I'm probably going to defer to Cathy
3 Olsen on that. Hopefully she'll know.

4 HEARING EXAMINER: Okay. Do you know the
5 approximation?

6 MR. FREDYMA: Is it a boardwalk or trail?

7 MR. PAVESE: It's both. It's part of one and
8 part of the other.

9 HEARING EXAMINER: So the horses are intended to
10 walk on the boardwalk, too, I mean, the decking or
11 stuff --

12 MR. PAVESE: I think in some areas they are, but
13 I'm going to defer to Cathy on that.

14 HEARING EXAMINER: Okay. All right. Cathy's the
15 expert on this then?

16 MR. PAVESE: Yes, ma'am.

17 Another thing that I wanted to -- Mr. Roeder made
18 a statement that you couldn't -- you had to have a certain
19 amount of flow to hook into a sewer and, you know, barring
20 that, you know, it was not feasible to do that. I guess I
21 would defer to the utility company with regard to that
22 aspect of the connection. If, in fact, there was not
23 sufficient flow, I don't believe that they would allow a
24 connection into the line.

25 The applicant talked about retrofitting, and

1 essentially that is part of what we're doing here as a
2 result of this request. And, again, as I said earlier,
3 retrofitting is something that frequently occurs and is
4 not unusual when developed property comes in for
5 additional approvals, for additional development, so it's
6 not -- I mean, and I can tell you that we have had to
7 retrofit our own projects because we -- the county, when
8 we process a Development Order, although we fast track it,
9 it still goes through the same review and we subject
10 ourselves to the same requirements that anyone in the
11 general public would be subject to. And if I run into a
12 project where I'm not sure how to handle it, then I go to
13 them and that's where I get my direction from.

14 HEARING EXAMINER: Okay.

15 MR. PAVESE: So the fact that this is
16 retrofitting is not at all unusual or unreasonable. As
17 Tony said in his presentation, the applicant is asking
18 for -- they're in here requesting entitlements to more
19 valuable uses. They're asking, you know, for something
20 again. This is the same way they did ten years ago. And
21 the reason that the previous case is somewhat significant,
22 Madam Hearing Examiner, is because at that time Lee County
23 didn't own this property.

24 HEARING EXAMINER: The property to the south?

25 MR. PAVESE: Yes, ma'am. It was a -- I'm pretty

1 sure it was a vacated RPD and at some point in the past
2 few years Lee County 20/20 conservation purchased the
3 land. They came in, they rezoned it, and we are currently
4 developing it with the recreational use that you see in
5 front of you today.

6 To answer your question, a couple of questions
7 that you posed about the requirement for buffering early
8 versus late, well, you know, with regard to the case ten
9 years ago, just for discussion purposes, if we required
10 the applicant to plant the required buffer here on the
11 south part -- is this Parcel A?

12 HEARING EXAMINER: I think that's F-1. I think
13 Parcel A is at the opposite end.

14 MR. PAVESE: South of F-1 and west of F-1, and we
15 have ten years growth, ten years maturity, we have
16 probably a substantial buffer there, but that was
17 unreasonable at that time. It would be unreasonable to
18 require them to do that based on what was existing at that
19 time.

20 And the same regard to this. Although you may
21 gain ten years of maturity and growth and, therefore,
22 enhance aesthetic value, it really wouldn't be reasonable
23 to require them to do that because they were against a
24 very large parcel that was undeveloped and was full of
25 exotics.

1 We are now ten years later. The scenario has
2 changed. We are in the process of developing this
3 property. The difference between requiring the buffering
4 now versus later is that we get an immediate benefit as
5 opposed to a later benefit. One that, as Tony said, and
6 as Mr. Fredyma tried to point out, could stretch out for
7 ten, eleven years, and that's even, you know, if they
8 waited five years to come in and get a DO. Then you tack
9 on Tony's eight or ten years, and we're thirteen years out
10 and we've got no benefit.

11 We've got people who are going to be using this.
12 It's reasonable and to require the planting of these
13 buffers along the south line immediately or within the
14 time period prescribed by the zoning staff.

15 HEARING EXAMINER: Mike, answer me one question.
16 Look up in your northwest corner now on your site plan
17 there. What is that triangular -- looks like a bunch of
18 -- can you tell what that is?

19 MR. PAVESE: Over here (indicating)?

20 HEARING EXAMINER: Yes.

21 MR. PAVESE: This is a storm water retention
22 area.

23 HEARING EXAMINER: Oh, that's the retention area.
24 It looked like a bunch of lanes on -- you know, like they
25 have around a track at a high school or something.

1 MR. PAVESE: Yes, ma'am. That's actually a
2 retention area.

3 HEARING EXAMINER: Okay. How soon do you guys
4 expect to have this pedestrian and equestrian park ready?

5 MR. PAVESE: Nine months.

6 HEARING EXAMINER: Nine months from today?

7 MR. PAVESE: Approximately.

8 HEARING EXAMINER: Something like that. All
9 right. So you've actually started building the boardwalk
10 and whatnot out there or is it just mainly cleared?

11 MR. PAVESE: We're putting in the infrastructure
12 right now, the drainage. We've built -- the retention
13 area has been completed. And right now we're in the
14 process of putting in the drainage components.

15 HEARING EXAMINER: Is your bathroom going to be
16 connected to central sewer?

17 MS. OLSEN: Yes.

18 MR. PAVESE: Good answer, Cathy.

19 HEARING EXAMINER: Okay. All right. But you
20 indicated that this is not the only plan that you have,
21 that later on you guys are going to be doing something
22 else with other parts of this 2,000 acres or whatever it
23 was?

24 MR. PAVESE: That's my understanding, but I don't
25 believe we even have a plan yet.

1 HEARING EXAMINER: Okay. All right.

2 MR. PAVESE: You do? Okay. She's got it. She
3 can tell you.

4 HEARING EXAMINER: We'll have to get Cathy up
5 here.

6 All right. Anything else, Mike?

7 MR. PAVESE: I just wanted to say that with
8 regard to the retrofitting, that the immediate benefit
9 that we would gain by the inclusion of the buffer along
10 the south line is that it would be -- the landscaping
11 would be planted and established and would begin to mature
12 immediately so we would get some softening against our
13 preserve --

14 HEARING EXAMINER: Okay.

15 MR. PAVESE: -- versus, as I said earlier, it
16 could be 13 years. We've had nothing within ten years
17 based on the last case, but, of course, things have
18 changed with regard to the adjacent property.

19 You asked -- another question that you had was
20 with regard to buffering of our site, and the answer to
21 that question is that we are not required by the Land
22 Development Code to buffer.

23 HEARING EXAMINER: I understand that. But
24 whether you're required to or not, if you're really
25 concerned about what is going to be visible from that

1 property, you know, would you not want to do something on
2 your property to ensure that there would be some kind of
3 visual screening?

4 MR. PAVESE: Sure.

5 HEARING EXAMINER: That you're responsible for
6 and that you can control?

7 MR. PAVESE: Sure, that's reasonable. That's a
8 reasonable point. And we may do that, but as you know,
9 we're in -- the budget constraints that we're in right now
10 are extreme and we've just been after the fact told that
11 we -- that Lee County DOT wants us to put in a sidewalk
12 along 41, so that's something that we didn't count on and
13 if there's any money left over in the budget, it's
14 probably a portion or all of it's probably going to go to
15 that.

16 But, you know, I wouldn't say that it's not even
17 a possibility that we would eventually do some more
18 plantings there.

19 MR. FREDYMA: If I may.

20 HEARING EXAMINER: Yes.

21 MR. FREDYMA: Just interject if I may. With
22 respect to responsibility and control to ensure that the
23 buffer is there, if it's required on this development
24 parcel, not the county's piece, it becomes a condition of
25 the DO, it's required to be installed and maintained and

1 failing which Code Enforcement action --

2 HEARING EXAMINER: I understand all that, John.
3 You know, I'm just trying to find out if the county is so
4 concerned about the visibility, are they doing anything on
5 their own behalf to help out the situation. That's all --
6 the only question I have. I understand that this property
7 has legal obligations under the Land Development Code that
8 they have to comply with. But, you know, if my neighbor
9 puts up a fence and I don't like the color of it, it's not
10 my -- you know, I can't go to my neighbor's house and say,
11 now, you got to come over here and paint the fence on my
12 side because I don't like the color on your side. It's my
13 responsibility to take care of what's, you know, on my
14 property. If I don't want to see the fence, I put in --

15 MR. FREDYMA: Typically we don't put the burden
16 on the abutting property owners in the way that you're
17 suggesting.

18 HEARING EXAMINER: That's what I'm asking,
19 though, is if the county is that concerned about the
20 visibility, are they planning to take any steps and I
21 think Mike has answered the question. I mean, I
22 understand where the responsibility lies as far as this
23 applicant is concerned.

24 MR. FREDYMA: I think we're relying on the
25 regulations to provide a certain level of buffering. The

1 question is will the county look to enhance that by
2 putting something on their own property. I think --

3 HEARING EXAMINER: Maybe.

4 MR. FREDYMA: Time will tell.

5 HEARING EXAMINER: Maybe. Exactly. Maybe. All
6 right. Anything else?

7 MR. PAVESE: I this that's it unless you have any
8 questions.

9 HEARING EXAMINER: Questions by the County
10 Attorney?

11 MR. FREDYMA: I guess not at this point.

12 HEARING EXAMINER: Okay. Questions by the
13 applicant?

14 MR. UHLE: Just a few. One I can't help asking.
15 The water management area up at the northwest corner, that
16 more or less abuts the subject property, does it not?

17 MR. PAVESE: Yes.

18 MR. UHLE: The county has a requirement in its
19 regulations that water management areas be designed so
20 that they're sinuous. Is that --

21 HEARING EXAMINER: Is that sinuous?

22 MR. PAVESE: I'm going to let Cathy answer that.

23 HEARING EXAMINER: That's dry detention, that's
24 not wet detention, huh?

25 MR. PAVESE: It's got some water in -- it had

1 some water in it last time I was out there.

