

LAND USES		MINIMUM LOT			MINIMUM SETBACK (ft)						MAX HEIGHT (ft)	MIN. BLDG. SEP. (ft)	MAX. LOT COVER. (%)
		AREA (ft)	MIN WIDTH (ft)	MIN DEPTH (ft)	SIDE INCL. CORNER LOTS (ft)	REAR (ft)	FRONT (ft)	WATER BODY (ft)					
						LOTS	WETLAND OR GOLF COURSE	Acc.	BLDG.				
Multi-Family	EGR	6,000	80	100	10	20	10		20	20	55 or 4 stories****	½ Bldg. Ht. but not < 20	70%
	Staff	10,000	100	100	10	20			20 for car./gar./ALF 15 for Bldg.	20	55 or 4 stories	½ Bldg. Ht. but not < 20	
Clubhouse	EGR	20,000	80	100	10	20	10		20	20	55 or 4 stories****	0 or 20'	55%
	Staff				10	20			20	20			
Commercial	EGR	20,000	80	100	0 or 15**	25	10		20 or 25***	20	55 or 4 stories****	0 or 20'	55%
	Staff	20,000	100	100	15	25			“most restrictive per LDC”	25	55 or 4 stories	½ Bldg. Ht. but not < 20	40%
Accessory Structures	EGR	n/a	n/a	n/a	5	5	0		12	0	n/a	n/a	n/a
	Staff												

* 80 ft. when abutting a golf course or buffer.

** Should the subject property be subdivided, a 0' setback to any internal lot lines will be required.

*** 20 ft. setback from Internal Accessway or 25 ft. street setback.

**** Building height is limited to a maximum of 35 feet within 200 feet of The Vines residential development and San Carlos Park.

ESTERO GOLF RESORT (Lee County Case #DCI2000-00032)

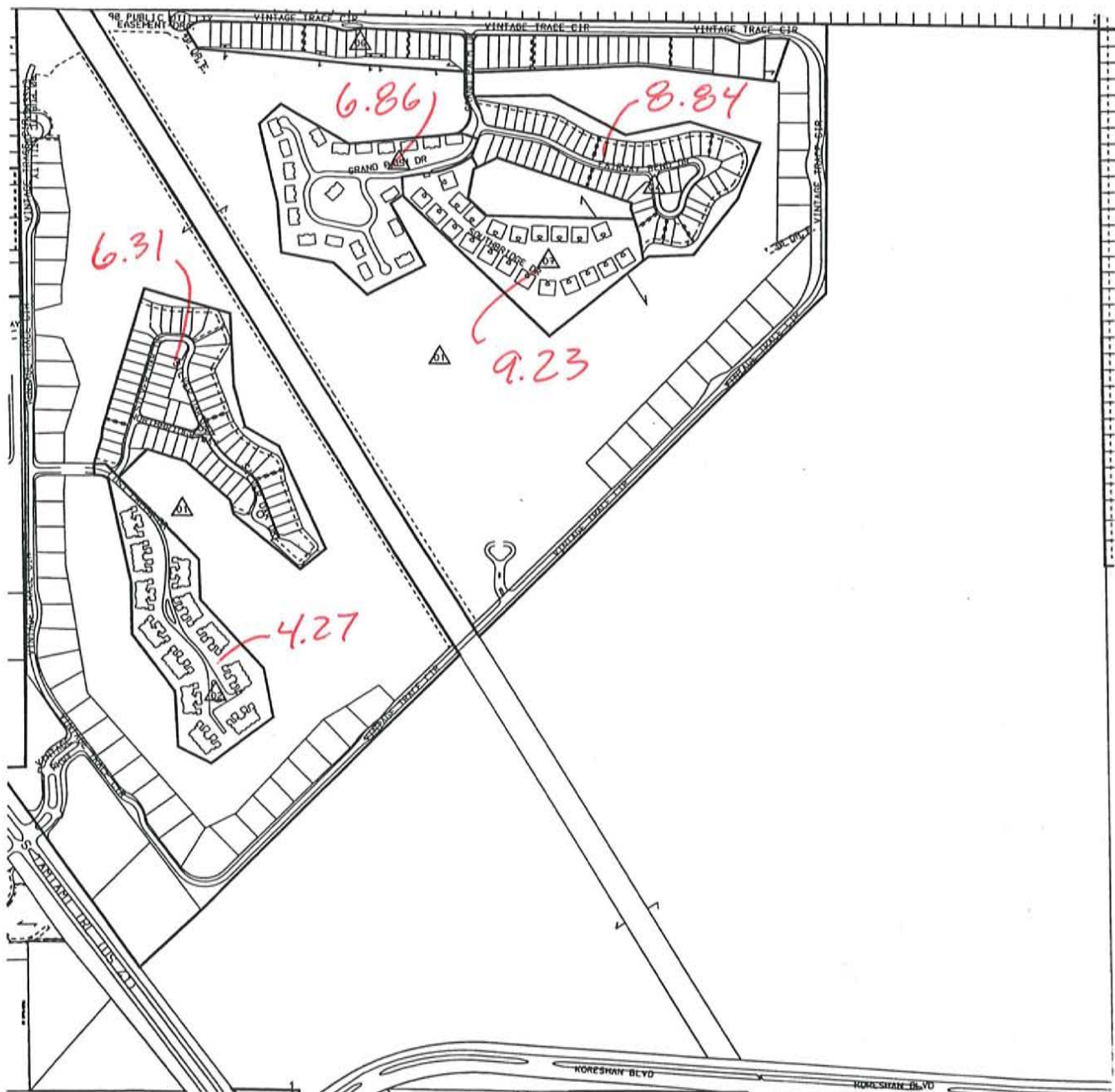
Lot Coverages Approved for various projects in Lee County:

Project:	Lot Coverage					
	Single Family detached	Zero Lot	Two Family & Townhouse	Multi-Family	Clubhouse	Commercial
The Vines PUD (#Z-88-292)	60%	60%	60%	60%	60%	60%
Pelican Landing RPD/CPD (#Z-94-014)	Lot Coverage is not specified.					
Pelican Pointe RPD (#Z-95-053)	Lot Coverage is not specified.					
Grande Oak RPD (#Z- 96-072)	55%	55%	55%	55%	55%	40%
The Brooks MPD (#Z-97-037)	55%	55%	55%	55%	"N/A"	45%
Bernwood MPD (#Z-97-039)	Lot Coverage is not specified.					
Heritage Palms RPD/CPD (#Z-97-051)	Lot Coverage is not specified.					
Stoneybrook RPD (#Z-98-018)	50%	70%	70%	70%	-	N/A
Carmargo Trust MPD (#Z-98-029)	50%	70%	70%	70%	"N/A"	60%
Heritage Cove RPD (#Z-98-045)	60%	60%	60%	60%	N/A	N/A
Miromar Lakes MPD (#Z-99-029)	55%	55%	55%	55%	"N/A"	45% & 55%
Livingston Oaks RPD (#Z-99-083)	Lot Coverage is not specified.					

Lot Coverages Proposed by EGR and Staff Report:

Estero Golf Resort	65%	65%	65%	70%	55%	55%
Lee County Staff Report	40%	40%	40%*	-	-	40%

* The Staff Report does not specify lot coverage for Townhouses.



ESTERO GOLF RESORT, CASE #DCI2000-00032

STAFF REPORT REVISED CONDITION #11

MARCH 14, 2001

Language to be deleted is shown struck thru, and language to be added has been underlined.

Prior to Development Order approval for any portion of the property, the developer must show an emergency access connecting to the existing ~~interconnection to~~ Oriole Road to the north. ~~This interconnecting street stub is necessary to provide for proper traffic circulation. The street stubs must be provided with a temporary cul-de-sac turnaround within the minimum required platted right-of-way.~~ Prior to the opening of the Sandy Lane extension, that will connect to the existing Oriole Road, the developer of this project must revise the emergency access so that it will be accessible from the Future Sandy Lane Extension. ~~create a new emergency access to the Sandy Lane extension to replace the emergency access directly to Oriole Road.~~

PLANNING DIVISION

M E M O R A N D U M



LEE COUNTY

SOUTHWEST FLORIDA

to: Hearing Examiner

from: Kay Deselem, AICP, Senior Planner



subject: Estero Golf Resort

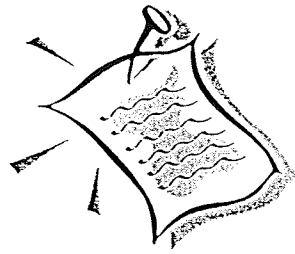
date: March 14, 2001

Staff recommends adding the following condition concerning golf course monitoring. This condition relates to staff's proposed Condition "10 K" which would require the developer to submit annual ground water and surface water quality monitoring reports. The condition staff is proposing here would require the developer to submit pre-development groundwater and surface water analysis in order to have baseline data upon which to evaluate the annual monitoring reports. The following condition is proposed.

Prior to development order approval for the golf course, the developer must conduct a pre-development groundwater and surface water analysis and submit the analysis to Lee County Division of Natural Resources. This analysis is intended to establish baseline data for groundwater and surface water monitoring for the project area. The analysis must be designed to identify those nutrients and chemicals that are anticipated to be associated with the project. Prior to commencing this baseline study, the developer must submit the methodology for review, comment, and approval by Lee County.

This condition was taken directly from the Miromar Lakes DRI development order.

cc: Ben Chumley, Planner, Division of Planning



NOTE TO MICROFILM
COMPANY:

PLEASE FILM
EXHIBITS, MAPS AND
SITE PLANS
LAST

EXHIBITS

Rec'd During
May 7, 2001

CASE # DCI2000-00032

CASE NAME: KEystone Custom Homes, INC.
in ref to ESTERO GOLF RESORT MPD

Attach copy of this form to top of packet of exhibits & place
exhibits in case file.

avoid (revised)
mcp*

W2

*Appli. has
has
requested
she revised
mcp on a
board for the
Spec. Arg.*

ARE THERE ANY BOARD EXHIBITS? YES NO

LOCATION OF BOARDS _____

If there are any board exhibits, attach another copy of this form to
boards for identification purposes.

ESTERO CONCERNED CITIZENS ORGANIZATION (ECCO)
Testimony regarding the Rezoning of the Estero Golf Resort property
Northeast Corner Koreshan Boulevard and Highway 41
March 14, 2001

Overall ECCO believes that the Estero Golf Resort project will add to Estero's reputation as a location for attractive, well-planned, quality residential developments. However, we are concerned about some of the possible uses being sought for some of the commercial sites within the project and the appearance of the commercial elements of the project.

We do not believe that a service station, auto repair facility and car wash would contribute to the appearance of this area. During the last few years two such facilities have been constructed in this area--one directly across highway 41 from the site and another about 1 mile to the south at Corkscrew and 41. Should the county decide to retain this use, we would urge the addition of some new, higher standards for the appearance of the commercial components of this project including landscaping, berming, signage and lighting.

For nearly a year ECCO has been working with the County, the Estero Chamber of Commerce and the Estero Civic Association to develop a Community Plan amendment to the Lee Plan. The draft plan was submitted to the County last September 29th. The Local Planning Agency is scheduled to consider the Estero Community Plan at its meeting next month and the Board of County Commissioners is scheduled to vote on it in May. In addition, the community has already raised most of the money with which to pay the planner for his assistance in developing the Land Development Code changes needed to implement the community plan.

The vision statement of the proposed Estero Community Plan states in part the following:

"Estero's growth will be planned as a village, establishing defined areas for tasteful shopping, service and entertainment, while protecting and encouraging residential neighborhoods that encourage a sense of belonging. Weaving the community together will be carefully crafted limitations on strip commercial uses, inappropriate signage and certain undesired commercial uses, while additional design guidelines will be established to ensure attractive landscaping, streetscaping, architectural standards, and unified access points."

We would like the Estero Golf Resort, and especially its commercial elements, to be a model of this vision that others will strive to achieve. With the changes we have proposed we think the Estero Golf Resort zoning would yield a project consistent with our vision, one that will satisfy the LDC changes that we expect to be adopted later this year while eliminating the risk that the project would have a negative effect on the community.

FOR FURTHER INFORMATION, call:

Don Eslick
949-4050

ESLICK EXHIBIT #1
DCI2000-00032

DCI 2000-00032

RECEIVED
JAN 03 2001

PERMIT COUNTER

DENSITY CALCULATIONS

	Urban Comm.	Suburban		Total
		CPD	RPD	
Total Land Area	22.6 ac	51.9 ac	242.2 ac	316.7 ac
Non-Residential	22.6 ac	11.5 ac	n/a	34.1 ac
Gross Residential Acres	n/a	40.5 ac	242.2 ac	282.7 ac
Uplands	n/a	34.1 ac	231.0 ac	265.1 ac
Wetlands	n/a	6.4 ac	11.2 ac	17.6 ac
Lee Plan Density	6 du/ac	6 du/ac	6 du/ac	6 du/ac
Upland Units	n/a	204 du	1386 du	1590 du
Wetland Units	n/a	38 du	66 du	104 du
Total Permitted Units	n/a	242 du	1452 du	1694 du
Requested Units				
From CPD	n/a	242 du	n/a	242 du
From RPD	n/a	58 du	520 du	578 du
Total Requested Units	n/a	300 du	520 du	820 du

BEN CHUMLEY

2914 SE 8th Ave., Cape Coral, FL, 33904
Phone: 458-1736(H) 479-8365(W)

Employment

PLANNER

Lee County BoCC

MAY 1999 - PRESENT

Ft. Myers, FL

Review various zoning requests and help to prepare staff positions on consistency with the county comprehensive plan. Recommend conditions or other actions to bring developments into consistency with the comprehensive plan. Participate in the annual comprehensive plan amendment cycle by evaluating current goals, objectives, and policies, and recommending modifications or new policies as needed.

PLANNER I

Albany/Dougherty County Planning Department

NOVEMBER 1998 - MAY 1999

Albany, Georgia

Responsible for reviewing various land use applications for consistency with the county comprehensive plan, zoning ordinance, historic preservation ordinance, and sign ordinance. Prepared staff reports and made recommendations to the Planning Commission and Board of Zoning Appeals on proposed rezonings, variances, and special exceptions. Also, prepared staff reports and made recommendations to the Historic Preservation Board on proposed demolitions and historic building modifications.

PLANNING INTERN

City of New Smyrna Beach

MAY 1997 - OCTOBER 1997

New Smyrna Beach, FL

Prepared basic staff reports on proposed variances and special exceptions for review by the Planning Commission or Board of Adjustment. Collected existing land use data for use in comprehensive plan amendments.

PLANNING INTERN

St. Johns County

MAY 1996 - SEPTEMBER 1996

St. Augustine, FL

Collected existing land use data for use in the Future Land Use Element of the Evaluation and Appraisal Report of the comprehensive plan.