2 HEARING EXAMINER: Okay.

3 MR. MADDEN: I object, relevancy.

4 MR. UHLE: I just couldn't help asking that
5 question. I've seen it come up many times.

6 What's proposed, if anything, to be done between
7 the boardwalk area and the northern property line?

8 MR. PAVESE: I'm going to have to defer to Cathy
9 on that. My answer would be I don't know that we're going
10 to do anything there right now.

11 HEARING EXAMINER: You're not going to go out
12 there and actually clear anything but the exotics? Are
13 you even going to clear those?

14 MR. PAVESE: You know, the -- I'm going to let
15 her answer that because I've heard some things and I don't
16 know.

17 HEARING EXAMINER: Okay. We'll let Cathy come
18 up.

19 MR. UHLE: What's the distance between the
20 northernmost point of the boardwalk and the property line?

21 MR. PAVESE: I'd say it's at least 100 feet.

22 HEARING EXAMINER: Okay.

23 MR. UHLE: That area --

24 MR. PAVESE: Excuse me, it's -- yeah, it's at
25 least 100 feet. I'm going to say it's at least 200 feet.

1 I think you've got a wrong reference.

2 MR. UHLE: The aerial indicates that that area is
3 pretty heavily vegetated now. And it appeared to me that
4 that area was basically natural vegetation. I didn't
5 really see a lot of exotics, am I right about that?

6 MR. PAVESE: I think so, yeah. And just to --
7 Matt brings up a good point. Because if you go out there,
8 Madam Hearing Examiner, and you walk to the edge of this,
9 it's kind of deceiving as to how -- you know, you look at
10 this and you can almost interpret that this is right up
11 here. It's actually not, it extends a pretty good
12 distance this way. You can see that when you go out
13 there.

14 HEARING EXAMINER: Okay.

15 MR. PAVESE: And if you want a set of these
16 plans, I can get you a whole set of them.

17 HEARING EXAMINER: Okay, that would be good. I
18 will also probably need somebody to drive me around the
19 site if it's as wet as it appears to be in one of those
20 pictures up there.

21 MR. UHLE: It's not now.

22 HEARING EXAMINER: It's not now?

23 MR. UHLE: No.

24 HEARING EXAMINER: I can trudge out there and not
25 disappear in a mud bog?

1 MR. PAVESE: It's like a barren area out there.

2 HEARING EXAMINER: Okay. It's December, maybe
3 the snakes will be halfway asleep.

4 MR. UHLE: Let's suppose, since we love
5 hypotheticals here, let's suppose that the conditions of
6 approval of this particular case become so onerous that
7 the applicant just decides to withdraw the case and
8 instead develop the property in accordance with the
9 existing zoning. Mr. Pavese, can you tell us what
10 buffering would be required along the south property line
11 under those circumstances and what the uses would be?

12 MR. PAVESE: Now, which -- are you talking about
13 developing this or this?

14 MR. UHLE: I'm talking about the whole site. And
15 you'll have to break it down into parts probably because
16 there are different factual situations.

17 MR. PAVESE: Well, this kind of goes back to the
18 hypothetical that Mr. Fredyma was bringing up earlier
19 when he assumed that there was grass here.

20 Now, there's two particular pieces of property
21 here separated by a property line but they're both under
22 common ownership to my understanding. Therefore, from the
23 perspective of the property appraiser's office, and
24 consequently from our perspective, that's one piece of
25 property, so --

1 HEARING EXAMINER: Okay.

2 MR. PAVESE: -- when you come in to develop that,
3 you're going to be subject to whatever buffering
4 requirements are required --

5 HEARING EXAMINER: In the approval?

6 MR. PAVESE: -- in the approval or that are
7 otherwise currently applicable to what you're doing or
8 have otherwise been deviated from.

9 HEARING EXAMINER: Okay. All right.

10 MR. PAVESE: So I guess my answer would be 30
11 feet where appropriate or --

12 HEARING EXAMINER: Do you know what the actual
13 CPD required for buffering; do you recall?

14 MR. PAVESE: Not from memory, no. I just know
15 that I was --

16 MR. UHLE: Could you please look at it? I mean,
17 given that you're very familiar with the case as you told
18 us and the resolution as a part of the Staff Report, could
19 you please tell us what the resolution required?

20 MR. PAVESE: Sure. It appears that the open
21 storage use, if it were developed -- the open storage use,
22 if it were developed on this tract up here, would require
23 a 15 foot wide buffer with an eight-foot wall with
24 plantings on the outside the wall.

25 There was a deviation granted for buffering

1 requirements adjacent to the street right-of-ways.

2 Now, the important thing to note is that when
3 this case came through, there was different buffering.
4 The preserve requirements were not in there ten years ago,
5 so we were probably -- at that time we were probably in
6 compliance with what was required so -- and, again, I
7 don't think that we went any further to address buffering
8 on the existing uses because, like I said, it really
9 wouldn't have been reasonable at that point because there
10 was a vacant RPD there and it was overrun with exotics and
11 wouldn't have served any purpose to anyone at that point.

12 MR. UHLE: Okay. So if I'm understanding you
13 correctly, along the remainder of the southern property
14 line, there was no buffer required.

15 MR. PAVESE: That's correct.

16 MR. UHLE: For the portion that was going to have
17 the open storage, was there any condition in that approval
18 that required the buffer to be installed at any specific
19 time other than prior to the use being instituted on the
20 property?

21 MR. PAVESE: Not to my knowledge.

22 MR. UHLE: No further questions.

23 HEARING EXAMINER: Follow-up?

24 MR. FREDYMA: Changing the subject a little bit.

25 If you know, Mike, the ten foot PUE that's up here along

1 the north side of the site, is there any -- does Lee
2 County Utilities utilize that at all, do you know, or
3 North Fort Myers, again if you know?

4 MR. PAVESE: I don't believe that they do. I
5 know the sanitary sewer services along the east side of
6 41.

7 MR. FREDYMA: Do you know if the -- I guess what
8 I'm getting at is oftentimes platted lots have a ten-foot
9 wide public utility easement along the front of the
10 street. But there are many instances where the utility
11 lines actually get put in the road right-of-way. So I was
12 wondering if you knew what was actually in this one as it
13 relates to the site.

14 MR. PAVESE: No, I couldn't say for sure.

15 MR. FREDYMA: Thank you.

16 HEARING EXAMINER: Mr. Madden, cross-exam?

17 MR. MADDEN: Yes, I only have two questions.

18 Again, Joe Madden for your audio record.

19 Mr. Pavese, you've been qualified as an expert
20 and not objected to by anyone. This is the original
21 zoning resolution as you just reviewed with Mr. Uhle.
22 This was the condition related to open storage?

23 HEARING EXAMINER: All right. Could you read out
24 the condition number, please, in the original?

25 MR. MADDEN: It's Condition No. 7 and

1 substantially provides for the eight foot high painted
2 concrete (block or pre cast) masonry wall. In addition, a
3 15 foot wide buffer containing a minimum of five trees and
4 12 shrubs per 100 linear feet provided on the exterior of
5 the masonry wall.

6 HEARING EXAMINER: Right.

7 MR. MADDEN: From your memory and in your
8 opinion, was that the minimum buffer -- given the
9 sensitivity of the surrounding residential area of Pine
10 Shadows Air Park, was that the minimum buffer that you
11 would have deemed necessary to make the open storage use
12 compatible with the residential?

13 MR. PAVESE: Yes, I believe that was the minimum
14 that was in place at the time.

15 MR. MADDEN: I have no further questions.

16 HEARING EXAMINER: All right, Mike, thank you.

17 Is she going to testify? Are you sworn in?

18 MS. OLSEN: Yes.

19 Thereupon,

20 CATHY OLSEN,
21 called as a witness by Staff, having been previously duly
22 sworn, was examined and testified as follows:

23 HEARING EXAMINER: State your name for the
24 record.

25 MS. OLSEN: Cathy Olsen for the record, and I

1 have been previously accepted as an expert witness for
2 environmental issues as well as parks and recreation
3 issues.

4 If I could, I just wanted to say --

5 HEARING EXAMINER: Hang on a second. Any
6 objection? Do you want to go through her qualifications?

7 MR. UHLE: No. Parks and recreation is clear.
8 The environmental part I have no familiarity with her
9 credentials but I'm not going to object to her.

10 HEARING EXAMINER: All right. Accepted.

11 MS. OLSEN: I just wanted to start with the whole
12 premise behind the conservation 20/20 program. It is the
13 county's land acquisition -- environmentally sensitive
14 land acquisition and management program. The whole
15 premise behind the program is to purchase and restore and
16 preserve environmentally sensitive areas for the wildlife
17 value, for the water quality and control aspects as well
18 as for providing passive nature based recreation to the
19 members of the county as well as tourists.

20 There have been a couple of confusions on the
21 site plan. This trail system that you see right here is
22 our 88 compliant trail. So it's impervious as well as
23 portions that are boardwalked over wetlands. We have an
24 additional extensive trail system which is not shown
25 because it's not part of this particular development. The

1 contractor is not working on that.

2 What that is is a system of trails, both for
3 hiking, mountain biking and equestrian use.

4 It all totals about 27 miles of trail throughout
5 the entire preserve. You have to remember that the
6 preserve is 2,709 acres and what we're showing and what
7 we're talking about in this particular zoning case to the
8 north is just a miniscule amount.

9 If I can direct you to Attachment D.

10 HEARING EXAMINER: Cathy, let me do ask you one
11 question before we go to Attachment D. Now, you said that
12 there are going to be other trails?

13 MS. OLSEN: Yes.

14 HEARING EXAMINER: Are those going to be -- I
15 know they're not going to be impervious. Are they going
16 to be any kind of shell or any kind of sub base or
17 anything put out there?