Education

BACHELOR OF SCIENCE, CITY & REGIONAL PLANNING
Cornell University

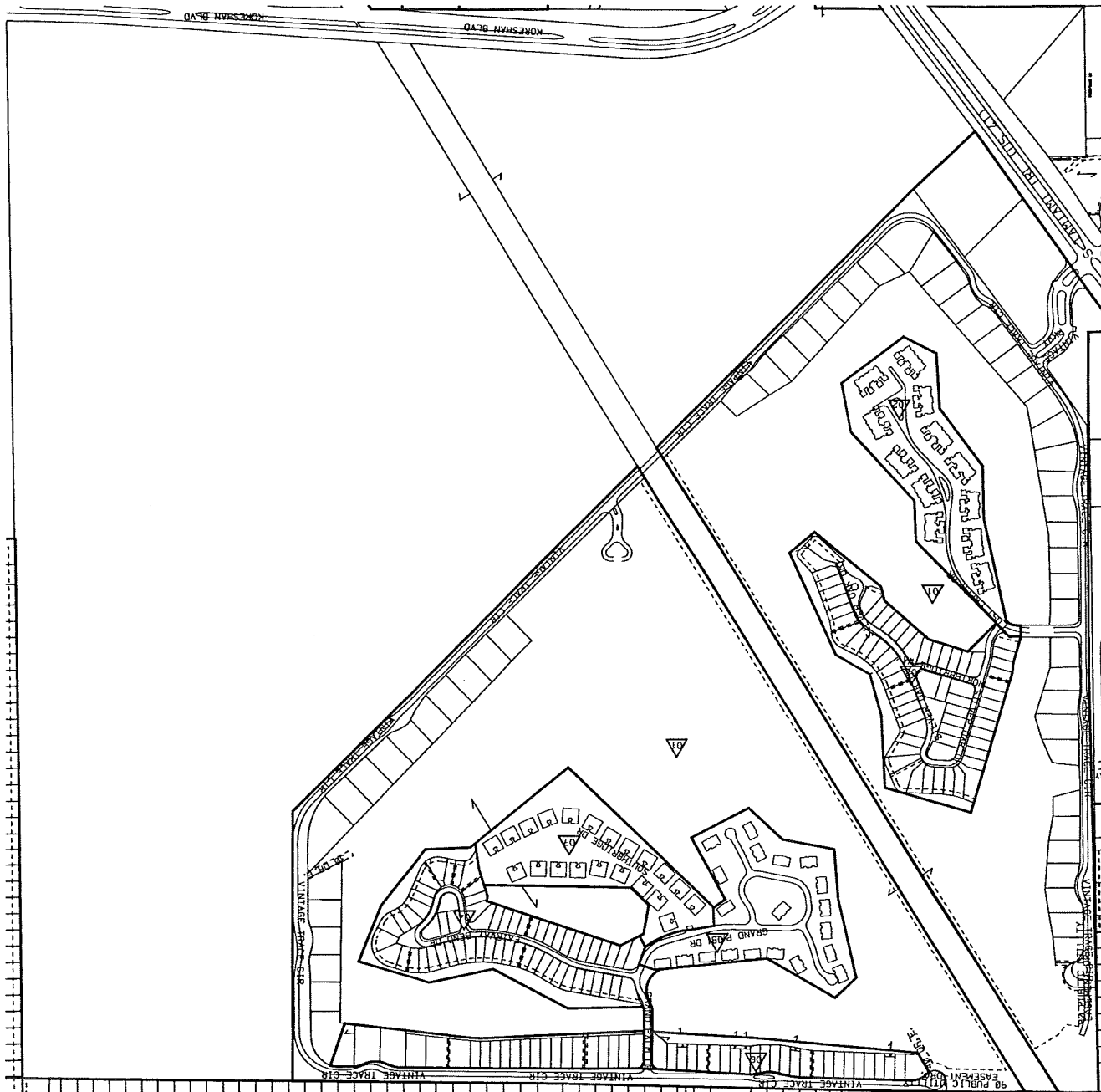
1991 - 1995
Ithaca, NY

46 HOURS TOWARD M.A. IN URBAN & REGIONAL PLANNING
University of Florida

1997-1998
Gainesville, FL

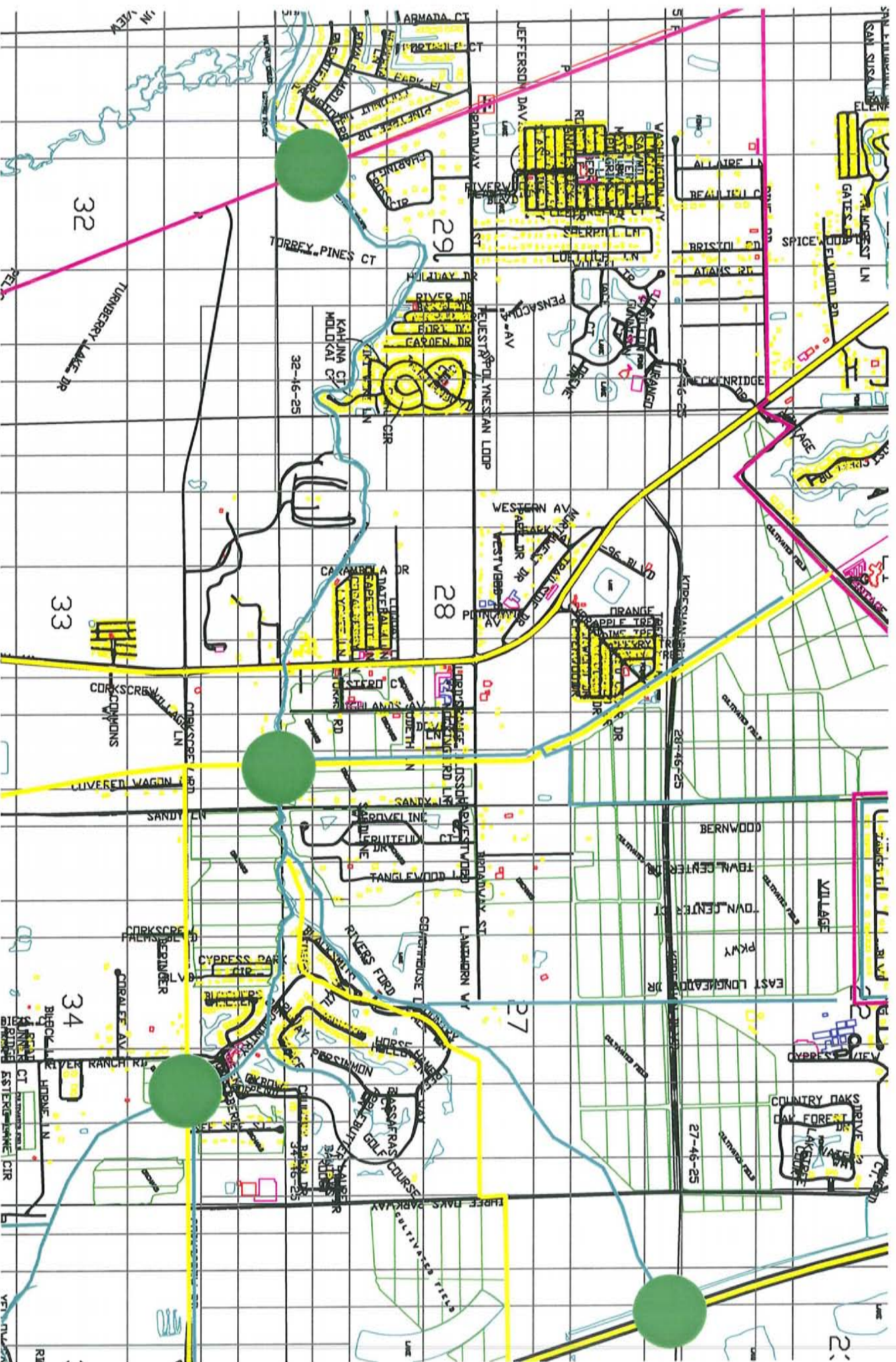
Residential Density

			Residential Acres	Residential Units	Net Density					
21	46-25	01								
Summary for 'AREA' = 01 (49 detail records)										
Sum			25.95 25.95	49	1.89	49	0	0	0	0
21	46-25	02								
Summary for 'AREA' = 02 (1 detail record)										
Sum			11.24 11.24	48	4.27	0	48	0	0	0
21	46-25	03								
Summary for 'AREA' = 03 (63 detail records)										
Sum			9.98 9.98	63	6.31	63	0	0	0	0
21	46-25	04								
Summary for 'AREA' = 04 (48 detail records)										
Sum			6.79 6.79	60	8.84	34	0	26	0	0
21	46-25	05								
Summary for 'AREA' = 05 (1 detail record)										
Sum			11.67 11.67	80	6.86	0	80	0	0	0
21	46-25	06								
Summary for 'AREA' = 06 (36 detail records)										
Sum			6.63 6.63	36	5.43	36	0	0	0	0
21	46-25	07								
Summary for 'AREA' = 07 (84 detail records)										
Sum			10.08 10.08	93	9.23	0	81	12	0	0
Grand Total			82.34 82.34	429	5.21	182	209	38	0	0
										429



STAFF'S EXHIBIT

#5
DRI 2000-00032



Memo

To: Kay Deselem, AICP
Senior Planner

From: Elaine Wicks, E.I.
LDOT Engineer III

Date: June 15, 2000

Re: **Estero Golf Resort RPD/CPD
Sufficiency Review
DCI 2000-00032**

The Department of Transportation has received the Application for Public Hearing for Planned Development for the above referenced project and has found it insufficient for review.

The Lee County MPO 2020 Financially Feasible Plan shows the 2-lane extension of Oriole Road as a reserve project. The existing Oriole Road stops just short of the northern property line for this project. This parcel is crucial in making the connection between the existing roadway to the north and Koreshan Boulevard. The Master Concept Plan submitted does not adequately address the extension of Oriole Road. Please show us how the extension of Oriole Road will be handled in the MCP.

DOT would like to suggest setting up a meeting with the applicant to discuss this issue of Oriole Road. Please give me a call at 479-8580 (ext. 5362) to coordinate.

EW/mlb

Memo

To: Kay Deselem, AICP
Senior Planner

From: Elaine Wicks, E.I.
LDOT Engineer III

Date: October 9, 2000

Re: **Estero Golf Resort RPD/CPD
Sufficiency Review
DCI 2000-00032**

The Department of Transportation has received the information submitted based on the original sufficiency review and still does not find this project sufficient.

The applicant stated in their August 15th response letter that they have provided as much space as feasible on their MCP for the Oriole/Sandy Lane Extension. The area they have provided increased from 15 to 30 feet. The applicant is also requesting a deviation to allow for a minimum lake setback of 25 feet from the property line, therefore, potentially having only 25 feet available for the Oriole/Sandy Lane Extension. This would require either impacting the future golf course, home sites, etc of the proposed development, or would require impacting over 30 existing single-family homes within the San Carlos Estates.

The Official Trafficways Map shows the required right-of-way of 100 feet; DOT mentioned during a meeting with the applicant, that we may be able to accommodate the proposed Oriole/Sandy Lane extension within a 60 foot wide area, in order to help lower the overall impacts of the roadway to the proposed project.

Policy 21.2.4 of the Lee Plan states: "Transportation corridors contained in local development orders, planned development approvals, or DRI development orders will be reviewed by the county to determine compliance with the corridor needs shown on the Official Trafficways Map". Conflicts with these corridors and the corridors contained on the Official Trafficways Map will be identified and mutual resolution of these conflicts will be encouraged.

The applicant has not sufficiently met the requirements of the Lee Plan's Transportation Section; therefore, DOT cannot find this project sufficient.

As stated in our previous sufficiency response, Oriole/Sandy Lane is a crucial piece of the overall transportation network. Sandy Lane will go from Old US 41 and tie into Three Oaks Parkway north of Alico Road. DOT is actively in the process of piecing this project together as more properties along this corridor develop. This corridor will provide relief to US 41, I-75 and Three Oaks Parkway.

I would also like to iterate that the area set aside for this corridor would be eligible for impact fee credits as outlined in Administrative Code AC-11-5.

EW/mlb

cc: Administrative File

Memo

To: Kay Deselem, AICP
Senior Planner

From: Elaine Mettauer, E.I.
LDOT Engineer III

Date: February 16, 2001

Re: **Estero Golf Resort RPD/CPD
Substantive Comments
DCI 2000-00032**

The Department of Transportation has review information submitted for the above referenced project and has the following comments:

The proposed project is located on a parcel just south of the San Carlos Park Subdivision and North of Koreshan Boulevard. The Department of Transportation has concerns with the proposed right-in/right-out access to the maintenance facility off Koreshan Boulevard. The maintenance facility will generate trips that are usually internal to the project (tractors and lawnmowers) from the maintenance facility. Problems arise when residents of the development object to the maintenance vehicles using the internal residential streets to access remote portions of the golf course. The slow moving trips are then required to use the entrance road to gain access to the main entrance road. However, these vehicles must use Koreshan Boulevard to gain access to the main entrance road. Introducing these slow moving vehicles to Koreshan Boulevard will cause health, safety and welfare concerns to the traveling public. Therefore, it does not recommend approval of the proposed right-in/right-out access point that serves the maintenance facility. DOT recommends that the maintenance facility have access to the internal roadway system only.

The Official Traffic Ways Map shows 100-feet of right-of-way for the Oriole Road/Sandy Lane Extension (Sandy Lane). The Sandy Lane alignment shown on the Lee County Official Trafficways Map would follow along the eastern boundary of the Estero Golf Resort project and the western boundary of San Carlos Park Unit 19 and the newly approved Bernwood Villages Development. The alignment would line up with the existing Oriole Road at the end of San Carlos Park and would tie into an existing median opening on Koreshan Boulevard. It will extend south from the existing median opening through the Indigo Isles (new development south of Koreshan Boulevard) and continue down until it ties in with Old 41.

Sandy Lane was shown on the original Trafficways Map prepared in 1985. It has been included in every subsequent revision, the last revision in 1991. DOT is in the process of reviewing and updating the Trafficways Map at this time. Sandy Lane will be reflected in the updated map as well. Moreover, Sandy Lane has been included in the Lee County Metropolitan Planning Organization (MPO) 2020 plan since 1995. It is also included in the current MPO 2010 Financially Feasible Plan.

Sandy Lane is a 2-lane collector that as shown on the MPO plan will connect to Old 41 (near the US 41 intersection) and run north to Alico Road. Sandy Lane will provide San Carlos Park and Estero Golf Resort residents a north/south alternative to Three Oaks Parkway and US 41, I-75. It also provides the residents of San Carlos Park an alternative means of accessing Alico Road and Koreshan Blvd without having to cross the existing railroad tracks. Sandy Lane will function as a necessary reliever keeping local trips off the other arterial roadways, thereby preserving the capacity of those roads. Development pressures in South Lee County highlight the need to address the extension of Sandy Lane in a proactive manner with a view toward 'smart growth'. There are no other alternatives for a north/south collector west of I-75 that would not involve the taking of existing structures.

Because Sandy Lane extension is a crucial component of the overall roadway network, the Department of Transportation recommends that right-of-way be obtained at this time. The recommended set aside right-of-way width will consist of 80 feet along the eastern boundary of the property and approximately 200 feet wide for 700 feet at the northeast corner to accommodate the reverse curve. Therefore, DOT recommends the following condition be placed on the zoning approval:

- 1) The Master Concept Plan must be revised to reflect the planned extension of Sandy Lane along the eastern boundary of the site, consistent with the sketch set forth in the attached Exhibit. Lee County will compensate the property owner for the reservation of this property in accordance with the regulations set forth in Chapter 2 of the LDC.

EMM/mlb

cc: Administrative File

Attachment – Exhibit: sketch and description of Sandy Lane Extension



LEE COUNTY
SOUTHWEST FLORIDA

BOARD OF COUNTY COMMISSIONERS

(941) 479-8580

Writer's Direct Dial Number: _____

John E. Manning
District One

January 5, 2001

Douglas R. St. Cerny
District Two

Ray Judah
District Three

Andrew W. Coy
District Four

John E. Albion
District Five

Donald D. Stilwell
County Manager

James G. Yaeger
County Attorney

Diana M. Parker
County Hearing
Examiner

Jack Ruskai, P.E.,
Owner Representative
Hermes Investment Co., Inc.
2328 Hancock Bridge Parkway, Suite 114
Cape Coral, Florida 33990

**Re: Estero Golf Resort
Sandy Lane Right-of-Way**

Dear Mr. Ruskai:

The property owned by your client is currently going through the rezoning process. This process allows the Department of Transportation the opportunity to review the proposed projects and how they relate to DOT's overall roadway network system. The property is located where the Sandy Lane extension, as shown on the Lee County MPO 2020 Financially Feasible Plan, will extend from the existing Oriole Road down to and tie into an existing median cut on Koreshan Boulevard.

Sandy Lane is a very important piece of the south Lee County roadway network. It is one of two north-south corridors, along with Three Oaks Parkway between US 41 and I-75. The roadway network model shows Sandy Lane taking the overflow traffic from US 41 and I-75.

The Lee County Land Development Code and Comprehensive Plan encourages us to work with the property owners at time of zoning and development orders to let them know of upcoming roadway projects and right-of-way needs. This helps to lower the future impacts to people within the developments as well as decrease the cost of constructing the roads, which helps everyone within Lee County.

LCDOT wanted to inform you of this future extension now during the rezoning process, to allow for the planning of your project with the future road in mind. This would increase the quality and compatibility of the residential/golf course development, with the future roadway improvements.

The Official Trafficways Map shows Sandy Lane as a 2-lane arterial needing 100 feet of right-of-way. We understand that the 100 feet would put an undue burden on the proposed project, and we have looked at the cross-section and feel that 80 feet of right-of-way would be adequate for the 2-lane cross-section. However, additional area may be needed for water management. Nothing has been designed at this time, but details like the water management issues can be coordinated at time of local development order.

\\LCFNW04\DATA\SHARED\DOT\DOCUMENT\SMG\LETTERS\Mettauer\jresterogolfownerimpactfee122900.doc

P.O. Box 398, Fort Myers, Florida 33902-0398 (941) 335-2111
Internet address <http://www.lee-county.com>

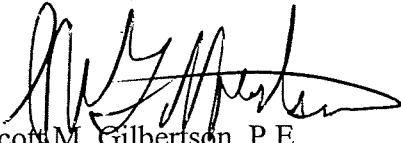
AN EQUAL OPPORTUNITY AFFIRMATIVE ACTION EMPLOYER

Jack Ruskai
January 5, 2001
Page 2 of 2

Our Department looks forward to working with you on this matter, and would like the owner to know that the right-of-way set aside for the Sandy Lane Extension would be eligible for road impact fee credits, pursuant to the LDC and Administrative Code. If you have any questions or comments or would like to set up a meeting to discuss the proposed roadway, please feel free to give me a call.