18 MS. OLSEN: It's at grade.

19 HEARING EXAMINER: It's at grade. So you're
20 going to be walking through the marsh or through the sand
21 or --

22 MS. OLSEN: On sand, yes. Not through the
23 wetlands. We've removed old Jeep trails. Basically, all
24 of our trails -- most of our trail system is on old
25 agricultural roads, Jeep trails, fire lines, that kind of

1 thing.

2 HEARING EXAMINER: Okay. Thank you.

3 MS. OLSEN: On Attachment D, if you take the
4 westernmost portion of that map and you take a quarter
5 inch from the left where it says 41, that's pretty much
6 the area that we're talking about, and I just wanted to
7 point that out in terms of magnitude. A quarter inch from
8 the left most point in is what's shown on that map.

9 HEARING EXAMINER: Oh, I see.

10 MS. OLSEN: Just so that you can understand that
11 the scale we're dealing with is fairly small.

12 When we first purchased this property, it was a
13 mobile home PD, vacant obviously, and it was full of
14 melaleuca, which is an exotic invasive tree. We have
15 cleared all of that, treated it. What remains is the
16 remnants of a natural system, primarily pine flatwoods,
17 but some oak encroachment as well.

18 It's already been stated, but I want to reiterate
19 that we do not have a welcome center here. It is the
20 parking lot and restroom facilities. From that point the
21 public will go out into the rest of the property. I dare
22 say, this is a guess, but I think the majority of the
23 people stay on the boardwalk system because I think we'll
24 have a lot more pedestrian users than equestrian, but, you
25 know, who's to know.

1 The whole point of the conservation 20/20
2 preserves is to get people out onto the preserves and what
3 is so unique about this one, it is within the urban area
4 which should get a lot of foot traffic. And what is so
5 important is that people are coming to these for the
6 outdoor experience, to feel as if they were in the
7 wilderness. Obviously, it's not, it's North Fort Myers,
8 but they want that outdoor feeling, which is part of the
9 reason we want to ensure that the buffering is done in
10 accordance with the standards that the county has.

11 It's also a safety issue in terms of buffering
12 because of the horsemen. We can't tell what kind of
13 experience horsemen have and if something is happening
14 when the storage unit is shuffling things around, horses
15 could shy so we want to make sure that the buffering is in
16 accordance with the standards.

17 We will try to provide supplemental planting.
18 However, as it's been explained to me that that really is
19 the responsibility of the property that's undergoing the
20 development, but we will, you know, put in what we can as
21 well.

22 As far as the walls go, we wanted the fence
23 changed because it is a natural system and if a lightning
24 strike occurs and a wild fire comes across, we don't want
25 the fence to burn up so that's why we requested the less

1 fire damage wall.

2 HEARING EXAMINER: Okay.

3 MS. OLSEN: And I think that's all I have unless
4 there are questions.

5 HEARING EXAMINER: Now, I think you prompted Mr.
6 Pavese in stating that you anticipate this boardwalk and
7 this parking area being completed and open within nine
8 months of today's date; is that correct?

9 MS. OLSEN: That's correct. Our contractor has
10 said that it should take him ten months and he's been
11 working for a month so fingers crossed.

12 HEARING EXAMINER: So sometime late next summer?

13 MS. OLSEN: Yes, ma'am.

14 HEARING EXAMINER: All right. Questions by
15 County Attorney?

16 MR. FREDYMA: None.

17 HEARING EXAMINER: County staff, none, okay.

18 MR. UHLE: Do you know where the other trails are
19 going to go on this property?

20 MS. OLSEN: We will have horse trails that go
21 probably off to the south and hiking trails and mountain
22 biking trails to the north.

23 MR. UHLE: Do you anticipate that there will be
24 trails in the area immediately to the north of that 88
25 boardwalk?

1 MS. OLSEN: Up in here?

2 MR. UHLE: Yes.

3 MS. OLSEN: Yes.

4 MR. UHLE: What can you tell us about them, how
5 close will they be to the property line and --

6 MS. OLSEN: They will be field located when the
7 major construction is done, so I can't give you an
8 absolute.

9 MR. UHLE: So you don't have a specific plan for
10 their location yet?

11 MS. OLSEN: Not for those trails. Like I said,
12 we're going to be field locating once the rest of the
13 infrastructure is in so that we don't have to move it.
14 And they will be at-grade trails. Nothing fancy.

15 MR. UHLE: Can you -- one of the problems I'm
16 having is relating the scale of that plan to the aerial
17 photograph. Can you try to identify on the photograph
18 where the easternmost point of your water management area
19 is?

20 MS. OLSEN: Easternmost point of the water
21 management. I would guess it would be right in here
22 (indicating). If you take the boardwalk, the boardwalk
23 goes around and the 88 trail goes around the wetlands.
24 You can see this is the main core of the wetlands and the
25 trail will go like this (indicating). In fact, you can

1 actually see sort of on the aerial where it will go. So
2 judging from that, I would say that the wetland would be
3 about in here (indicating), the detention.

4 MR. UHLE: Thank you. No further questions.

5 HEARING EXAMINER: Mr. Madden, questions?

6 MR. MADDEN: No questions. Thank you.

7 HEARING EXAMINER: Okay. Thank you, Cathy.

8 All right. Any other staff witnesses?

9 MR. PALERMO: No, ma'am.

10 HEARING EXAMINER: Okay. All right. Folks, at
11 this time -- Joe, did you want to do a presentation or did
12 you want to --

13 MR. MADDEN: I do want to make a brief
14 presentation before the testimony --

15 HEARING EXAMINER: All right.

16 Now, are you hired by -- were you hired by the
17 association or --

18 MR. MADDEN: That's correct.

19 HEARING EXAMINER: -- individuals?

20 MR. MADDEN: I've been retained by the
21 association. The proper name is the Pine Shadows Air Park
22 Property Owners Association, Incorporated.

23 HEARING EXAMINER: Okay.

24 MR. MADDEN: And I'm representing that Board and
25 intend to also supplement this presentation with testimony

1 from residents of the neighborhood.

2 HEARING EXAMINER: Okay.

3 Thereupon,

4 JOSEPH MADDEN,

5 called as a witness, having been previously duly sworn,
6 was examined and testified as follows:

7 MR. MADDEN: Again, my name is Joseph Madden, and
8 I'll provide you with my card and my information sheet in
9 a moment.

10 We're here today again representing the
11 association to present an express objection to the
12 application for the CPD amendment. Specifically, our
13 client objects to the proposed use of outdoor storage
14 being located closer to the existing residential uses
15 adjacent to this parcel.

16 I've got an aerial photograph that if the Hearing
17 Examiner will allow me to unfurl and put up there. It's
18 not going to be in a reproducible form probably unless I
19 make it very small.

20 I want to put that up there because the one thing
21 that we see from all of the evidence that has been
22 supplied to you so far is they're conveniently locating
23 these things without the residences nearby.

24 HEARING EXAMINER: All right. Do you know the
25 date on that aerial photograph?

1 MR. PALERMO: No, I don't. February '99.

2 HEARING EXAMINER: February '99, is that what you
3 said, Tony?

4 MR. PALERMO: Yes.

5 MR. UHLE: I'm not going to object to it, but if
6 it's a '99 aerial its relevance is obviously limited.

7 HEARING EXAMINER: Let's find out what the
8 purpose of it is before we --

9 MR. MADDEN: I appreciate that.

10 HEARING EXAMINER: Okay. Then you better orient
11 me because I am totally lost.

12 MR. MADDEN: Yeah, I'm going to take this out of
13 here as I saw somebody else do.

14 The purpose for putting this up here right now is
15 really just to orient the Hearing Examiner to where we are
16 in relationship to the proposed rezoning.

17 Utilizing this aerial photograph, you're able to
18 see the entirety of the real neighborhood for
19 compatibility standpoint.

20 This is enlarged. This improvement for this
21 subject site is this area here (indicating). This is the
22 41 frontage of the site (indicating). This is
23 approximately the easterly edge of the subject site
24 (indicating).

25 HEARING EXAMINER: Okay.

1 MR. MADDEN: As the Hearing Examiner can see,
2 then immediately east of it is a runway for the Pine
3 Shadows Air Park.

4 Immediately to the north is an access road called
5 Runway Avenue East -- or Runway Avenue. And previously
6 you were provided by Mr. Palermo the property information
7 records from the property appraiser's office showing that
8 Runway Avenue is a common element maintained by our
9 client, Pine Shadows Air Park. This is the Pine Shadows
10 Air Park. It's a 70 -- or 75 unit residential subdivision
11 with one acre plus lots as is the adjacent subdivision to
12 the north which is Trail Dairy Farms subdivision.

13 That's the reason for the big one, just to orient
14 you where we're talking about these residences.

15 HEARING EXAMINER: Okay. Now, let me ask a
16 question, Joe. Now, you showed the number back there.
17 Are these residents along the -- you know, just north of
18 the subject property, are those part of the Air Park as
19 well?

20 MR. MADDEN: No, that's a -- I believe it's
21 called an unrecorded subdivision called Trail Dairy Farms
22 subdivision. Those lots are even more rural in nature and
23 they're an acre plus, some of them being two plus acres.
24 They are immediately north of Runway Avenue and they are
25 again residential utilized properties.

1 HEARING EXAMINER: Okay.

2 MR. MADDEN: A couple of things today. One is
3 the objection to the open storage use being relocated from
4 the westerly property line to the easterly property line.
5 It's our client's contention, as you'll hear testimony,
6 that this creates more of an intrusion into a residential
7 utilized neighborhood.

8 Also, a couple of the elements of this Staff
9 Report almost ignore the idea that when we're relocating
10 this open storage use to the east and adding 12,000 plus
11 square feet of office space on the west, there's some very
12 direct impacts on what we just showed you as Runway
13 Avenue, which is maintained by our client, the Pine
14 Shadows Air Park Property Owners Association, Inc.