Sincerely,

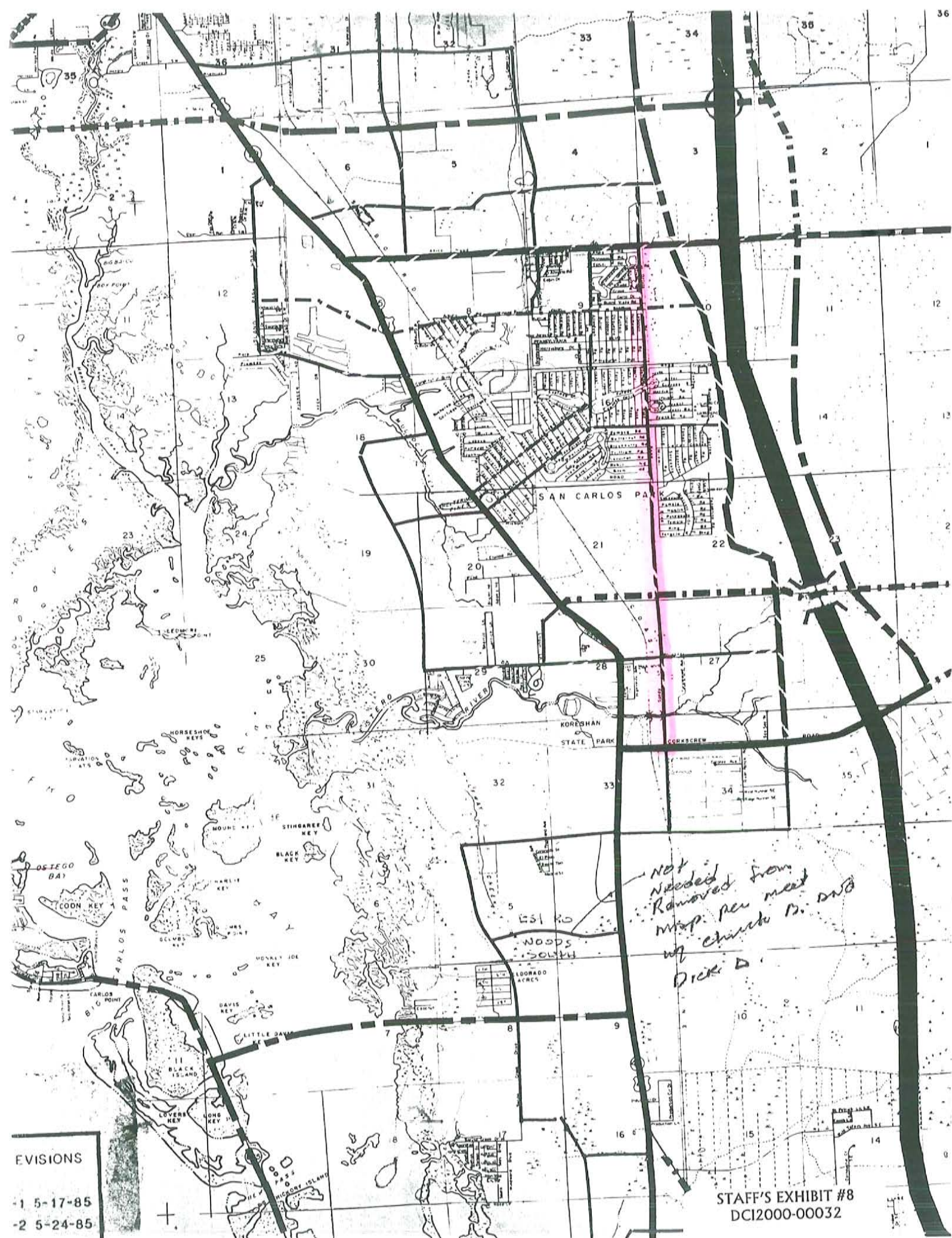
DEPARTMENT OF TRANSPORTATION



Scott M. Gilbertson, P.E.
Director

EMM/SMG/mlb

cc: Paula Davis, Keystone Custom Homes
Michael Ciccarone, Annis, Mitchell, Cockey, Edwards & Roehn
Kevin Higginson, Coastal Engineering
Carron Day, Florida Land Planning
Dawn Perry-Lehnert, Assistant County Attorney
Inquiries File



EVICTIONS

-1 5-17-85
-2 5-24-85

STAFF'S EXHIBIT #8
DCI2000-00032

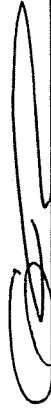
DESCRIPTION

OF

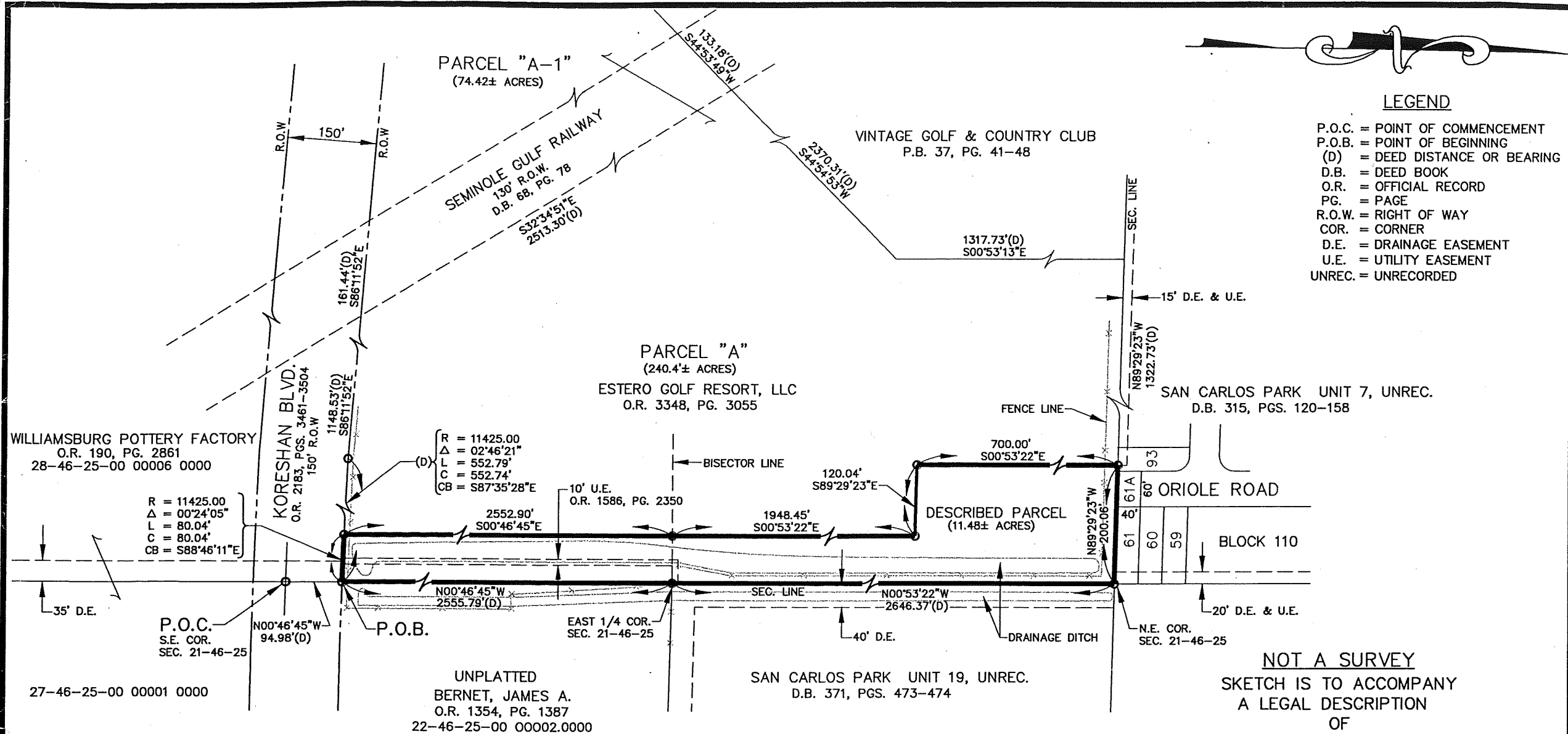
A parcel or tract of land in Section 21, Township 46 South, Range 25 East, Lee County, Florida, being described as follows:

Commencing at the southeast corner of Section 21, Township 46 South, Range 25 East, Lee County, Florida; thence run N00°46'45"W along the east line of the Southeast Quarter (SE ¼) of said Section 21 for a distance of 94.98 feet to a point on the northerly right-of-way line of Koreshan Boulevard (as described in Official Record Book 2183, pages 3461 through 3504, Public Records of Lee county, Florida) and the point of beginning; thence continue N00°46'45"W along the east line of the Southeast Quarter (SE ¼) of said Section 21 for a distance of 2555.79 feet to the northeast corner of the Southeast Quarter (SE ¼) of said Section 21; thence run N00°53'22"W along the east line of the Northeast Quarter (NE ¼) of said Section 21 for a distance of 2646.37 feet to the northeast corner of the Northeast Quarter (NE ¼) of said Section 21; thence run N89°29'23"W along the north line of the Northeast Quarter (NE ¼) of said Section 21 and the south line of Unit Number 7, San Carlos Park, an unrecorded subdivision filed in Deed Book 315, pages 120 through 158, Public Records of Lee County, Florida for a distance of 200.06 feet; thence run S00°53'22"E along a line 200.00 feet west of (as measured on a perpendicular) the east line of the Northeast Quarter (NE ¼) of said Section 21 for a distance of 700.00 feet; thence run S89°29'23"E for a distance of 120.04 feet; thence run S00°53'22"E along a line 80.00 feet west of (as measured on a perpendicular) the east line of the Northeast Quarter (NE ¼) of said Section 21 for a distance of 1948.25 feet to a point of intersection with a line 80.00 feet west of (as measured on a perpendicular) the east line of the Southeast Quarter (SE ¼) of said Section 21; thence run S00°46'45"E along a line 80.00 feet west of the east line of said Southeast Quarter for a distance of 2552.90 feet to a point on the north right-of-way line of aforesaid Koreshan Boulevard and to which point a radial line bears S01°25'52"W; thence run easterly along said north right-of-way line and the arc of non-tangent curve to the left of radius 11,425.00 feet, having for its elements, a central angle of 00°24'05', chord bearing of S88°46'11"E, chord distance of 80.04 feet for 80.04 feet to the point of beginning and to which point a radial line bears S01°01'47"W, containing 500118.74 square feet (11.48 acres) more or less.

Bearings mentioned hereinabove are based on a right-of-way map for Koreshan Boulevard showing the east line of the Southeast Quarter of Section 21, Township 46 South, Range 25 as bearing N00°46'45"W.



Arthur W. Parsons, County Surveyor
Professional Surveyor and Mapper
Florida Certificate No. LS-2987



SURVEYOR'S CERTIFICATION

I HEREBY CERTIFY THAT THIS SKETCH AND DESCRIPTION WAS MADE UNDER MY DIRECTION AND CONTROL AND TO THE BEST OF MY KNOWLEDGE AND BELIEF MEETS THE MINIMUM TECHNICAL STANDARDS IN ACCORDANCE WITH CHAPTER 61G17-6 FLORIDA ADMINISTRATIVE CODE PURSUANT TO CHAPTER 472.027 OF THE FLORIDA STATUTES.

DATE: 02/01

Arthur W. Parsons, County Surveyor
Professional Surveyor & Mapper
Florida Certificate No. LS-2987

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL
RAISED SEAL OF A FLORIDA LICENSED SURVEYOR & MAPPER.

SURVEYOR'S NOTES

- 1.) DESCRIPTION FOR DESCRIBED PARCEL IS BASED ON DEED.
- 2.) TOPOGRAPHICAL FEATURES OR IMPROVEMETS LYING WITHIN DESCRIBED PARCEL WERE NOT SURVEYED OR LOCATED.
- 3.) NO RECORD OF OWNERSHIP HAS BEEN DETERMINED FOR PARCEL SHOWN AS LOT 61A, BLOCK 110, SAN CARLOS PARK UNIT 7.
- 4.) UNLESS OTHERWISE NOTED, DIMENSIONS ARE CALCULATED.

LEE COUNTY DEPARTMENT OF PUBLIC WORKS TRANSPORTATION DIVISION			SHEET NO.
Designed by: A.W.P.	Date: 02/01	Disk 20001	2 of 2
Drawn by: D.O.K.	Date: 02/01	Scale: 1"=200'	
Chk'd: A.W.P.	Date: 02/01	001572701	

Level of Service Comparison

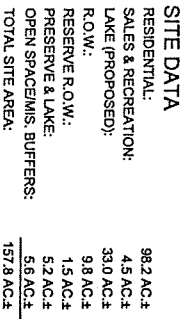
Roadway volume north of Koreshan Boulevard	Existing number of lanes	2000 Existing conditions (1)	2005 CIP/TIP programmed improvements (2)	2020 MPO Financially Feasible Plan (includes Oriole Road extension) (3)	2020 MPO Financially Feasible Plan (3) (without Oriole Road extension)	2020 PM peak hour volume change without Oriole extension
U.S. 41	4	C	C	D (4)	F (5)	+110
Oriole Road	0			C	N/A	-360
Three Oaks Parkway	2	C	C	C	C	+140
I-75	4	D (5)	D (5)	D (5)	D (5)	+20
Ben Hill Griffin Parkway	4	A	C	C	C	+20
Screenline PM peak hour/peak directional volume		5623	8172	12710	12640	-70

Notes:

- 1) 2000 existing conditions are based on the Lee County Traffic Count Report 2000 Lee County Traffic Report
- 2) 2005 CIP/TIP based on a FSUTMS analysis including all improvements programmed for construction by fiscal year 2005 by Lee County and the Florida Department of Transportation and interpolated population and employment projections. This includes 4-laning of Three Oaks Parkway and 6-laning of U.S. 41.
- 3) The 2020 volumes are based on the 2020 MPO Financially Feasible Plan FSUTMS analysis (with a more detailed San Carlos Park network) with and without the 2-lane extension of Oriole Road from San Carlos Park to Koreshan Boulevard. The network includes 6-laning improvements on I-75 and Ben Hill Griffin Parkway.
- 4) Roadway operating within five percent of maximum service volume at level of service standard
- 5) Roadway volume above maximum service volume at level of service standard.

Date: 8/20/94
 Scale: 1" = 100'
 Revision: 12/12/94
 JOB NO. 87.021

STAFF'S EXHIBIT #13
DC12000-00032



BROADWAY
CONCEPTUAL DESIGN FOR
SOUTHSTAR DEVELOPMENT PARTNERS, INC.
CORAL GABLES, FLORIDA.



Elaine



STAFF'S EXHIBIT #14
DCI2000-00032

LEGEND:

-  LEE CO. SCHOOL / PARK
-  PROPERTY OWNER

PROPERTY OWNERS:

- ① BISHOP, LESLIE R., TR.
St. CHARLES, IL.
- ② MULLIGAN, RICHARD E., TR.
NAPLES, FL.
- ③ MULLIGAN, RICHARD E., TR.
NAPLES, FL.
- ④ TWIN PEAKS CORP.
Ft. LAUDERDALE, FL.
- ⑤ A.C.L.R.R. CO.
- ⑥ HANSEN, ZEFIR
Ft. MYERS, FL.
- ⑦ MILLER, STEPHANIE TR.
Ft. MYERS, FL.
- ⑧ MILLER, STEPHANIE TR.
Ft. MYERS, FL.

SANDY LANE ALIGNMENT - OPTION #1D

CHARLOTTE HARBOR

INTERSTATE/EXPRESSWAY

- 2 LANES
- 4 LANES
- 6 LANES
- 8 LANES

DIVIDED ARTERIALS OR COLLECTORS

- 2 LANES
- 4 LANES
- 6 LANES

UNDIVIDED ARTERIALS OR COLLECTORS

- 2 LANES
- 4 LANES

ONE-WAY STREETS

- 2 LANES
- 3 LANES

- 2010 FINANCIALLY FEASIBLE PROJECT
- EXISTING, COMMITTED, AND RESERVE PROJECTS

BRIDGE CONNECTOR

GRADE SEPARATED INTERCHANGES

- EXISTING
- PLANNED

① EXISTING INTERSTATE INTERCHANGES TO BE EXPANDED

② ACCESS TO BE CONTROLLED

③ FUTURE CORRIDOR EVALUATIONS

④ FREEWAY MANAGEMENT SYSTEM ON I-75 SOUTH OF SR 78

NOTE:
LINES REPRESENT GENERALIZED ALIGNMENTS;
MORE SPECIFIC ALIGNMENTS TO BE DETERMINED
THROUGH CORRIDOR AND DESIGN STUDIES.

MAP 21
LEE COUNTY MPO 2010
FINANCIALLY FEASIBLE PLAN



GULF
OF
MEXICO

LEE COUNTY
LEE COUNTY

LEE COUNTY

STAFF'S EXHIBIT #16
DCI2000-00032

AMENDED JUNE 18, 1999
AMENDED AUGUST 20, 1999



0 1 2 3 4 MILES
SWFRPC, AUGUST 99-RNC

Financially Feasible Improvements

-  2 Lanes (1 Lane One Way)
-  4 Lanes (2 Lane One Way)
-  6 Lanes (3 Lane One Way)
-  8 Lanes

Existing & Committed Roads

-  2 Lanes (1 Lane One Way)
-  4 Lanes (2 Lane One Way)
-  6 Lanes (3 Lane One Way)

 Overpass

 Interchange Improvements

 Future Corridor Evaluation

The lines on this plan represent only the general routes. Specific alignments will be determined through corridor and design studies.

NOTES APPLYING TO SPECIFIC IMPROVEMENTS:

① No access should be permitted to these roads east of I 75, south of Corkscrew Road, and north of the Bonita Springs city limits.

② The feasibility and alignment of these roads should be determined through studies that adequately address their growth management and environmental impacts, including their secondary and cumulative effects on wildlife, wetlands, and water management. Extending Strike Lane should be evaluated as an alternative to extending Coconut Road east of I 75.