15 The considerations here are a couple. From a due
16 process standpoint, we just want to mention that this
17 client has really been hampered in this case because of a
18 couple of things. There's published notice of every
19 zoning case in the news press or whatever other general
20 circulation paper, but also the county code provides for
21 mail courtesy notice and posting of a nice red Z sign on
22 the property when a zoning is going to be considered.

23 For whatever reason, you know, I'm not aware, the
24 address at the property appraiser is incorrect for the
25 property owners association, and no letter was ever

1 received advising them of this matter pending.

2 HEARING EXAMINER: I'm sorry, no letter was
3 received by who?

4 MR. MADDEN: By the property owners association.

5 HEARING EXAMINER: Okay. By the POA, okay.

6 MR. MADDEN: There's some sort of erroneous
7 street address for them and that will be corrected so that
8 that does not happen in the future.

9 HEARING EXAMINER: So they did not receive the
10 courtesy mailing notice, mailed notice?

11 MR. MADDEN: No, they did not.

12 In addition to that, the posting of notice on the
13 site was occasioned by two signs, one placed on Runway
14 Avenue and one -- or purportedly placed on Runway Avenue
15 and the other one placed on the U.S. 41 frontage of the
16 site.

17 The U.S. 41 frontage sign was posted very close
18 to the county's construction, as you've heard, the moon
19 scape. So I think common sense would say, driving by 41,
20 you'd assume that the red Z sign had something to do with
21 the county improvements.

22 The sign that was placed on Runway, for some
23 reason was removed and was cast under a bush, and the only
24 way these residents found out about this hearing was based
25 upon somebody finding the Z sign underneath the bush

1 during walking the dog.

2 I just point that out because I think these
3 residents have been greatly disadvantaged because there
4 was no direct contact from the applicant to them with
5 regard to what was being proposed.

6 Okay. That's the due process consideration. I
7 think the other consideration is looking at the Staff
8 Report and the applicant's presentation is, I think a
9 disregard to what the open storage use does to this
10 residential community.

11 We have houses directly across the street,
12 directly across Runway, and, you know, we've heard
13 testimony from the experts about the drive-by experience
14 and what that means.

15 The original zoning application when it allowed
16 for open storage at the U.S. 41 frontage conditioned it
17 upon, only upon an eight-foot wall and a 15 foot planted
18 buffer.

19 And that same consideration wasn't give to these
20 residents today when we're moving the open storage closer
21 to their residential neighborhood.

22 The next consideration that we think was really
23 missed by the applicant and also missed by the county
24 staff was a failure to consider the proposed relocated
25 uses' proximity to the runway that's utilized by the Pine

1 Shadows residents.

2 This is an active private runway and as such the
3 Lee County Port Authority doesn't have any control over
4 it, and, of course, would not provide comment to it. But
5 that doesn't mean that we can ignore what uses would go
6 immediately adjacent to the runway and what the maximum
7 height of those uses might be when we're looking to
8 protect the health, safety and welfare of Lee County
9 residents and the users of that runway.

10 So we're going to hear some testimony with regard
11 to the proximity to the airport and the runway use itself
12 versus open storage with unlimited height potential.

13 Finally, I think that there has been a failure to
14 consider the infrastructure that serves this site. We
15 were very pleased, I think, to hear that even in the
16 proposed relocation of the outside storage, that there is
17 not a new access point off Runway into the rear parcel.
18 But when we talked about a 12,000 square foot building
19 being built, the staff did not make any condition for
20 temporary construction access or anything else. Instead
21 they want to use Runway Avenue for the construction
22 traffic for a 12,000 square foot office park as Mr. Uhle
23 referred to it, and you know, at this point zoning doesn't
24 address anything regarding using this private roadway and
25 what effect that might have. In fact, the zoning TIS was

1 waived by someone to allow this to continue.

2 The testimony that you'll receive from the
3 residents will substantiate that this application fails to
4 meet the requirements of Chapter 34 that are set forth in
5 the zoning Staff Report, specifically Condition -- or
6 requirement 2.C on Page 7 of 21. I think our testimony
7 will show that this application, especially with regard to
8 open storage, flies in the face of Policy 5.1.5 and Policy
9 139.9.5 when we're relocating this open storage use closer
10 to a residential use and diminishing any buffer
11 requirement that currently is in place.

12 Also, the testimony will show that Condition 3
13 that's set forth on Page 7 is also not met. In fact, it's
14 to the contrary. Condition 5 is not met and Condition 6
15 is not met that shows that there's sufficient safeguards
16 for the public interest.

17 So with that I want to let the residents get up.
18 I know we've been at this a long time, but I want to
19 address just a couple of things that did come up through
20 the applicant's presentation and the staff's presentation.

21 I think it's probably good for the Hearing
22 Examiner to remember that ten years ago when this zoning
23 case came in, it was not a result of the original
24 developer's action as Mr. Roeder characterized it. The
25 original developer did not construct these buildings. I

1 believe Mr. Dumas (ph) constructed those buildings and was
2 a subsequent owner out there. And much of the development
3 that occurred may or may not have been permitted by Lee
4 County prior to its construction.

5 I think the zoning considerations ten years ago
6 were to legitimize some existing uses that may or may not
7 have been permitted at the time they were built.

8 With that, I'd like the residents who have
9 obviously prepared themselves to address the Hearing
10 Examiner, and I'd like to respectfully reserve some time
11 to sum up, if I may, at the conclusion of their
12 testimony.

13 MR. UHLE: I'd like to ask Mr. Madden some
14 questions.

15 MR. PALERMO: So would I.

16 Tony Palermo for the record.

17 Just a couple. I just wanted to understand you
18 and your client's position. I know you're opposed to the
19 open storage at that location, but in terms of the height
20 of open storage, which is an interesting question, what
21 would be your position on that, whether there should be a
22 10 foot or 20 foot height limitation on open storage
23 items?

24 MR. MADDEN: I need to address probably one of
25 the officers of the association and see what they consider

1 a reasonable height limitation to go behind that
2 eight-foot wall if open storage was to be permitted.

3 MR. PALERMO: And moving on to the buffer, look
4 under Condition 7, which is open storage, it says what its
5 limitations are, then it jumps to Deviation No. 2 saying
6 you have to comply with these buffer requirements.

7 Again, is your position that there should be
8 additional buffer requirements specifically requiring
9 vegetation on obviously the other side of the wall?

10 MR. MADDEN: The exterior side of the wall?

11 MR. PALERMO: Exterior side.

12 MR. MADDEN: In the event that the Hearing
13 Examiner would recommend that the County Commission
14 approve open storage, at minimum it should not be
15 diminished from what was deemed the minimum by Mr. Pavese
16 and by the County Commission in 1988.

17 MR. PALERMO: That's all I have.

18 HEARING EXAMINER: Okay. County Attorney?

19 MR. FREDYMA: No questions.

20 HEARING EXAMINER: Matt?

21 MR. UHLE: Joe, since you put that aerial up, I'd
22 like to ask you a couple of questions about it. What's
23 the scale on that aerial?

24 MR. MADDEN: It's one inch to 200 feet.

25 MR. UHLE: Could you please tell us based on that

1 scale, what the distance is between the proposed open
2 storage area and the nearest home owned by your clients?

3 MR. MADDEN: No, I can't. I don't have a ruler.

4 HEARING EXAMINER: Isn't there one up there?

5 MR. MADDEN: Our client doesn't own a home. Our
6 client is a not-for-profit corporation. It's impossible,
7 our client doesn't own a home.

8 MR. UHLE: I didn't ask that. I asked what's the
9 distance between the open storage area and the nearest
10 home owned by one of the residents of Pine Shadows.

11 UNIDENTIFIED SPEAKER: Collectively owning --

12 HEARING EXAMINER: All right, all right, sir, you
13 don't need to be responding. Your attorney will handle
14 the questions.

15 MR. MADDEN: Ball park, looks as if the first
16 home that's constructed in the Pine Shadows is
17 approximately 1,800 feet.

18 MR. UHLE: Thank you. And your clients are aware
19 that there is currently a zoning approval for open storage
20 on U.S. 41 frontage, are they not?

21 MR. MADDEN: They're aware of the permitted use
22 and the buffering requirements for that permitted use.

23 MR. UHLE: So I gather from your presentation
24 that they prefer the status quo approval to the one that
25 we're requesting?

1 MR. MADDEN: That's correct.

2 MR. UHLE: Okay. No further questions.

3 HEARING EXAMINER: Okay. Joe, thank you.

4 Did you have anybody in any order or can I
5 just call my white forms?

6 MR. MADDEN: No, I don't. Yes, please.

7 HEARING EXAMINER: All right. I have a bunch of
8 white forms here. I'm going to start at the top. If you
9 do not wish to speak, tell me so. If you wish to speak,
10 just come on up to the podium.

11 All right. Antony Greene. Greene.

12 Now, remind me, please, if you are not sworn
13 in.

14 MR. GREENE: I am sworn.

15 Thereupon,

16 ANTONY GREENE,
17 called as a witness, having been previously duly sworn,
18 was examined and testified as follows:

19 HEARING EXAMINER: Okay. All right. You want to
20 stand in front of the microphone, sir, please.

21 State your name for the record.

22 MR. GREENE: For the record, I'm Antony Greene, a
23 resident of Pine Shadows Air Park.

24 And my opposal to this proposition is the fact
25 that we have to drive by this area, you know, twice, maybe

1 more times a day, and the applicant's previous, I guess
2 it's more of a code issue, but his defiance of code has
3 been quite an eyesore for us.

4 I'm afraid more of that's going to happen and
5 that the storage, if there's no height restriction, that
6 the end of our runway could impede our flow of air
7 traffic.

8 HEARING EXAMINER: Do you own a plane, sir?

9 MR. GREENE: Yes, ma'am.

10 HEARING EXAMINER: Okay. Answer me a few
11 questions about your runway, all right? Is it allowed for
12 use at night?

13 MR. GREENE: Yes.

14 HEARING EXAMINER: It is. It's got lights and
15 stuff out there?

16 MR. GREENE: Correct.

17 HEARING EXAMINER: Okay. It's FAA approved for
18 night use?

19 MR. GREENE: Yes.

20 HEARING EXAMINER: Okay. Okay. Now, given the
21 fact that it goes east and west, and so clearly you can't
22 go north and south to take off, you land -- you take off
23 from what direction and land from what direction? Does it
24 matter?

25 MR. GREENE: It matters greatly. It depends on

1 the prevailing winds.

2 HEARING EXAMINER: I'm not a pilot, I have no
3 clue.

4 MR. GREENE: Due to the wind condition, we can
5 take off or land from either direction.

6 HEARING EXAMINER: Okay. So if you're going to
7 approximately -- I'm sorry, what type of plane do you
8 have? Big one, a little one?

9 MR. GREENE: A couple of each actually. There's
10 five.

11 HEARING EXAMINER: Propellers or jet.

12 MR. GREENE: Propeller driven aircraft.

13 HEARING EXAMINER: Approximately how much of the
14 runway is your -- what's the longest amount of runway that
15 your aircraft requires?

16 MR. GREENE: If you go by the books on any of
17 these aircraft, they say 800 feet to --

18 HEARING EXAMINER: Okay. Sometimes it takes
19 more; is that what I'm hearing?

20 MR. GREENE: Prevailing conditions can require
21 different circumstances.

22 HEARING EXAMINER: Okay. So it takes 800 feet by
23 the book to take off, how far do you have to have it to
24 stop, to land?

25 MR. GREENE: You could stop on 20 feet but you

1 wouldn't have much of an airplane left.

2 HEARING EXAMINER: Might have a few bruises, too.

3 MR. GREENE: The questions you're asking, I mean,
4 they're valid, but I don't see how they apply.

5 HEARING EXAMINER: Okay. Well, I'm trying --
6 what I'm trying to do --

7 MR. GREENE: Conditions dictate different -- you
8 know, there's all kind of different scenarios.

9 HEARING EXAMINER: Okay. What I'm trying to do
10 is figure out -- I mean, you've got your fueling station
11 or somebody's got a fueling station up here at the corner,
12 and they're planning to put an eight-foot wall there. You
13 know, I mean, my question is in relationship to how much
14 of this runway is going to be affected by the presence of
15 that eight-foot wall. I mean, If you guys are going to
16 come down here and fuel your plane, can you flap the wing
17 up or something so that it can pull in beside it to get
18 fueled or -- I mean, I don't have any idea how to fuel an
19 airplane.

20 MR. GREENE: A station will actually offset from
21 the center line of runway which means an aircraft fueling
22 is not a factor to any landing or departing aircraft.

23 HEARING EXAMINER: Okay. So then this area down
24 here where the fuel pump is actually is not part of the
25 landing or take-off area needed for the airplanes?

1 MR. GREENE: It is offset from the center line of
2 the runway.

3 HEARING EXAMINER: I don't understand what that
4 means.

5 MR. GREENE: We try to land in the center of the
6 runway and the fuel farm is offset to the southern side of
7 that central line of the runway.

8 HEARING EXAMINER: Okay. So you can still land
9 on that area that's just north of the fuel pump if you
10 need to?

11 MR. GREENE: Yes, if you need to, yes.

12 HEARING EXAMINER: Okay. Okay.

13 All right. And I don't recall, but it seems to
14 me like the fuel tank is kind of close in to the wall
15 there. There's no problem with fueling with the fuel tank
16 where they've relocated it, you can still get the planes
17 up there close enough to it to --

18 MR. GREENE: Yes. There's an existing fence just
19 to the west of the fuel tank. It's not an issue.

20 HEARING EXAMINER: Okay. So your understanding
21 is then that the eight-foot wall is going to go where the
22 existing fence is?

23 MR. GREENE: Correct.

24 HEARING EXAMINER: And if it goes there, then you
25 don't have a problem with the fueling?

1 MR. GREENE: Not with the fueling, no.

2 HEARING EXAMINER: Okay. I need to get all these
3 facts and figures, you know, locked down here, so that I
4 know exactly what -- because I don't know anything about
5 flying and I don't know anything about the turn radius on
6 airplanes or any of that stuff. Okay. Okay.

7 Did you have anything else you wanted to say for
8 the record? I'm sorry.

9 MR. GREENE: No, ma'am.

10 HEARING EXAMINER: Okay. So you're just opposed
11 to it because of the visibility and --

12 MR. GREENE: Without any height restrictions,
13 there could be some issues there.

14 HEARING EXAMINER: All right. You fly how low or
15 how high in this area?

16 MR. GREENE: On a night approach, we do have a
17 visual lighting system to have the proper approach and
18 angles to the end of the runway. And it is surprising
19 what sneaks up at you from the night as you cross that end
20 of the runway.

21 HEARING EXAMINER: I mean, staff has indicated
22 that they think a height limitation on this parcel would
23 be a good idea. Applicant hasn't made a statement one way
24 or the other on this. But if I'm looking at approving
25 this and I decide to impose a height restriction for items

1 on this end of the property, what height do you think is
2 appropriate so that you don't get your wheels tangled up
3 in it as you're trying to come in or go out?

4 MR. GREENE: With the buffer requirement --

5 HEARING EXAMINER: Yes.

6 MR. GREENE: -- that would probably make a 10
7 foot or 12 foot height acceptable.

8 HEARING EXAMINER: So a 12 foot height then would
9 be the max that you think would not interfere with your
10 operation of the airstrip?

11 MR. GREENE: If the buffer requirements are met
12 that moves that, hiding the wall back, you know, away from
13 the runway.

14 HEARING EXAMINER: Okay. I see what you're
15 saying. If the 15 foot vegetative and then the wall and
16 then -- okay. All right. Gotcha.

17 MR. GREENE: But the special considerations for
18 the vegetative buffer on that end should be considered.
19 We don't need any real tall trees there either.

20 HEARING EXAMINER: Very good idea. Very good
21 idea. Okay.

22 MR. GREENE: Well, I mean, it's my life, my
23 family's life. I have to consider that.

24 HEARING EXAMINER: Okay. Any questions by staff
25 or the applicant of this witness?

1 MR. UHLE: Yes, I have one. If you can tell us,
2 roughly, how many flights per day use this airstrip?

3 MR. GREENE: On a per day average, no, I could
4 not. I can tell you some days it's zero. Obviously when
5 we have weather conditions that are not conducive to
6 flying, there's no flying.

7 MR. UHLE: What would be the maximum?

8 MR. GREENE: We could have over 20 a day.

9 MR. UHLE: Is that unusual?

10 MR. GREENE: Not on a nice day.

11 MR. UHLE: One other question. The fence that
12 currently exists on the property, how tall is that?

13 MR. GREENE: Approximately four feet.

14 MR. UHLE: Thank you.

15 MR. MADDEN: Can we change up the order a little
16 bit? I have the vice-president of the association.

17 HEARING EXAMINER: Okay. Do I have his form?

18 MR. MARZ: Yes, I believe you do, ma'am. Barry
19 Marz, M-a-r-z.

20 HEARING EXAMINER: M-a-r-z, okay. Let me see if
21 I can find you.

22 MR. MARZ: And I am the vice-president of the
23 association and I have been sworn in.

24 HEARING EXAMINER: All right. I have you. Thank
25 you, sir.

1 Thereupon,

2 BARRY MARZ,

3 called as a witness, having been previously duly sworn,
4 was examined and testified as follows:

5 MR. MARZ: I just wanted to clear up some of what
6 he was trying to relay there and also I have a little
7 problem with staff not really addressing the approach and
8 landing zones and our traffic pattern with this.

9 There is a specific glide slope, if you will,
10 that's required for us to get certification of the
11 airport. For a public airport it's completely different.
12 That's done by the FAA. With us it's approved by the
13 state or the initial certification of the airport and then
14 it comes down to local zoning to basically enforce whether
15 what's happening is safe and consistent with noise
16 abatement and noise problems.

17 That's one of the biggest problems small airports
18 have in the country. There's a lot of encroachment on the
19 area, because typically the areas around the ends of
20 airports, the property is cheap so people buy them and
21 things happen.

22 I'm a retired commercial airline pilot. I'm CFI.
23 I've been flying for 30 years in this country and a lot of
24 countries, South America, Central America. And this is a
25 very consistent theme. I've also done a lot of work with

1 the possibility of cell phone towers going up, especially
2 around airports. There was one proposed at the fire
3 station that was going to be --

4 HEARING EXAMINER: Where's the fire station here?

5 MR. MARZ: The fire station is right here
6 (indicating).

7 HEARING EXAMINER: You have to show me these
8 things. Okay. Oh, yeah.

9 MR. MARZ: It says tower site.

10 I would suggest and hope that you would ask staff
11 to go back and research what the requirements are for the
12 approach and landing areas so they have solid numbers to
13 go by. When we throw out 10 feet, 12 feet, we really
14 don't know because there is a specific slope coming up
15 from the end of the runway going out so far. Basically,
16 if you will, see this area here in the black, that is the
17 area prescribed by the state and it goes up at a 20 to 1
18 slope.

19 HEARING EXAMINER: So for every foot this way,
20 you're going to go up 20?

21 MR. MARZ: No, no. Every 20 foot out, you're
22 going to go up one. So basically just for reference --

23 HEARING EXAMINER: I thought you were going to go
24 straight up. I was going to say, wow, that's wonderful.

25 MR. MARZ: See, helicopters do that but,

1 unfortunately, aircraft can't. And the problem, we have a
2 very large mix of aircraft. I myself own three. I have a
3 little two seater, I have a four seater and I have a four
4 seater that goes real fast. So each one of those have
5 different performance requirements.