③ A 4 lane toll expressway, open to transponder users only, with no access points en route, is to be constructed within the median of Colonial Boulevard from west of Winkler Avenue to east of Treeline Avenue.

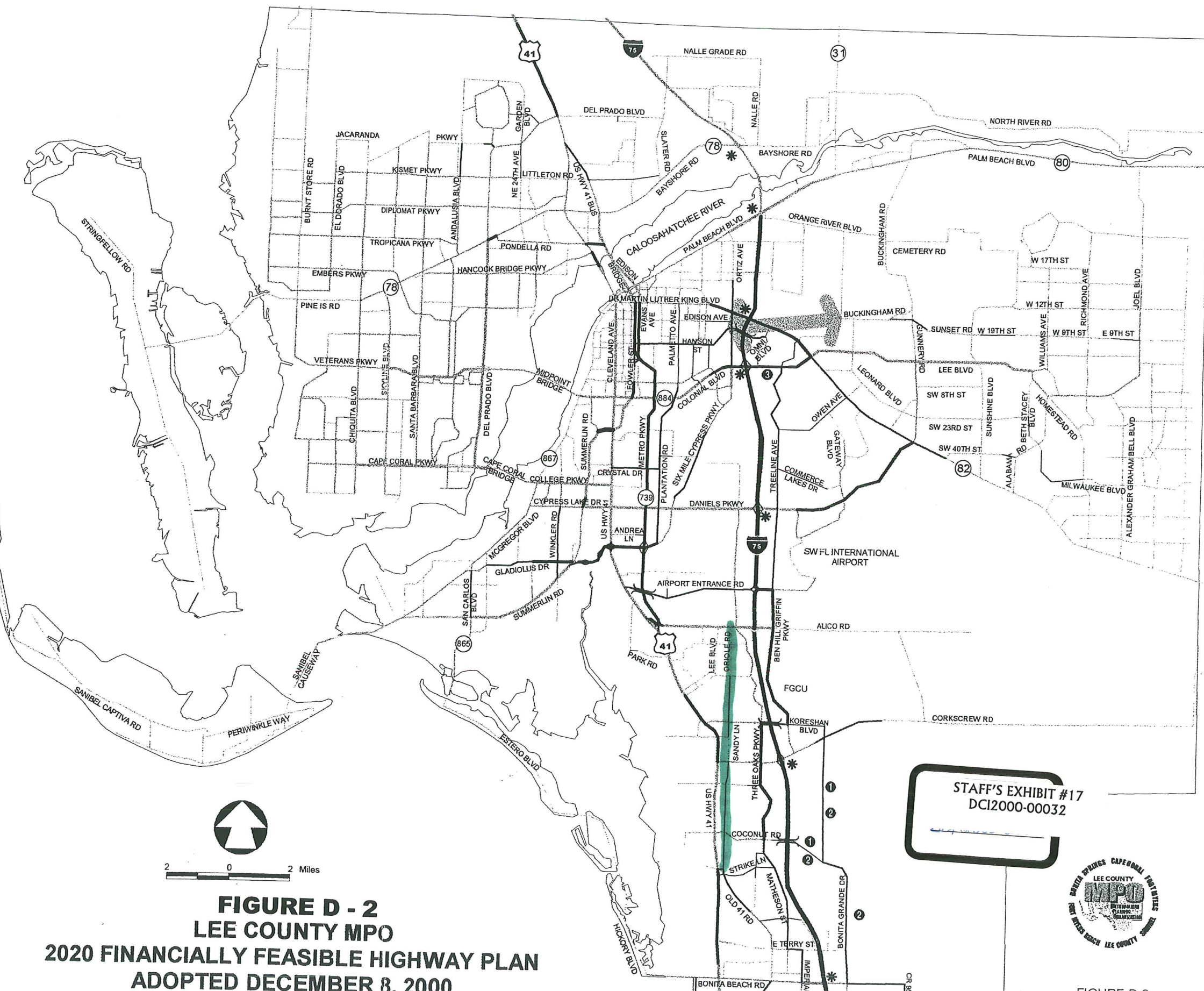
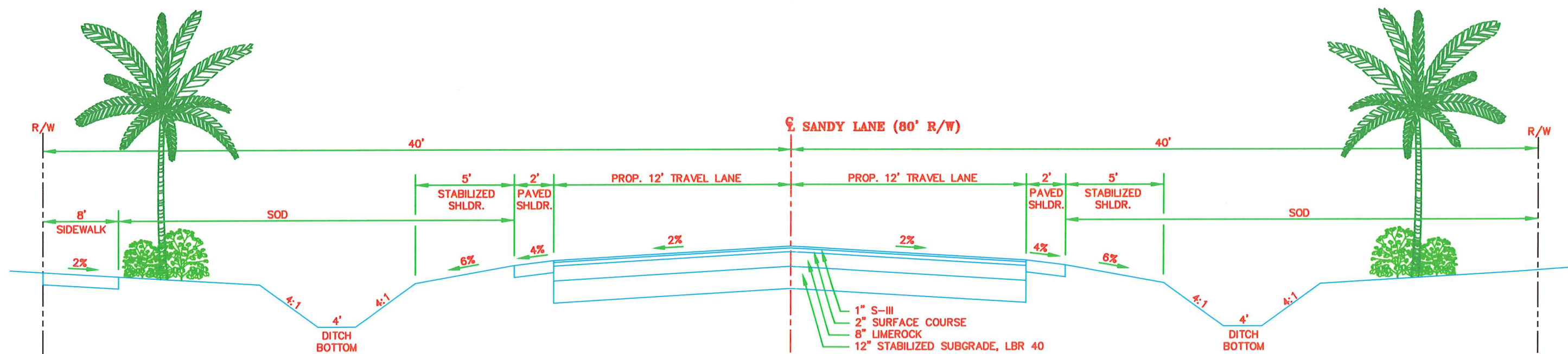


FIGURE D - 2
LEE COUNTY MPO
2020 FINANCIALLY FEASIBLE HIGHWAY PLAN
ADOPTED DECEMBER 8, 2000

STAFF'S EXHIBIT #17
 DCI2000-00032





POSSIBLE
TYPICAL SECTION
SANDY LANE
N.T.S.

R-1 & R-2 combined will provide a minimum of 13.91 acres

3 4 5a 5b
6 7 8 f1



Revised Condition 3b:

The development order plans will show a connection between the conservation area in the southeast corner of the MPD Tract-5 and the upland conservation area on the eastern side of the restored wetland. The wildlife connection will run under the road and include a set of 2 tunnels constructed of, 36 inch wide X 24 inch high, elliptical concrete pipe. The plans will show the 2 elliptical wildlife connections placed under the road in a side by side position unless directed otherwise by ES staff. At a minimum, the bottom of the pipes will be placed no lower than the existing upland preserve grade to help prevent inundation, within the pipes, during the wet season.

LDC Table 34-934:
Use Regulations for
Planned Development Districts

Convenience Food and
Beverage Store &
Self-service Fuel Pumps

Estero Golf Resort
Application for Public Hearing for MPD
Keystone Custom Homes

FLORIDA LAND PLANNING, INC.

	<i>Special Notes or Regulations</i>	<i>RPD</i>	<i>MHPD</i>	<i>RVPD</i>	<i>CFPD</i>	<i>CPD</i>	<i>IPD</i>	<i>AOPD</i>	<i>MPD</i>
Cleaning and maintenance services (34-622(c)(7))		—	—	—	—	P	P	—	P
Clothing stores, general (34-622(c)(8))		—	—	—	—	P	—	—	P
Clubs:									
Country		P	P	P	—	P	—	—	P
Commercial		—	—	—	—	P	—	—	P
Fraternal, membership organization	34-2111	—	—	—	—	P	—	—	P
Private	34-2111	P	P	P	—	P	—	—	P
Cold storage, pre-cooling, warehouse and processing plant		—	—	—	—	P	P	—	P
Commercial fishery		—	—	—	—	P	—	—	P
Commercial use of beachfront seaward of the coastal construction control line	Note (7), 34-3151	P	P	—	—	P	—	—	—
Communication towers									
100 feet or less in height	Note (22), 34-1441 et seq.	—	—	—	P	P	—	P	P (25)
More than 100 feet in height	Note (22), 34-1441 et seq.	—	—	—	SE	SE	—	SE	SE (25)
150 feet or less in height	Note (22), 34-1441 et seq.	—	—	—	—	—	P	—	P (26)
More than 150 feet in height	Note (22), 34-1441 et seq.	—	—	—	—	—	SE	—	SE (26)
Community residential home		P	P	—	—	P	—	—	P
Computer and data processing services		—	—	—	—	—	P	—	P
Consumption on premises	34-1261 et seq.	P (4)	P (4)	P (8)	—	P	P (9)	P	P
Continuing care facilities	34-1414	P	—	—	P	—	—	—	P
Contractors and builders (34-622(c)(9)), all groups	34-1352, 34-3001 et seq.	—	—	—	—	P	P	—	P
Convenience food and beverage store		P (4), (27)	P (4), (27)	—	—	P	P	—	P (27)
Correctional facility		—	—	—	P	—	—	—	P
Cultural facilities (34-622(c)(10))		—	—	—	P	P	—	—	P
Day care center, child, adult		P (4)	P (4)	P (8)	P	P	P	—	P
Department store		—	—	—	—	P	—	—	P
Dormitory		P	—	—	—	P	—	—	P
Drive-through facility for any permitted use		P (4)	P (4)	—	—	P	P	—	P
Drugstore, pharmacy		P (4)	P (4)	—	—	P	—	—	P
Dwelling unit:									
Duplex, single-family		P	—	—	—	—	—	—	P
Two-family attached		P	—	—	—	—	—	—	P
Townhouse, multiple-family building		P	—	—	—	P (10)	—	—	P
Mobile home		—	P	—	—	—	—	—	P
Zero lot line		P	—	—	—	—	—	—	P
Entrance gates and gatehouse	34-1741 et seq.	P (3)	P (3)	P	P	P	P	P	P
Emergency medical service (ambulance station)		P (4)	P (4)	—	P	P	P	—	P
Emergency operations center		—	—	—	P	P	P	—	P
Essential services	Note (1), 34-1611 et seq., 34-1741 et seq.	P	P	P	P	P	P	P	P
Essential service facilities (34-622(c)(13)):									
Group I	Note (1), 34-1611 et seq., 34-1741 et seq., 34-2141 et seq.	P	P	P	P	P	P	P	P
Group II	Note (1), 34-1611 et seq., 34-1741 et seq., 34-2141 et seq.	P	P	P	P	P	P	P	P
Group III	Note (1), 34-1611 et seq., 34-1741 et seq., 34-2141 et seq.	—	—	—	P	—	P	—	P
Excavation:									

	Special Notes or Regulations	RPD	MHPD	RVPD	CFPD	CPD	IPD	AOPD	MPD
Group III		---	---	---	---	---	P	---	P
Group IV		---	---	---	---	P	P	P	P
Residential accessory uses (34-622(c)(42))	Note (1), 34-1171 et seq.	P	P	---	---	P	---	---	P
Restaurant, fast food		---	---	---	---	P	---	P	P
Restaurants (34-622(c)(43)):									
Groups I and III		P (4)	P (4)	---	---	P	P	P	P
Group II		P (4)	P (4)	---	P (1)	P	P	P	P
Group IV		---	---	---	---	P	P	---	P
Retail and wholesale sales, when clearly incidental and subordinate to a permitted principal use on the same premises		---	---	---	---	P	---	---	P
Rooming house		P	---	---	---	---	P (5)	---	---
Salvage and disposal of materials, including auto junkyards, refuse disposal and processing plants, incinerators, landfills and similar uses		---	---	---	---	---	---	---	---
Sanitary landfill	Note (5)	---	---	---	P	---	P	---	---
Schools:									
Commercial (34-622(c)(45))	34-2381	---	---	---	---	P	P	---	P
Noncommercial	34-2381	P	P	P	P	P	---	---	P
Self-service fuel pumps	Note (24)	P (4)	P (4)	---	---	P	P	---	P
Signs in accordance with chapter 30	Note (1)	P	P	P	P	P	P	P	P
Social services (34-622(c)(46)):									
Group I		---	---	---	---	P	---	---	P
Group II		---	---	---	P	P	---	---	P
Group III		---	---	---	P	P	---	---	P
Group IV		---	---	---	P	---	---	---	P
Specialty retail shops (34-622(c)(47)):									
Group I		P (4)	P (4)	---	P (1)	P	---	P (18)	P
Group II		P (4)	P (4)	---	---	P	---	P (18)	P
Group III		---	---	---	---	P	---	---	P
Group IV		P (4)	P (4)	---	---	P	---	---	P
Stable:									
Boarding	34-1291 et seq.	P	P	P	---	---	---	---	P
Commercial	34-1291 et seq.	---	---	---	---	P	---	---	P
Private	34-1291 et seq.	P	P	P	---	---	---	---	P
Storage:									
Indoor only	Note (1), 34-3001 et seq.	P (4)	P (4)	P	P	P	P	P	P
Storage, open	Note (5), 34-3001 et seq.	---	---	P (15)	---	P	P	P	P
Large-scale storage of noxious or hazardous materials (flammable, toxic, explosive, corrosive, etc.), including liquid petroleum, fractions and distillates thereof, and fuel gases	Note (5), 34-3001 et seq.	---	---	---	---	---	---	P (16)	---
Studios (34-622(c)(49))		---	---	---	---	P	---	---	P
Temporary uses	Note (1), 34-3041 et seq.	P	P	---	P	P	---	---	P
Tents, transient parks only		---	---	P	---	---	---	---	P
Theater, indoor or outdoor (drive-in)	34-2471 et seq.	---	---	---	---	P	---	---	P
Timeshare units		P	---	---	---	---	---	---	P
Transportation services (34-622(c)(53)):									
Group I		---	---	---	---	P	P	---	P
Group II		---	---	---	---	P	P	P	P
Group III		---	---	---	---	P	P	---	P
Group IV		---	---	---	---	P	P	---	P
Truck stop, trucking terminal		---	---	---	---	---	---	---	---
Used merchandise stores (34-622(c)(54)):									
Group I		P (4)	P (4)	---	---	P	---	---	P
Groups II, III and IV		---	---	---	---	P	---	---	P
Variety store		P (4)	P (4)	---	---	---	---	---	P

- (17) Limited to recreational vehicles only.
 - (18) Permitted only when contained within the principle airport facility.
 - (19) Only when clearly subordinate to a cemetery located on the same premises.
 - (20) Recreational vehicle sites in mobile home planned developments (MHPD) must be designated on the approved master concept plan. All recreational vehicles approved as part of a MHPD are subject to the regulations in sections 34-762(1), 34-762(2), 34-782, 34-784 and sections 34-786 through 34-790.
 - (21) In RPDs, MHPDs, and residential areas of MPDs, a special exception is required.
 - (22) Communication towers must be approved on the schedule of uses for the planned development. If a communication tower will exceed the height permitted by right the exact location and height of the towers must be shown on the master concept plan. If the exact location and height is not provided but the list of uses indicates that a tower(s) will exceed the permitted height, then a special exception showing the exact location and height will be required. If the exact location and height is not shown on the approved master concept plan and if the approved list of uses does not indicate that a tower(s) will exceed the permitted height, it will be necessary to apply for a PD plan amendment.
 - (23) Real estate sales offices in residential areas are limited to sales of lots, homes or units within the development, except as may be permitted in section 34-1951 et seq. The location of, and approval for, the real estate sales office will be valid for a period of time not exceeding five years from the date the certificate of occupancy for the sales office is issued. The director may grant one two-year extension at the same location.
 - (24) Two pumps are permissible as an accessory use to businesses to provide fuel for their own fleet of vehicles and equipment. Additional pumps require approval of a special exception.
 - (25) In the MPD district, use is limited to commercial areas only.
 - (26) In the MPD district, use is limited to industrial areas only.
 - (27) Limited to eight self service fuel pumps (df) unless a greater number is specifically approved as part of the planned development and depicted on the master concept plan. An existing business with more than eight lawfully permitted pumps as of January 31, 1998 will not be considered non-conforming. Existing pumps may be modernized, replaced, or relocated on the same premises but additional new pumps will not be permitted.
- (Ord. No. 93-24, § 7(table 480.A), 9-15-93; Ord. No. 94-02, § 7, 1-19-94; Ord. No. 94-24, § 49, 8-31-94; Ord. No. 95-07, § 35, 5-17-95; Ord. No. 96-06, § 5, 3-20-96; Ord. No. 96-18, § 5, 9-18-96; Ord. No. 97-10, § 6, 6-10-97; Ord. No. 98-03, § 5, 1-13-98; Ord. No. 99-05, § 9, 6-29-99)

Sec. 34-935. Property development regulations.

(a) Minimum area for planned developments.

- (1) *Recreational vehicle planned developments.* The minimum area required for a new recreational vehicle planned development is 20 acres. A minimum of five acres is required to expand an existing recreational vehicle park, a phased recreational vehicle park or an approved recreational vehicle planned development in

order to provide additional recreation vehicle units to the park. However, a recreational vehicle park, a phased recreational vehicle park or an approved recreational vehicle planned development can be expanded by less than five acres, if the expansion is solely for the purpose of providing amenities to the park and will not result in creating additional recreational vehicle units.