6 We have small jets that come in and out of here
7 that will greatly change the performance requirements of
8 the runway day and night. We have Warbirds. We have very
9 sophisticated twin engine propeller airplanes that also
10 will require much more performance coming down the
11 runways. And it all changes on a daily basis. Like Tony
12 said, some days we have small utilization, other days we
13 have larger utilization.

14 But what we're really concerned about is the
15 encroachment of what's going to happen if we get an office
16 building in right off the end of the runway. This is the
17 worst piece of property from the Caloosahatchee to Port
18 Charlotte to put an office building at because just think
19 if you're sitting in your three-story building and you
20 watch a jet take off here (indicating) and by here it may
21 be 100, 150 feet and when you're in the office building,
22 it's coming right at you.

23 So that's the biggest problem we have down the
24 road of changing this area from a commercial and
25 industrial to an office building where now we're going to

1 have to deal with noise problems, and also the safety
2 factor of the higher you get here, if there's an
3 emergency, one of the twin engine airplanes loses its
4 engine, or the other thing that happens if you have a big
5 westerly wind, you know, hit those buildings and create a
6 burble. That aircraft gets in the burble, it's just like
7 rapids on a river.

8 HEARING EXAMINER: Okay. So that affects the
9 landing or the takeoff?

10 MR. MARZ: Exactly.

11 HEARING EXAMINER: Okay.

12 MR. MARZ: Also what we've done, the normal
13 traffic pattern is a rectangular pattern like this. We
14 have modified our pattern to come down 41 so we don't do
15 that noise over this area here (indicating).

16 What's going to happen, as we come down, we're
17 making our turn right over the proposed office building.
18 When an aircraft is at a straight end, it has a much more
19 stabilized glide path. When you're making a turn, there's
20 much more chance for sliding low or going low or getting
21 in a burble, you have less control when you're in a turn
22 basically.

23 HEARING EXAMINER: Okay.

24 MR. MARZ: So that's one consideration there.

25 Right here, on the normal glide path, you have

1 about a 50 foot from the bottom of the glide path to the
2 ground. With a 35 foot proposed building, you've got 15
3 feet of leeway. Not much.

4 HEARING EXAMINER: Okay.

5 MR. MARZ: Again, those are my biggest concerns.

6 HEARING EXAMINER: Answer me one question,
7 please. Looking at the east end of your runway now, is
8 that a building or is that another concrete pad?

9 MR. MARZ: Here?

10 HEARING EXAMINER: Yes.

11 MR. MARZ: What this is, this is grass overrun.
12 In case something happens and you have to abort a takeoff,
13 we have grass to overrun.

14 See, this area up here, the area where they're
15 talking about putting the storage, was always proposed as
16 an overrun area and a ramp. There was never anything
17 really proposed. Because, see, the guys that originally
18 did this were pilots. So they didn't want anything up
19 there that would impede if they had to abort a takeoff.
20 If you put a concrete wall up there, an airplane is going
21 to stop pretty quick. That's our other consideration.
22 And, again, just the slope.

23 HEARING EXAMINER: Okay. Can you show me where
24 your house is in the park over there?

25 MR. MARZ: Yes, it's right over here

1 (indicating).

2 HEARING EXAMINER: Okay.

3 MR. MARZ: Like I said, we have a large mix and
4 we still have a bunch of open lots so we're going to
5 have -- I don't know if you've been reading it or not,
6 there's a whole new class of aircraft called light jets,
7 and we're probably going to be getting more of those in
8 here so, again, it's going to be -- unfortunately, it's a
9 little bit more noise abatement possibilities and stuff.
10 So the problem with an office building right here, it
11 could become a real can of worms for us on trying to
12 maintain our use of the runway and have them do what they
13 need to do.

14 HEARING EXAMINER: How long is your runway?

15 MR. MARZ: 3,500 feet -- 3,200 feet, excuse me.

16 HEARING EXAMINER: 32, okay. Does that include
17 the grass overflow?

18 MR. MARZ: No, that's just --

19 HEARING EXAMINER: Overdrive or whatever.

20 MR. MARZ: See, actually, what we have here is
21 called a displaced threshold. Most of the time, because
22 of the hangars -- to go back, on a public use airport,
23 none of that could ever happen. You couldn't have hangars
24 there. We couldn't have our gas point there. None of
25 that could happen because of safety stuff. So normally

1 what happens, we use the actual runway position to land
2 in, but we obviously take off sometimes from where the gas
3 point is to give us that much more room.

4 HEARING EXAMINER: Okay. Interesting. All
5 right. Thank you, sir.

6 MR. MARZ: You're welcome.

7 That's mainly my concern is I would really like
8 staff to investigate that a little bit more to make sure
9 that they have the proper --

10 HEARING EXAMINER: Now, who with the state? You
11 said the state is the one that actually approves it. It's
12 not FAA approved. It's actually be approved by the state.

13 MR. MARZ: Private airports, it's all state.

14 HEARING EXAMINER: Who?

15 MR. MARZ: State of Florida.

16 HEARING EXAMINER: But I mean who do they go to?
17 They can't just go to the state of Florida and say, you
18 know.

19 MR. MARZ: I think Department of Transportation.

20 HEARING EXAMINER: Okay. DOT would have the
21 specs and whatnot?

22 MR. MARZ: I would think. Like I say, we just
23 used -- the ones I have that I've gotten for the cell
24 tower use, the number I've seen, it's a 20 to 1 ratio.
25 I'm pretty sure that's what applies here.

1 HEARING EXAMINER: That's from the end of the
2 runway which in your case would be where the pavement
3 starts here or --

4 MR. MARZ: The storage thing, if we -- see, the
5 other problem with the storage thing is where your light
6 standards are going to be. You know, you have your
7 storage areas, the light standard of 25 feet. Now, you've
8 got that problem. So the lighting would have -- and,
9 normally, if you had a wall there, you would need red
10 lights on top of that wall to depict at night where that
11 area is.

12 HEARING EXAMINER: It's a dangerous structure?

13 MR. MARZ: Exactly. So just to give you --
14 because at night your depth perception is way off.

15 HEARING EXAMINER: Especially if you're driving
16 fast.

17 MR. MARZ: See, that's the thing, you know, we
18 can't pull over to the side of the road and go, well,
19 let's see what's happening now. We have to keep moving,
20 and that is a consideration. But, I mean, that's what you
21 get trained for and that's what you do.

22 HEARING EXAMINER: Okay. Great. Thank you.

23 MR. MARZ: You're welcome. Thank you.

24 HEARING EXAMINER: All right, Matt, any questions
25 of this witness?

1 MR. UHLE: I don't have any questions, but if you
2 don't mind, I'd like a couple of minutes to talk to my
3 client. I'm a little concerned about this testimony and I
4 think we may need to take some different action on it.

5 HEARING EXAMINER: On the request?

6 MR. UHLE: As far as what goes on in the hearing
7 today.

8 HEARING EXAMINER: Okay. All right. Well, if
9 there's no other questions of this witness, then let's
10 take a -- ten minutes?

11 MR. UHLE: I can do it in five I think.

12 HEARING EXAMINER: Okay. All right. Just come
13 get me then. Let's take a quick break here, folks. Water
14 only in the room. And we'll start up no later than ten
15 minutes of 1:00, okay? No later than ten minutes of
16 1:00.

17 (A recess was taken.)

18 HEARING EXAMINER: Let's go back on the record.

19 MR. UHLE: Matt Uhle for the record. I heard
20 enough in that last witness' testimony to suggest to me
21 that there are gaps in the data that we have today that
22 need to be addressed.

23 HEARING EXAMINER: I agree.

24 MR. UHLE: Probably by us and by the staff. And
25 so our request is going to be, and I don't know if this

1 should be charged to us, the staff or whoever, but I think
2 we need to wind up continuing this hearing.

3 MR. FREDYMA: Call it for cause.

4 HEARING EXAMINER: We'll do it on my authority.
5 I'll take the blame. I'll do it.

6 I agree. I think there's a lack of information
7 regarding that airstrip and that is a major safety
8 situation as far as I'm concerned, and I really think that
9 some investigation needs to be done on that to either
10 confirm or allay the concerns.

11 MR. UHLE: I don't know if you want to take the
12 rest of the neighbors' testimony --

13 HEARING EXAMINER: Let's go ahead and take the
14 rest of the testimony from the public since we've got them
15 here. You know, I don't want to send them home and make
16 them all come back on a later date and then we can come
17 back and if they want to come back then, they can come
18 back in, that's their choice. But since I've got them
19 here, I'd just as soon take their testimony now.

20 MR. UHLE: I would anticipate that either me, the
21 staff or both would be putting on substantial additional
22 testimony on this particular issue.

23 HEARING EXAMINER: I think -- yeah. I think it's
24 going to be awhile.

25 All right, folks, I'm not sure how much of it you

1 all hear. The applicant's attorney has suggested that
2 this case be continued to a later date to allow both his
3 client and staff to look up some of the issues that have
4 been raised by the two witnesses that have come up so far
5 regarding the safety issues as they've stated with this
6 airstrip. All right? It's not going to be continued
7 right this instant because I'm going to give you all the
8 opportunity to go ahead and put your testimony on the
9 record, but we will continue it for additional review and
10 consideration of these particular issues. So that the
11 continued hearing will probably address all those issues.

12 You'll be invited back at that time if you want
13 to come. If you don't want to come, that's your business.
14 It's up to you. You can be out flying, you know. But I
15 would like to have -- all of you that want to speak today,
16 I would like to have you go ahead and finish your
17 testimony today so we have it all on the record so that
18 the applicant knows what he's facing and staff knows what
19 they're facing in trying to resolve these issues. Okay.