- (2) *Other planned developments.* Minimum area and dimensions are not specified for

ESTERO GOLF RESORT (Lee County Case #DCI2000-00032)

GAS STATION INVENTORY		
A sample of stations surveyed March 2001		
GAS STATION	LOCATION	# OF PUMPS
Colonial Blvd		
7-11	Colonial near US 41 (new)	12
Shell	Colonial & Evans	8
Speedway	Colonial & Evans (AAA office)	18
Mobil	Colonial & Metro (mall)	12
7-11	Colonial & Metro (new)	12
Hess	Colonial east of Metro	8
7-11	Colonial & Winkler Extension (new)	16
Racetrack	Colonial east of Winkler	12
Alico Road		
Hess	Alico near I-75	28
Site		10
Hess	Alico @ US 41	14
US 41 Alico to Corkscrew		
Subco	US 41 south of Alico (old)	8
Texaco	US 41@ San Carlos Park	8
Circle K	US 41@ San Carlos Park (old)	8
Shell	US 41 south of San Carlos Park	12
"K" store	US 41 south of Koreshan (old)	8
Corkscrew Road		
Mobil	US 41 & Corkscrew Rd (new)	12
7-11	Three Oaks & Corkscrew Rd	16
Hess	Corkscrew Rd	20
Mobil	Miromar Outlet at Corkscrew Rd	10
Palm Beach Blvd. (St. Road 80)		
Speedway	SR80 & Buckingham	8
Chevron	SR80 & I-75 east of exit ramp	10
Exxon	SR80 & I-75 east of exit ramp (new)	8
Racetrac	@ Moreshores Shopping Center (new)	12
Hess	opposite Moreshores Shopping Center	10
7-11	North side of P.B. Blvd. (older)	4
Cumberland Farms	P. B. Blvd. at Marsh Ave	8
Amoco	P.B. Blvd. east of Marsh Ave.	4
Hess	P.B. Blvd. west of Marsh Ave.	10
Shell	P.B. Blvd. west of Marsh Ave.	12
Citgo	P.B. Blvd. at Seaboard	11

US 41 McGregor to Colonial		
Hess	US 41 @ Victoria Ave.	8
Speedway	US 41 opposite Lee Memorial Hosp.	12
Mobil	US 41 @ Hanson Ave.	6
Circle K	US 41 @ Hanson Ave.	12
Shell	US 41 @ Hill Ave.	12
Summerlin Road		
Mobil	Summerlin @ Boy Scout (new)	12
Cape Coral Pkwy.		
7-11	CC Pkwy. @ Palm Tree Blvd. (new)	16
Exxon	CC Pkwy. @ Coronado (new)	4
Mobil	CC Pkwy. @ Coronado (new)	10
Hess	CC Pkwy. @ 8 th St. near Coronado	8
Circle K	CC Pkwy. @ Coronado (west) & 6 th Ave.	4
Mobil	CC Pkwy. @ Vincennes	12
Amoco	CC Pkwy. @ Vincennes	8
Del Prado Blvd.		
Citgo	North of CC Pkwy.	6
Exxon	Del Prado Blvd. @ 44 th St. (new)	4
USA	Del Prado Blvd. @ Veterans Pkwy.	12
Hess	Del Prado Blvd. @ Viscaya	4
Citgo	Del Prado Blvd. @ Viscaya (old)	4
7-11	Del Prado Blvd. @ Pine Island Road	8
Circle K	Del Prado Blvd. @ Pine Island Road	10
Santa Barbara Blvd.		
Mobil	Santa Barbara Blvd. @ Pine Island Rd. (new)	8
Circle K	Santa Barbara Blvd. @ Pine Island Rd.	6
Hess	Santa Barbara Blvd. @ Nicholas Pkwy.	12
Circle K	Santa Barbara Blvd. @ Veterans Pkwy.	4
7-11	Santa Barbara Blvd. @ Gleason	12
College Pkwy.		
Racetrac	College Pkwy. & South Pointe (new new)	20

[illegible]

Units/Sq. Ft.

(w)

Estero Greens (Z-97-050)	Hours of Operation	Deliveries to any businesses on this site between the hours of 8:00 pm and 6:00 am are prohibited.
	Outdoor Speakers	Outside speaker systems, loud speakers, or public address systems associated with <u>any</u> drive-thru use must be located a minimum of 200 feet away from the project's western perimeter property line (Fountain Lakes). Sound must be directed away from the western perimeter property line.
Williams Place Commercial Center (Z-97-026)	Hours of Operation	Deliveries to any businesses on this site between the hours of 8:00 pm and 6:00 am are prohibited.
	Outdoor Speakers	There will be no outside speaker system, loud speakers, or public address systems associated with <u>any</u> drive-thru use permitted on this site.
Pelican Landing Business Park (Z-98-028)	Hours of Operation	Deliveries to any businesses within 100 feet of the south property line (RV-3 zoning) are prohibited between the hours of 8:00 pm and 6:00 am.
	Outdoor Speakers	There will be no outside speaker system, loud speakers, or public address systems associated with any fast food drive-thru use within 100 feet of the south property line (RV-3 zoning).

CPC Properties CPD
Resolution Z-99-068

**Consumption on Premises &
Outdoor Speaker Systems**

Estero Golf Resort
Application for Public Hearing for MPD
Keystone Custom Homes

FLORIDA LAND PLANNING, INC.

10. The consumption on premises use must comply with the following:

- a. Consumption on premises within the hotel/motel and any restaurant on this site must be located at least 200 feet from the RM-2 property. If the site is developed with the "town center" concept, consumption on premises uses may be located (internally) adjacent to the multi-family dwelling units, but still must meet the 200-foot setback from the RM-2 property.
- b. Any consumption on premises not in conjunction with a full service restaurant or the hotel/motel must be located at least 300 feet from the RM-2 property.
- c. Outside consumption on premises, whether in conjunction with hotel/motel or restaurant, is prohibited within 300 feet of the RM-2 property.
- d. Consumption on premises in outdoor seating areas must cease at 11:00 p.m., Sunday through Thursday nights, and 12:00 midnight, on Friday and Saturday nights.

11. Outside speakers systems, loud speakers or public address systems associated with any drive-thru use must be located a minimum of 200 feet from the RM-2 property, and must be directed away from the RM-2 property.

Miromar Lakes MPD/DRI
Resolution Z-99-029

**Golf Course Maintenance
& Management Guidelines**

Estero Golf Resort
Application for Public Hearing for MPD
Keystone Custom Homes

FLORIDA LAND PLANNING, INC.

7. The following management guidelines must be implemented to further reduce the potential for ground and surface water impacts from the golf course:

(a) The course must be planted with a turfgrass cultivated variety having drought and pest resistant qualities and requiring relatively low fertilizer use;

(b) The irrigation system should operate on an "as needed" basis by the utilization of weather forecasting and ongoing assessment of the moisture content of the soil. It is not the intent of this provision to require the purchase or installation of high technology weather forecasting or rain monitoring equipment.

(c) Fertilizers with a low leaching potential (slow release) must be used whenever possible. Fertilizers may not be applied after active growth of the turfgrass has ceased. Application rates must be kept to the lowest reasonable levels;

(d) To reduce sources of pollutants, especially nutrients and pesticides associated with the golf course, the golf course manager must implement a chemicals management plan which includes an integrated pest management (IPM) program and a nutrient management program so that nutrients and pesticides are used only when absolutely necessary and only in the most conservative manner through minimal species-specific applications. The nutrient management program must include the use of soil tests to determine needed applications of nutrients. Only EPA-approved chemicals are permitted. Turf managed areas (including fairways, tees, and greens) are prohibited within 35 feet of the Conservation Areas (CO) shown on the Master Concept Plan for Miromar Lakes.

(e) The golf course manager will coordinate the application of pesticides with the irrigation practices (the timing and application rates of irrigation water) to reduce runoff and the leaching of any applied pesticides and nutrients.

(f) The Developer must employ a golf course manager licensed by the state to use restricted pesticides and experienced in the principles of IPM. The golf course manager will be responsible for ensuring that the golf course fertilizers are selected and applied to minimize fertilizer runoff into the surface water and the leaching of those same fertilizers into the groundwater.

(g) The storage, mixing, and loading of fertilizer and pesticides will be designed to prevent/minimize the pollution of the natural environment. The golf course must comply with the publication "Best Management Practices for Golf Course Maintenance Departments, May 1995" published by the Florida Department of Environmental Protection.

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ADVERTISEMENT

Estuary at Grey Oaks Renovation Early to Meet High Demand

With record-setting sales once again in 2000, Grey Oaks Country Club has accelerated the release of its final phase, Estuary at Grey Oaks. Introduced to the Naples market just weeks ago, rapid sales at Estuary are the result of an overwhelming demand for a rare City of Naples address. "Grey Oaks is approximately a year and a half ahead of the original projected schedule," said Connie Dickinson, Director of Sales. "Our homebuyers recognize that Estuary offers the best of the best—the privacy and prestige of Grey Oaks Country Club, an extraordinarily beautiful neighborhood, and a one-of-a-kind Naples address."

Grey Oaks' incredible amenities also add to this irresistible combination. In addition to the renown Pine and Palm courses, the Estuary course will feature a Bob Cupp design meandering through towering pines providing breathtaking vistas for the exclusive estate residences and luxury villas, presently under construction. A new satellite clubhouse at Estuary will provide a grille and men's and ladies' locker rooms for member convenience. A new satellite clubhouse at Estuary will provide a grille and men's and ladies' locker rooms for member convenience.

This season Grey Oaks celebrated the grand opening of the



expanded 62,000-square-foot clubhouse. In an atmosphere of casual luxury, club members are extended warm hospitality,

attentive service, and the finest in gourmet cuisine. The new, exquisitely decorated main dining room now has a

total seating capacity of over 425. Still a favorite gathering place is the adjacent Grille Room and Bar, and the Garden Room addition offers a more intimate setting for small luncheons or private parties. Also added for the enjoyment of all members, a European-style wine tasting room offers a varied collection of some of the world's finest wines. Overlooking the 18th fairway, the 2,400-square-foot Fitness Center has highly qualified, professional trainers, available to supervise proper use of the latest cardiovascular machines and strength-training equipment, as well as aerobics training.

Finely appointed men's and ladies' locker rooms each offer

8,000 square feet of spacious comfort. The men's locker room offers a bar, while the ladies enjoy relaxing in a generous lounge area. Recreational amenities also include the Grey Oaks' Tennis Center with eight, lighted Har-Tru courts, a children's playground with shady gazebo, and a tropical lagoon-style pool.

Grey Oaks is located on Airport-Pulling Road north of Golden Gate Parkway and offers homes from the \$500s to over \$5 million. Estuary homesite opportunities are priced from the \$800's with villas priced from \$1.6 million. For additional information, visit our sales center or call (941) 262-5557 or 1-800-294-2426.

Naples Daily News

Hunters Ridge is on Bonita Beach Road immediately east of Exit 18 of Interstate 75. The Hunters Ridge information center is in the community at 12500 Hunters Ridge Dr.

Located on Bonita Beach Road immediately east of Exit 18 of Interstate 75, Hunters Ridge is a 275-acre community of 542 planned homes with less than two homes per acre. The 18-hole, par 72 golf course, designed by Gordon G. Lewis, has multiple tees. Private

Each master bath has a corner cultured marble tub with a separate walk-in shower, a 36-inch cultured marble vanity with his-and-hers sinks and a walk-in closet. Interior features include marble window sills, six-panel doors with brushed brass lever hardware.

APPLICANT'S EXHIBIT #10
DCI2000-00032

Contracted sales reach one-third at Wellington Place II

The contracted sales rate has reached one-third at Wellington Place II, a coach home neighborhood developed by Bateman Communities of Southwest Florida Inc. in Kensington Golf and Country Club, North Naples.

According to Al Bateman of Bateman Communities, 31 sales contracts have been recorded. At completion, Wellington Place II will consist of 92 coach homes in 23 two-story buildings of four units each. Pre-construction marketing began in April 1999.

Wellington Place II is one of three neighborhoods developed by Bateman Communities in the southern portion of the country club community. Wellington Place I consists of 48 coach homes in 12 buildings. Westchester Village will consist of 36 coach homes in nine buildings. The firm is also co-developing Lancaster Square III, a neighborhood of 20 coach homes, also in Kensington.

Wellington Place II is in the southeast corner of the community. It is surrounded by a lake and overlooks the 15th fairway of Kensington Country Club's golf course.

The Evans Group, an Orlando-based architectural firm, conceived the neighborhood's two-, three- and four-bedroom floor plans. Each has a den, a screened lanai and an attached two-car garage. All homes will have a lake view with some also having a golf course view. Prices start at \$250,000.

The Berkeley is a first-floor design with two bedrooms, a den, two baths, 2,160 square feet under air and 2,806 total square feet. The Warwick, on the second floor, is a three-bedroom with a den/three-bath design with 2,686 square feet of living area and 3,355 total square feet.

The four-bedroom/den design of The Warwick IV floor plan divides the third suite of The Warwick into two bedrooms. Owners may choose to install an optional elevator in the second-floor coach homes.

Kitchen features include an 8-foot bay window off the breakfast nook, an island work station with cabinet storage, a walk-in pantry, a choice of heather oak or white lacquer Merillat cabinets



The contracted sales rate has reached one-third at Wellington Place II, a coach home neighborhood developed by Bateman Communities of Southwest Florida Inc. in Kensington Golf and Country Club, North Naples. According to the developer, 31 sales contracts have been recorded. At completion, Wellington Place II will consist of 92 coach homes in 23 two-story buildings of four units each. Marketing began in April 1999. Wellington Place II is surrounded by a lake and overlooks the 15th fairway of Kensington Country Club's golf course. Three floor plans, offering two, three and four bedrooms, are available. Each has a den, a screened lanai and an attached two-car garage. Prices start at \$250,000. The entrance to Kensington Golf and Country Club is at 2700 Pine Ridge Rd., on the south side of the street, one-half mile east of Airport-Pulling Road North. *Courtesy/Legris & Associates Inc.*

porcelain double compartment sink and a pass-through bar counter to the grand room. The General Electric appliances include a refrigerator with a door-mounted ice and water dispenser, a dishwasher, a smooth-top range with a self-cleaning oven, microwave and a disposal.

Pocketing double doors separate the kitchen and the den, which is furnished with a built-in bookcase.

The master suite has a walk-in closet, a second closet and a 10-foot bay window with a sitting area. A second walk-in closet is available as an option. The owner's bath has his-and-hers cultured marble vanities, a Roman tub, a glass-enclosed shower and a linen closet. The master bath in the second-floor coach homes has a skylight.

In The Warwick, the third bedroom, with more than 300 square feet, has a glass-enclosed shower in the private bath and a walk-in closet. In The Warwick IV option, the walk-in closet is in the third bedroom.

Features include a storage area, a laundry room equipped with a utility tub and a large-capacity GE washer and dryer, 16-inch ceramic tile in the foyer, hallway, kitchen, baths and laundry room, stain-resistant carpeting in the bedrooms and living areas, 10-foot ceilings on the first floor, vaulted ceilings and plant shelves in the second-floor coach homes, wood ventilated closet shelving, a humidistat, and pre-wiring for ceiling fans, telephones, cable television and a security system.

Exterior features include spraycrete on the lanai, tile roofs, concrete block and stucco

controls for the garage door opener.

The neighborhood's grand clubhouse, currently under construction, will have 2,928 square feet under air and 3,260 total square feet. It will have double doors opening to the foyer, a kitchen with pantry, a 1,800-square foot multipurpose room with a large-screen television, a more than 289-square foot exercise room, a social area and a more than 100-square foot veranda. Next to the clubhouse will be a pool and a spa.

The grand clubhouse will serve residents of Wellington Place II and its sister neighborhoods of Wellington Place I and Westchester Village. The facility will complement the individual neighborhood clubhouses of each neighborhood.

Kensington Golf and Country Club is a 370-acre community on the south side of Pine Ridge Road, east of Airport-Pulling Road North. Robert Trent Jones Jr. designed the golf course. Golf memberships are limited to 350. The more than 30,000-square foot, two-story clubhouse has banquet and formal dining facilities, a lounge and mixed grill, a golf pro shop, locker rooms, card rooms, an exercise facility and private meeting rooms.

Next to the clubhouse is an Olympic-size pool with a cabana area, driving range, putting green, seven Hydro-Grid clay tournament tennis courts and a tennis pro shop.

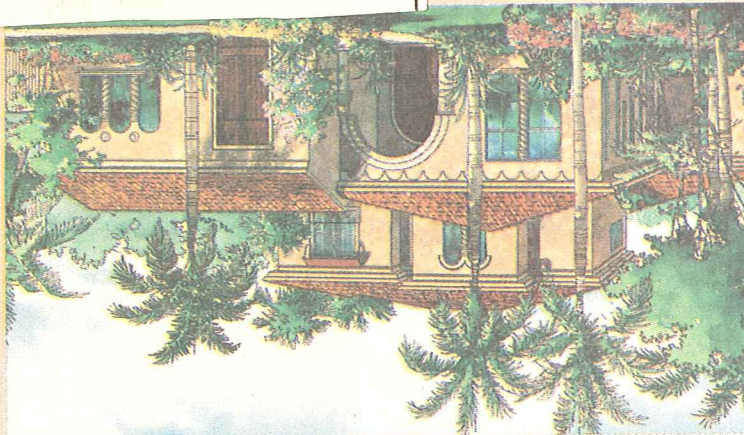
Kensington Golf and Country Club is at 2700 Pine Ridge Road, on the south side of the street, one-half mile east of Airport-Pulling Road North.

With 10 Different Villages It Adds New Meaning To Nature

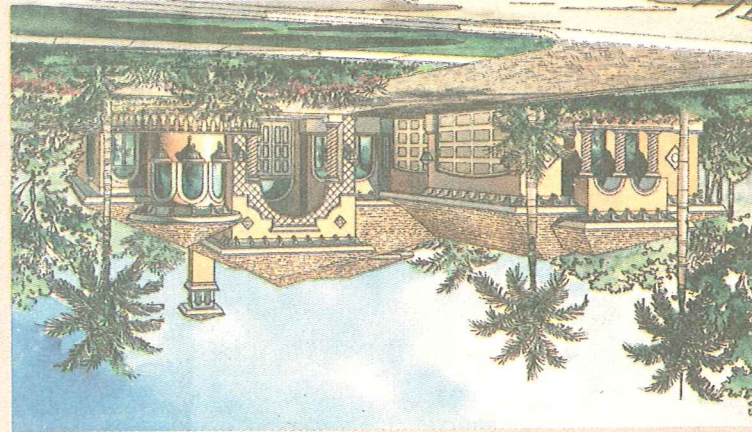
CASCADA, COACH HOMES
HOMES FROM THE MID \$300'S*



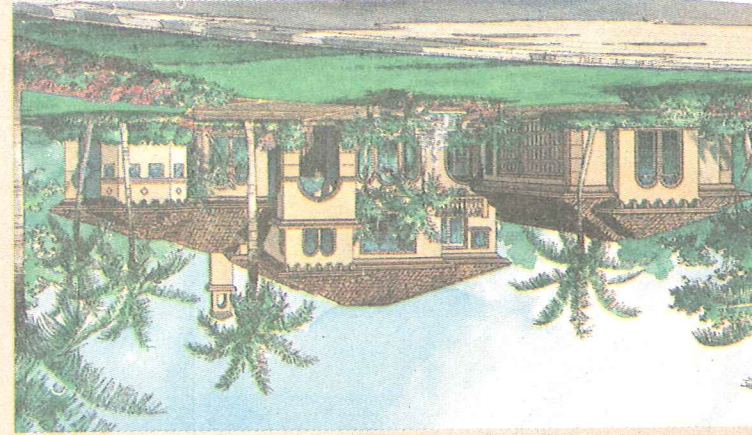
BELLAGIO, SINGLE FAMILY HOMES
HOMES FROM THE HIGH \$500'S*



MULBERRY ROW, CUSTOM SINGLE FAMILY HOMES
HOMES FROM THE \$500'S TO OVER \$1 MILLION*



ISLA DEL SOL, CUSTOM ESTATE HOMES
HOMES FROM \$1.8 MILLION TO OVER \$3 MILLION*



Residences from the \$200's to over \$3 million. Home sites from the low \$100's.

Ibis Pointe contracted sales top 75 percent

The contracted sales rate has exceeded 75 percent at Ibis Pointe, a coach home neighborhood in Carlton Lakes, North Naples.

According to Chris Claussen of NTC Development, the developer of the community, of the neighborhood's 64 planned coach homes, 51 contracts have been recorded. Marketing began in March 2000.

Carlton Lakes is a community on the north side of Immokalee Road east of Livingston Road. The community's 245 acres includes 155 acres of residential areas and 90 acres of lakes and preserves. In addition to coach homes, Carlton Lakes offers condominiums, attached villas and single-family homes.

Ibis Pointe is on the western edge of the community, west of Carlton Lakes Boulevard, the community's main roadway. At completion, Ibis Pointe will consist of 16 two-story buildings of four homes each. The buildings are flanked by two fingers of the community's largest central lake. Every coach home has a lake view.

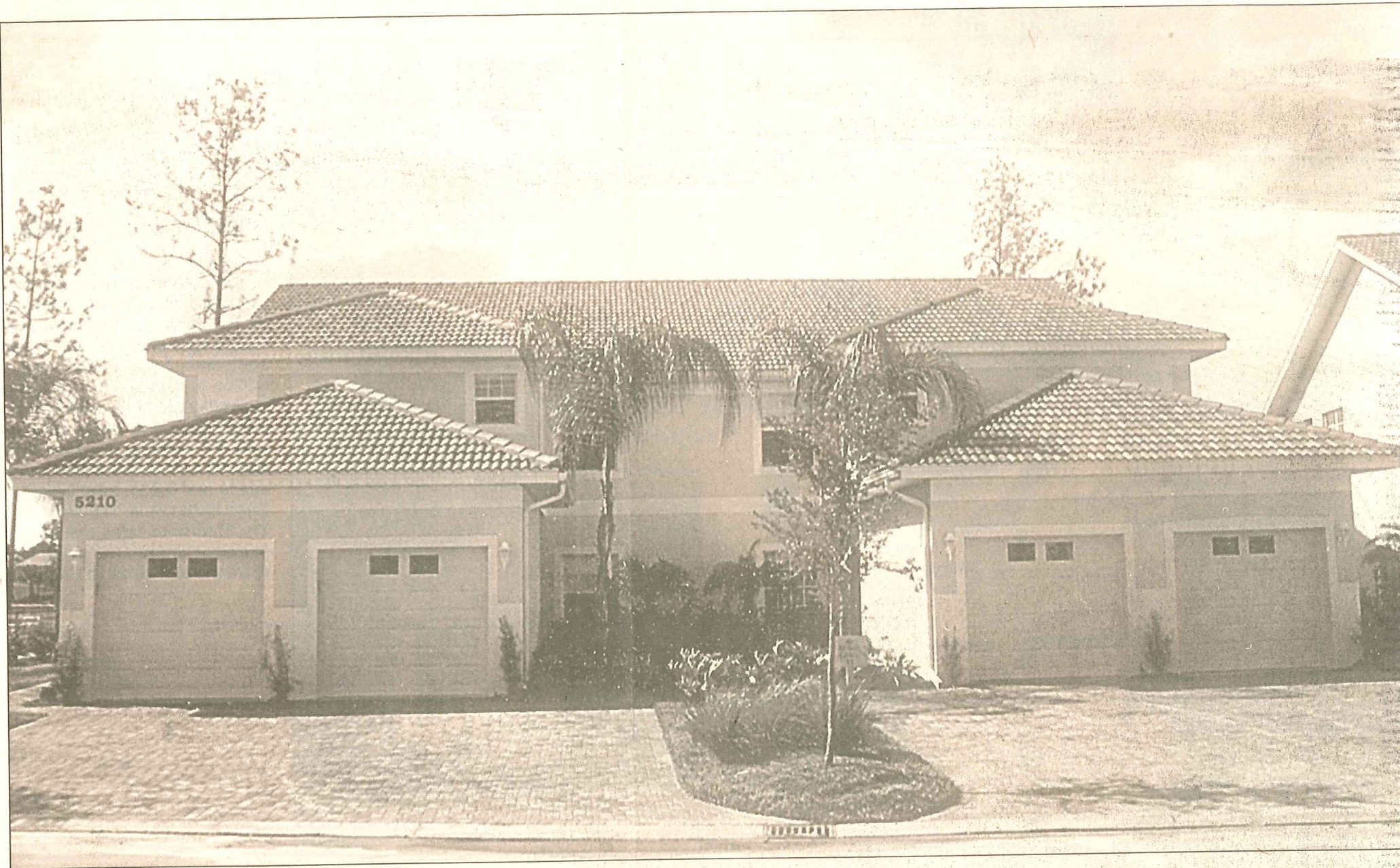
Ibis Pointe offers two floor plans, ranging from 1,654 to 1,928 square feet of living area. Each has a grand room, a screened lanai, an attached garage and a private entrance. Prices start at \$167,000.

The Regal Home IV, on the first floor, is a three-bedroom/two-bath floor plan with 1,654 square feet of living area and 2,134 total square feet. The buyer has the option of converting the third suite into a den.

The Regal Home II, the second-floor design, is a two-bedroom with a leisure room/two-bath floor plan. It has 1,928 square feet under air and 2,408 total square feet.

The entrances to the second-floor homes have indoor stairways from the private ground-level foyers.

Kitchen features include a shelved pantry, European-style cabinetry with mica counters, a double-bowl stainless steel sink and a cafe area for informal dining. The General Electric white-on-white appliances include a refrigerator with an ice maker, a



The contracted sales rate has exceeded 75 percent at Ibis Pointe, a coach home neighborhood at Carlton Lakes, North Naples, developed by NTC Development. According to the developer, of the neighborhood's planned 64 coach homes, 51 contracts have been recorded. Marketing began in March 2000. Ibis Pointe will consist of 16 two-story buildings of four homes each. The buildings are flanked by two fingers of the community's largest central lake. Every coach home has a lake view. Two floor plans are available, ranging from 1,654 to 1,928 square feet of living area. Each has a grand room, a screened lanai, an attached garage and a private entrance. Prices start at \$167,000. The Carlton Lakes sales center is at 4920 Livingston Road on the north side of Immokalee Road one-half mile west of I-75.

range with a self-cleaning oven, microwave oven, dishwasher, disposal and a large capacity washer and dryer.

Each master suite has an air-conditioned walk-in closet. The master bath includes a glass-enclosed shower and twin vanity sinks with cultured marble tops and single-lever faucets.

Interior features include

vaulted ceilings on the second floor and 8-foot, 8-inch ceilings on the first floor, six-panel doors, ventilated shelving and marble window sills. Floor coverings include ceramic tile in the foyer, kitchen and all baths and wall-to-wall carpeting in the other main living areas. The homes are prewired for ceiling fans and telephone and cable television outlets.

Structural and exterior features include concrete block construction, a steel-reinforced concrete slab, a cement-tile roof, and aluminum soffits and an attached garage. Also included is an automatic irrigation system and professionally designed landscaping.

Ibis Pointe has a neighborhood lakeside pool and cabana.

The community amenities at Carlton Lakes include a 4,600-square-foot lakefront clubhouse with a catering kitchen, exercise room and social room. Recreational amenities also include four Hydrocourt tennis courts with sub-surface irrigation, a heated 1,577-square foot L-shaped pool with lap lanes and a separate spa, bike/walking trails, a bocci court, playground,

picnic areas with barbecue grills and a 40-foot long, 6-foot wide fishing pier. The community has 50 acres of lakes with 40 acres of preserves including cypress forest and saw palmetto areas.

The Carlton Lakes sales center is at 4920 Livingston Rd., on the north side of Immokalee Road, approximately one-half mile west of I-75.

Sea Grove sales contracts reach 95 percent mark

The contracted sales rate has reached 95 percent at Sea Grove, a neighborhood of coach homes at The Dunes, a North Naples waterfront community developed by Signature Communities Inc.

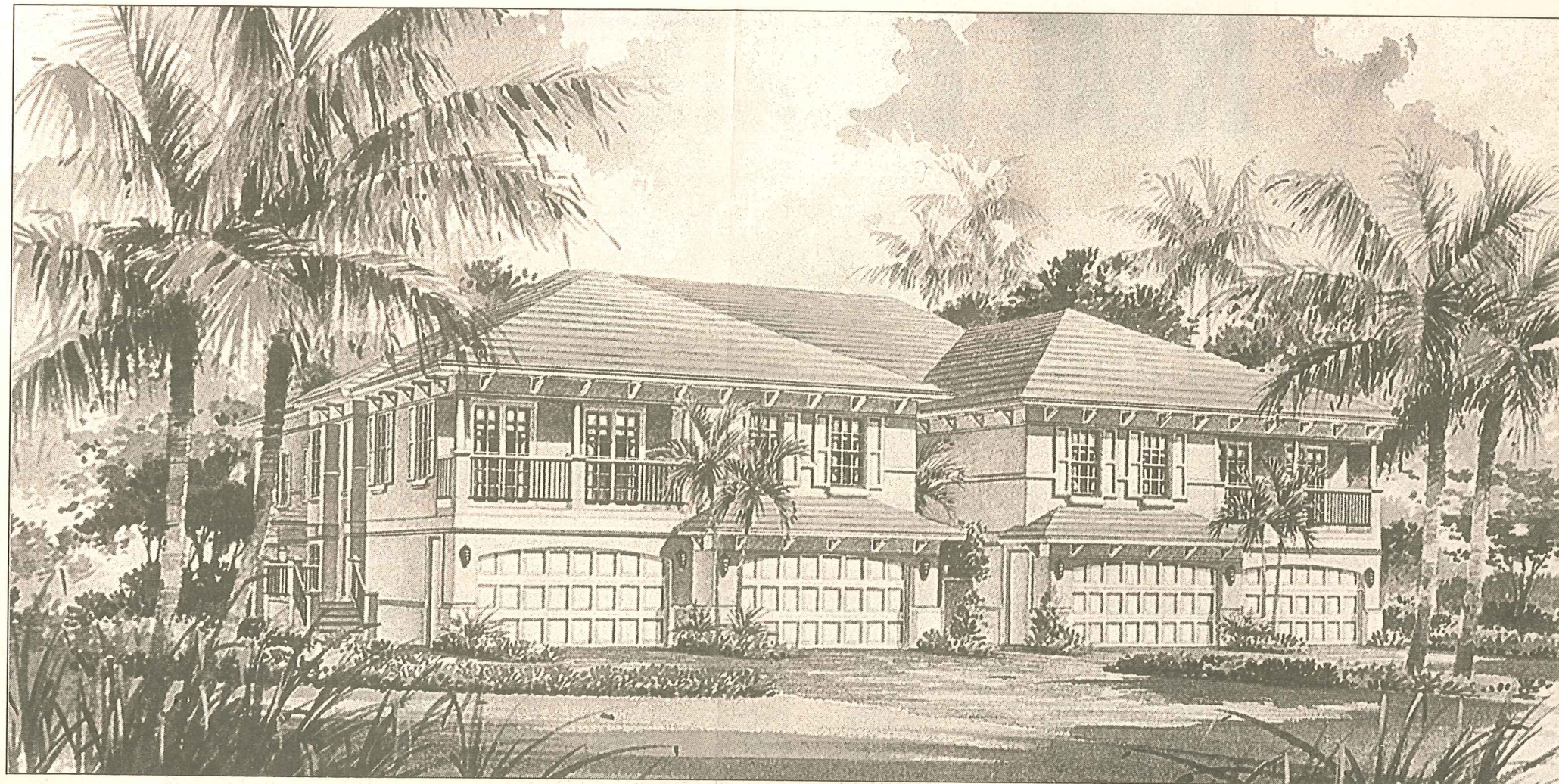
According to Glenn Griffin, the vice president of sales and marketing of Signature Communities, 38 contracts have been recorded. Marketing began in March 2000. At completion, Sea Grove will consist of 40 coach homes in 10 two-story buildings. Each building will house four coach homes.

The coach homes will surround the community's central lake. The rear of every home will overlook the lake and the community's recreational center and British West Indies-style clubhouse. Views from the front of each building will be of nature preserves or landscaped areas.

Two, three-bedroom floor plans, with 2,061 and 2,973 square feet of living area, are available. Each has 10-foot ceilings, two walk-in closets in the master suite, a great room, a screened lanai and a two-car garage. Prices start in the mid-\$400s.

The first-floor coach home is a three-bedroom/two-bath design with 2,061 square feet under air and 2,766 total square feet. The second bath has a shower enclosure. The second-floor coach home, with 2,973 square feet under air and 3,756 total square feet, has a private elevator, two master suites, a third bedroom/den, three baths and a family room. The second master suite has a walk-in closet, twin vanity sinks, a shower enclosure and a private water closet.

Kitchen features include a bay window informal dining area, a bar-counter passthrough to the great room, custom raised cabinetry, above-cabinet lighting, a porcelain double sink, a pantry and granite solid-surface counter tops. The General Electric Monogram appliances include a side-by-side refrigerator with a door-mounted ice and water dispenser, a drop-in radiant-top range with a cabinet-mounted oven and microwave, a dishwasher and a disposal.



Sea Grove at The Dunes —The contracted sales rate has reached 95 percent at Sea Grove, a neighborhood of coach homes at The Dunes, a North Naples waterfront community developed by Signature Communities Inc. According to the developer, 38 contracts have been recorded. Marketing began in March 2000. At completion, Sea Grove will consist of 40 coach homes in 10 two-story buildings. Each building, as shown in this artist's rendering, will house four coach homes. Two, three-bedroom floor plans, with 2,061 and 2,973 square feet of living area, are available. Each includes a lake view, 10-foot ceilings, two walk-in closets in the master suite, a great room, a screened lanai and a two-car garage. Prices start in the mid-\$400s. The Dunes sales and information office is at 465 Bluebill Ave., one block west of Vanderbilt Drive. *Courtesy/Legris & Associates Inc.*

Eight-foot sliding glass doors from the more than 534-square foot great room open to the 250-square foot lanai.

The primary master bath in each coach home is furnished with separate his-and-hers vanity sinks with cultured marble counters, a corner oval tub, a separate glass-enclosed shower and a private water closet. The walk-in closets, equipped with wood shelving, separate the master bath from the master suite.

The primary master bedroom has a door leading to the lanai

and three windows overlooking the rear of the home arranged in a bay design.