20 The next person I have, the next white form I
21 have is Wayne Gray.

22 MR. GRAY: I've decided not to speak.

23 HEARING EXAMINER: Okay, Mr. Gray, thank you.

24 MR. FREDYMA: If I may, you realize by not
25 speaking at this point, you will not be able to speak to

1 the Board when it goes there?

2 MR. GRAY: I understand that.

3 UNIDENTIFIED SPEAKER: He can speak at the
4 continued hearing, though?

5 HEARING EXAMINER: Yes, he can speak then, yes.
6 I mean, if you want to wait and speak at the continued
7 hearing, that's fine. But it's just that if you talk now,
8 everybody has an idea. I have an idea so when they come
9 back and start giving me information, you know, I'll know
10 how it comports with what your concerns were. If I don't
11 know what your concerns are, I mean, and nothing was
12 brought up about this airstrip, okay.

13 MR. GRAY: Thank you. There's actually a couple
14 of people here with the same concerns.

15 HEARING EXAMINER: Okay. Thank you.

16 MR. FREDYMA: That's the only question I would
17 have for them. If there's something else that hasn't been
18 said that you think is relevant to what may come forward,
19 it would really be helpful if you put that on the record
20 now.

21 HEARING EXAMINER: Okay. James Hiatt.

22 Thereupon,

23 JAMES HIATT,

24 called as a witness, having been previously duly sworn,
25 was examined and testified as follows:

1 MR. HIATT: I'm James Hiatt, resident of Pine
2 Shadows Air Park Homeowners Association. I was sworn.

3 I wouldn't say I'm an expert, but I did spend
4 around five years in Coeur D Alene, Idaho, on the Airport
5 Planning Board.

6 HEARING EXAMINER: Oh, okay. Well, you've got
7 more expertise than I do then.

8 MR. HIATT: So I'm very familiar with some of the
9 issues of land use around the airport. Barry pretty well
10 said it all.

11 The concerns that I have are basically glide
12 slope protection on the approaches. The use of an office
13 building at the end, both for putting a lot of people in a
14 place that they shouldn't be. And also for possible
15 encroachment into the glide slope.

16 On the open storage area, again, possible
17 encroachment on a glide slope without any height
18 restrictions. Open storage is by definition portable
19 storage. You know, what's there this week may not be
20 there next week. There needs to be some height
21 restrictions out there with some teeth in them.

22 And that also goes for any lighting standards,
23 any other accessories that may have to be put up with the
24 storage.

25 The other issue that I have is more of a code

1 thing. If the Code has been written for open storage, you
2 need a 15 foot setback with vegetation in front, that
3 should be on their property, not ours.

4 And my qualifications to speak on some of the
5 pilot stuff, I'm a commercial pilot, flight instructor,
6 been flying for about 40 years.

7 HEARING EXAMINER: Would you show me where your
8 house is, sir, please?

9 MR. HIATT: My house is right up here in the
10 corner (indicating).

11 HEARING EXAMINER: Okay. I can tell you when I
12 went out and did the site visit in this case back in 1998,
13 I'm driving around and I couldn't figure out why you had
14 two foot tall stop signs until I finally saw somebody's
15 airplane sitting in his hangar, it's attached to his
16 house, and I realized you drive down the streets.

17 MR. HIATT: Exactly.

18 HEARING EXAMINER: So they had to have a little
19 tiny short stop sign. I just couldn't figure out why they
20 would have little tiny short stop signs like that. I was
21 amused anyway after I realized what it was.

22 MR. HIATT: One suggestion I would make today and
23 to the people is, besides staff and all, if you get some
24 of the people from the Air Park that have been involved in
25 airport planning like Barry or myself, we can probably

1 solve a lot of issues before we get to this point.

2 HEARING EXAMINER: Okay. Okay. Thank you, sir.

3 Hang on a second. Questions of this witness?

4 MR. UHLE: No questions.

5 HEARING EXAMINER: Okay. All right, thank you.

6 Glenn Novaek.

7 MR. NOVAEK: I apologize for interrupting
8 earlier.

9 HEARING EXAMINER: That's all right. But I have
10 learned if I don't say something right when it happens,
11 I'll have four or five people out there, you know, trying
12 to talk at the same time.

13 Thereupon,

14 GLENN NOVAEK,
15 called as a witness, having been previously duly sworn,
16 was examined and testified as follows:

17 HEARING EXAMINER: State your name.

18 MR. NOVAEK: Glenn Novaek. I am sworn in and I
19 am a resident of Pine Shadows Air Park. And I have been a
20 pilot at the professional level. I have been licensed
21 over 30 years and I hold a real estate license also for
22 around 30 years, primarily commercial real estate. Also
23 owned a storage business, was co-owner of a storage
24 business three-tenths of a mile from this location.

25 And to speak first in reference not to -- I'll be

1 as brief as I can -- due process, I did believe that that
2 notification on 41 was for the county park. I did
3 personally, you know, I'm a busy guy, come in and out more
4 than many people.

5 I stopped at the hangars to try to do retail
6 business with one of the tenants that has a restaurant
7 equipment, seems to be a store in there that we have to
8 put up with now, and so I have concerns, I'll just express
9 personal concerns that the activities that have gone on
10 there now that I'm personally familiar with, you know,
11 that also I am in business currently in Lee County and
12 Charlotte County. I own property and am in business.
13 Very familiar with the codes. I can't recite them number
14 by number for you, but with what I've watched the current
15 owner do there in the last couple of years, I have
16 concerns with what he says he's going to do.

17 And then I can speak actually nearly expertly on
18 the storage business, and, you know, I think he's got a
19 really limited space. I understand from a real estate
20 standpoint what he wants to do. Barry had it right, don't
21 buy property at the end of a runway. Noise abatement
22 issues. I owned property next to Spirit of St. Louis
23 Airport in Missouri. I owned a house on the bluff behind
24 it. I know all about noise abatement. I flew some of the
25 noisiest aircraft in the country.

1 So just to make it brief, I do agree with his
2 counsel and you, that there are other issues. There are
3 lighting issues at the end of the runway that are very
4 critical. And I see this request as -- I understand the
5 office building routine and I'm wondering, ten years ago,
6 you know, they were approved for storage. Can I ask you,
7 there is no limitation if someone doesn't produce in X
8 number of years, it's kind of like finding out -- when I
9 found out my neighbor had a spot zoning on his garage as a
10 car repair back in the '50s and he was approved for a cell
11 tower because it was a little spot of commercial property
12 that none of us realized. And would we have -- living in
13 this county, would we have been able to be proactive so we
14 know in the future if we see something, I don't know if
15 you want to call it specifically spot zoned, but if we see
16 that, hey, this guy is approved for storage, he hasn't
17 done it in years, would we have been able to proactively
18 quell that approval?

19 HEARING EXAMINER: County Attorney, I'm going to
20 let you answer it. I would but I'm going to let you.

21 MR. FREDYMA: A brief answer. The zoning runs
22 with the land. It's not with the owner, so it travels
23 with the land. It's going to depend on whether the
24 property is conventionally zoned, in which case all the
25 uses that that particular zoning district allows, they

1 don't expire, if they're allowed.

2 If it's a planned development such as this and
3 somebody takes no action on that planned development
4 within the five years, then that Master Concept Plan,
5 essentially it becomes void. You have Commercial Planned
6 Development zoning, but you have no approved uses and you
7 would have to come back.

8 So the quick answer is it depends on the type of
9 zoning. Typically, conventionally zoned properties, they
10 are what they are and the uses are what are allowed, so
11 there's no time frame on that.

12 MR. NOVAEK: As a realtor, it's a good reminder
13 and I hope everybody enjoyed hearing that answer.

14 All right. I'll just make it brief. I think
15 that, you know, I understand what he's doing, office
16 building and then he doesn't want to lose that outdoor
17 storage, it's a cash cow when you can do it. He's got a
18 limited area. You need room to turn around. The items
19 you want to store that command a decent price, you know,
20 your 35, 40 foot long RVs, et cetera, they take room to
21 turn around. Currently, he's got some nearly 50 foot
22 boats stored in the hangars that the doors open onto that
23 pad. He'll lose the ability to maneuver those vehicles in
24 and out. He'll lose those quality tenants, I believe
25 maybe Nor-Tech, big Nor-Tech boats he's got stored in

1 there.

2 And it doesn't seem like a wise move for anybody
3 at this point. And safety, when we speak of aviation and
4 our overrun and our glide path and height of walls and
5 fences, you know, in our operating manual it specifies,
6 you know, the typical is over a 50 foot object, obstacle,
7 you need X number of more feet. I mean, it's a lot of
8 math. They can pull in an expert witness if his counsel
9 would like on it. I have been involved in hearings where,
10 you know, you can see the geometry and do the math. This
11 is when everything is functioning right.

12 When a plane went down over in Del Tura and
13 someone died, things weren't functioning right. I
14 wouldn't want to be, you know -- I mean, as a real estate
15 owner I totally -- you know, the office building at the
16 right level, the storage that close to our runway seems
17 like a mistake, and I just hope that, you know, county can
18 see that clearly.

19 I'll leave it at that. I appreciate the time to
20 speak.

21 HEARING EXAMINER: Thank you. Hang on a second.
22 Questions?

23 MR. NOVAEK: Oh, yeah, any questions?

24 HEARING EXAMINER: No. No. All right, you're
25 fine. Thank you, sir.

1 Jim Whitty. Now, that's the last of the white
2 forms, folks, so if you want to speak, you'll have to
3 bring your little white form with you.

4 Thereupon,

5 JAMES WHITTY,
6 called as a witness, having been previously duly sworn,
7 was examined and testified as follows:

8 MR. WHITTY: James Whitty. I reside at Pine
9 Shadows Air Park for the last 22 years. I live on Runway
10 Street right here (indicating).

11 HEARING EXAMINER: You're right there almost --

12 MR. WHITTY: Right on Runway Street.

13 HEARING EXAMINER: Okay.

14 MR. WHITTY: I'd like to see the whole concept
15 of -- you know, you're proposing height restrictions and
16 all that in the new proposed storage area to the east, I'd
17 like to see that scuttled because both the city planner
18 and the gentleman that represented the developer, they
19 both agreed that it's an eyesore to the traveling public.
20 People that are going to Michigan and California, you
21 know, they're just going through. And it's an eyesore to
22 them. But they're going through once. But they don't
23 mind moving it from the eyesore to the public down closer
24 to the east end of us.

25 Now, another one of the gentlemen wanted to

1 establish how far it was from the house, the nearest house
2 to where the storage area would be. But that's not the
3 point. You've got to be consistent. The traveling public
4 don't live there either, and you don't want it near the
5 traveling public. So we drive in and out of there four,
6 five, six times a day. We're looking at it much more
7 frequently than the traveling public. So I think we
8 should be consistent in not shoving it down near us. Even
9 though we only live 1,800 feet away, we're still looking
10 at it more than just a person going by.

11 Now, the rest of the storage area I'm really
12 opposed to is, I fly in and out of there, and I've got a
13 twin engine jet with a friend of mine, Wayne, and we knew
14 we were going to say the same thing, so we fly in at about
15 130 knots, you know, pretty fast and we use all of the
16 runway. Whether going in or coming out, we use it all.
17 But it's legal, you know. And as a matter of fact,
18 there's been three jets based there in the last year, a
19 Lear Jet, a Citation and a Provost Jet, three of them
20 flying in and out of there, not just one.

21 It's more than the storage area. You have parked
22 motor homes in there with reflective windshields and
23 chrome mirrors and chrome bumpers and all that. And you
24 get all this reflection, and it can give you
25 disorientation. And like I said, we're flying in at 130

1 knots and as much as I like to admit that flying in
2 approaches and departures is a precision event, a lot of
3 times it isn't, okay, because you're subject to turbulence
4 as somebody alluded to coming in with the top of buildings
5 and cross winds and what have you. So we're vacillating
6 all over the place coming in there, up and down, left and
7 right. I mean, we really are.

8 So I think the reflection of -- you know, we've
9 all driven behind cars, motor homes and you get reflection
10 off their mirror and you say, whoa, put my thing down, I
11 can't even see where I'm going. This happens to all of us
12 with these chrome bumpers and chrome mirrors and
13 everything. So that's a problem that's going to be coming
14 over the storage area. So I'd like to see the whole
15 storage area, for safety reasons, just forget about it. I
16 don't think it's safe at all.

17 Thank you.

18 Any questions?

19 HEARING EXAMINER: Thank you, sir.

20 Anyone else from the public wish to speak?

21 Now, the case is going to be continued, so, you
22 know, if you decide not to talk today, you can always come
23 back and talk next time. And those of you who spoke
24 today, you can speak the next time only if you are
25 speaking about new matters. Since your testimony is on

1 the record now, you know, you can't come back and tell me
2 the same thing over again. I already heard it once, I
3 don't need to hear it twice from the same person. But if
4 you've got something new, something you thought of that
5 has not been discussed, you can bring it up at that time.

6 Okay. So nobody else from the public wishes to
7 speak? Okay.

8 MR. MARZ: I would like to offer if you'd be
9 interested in taking a flight and seeing exactly what it's
10 like, I would be more than happy to do that for you.

11 HEARING EXAMINER: The only problem with that,
12 and I learned this early on in this business, the only
13 problem with that is I've got to have the County Attorney,
14 the county staff, the applicant's attorney, the court
15 reporter. I'd have an entourage. It wouldn't just be me.

16 MR. MARZ: Well, maybe we could make a video?

17 HEARING EXAMINER: Yeah, do that. Okay. But I
18 will tell you, keep it as absolutely, positively still as
19 you can. I'm one of these that gets sick off the home
20 videos. Oh, I get deathly ill off of videos. We used to
21 have a guy that did code enforcement, we videotaped it,
22 and he'd videotape the sites, you know, I'm like, oh, my
23 God, by the time the hearing was over, I was done. I was
24 really done.

25 Okay. Then if no one else wishes to speak from

1 the public, we'll go back to your attorney.

2 MR. MADDEN: Thank you.

3 And again Joe Madden. I just want to be clear
4 that some of the testimony that was presented, there will
5 be empirical facts I think during this research time and
6 we do want individuals to be able to provide rebuttal
7 testimony if that's deemed necessary.

8 HEARING EXAMINER: Well, if you guys can bring in
9 some, you know, some actual honest to God figures and
10 pictures --

11 MR. MADDEN: Well, we want to react to what the
12 applicant and the staff -- I'm assuming they will share
13 with us if -- during this process.

14 MR. UHLE: I think he and his clients have a
15 right to respond to whatever we --

16 MR. MADDEN: Thank you. That's the main thing.

17 MR. MARZ: I do have a blowup of the end that
18 relatively shows relative heights if I can enter that as
19 an exhibit.

20 HEARING EXAMINER: Yes. You can bring that --
21 do you have it now?

22 MR. MARZ: Yes.

23 HEARING EXAMINER: Yes, that will be good. That
24 will help me. A picture is worth a thousand words.

25 MR. MARZ: You know, I'll just reserve the right

1 to provide whatever, you know, presentation we need to at
2 the continued hearing.

3 Thank you very much.

4 HEARING EXAMINER: All right.

5 MR. MARZ: Are we going to set a date for that
6 today?

7 HEARING EXAMINER: Yes, we're going to set a
8 date. Okay.

9 MR. MARZ: Just to show you what is going on,
10 this is the A track in the orange, that's the B track in
11 the green and that's the C track. This is the end of the
12 runway here and that cone is -- that approach cone now --

13 HEARING EXAMINER: It takes up the whole thing.

14 MR. MARZ: Right. And for reference this is
15 where the fire station is and at the base of it, being the
16 fire station, that's where B is, the base of the approach,
17 and the 35-foot building was proposed to go in right
18 there. So right there you've got about a 15 foot
19 differential.

20 HEARING EXAMINER: Okay. 15 foot clearance.

21 MR. MARZ: It's a 20 to 1 slope.

22 HEARING EXAMINER: I'm going to mark this your
23 exhibit. Your name again?

24 MR. MARZ: It's Barry, B-a-r-r-y.

25 HEARING EXAMINER: Last name?

1 MR. MARZ: Marz, M-a-r-z.

2 HEARING EXAMINER: That's right. M-a-r-z.

3 Exhibit No. 1.

4 (Marz Exhibit No. 1 was marked for
5 identification.)

6 MR. MADDEN: Just as a matter of clarification, I
7 know a couple of members -- again, we received notice of
8 this Wednesday of last week is when our firm was
9 retained. We can still provide testimony from the
10 president and those that weren't able to be here today,
11 correct?

12 HEARING EXAMINER: Right. The record is still
13 completely open. The only limitation on public input is
14 going to be the ones that have spoken, they can't repeat.
15 Okay?

16 All right. Anything else from staff or
17 applicant?

18 All right. What are we looking for for time
19 here, guys? Two months, a month and a half, three days,
20 Christmas?

21 MR. UHLE: I'm guessing a month and a half.

22 HEARING EXAMINER: All right. So this is the
23 middle of -- what is this?

24 UNIDENTIFIED SPEAKER: It's the beginning of
25 December.

1 HEARING EXAMINER: Okay. The middle of January?

2 All right. Let me go in and have the girls come up with
3 some dates for us, all right, and you guys hang loose here
4 for a minute and I'll be right back.

5 (A recess was taken.)

6 HEARING EXAMINER: All right. After having
7 consulted my hearing calendar, the best way to do this to
8 ensure that if we, you know, if we run over four hours
9 that we have the time to do it is to put us on a Friday
10 date. We have the 16th, the 23rd and the 30th. Those are
11 all Fridays. They're all open at this point. You guys
12 want to choose, do you want to call your offices?

13 MR. UHLE: I think I'm available the 23rd.

14 MR. PALERMO: Those are fine with me.

15 HEARING EXAMINER: The 16th, 23rd and the 30th.
16 Okay. The applicant has indicated he's considering the
17 23rd. Anybody have any objections with the 23rd? It's a
18 Friday.

19 All right, then, let's reschedule this or let's
20 continue this to January the 23rd, at 9:00 a.m. and if
21 something comes up and you need more time before that
22 date, send me an e-mail, send me a letter requesting an
23 extension or something.

24 You all will receive notice of anything that
25 happens. If I get a request from staff or the applicant

1 to continue this to a later date, my office will notify
2 everyone for whom I have a white form. If I don't get a
3 white form from you, you don't get nothing from me. All
4 right.

5 So if you all want to get it, you better give
6 me. Okay?

7 Anything from anybody?

8 MR. PALERMO: One more thing. Just that I'll
9 keep in contact with the applicant and with Mr. Madden
10 regarding any material that comes out of this. So if they
11 just want to keep in touch or get material to me, that
12 would be fine.

13 HEARING EXAMINER: Okay. All right. Then I will
14 see you guys on the 23rd. And if we have any new
15 conditions or whatnot coming out of this, I'd like to see
16 those a day or two ahead of time. Don't slap them on me
17 at the hearing and expect me to be intelligent. Okay?

18 All right. We'll put it in the order. See you
19 guys here on the 23rd of January.

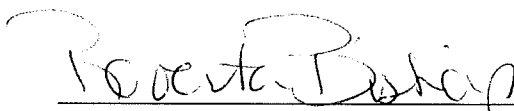
20 (Hearing concluded.)
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1 STATE OF FLORIDA)

2 COUNTY OF LEE)

3
4 I, Roberta June Bishop, Registered Professional
5 Reporter, do certify that I was authorized to and did
6 stenographically report the foregoing proceedings, and
7 that the typewritten transcript, consisting of pages
8 numbered 1 through 173, is a true record.

9 Dated this 29th day of December, 2008.

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12 Roberta June Bishop, RPR
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