The second bath has an enclosed shower. The utility room is furnished with a laundry tub, a GE Profile white-on-white washer and dryer and cabinets above the appliances and tub.

Interior features include 10-foot ceilings in all living areas, crown molding, 8-foot raised-panel interior doors and recessed lighting in the halls, kitchen and baths. Kohler plumbing fixtures, tinted glass windows, an in-wall pest defense system and pre-wiring for

a security system and three-line telephone and cable TV outlets also are included.

The site for The Dunes, at the northwest corner of the intersection of Vanderbilt Drive and Bluebill Avenue, consists of 188 acres. Less than half of the site's total acreage is to be dedicated to residential buildings, infrastructure and amenities. The remainder will consist of conservation areas.

The community's amenities will include a clubhouse and recreational complex, two lakes totaling more than 3 acres, a roadway and an entry on Van-

derbilt Drive.

The Dunes' recreational center and British West Indies-style clubhouse will have a fitness room, a free weight area, a massage room, sauna, lockers, meeting area, lounge, bar, grill room, commercial kitchen and administrative office space.

Also planned is a tennis center with a pro shop and six Har-Tru courts. Next to the clubhouse will be a pool and spa, surrounded by a furnished sun deck. The clubhouse and pool area will overlook the community's central lake.

Next to the clubhouse and

along the lake will be six guest cottages available to owners to accommodate guests.

Other planned amenities include a sunning beach, fishing pier, a citrus walk, nature walk and canoe/kayak and bike racks. At the entry to the community on Vanderbilt Drive will be a gatehouse with an electronically-controlled gate.

The Dunes' sales and information office is at 465 Bluebill Ave., one block west of Vanderbilt Drive.

FLORIDA LAND PLANNING, INC.

12 March 2001

MEMORANDUM

TO: Kay Deselem, Lee County
Office of the Hearing Examiner

FROM: Carron Day, President
FLORIDA LAND PLANNING, INC.

SUBJECT: Estero Golf Resort – Hearing

cc: Paula Davis
Michael Ciccarone, Esq.
A. Brian Bigelow
Matt Noble

Dave Farmer, P.E.
Kevin Higginson, P.E.
Donna Marie Collins, Esq.
Mike Myers

We have reviewed the staff recommendations in detail and agree to make most of the recommended changes. We are still working on our response to Condition #6 that provides the road right-of-way for the northerly extension of Sandy Lane

As requested, this is our preliminary list of the points that we will present at the hearing on Wednesday in addition to the Sandy Lane issue.

Residential uses - Add: Accessory Use (Kay has agreed to this) and delete limitation to 300 units for MPD 5 to give the developer the flexibility provided in a MPD (or at a minimum change it to 340 units)

Commercial uses - Add: Accessory Uses (Kay has agreed to this)
Delete Note B as it applies to Drive-through facility but leave Permitted Use Note A
Increase the number of Self Service Fuel Pumps to 16 pumps and retain the location limitation proposed by applicant.

Restore the applicant's Permitted Use Notes language (A)

We need to clarify our request for COPs. We had requested in Permitted Use Note "C" a maximum of three for standard restaurants only, and one for the Club Recreation Tract. It was my understanding that the one for the golf clubhouse was for a cocktail lounge in the club and that a restaurant or snack shop within the club area could also serve liquor. A closer reading of the LDC regarding COPs and the staff concerns lead us to modify how we have presented the COP request. We suggest that we delete note "C" and instead put an asterisk with "COP" in tracts MPD 1, 3 and 4 where the COPs in restaurants and the golf clubhouse will be located.

- This request will enhance the development because it will allow the applicant to introduce a very positive building product to this project, while still providing the required number of parking spaces. The parking spaces will be closer to the units than they would be if a parking lot were required as is the usual case with multi-family development.
- These driveways and individual garages are more attractive and safer than an expansive parking lot.
- Deviation #11 is currently worded to seek relief from LDC Section 34-2015(2)c, which prohibits the stacking of vehicles in multi-family developments, to allow stacking in multi-family buildings that have a specific garage appurtenant to the structure. We suggest a language change to the following:
 - Deviation #11 seeks relief from LDC Section 34-2015(2)c, and 34-2020(1)c which prohibits the stacking of vehicles in multi-family developments, to allow stacking of vehicles in the driveways of multi-family buildings of ~~less than~~ 8 units in total when the first parking space is in an individual garage and where it can be demonstrated at time of development order that adequate line-of-sight visibility is provided to ensure safe exit from driveway onto road. *or less*
- Language similar to the above was approved in Z 99-0893.

Environmental Conditions

Incorporate revised critter crossing condition recently approved by Kim.

Property Development Regulations

Restore the applicant's request – particularly the lot coverage %.

ESTERO GOLF RESORT (Lee County Case #DCI2000-00032)
PROPERTY DEVELOPMENT REGULATIONS vs Lee County Staff Report:

LAND USES		MINIMUM LOT			MINIMUM SETBACK (ft)								
		AREA (ft)	MIN WIDTH (ft)	MIN DEPTH (ft)	SIDE INCL. CORNER LOTS (ft)	REAR (ft) WETLAND OR GOLF COURSE	Acc.	FRONT (ft) BLDG.	WATER BODY (ft)	MAX HEIGHT (ft)			
Single Family Detached	EGR	4,000	50	80* or 100	5	20	10		12	20	35 or 2 stories	10	65%
	Staff	5,000	50	100	5	20		5	20 (street)	25	35 or 2 stories		40%
Zero Lot Line	EGR	2,000	25	80	0 or 7 1/2	20	10		12	20	35 or 2 stories	10	65%
	Staff	5,000	50	100	0 & 7 1/2	20		5	20 (street)	25	35 or 2 stories		40%
Two Family Attached	EGR	2,000	25	80	0 or 7 1/2	20	10		12	20	35 or 2 stories	10	65%
	Staff	3,750	37 1/2	100	0 & 10	20		5	20 (street)	25	35 or 2 stories		40%
Townhouse	EGR	2,000	25	80	0 or 7 1/2	20	10		12	20	35 or 2 stories	10	65%
	Staff	3,750	37 1/2	100	0 & 10	20			20 (street)		55 or 4 stories	½ Bldg. Ht. but not < 20	

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LEE COUNTY HEARING EXAMINER
PUBLIC HEARING

PLANNING DEPT.
PUBLIC HEAR. CNTR.
1000 W. 1ST AVE.
FORT MYERS, FL 33901

RE: Case No. DCI2000-00032

Applicant: KEYSTONE CUSTOM HOMES, INC.
Re: Estero Golf Resort MPD

Transcript of proceedings before Salvatore
Territo, Lee County Hearing Examiner, 1500
Monroe Street, Fort Myers, Florida, on March
14, 2001, commencing at 9:00 A.M.

APPEARANCES:

MICHAEL CICCARONE, Attorney at Law;
representing the Applicant

DONNA MARIE COLLINS, Assistant County Attorney;
representing Lee County

KAY DESELEM, Lee County Staff

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I N D E XAPPLICANT:

MICHAEL CICCARONE	Page 7
TED TREESH By Mr. Ciccarone	Page 30
MICHAEL MYERS By Mr. Ciccarone	Page 32
KEVIN HIGGINSON By Mr. Ciccarone	Page 38
CARRON DAY By Mr. Ciccarone	Page 44
By Mr. Ciccarone (Cont'g.)	Page 54
<u>PUBLIC:</u>	
ARNOLD ROSENTHAL	Page 27
DON ESLICK	Page 28
CHARLES MAURER	Page 49
KAY ROTE and LOU CORSIGLIA	Page 110
<u>STAFF:</u>	
KAY DESELEM By Mr. Ciccarone	Page 144 Page 156
BEN CHUMLEY By Mr. Ciccarone	Page 158 Page 162
MATT NOBLE	Page 172
DONNA MARIE COLLINS	Page 177
ELAINE METTAUER By Ms. Collins By Mr. Ciccarone	Page 181 Page 196 Page 197
<u>APPLICANT:</u>	
CARRON DAY (Rebuttal) By Mr. Ciccarone	Page 200

EXHIBIT INDEX

<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
<u>APPLICANT'S:</u>		
No. 1	Indigenous preservation and restoration acreage site map	34
No. 2	Revised Condition No. 3	48
No. 3	LDC Table 34-934	60
No. 4	Gas station inventory	60
No. 5	Land use summary plan	63
No. 6	List of hours of delivery	72
No. 7	Hours of delivery in Estero Greens, etc.	73
No. 8	Hours of consumption on premises	74
No. 9	Miromar Lakes MPD DRI golf course conditions	84
No. 10	Four newspaper articles	97
No. 11	Two-page memo from Carron Day	102
No. 12	Property development regulations	106
NO. 13	Lot coverages	106
<u>PUBLIC'S:</u>		
Eslick No. 1	Statement	30
Maurer No. 1	MPD	53
<u>APPLICANT'S:</u>		
No. 14	Site Plan	121
No. 15	Revised Condition 11	137
No. 16	New Condition M.	143

	<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
2	<u>STAFF'S:</u>		
3	No. 1	Density calculations	148
4	No. 2	Master concept plan	148
5	No. 3	Resume of Ben Chumley	158
6	No. 4	GIS plat map	159
7	No. 5	Map and key	161
8	No. 6	Drainage features	173
9	No. 7	Sufficiency response, substantive comments, letter from Scott Gilbertson	182
10	No. 8	Portion of official trafficways map	183
11	No. 9	Legal description and survey sketch	189
12	No. 10	Level of service comparisons chart	191

1 THE HEARING EXAMINER: Good morning. I'm Sal
2 Territo, Lee County Hearing Examiner. We're here for
3 Case DCI2000-00032, Keystone Custom Homes,
4 Incorporated, in reference to Estero Golf Resort MPD.

5 Let me explain the process for people who haven't
6 been to one of these hearings before.

7 The normal way this works is the applicant will
8 make their presentation first. When they are finished
9 we'll have the staff presentation. At that point,
10 anyone in the audience who would like to speak, I'll
11 have you come to the microphone, I'll swear you in,
12 get your name and address and you can say whatever it
13 is you would like to say at that particular point.

14 If you have questions dealing with something
15 that's been discussed, I'd prefer if you can wait
16 until everybody has made their presentations on both
17 sides. Often the questions that you will have to ask
18 have been answered somewhere along the process because
19 what often happens is someone has a question, it
20 really is the next witness or a different witness who
21 has the answer, and it slows the process down, so I'd
22 prefer you wait until the end to make those comments.

23 If anyone is intending to speak before the County
24 Commission, it is necessary for you to speak here
25 today. Filling out one of these forms will not be

1 sufficient to get you to speak before the County
2 Commission. This will give you a copy of my
3 recommendation when I finish and get it to the Board
4 of County Commissioners, but it does not authorize you
5 to speak before the board. The only way to do that is
6 to speak here today. If you don't speak here today,
7 they will not let you speak there.

8 Any presentations that you make here are not
9 limited by time, but you may want to keep in mind that
10 the board's hearings are limited so you want to keep
11 your comments somewhat brief because you're going to
12 be shortened over there, rather than having a long
13 presentation here and then have to shorten it when you
14 get over there if you have any comments to make at
15 that time.

16 Any questions on the procedures?

17 What I plan to do is break around noon for lunch
18 if we go that long, and it looks like we may go that
19 long, and break around 4:30 to 5 o'clock, in that
20 range, today if the hearing is all day. We have set
21 aside Friday if we need Friday for extra time just in
22 case. If everybody -- if it's amenable for everybody
23 here, we'll go to Friday if we have to. That's kind
24 of like how we're going to work it today.

25 Who will be testifying so I can swear everybody

1 in?

2 Members of the audience, I can swear you in when
3 you come up here, so don't worry about it. If you're
4 with either the applicant or the staff, I would ask
5 you to raise your hands now.

6 (Whereupon, the prospective witnesses were duly
7 sworn.)

8 THE HEARING EXAMINER: Mr. Ciccarone.

9 MR. CICCARONE: Mr. Hearing Examiner, good
10 morning.

11 My name is Michael Ciccarone. I'm the attorney
12 for the applicant, Keystone Custom Homes, which since
13 the filing of the application has actually purchased
14 the property, so we're only -- we're not only the
15 applicant, we're also the owner at this point.

16 This is a request as set forth in the staff
17 report which is before you in the record to rezone
18 314.6 acres of land from agriculture, AG-2, to the
19 mixed use planned development zoning district which we
20 call MPD. So for the benefit of the public, if you
21 hear MPD mentioned frequently, that means the zoning,
22 mixed use. It's a combination of residential,
23 commercial and office.

24 We tend to speak in acronyms and jargon in these
25 meetings, so we'll try to avoid that as much as

1 possible, but some of it's unavoidable.

2 MPD is the zoning we are seeking. It's a
3 combination of residential, commercial and office.

4 Specifically within that use, this is a request
5 to allow 820 dwelling units consisting of various
6 types of residential units. And of these 820 dwelling
7 units, the request is to permit up to 100 of these to
8 be within an assisted living facility. The project is
9 proposed to include a golf course and up to 320,000
10 square feet of retail uses and 20,000 square feet of
11 office use. There is an application for consumption
12 on premises. There's a commitment that the buildings
13 will not exceed 55 feet and four stories.

14 Now, on the board in front of you is the latest
15 master concept plan, which nevertheless has some
16 revisions which I'll explain to you right now so that
17 we're all looking at the same thing.

18 For the benefit of the public who can't see that
19 very well, the property's narrowest line, if you will,
20 on the southwest is along Tamiami Trail, U.S. 41. And
21 immediately adjacent to that in the area next to
22 the -- I believe it's The Vines, although it may be,
23 it may be reserved for future commercial use - I'm not
24 sure - is a proposed office tract which we call MPD-2.
25 It's impossible to see it from the audience, but MPD-2

1 is the office tract.

2 Next to it right at the corner is a commercial
3 tract called MPD-3, and next to that along Koreshan is
4 MPD-4, and then behind those three, interior to the
5 project, is MPD-1. The balance of the tracts are all
6 residential and golf course.

7 That plan before you should be changed to reflect
8 the fact that the right-in and right-out from Koreshan
9 which is located just east of the Seaboard Coastline
10 Railroad right-of-way is being deleted. We don't need
11 it, the staff isn't requiring it, so it is withdrawn.

12 On the schedule of deviations, which is about
13 halfway down the second column from the right,
14 Deviations 5-A, 5-B, 6 and 7 are withdrawn.

15 Now, Mr. Hearing Examiner, I'm not sure how long
16 we're going to take today. I'm sure we'll finish
17 today. I just don't know how long it will take
18 because we have a substantial number of issues. Most
19 of them are minor and I think will be resolved. It's
20 just a matter of clarification. There are several
21 points of disagreement which we'll have to spend some
22 time on.

23 Let me suggest that the best way to educate you
24 to those issues is to ask you to look at the staff
25 report. And if you will go through it with me, I will

1 show you those places where I believe we have either
2 agreed on changes or have agreed to disagree. Now, if
3 I misspeak, it's strictly an error on my part. It's
4 not an attempt to entrap the staff into agreeing with
5 me. If I misspeak and state that I think we've agreed
6 on something and it turns out we haven't, then
7 obviously I'll look to Kay to call that to your
8 attention when we get there.

9 But I understand that under the schedule of uses,
10 residential portion, Tracts 5 to 12, it's agreed that
11 immediately below administrative offices we will add
12 accessory uses.

13 Under dwelling units at the very end there is a
14 phrase that says, "and the maximum of 300 for MPD-5."

15 Let's locate MPD-5 first.

16 MPD-5 is west of the railroad right-of-way and
17 it's behind the commercial tracts.

18 Now, I'm not sure if we have an agreement or
19 disagreement on this, but the applicant would like to
20 have that phrase deleted or else the number changed
21 from 300 to 340. We're not suggesting that the total
22 number of approved units would change, but we would
23 like to be able to do at least 340 of them west of the
24 railroad right-of-way. Again, I'm not sure what the
25 staff position is on that, but that's our request.

1 On the next page under the commercial portion,
2 Tracts 1 to 4, I believe we have agreed at the very
3 beginning to add accessory uses. Under drive-through
4 facility - and I'll ask Carron Day to explain this in
5 her testimony - there's -- at the very end there's a
6 reference to drive-through facilities being subject to
7 Permitted Use Notes A and B.

8 Let me show you where those notes are.

9 The very bottom you see Permitted Use Notes, and
10 under B it says, "Limited to Tracts MPD-3 and MPD-4."
11 This is 3 on the corner and 4 is next to it. And we
12 would like the reference to that condition to be
13 deleted so that the drive-through facility would be
14 subject to Permitted Use Note A only.

15 I'm not sure if the staff agrees with that or
16 not. I'll ask Kay to speak for the staff when we get
17 there.

18 On the next page, under self-service fuel pumps,
19 it's our understanding that the way the county counts
20 pumps is that each side of what we think of as a pump
21 counts as a separate pump, so in effect, in a typical
22 modern gas station, every one of those islands that
23 has a pump in effect counts as two. So this request
24 is to allow 16 pumps, in other words, eight units, if
25 you will, as opposed to the eight pumps that are

1 requested, so we are clarifying our request to change
2 the limitation to eight pumps to 16 pumps. It's not a
3 change in our intent, it's simply an understanding of
4 how the county counts them.

5 Now, we think if that is agreeable, then the
6 balance of that should be deleted because it would not
7 be applicable. But we think that in that case we
8 ought to add the words "subject to Permitted Use Note
9 B," which means that self-service fuel pumps would be
10 limited just to Tracts MPD-3 and 4, the ones that are
11 right on the corner, and then immediately northeast of
12 it along Koreshan.

13 On the next page, up at the very top, there is a
14 reference to three separate conditions described, 1, 2
15 and 3. These are actually Notes A, B and C as shown
16 on the master concept plan. And under 3, which is
17 Note C, we are proposing that that be deleted as it
18 would apply to COP and we will propose a substitute,
19 which I will ask Carron Day to explain, but the
20 substitute I believe should read as follows:

21 Consumption on premises, COP uses, are limited to a
22 total of three for standard restaurants only within
23 MPD-1, 3 and 4 and an unspecified number in the club
24 recreation tract.

25 And the reason we haven't specified it is we're

1 not entirely sure how the county is counting COP uses
2 within the golf course clubhouse. We don't know if,
3 for example, there's a restaurant and then a separate
4 lounge, whether that's one or two. Our intent is to
5 operate a clubhouse, typical golf course clubhouse,
6 and perhaps you can provide some guidance to us on
7 that point. We just don't know quite how to describe
8 it. We're afraid it's more than one, but certainly
9 we're not envisioning anything other than a recreation
10 clubhouse type use there.

11 Under C there's a reference to hours of
12 operation, 7:00 a.m. to 10:00 p.m., which is
13 acceptable to the applicant. However, immediately
14 beneath that there's a reference to deliveries, and we
15 propose that deliveries be prohibited between the
16 hours of 8:00 p.m. and 6:00 a.m., which we believe is
17 consistent with conditions the county has imposed in
18 similar situations. And Carron will provide you with
19 a list of those. In other words, we're asking for
20 what we think is the typical county limitation on
21 hours of deliveries.

22 Under site development regulations, it's not
23 entirely clear whether this simply needs to be noted
24 in the record or whether we need language to make it
25 clear, but, for example, under Site Development

1 Regulation A-1 and A-6, you see a reference to retail
2 commercial square footage. And in particular under 6
3 it says that within the suburban land use category it
4 must not exceed 100,000 square feet.

5 This is somewhat unique because we have a change
6 in the land use category cutting right through the
7 commercial development, and I will show you where I
8 think it is on this map. I believe it runs right
9 along the boundary between -- well, I think in this
10 direction sort of through MPD-1 and MPD-4. I'm not
11 sure it's on the boundary. The problem is you can't
12 locate it specifically because it's the width of the
13 pencil mark, if you will, on the map, so we're not
14 entirely sure where it is.

15 We want to make it clear that wherever it is
16 there won't be more than a hundred thousand square
17 feet in it, but we don't want it to be misunderstood
18 that we have to put 100,000 square feet in it. In
19 other words, the request is for 340,000 square feet of
20 retail commercial uses -- I'm sorry. There's a
21 misprint in the staff report. Under --

22 THE HEARING EXAMINER: Should be 320 rather than
23 340?

24 MR. CICCARONE: Yes. Thank you.

25 The request is that we be permitted to have up to

1 that with up to 100,000 of it within the suburban land
2 use category, but there may be none within that. We
3 just don't know. So perhaps you might want to
4 consider language in BA-1 that would say there is no
5 requirement that any of the retail commercial uses be
6 located within the suburban land use category.

7 THE HEARING EXAMINER: Maybe I'm misreading it
8 wrong. It seems to me it's almost saying that if you
9 put it in suburban, you can't have more than a hundred
10 thousand.

11 MR. CICCARONE: Yes, that's our intent. But
12 apparently there was some concern on the applicant's
13 part that maybe that would be misread to require a
14 hundred thousand. We don't think that's the staff
15 intention. So as long as it's clear on that point,
16 we'll leave it to your good judgment as to how you
17 would address it.

18 Immediately below that, Mr. Hearing Examiner,
19 under outdoor seating, again I'm not sure if we have
20 an agreement with the staff on this or not, but we
21 would propose in lieu of what the staff has that that
22 be deleted. But we're not unhappy if you would in the
23 alternative impose some reasonable restrictions, as
24 have been done on some other projects, and the one
25 that we think would be appropriate would be as

1 follows: Outdoor seating may not be located within
2 200 feet from existing adjoining residential
3 development and shall be located on the side or sides
4 of the buildings opposite such residential development
5 and with respect to hours of operation shall cease as
6 of 11:00 p.m. Sunday through Thursday night and shall
7 cease as of 12 o'clock midnight on Friday and Saturday
8 nights.

9 I'll be happy to repeat that.

10 THE HEARING EXAMINER: I've got it. Thank you.

11 MR. CICCARONE: On the next page at the very top
12 there's again a reference to consumption on premises.
13 What we are proposing to do in lieu of that is to
14 specifically locate the consumption on premises on
15 revisions to the master concept plan, which Carron Day
16 will illustrate in a handout during her presentation.

17 The purpose of the condition at the top of this
18 page --

19 THE HEARING EXAMINER: I'm not finding that.

20 MR. CICCARONE: Let me --

21 THE HEARING EXAMINER: What's the number of the
22 page?

23 MR. CICCARONE: Well, my pages are not numbered,
24 but it would be --

25 THE HEARING EXAMINER: Because I go straight from

1 that section to the next page is Number 6, "As part of
2 the first development order submittal". This is the
3 Sandy Lane section. So I'm not sure what the top of
4 your page is. Do you have a number?

5 UNIDENTIFIED SPEAKER: It's 6.

6 MR. CICCARONE: Let me make sure Kay and I are
7 looking at the same page.

8 Apparently when this was e-mailed it was
9 paginated differently, so I'm not sure --

10 MS. DESELEM: You're at the top of Page 6, Item
11 D, 2-D.

12 MR. CICCARONE: Two-D at the top of your Page 6.

13 THE HEARING EXAMINER: So mine was a continuation
14 rather than the next page.

15 Okay. I got you. All right.

16 MR. CICCARONE: What we're saying here is that
17 it's our understanding that this condition is
18 necessary only if the COP uses are not specifically
19 located on the master concept plan, so what we propose
20 to do is specifically locate them today. Carron will
21 provide an illustration which will accomplish that.
22 We would propose that the master concept plan be
23 amended to locate those items. And if that's the
24 case, then we believe that there's no need for a
25 special exception or administrative approval, so that

1 therefore this Condition D should be and can be
2 deleted.

3 Under environmental conditions --

4 THE HEARING EXAMINER: Let me -- I need a
5 clarification on that one because the earlier one
6 talks about giving you a certain number of consumption
7 or COPs and this one is saying you can't have them
8 unless you have a special exception.

9 MR. CICCARONE: Yes. And we're proposing that
10 you delete Condition D in its entirety because we
11 think it's only necessary if we --

12 THE HEARING EXAMINER: I'm asking a different
13 question, because the first one seems to allow you to
14 put three anywhere on the property and one in the golf
15 course as it's written, and this one says but you
16 can't have those three and that one unless you have a
17 special exception. Maybe I'm misreading. That's what
18 it seems to be saying. It's giving you with one hand
19 and taking away with the other.

20 MR. CICCARONE: That's why we propose that D be
21 deleted.

22 THE HEARING EXAMINER: Mine is more of a
23 procedural question. You can't get it here and take
24 it away here. That doesn't even work. Even if you
25 wanted to live with that provision, it still doesn't

1 work. They're saying you got them but you don't got
2 them.

3 MR. CICCARONE: We don't disagree with you, but I
4 think what the staff was concerned about is that if
5 they're not specifically located, they can only be
6 approved by special exception or administrative
7 approval. Rather than argue about it, we'd just say,
8 well, we'll locate them and argument, if you will, is
9 academic at that point.

10 But I understand. Your point is well taken.

11 THE HEARING EXAMINER: Okay.

12 MR. CICCARONE: It's unusual to be sticking up
13 for the staff. I hope it doesn't become a habit.

14 Under Condition 3-B, this is an environmental
15 condition. And I understand that our environmentalist
16 and the county's environmentalist have diligently been
17 working on substitute language for Condition 3-B. And
18 I have a copy of it here, but unfortunately I'm not
19 sure I have any extras. What I'll do is read it to
20 you and then provide this to you to photocopy so that
21 you don't have to take it down verbatim. But my
22 understanding is that the county and the applicant
23 agree that Condition 3-B ought to read as follows:
24 The development order plans will show a connection
25 between the conservation area in the southeast corner

1 of the MPD Tract 5 and the upland conservation area on
2 the eastern side of the restored wetland. The
3 wildlife connection will run under the road and
4 include a set of two tunnels constructed of
5 36-inch-wide times 24-inch-high elliptical concrete
6 pipe. The plans will show the two elliptical wildlife
7 connections placed under the road in a side-by-side
8 position unless directed otherwise by the county's
9 environmental services staff. At a minimum, the
10 bottom of the pipes will be placed no lower than the
11 existing upland preserve grade to help prevent
12 inundation within the pipes during the wet season.
13 End of quote.

14 I'll have our environmentalist show you what
15 we're talking about, but my understanding is that's to
16 allow the gopher tortoises to cross under the road.

17 At the -- well, again, I better not say at the
18 bottom.

19 Condition 6 has to do with whether this
20 development can be required to accommodate the
21 county's plans to extend Sandy Lane, and that is a
22 point of major disagreement that I think I will
23 reserve until later because I think that that is going
24 to take us awhile and I would like to be able to get
25 the other issues out of the way, let some of the

1 experts go, let the public go and we can talk about
2 Sandy Lane in great detail.

3 Under golf course conditions, which are Condition
4 10, these go on for quite a while and represent the
5 evolution of a county planning desire to deal with the
6 environmental aspects of golf course design and
7 management. It's open to debate as to how appropriate
8 that is, but we nevertheless are willing to do the
9 same thing that was required of Miromar Lakes in their
10 golf course approval. Substantially, we're a golf
11 course in an area that is a recognized environmentally
12 sensitive location. And we will provide you with
13 those conditions at the appropriate time. I don't
14 know if the staff agrees or not. If the staff does
15 not agree, I think the burden would be on them to
16 explain why what was adequate for a development as
17 large as Miromar Lakes would not be adequate for a
18 development as small as this one.

19 Immediately after golf course conditions, there
20 is Condition Number 11. And I believe we have an
21 agreement on this and the agreement, I believe, would
22 be as follows. We would strike the last sentence.
23 There's two sentences. We would strike the second
24 one. I'm sorry. There's three sentences. We would
25 strike the last two and we would modify the remaining

1 sentence to show that the interconnection to Oriole
2 Road to the north is an emergency only
3 interconnection, which is typical of many
4 developments.

5 Now, Mr. Hearing Examiner, I believe as you go
6 down the conditions, you will see Condition 18. We
7 propose that that be deleted because we think it's
8 already addressed under the property development
9 regulations table which is in the upper left corner of
10 the master concept plan, and it's the item that's
11 marked with the four asterisks. And what that says is
12 that building height will be limited to a maximum of
13 35 feet within 200 feet of the adjoining Vines
14 residential development.

15 Under Condition 21, I believe we have an
16 agreement with the staff on this and I believe the
17 agreement would require that the sentence as you have
18 it be changed to read as follows: The maintenance
19 facility must be relocated between Tract MPD 9 - I
20 think 10 is a misprint - and the railroad
21 right-of-way. And then in the next sentence, for the
22 sake of clarification, MPD Tract 7 is approved for
23 residential and golf course use only.

24 Now, if you will go to deviations, Mr. Hearing
25 Examiner, just as a reminder, immediately below 4 we

1 have agreed to withdraw 5-A, 5-B, 6 and 7.

2 And under Condition 11, which relates to the
3 stacking of vehicles in multifamily developments, we
4 have alternative language to propose. I'm not sure if
5 the staff yet agrees with us, but when Carron gets up
6 here to speak I will ask her to explain the language
7 and the purpose of it and we will hopefully justify
8 what we're proposing to do in that regard.

9 THE HEARING EXAMINER: Deviation 8 was also a
10 recommendation for denial. Did you want to address
11 that one? Is that the one we dealt with before?

12 MR. CICCARONE: Let me just take a quick look.

13 MS. DAY: That's the Oriole.

14 MR. CICCARONE: That's Oriole. Yes, yes.

15 We, in effect, we -- we're going to provide for
16 it by an emergency access. And I'm not entirely sure,
17 quite frankly, whether we need a deviation in that
18 respect. If you think we do, then I guess we would
19 ask you to modify it to indicate that it's
20 accomplished by the emergency access. If we don't
21 need it, then we don't have any objection to its being
22 withdrawn.

23 THE HEARING EXAMINER: Okay.

24 MR. CICCARONE: Now, the last thing I will ask
25 you to take a look at is at the very end under the

1 staff attachments, the staff has proposed property
2 development regulations which substantially differ
3 from what is on the master concept plan. And this,
4 along with the proposed extension of Sandy Lane,
5 represents what appears to me to be the two biggest
6 points of disagreement in the case.

7 Carron, when she gets to her presentation, will,
8 I believe, adequately demonstrate through precedent
9 the number of cases where the county has approved
10 development regulations substantially similar to that
11 which we are requesting, and it's possible that at the
12 end of that the staff may be satisfied. If not, we
13 will probably need to spend some time talking about
14 each of those in detail when we get there.

15 Now, let me say before we hear testimony that we
16 have made an effort to keep our neighbors in The Vines
17 apprised of what's happening. We met with a couple of
18 their representatives. They were very polite and
19 pleasant to work with and we have supplied them with
20 things that have been submitted, changes to the master
21 concept plan and so forth, and I understand that they
22 have identified to one of our engineers the following
23 concerns which we will attempt to address through our
24 experts in the appropriate order.

25 They are concerned, I am told, about damage that

1 may be caused due to blasting for lake excavation.
2 I'll ask whichever one of our engineers feels good
3 about that to put that on his list of things to
4 address.

5 Kevin, ordinarily it's not part of your
6 presentation. I would like you to speak to that. And
7 I think, Kevin, the next one would be yours, too.
8 They're concerned about the possible draining of their
9 lakes because our lakes may be too close.

10 They're concerned about damage to the existing
11 fence along the property line by our clearing
12 contractor. Certainly a legitimate concern. I'm not
13 quite sure how to address it in the zoning, but
14 obviously contractors can't be damaging property.

15 They're concerned about smoke from burning the
16 cleared material. And, again, Kevin, I think you can
17 probably address that. There are various methods to
18 prevent that.

19 The next one I, quite frankly, I don't know what
20 to say about because I don't know what the existing
21 conditions are. They do not want our golf course
22 holes to parallel their road for fear of an errant
23 golf ball that may be dangerous if it hits a motor
24 vehicle on the road. I don't know where their roads
25 are and I don't know where our proposed golf course

1 holes would be, so I'm not quite sure how to address
2 it, but we have it on our list and we'll talk about
3 it.

4 I understand that they're very much opposed to
5 any type of gas station use, I believe on aesthetic
6 grounds. I have to be the first to admit that you
7 will never find an architect winning an award for
8 tasteful gas station architecture. On the other hand,
9 I don't know what to do about it. It's probably an
10 issue that's larger than this project. We are
11 proposing to put that use along the main roads, which
12 I think is appropriate. I don't believe that staff
13 has any problem with it. I'm not quite sure how to
14 address the neighbors' concerns except to say that it
15 wouldn't be next to them.

16 They also have some concern about the buffer
17 between the railroad and our multifamily parcel. I'm
18 not quite sure what that concern is, so maybe they'll
19 have to explain it to us and then we'll take a look at
20 it.

21 And, finally, two of the folks of the public have
22 asked if they could say their piece and be on their
23 way. I don't have any objection to that, but I want
24 to make it clear that we're not answering questions.
25 I mean, if they want us to answer questions, they have

1 to stick around until our experts do their testimony
2 because, as you said, we don't want to have to repeat
3 it. But I don't have any objection to any member of
4 the public going on record so he can become a party of
5 record. When that's through, we'll go ahead and
6 present our testimony.

7 THE HEARING EXAMINER: Thank you.

8 Mr. Rosenthal and someone else, I believe, you
9 want to go up?

10 Let me swear you in to get you on the record.

11 (Whereupon, Arnold Rosenthal was duly sworn.)

12 THE HEARING EXAMINER: Please give your name and
13 address for the record, please.

14 MR. ROSENTHAL: My name is Arnold Rosenthal and
15 I'm a founding member of the Estero Concerned Citizen
16 organization.

17 Speaking for the record, most of what I have
18 heard is compatible with what we stand for. I would
19 have to examine the details to determine the extent if
20 any of noncompatibility.

21 One point that did come up I do want to mention
22 is the burning. Now, the burning in Estero must be
23 done with an air curtain incinerator to hold down the
24 emissions of carcinogens, mutagens, all the toxic
25 stuff. It reduces it by 85 percent. I don't know why

1 San Carlos hasn't adopted that. It is, it is for the
2 good of the people.

3 I would ask if and when they do burn that they
4 use that. The preferred method, of course, would be
5 chipping and shipping.

6 And that finishes my testimony and I appreciate
7 the opportunity. Thank you very much.

8 THE HEARING EXAMINER: You're welcome.

9 Who was the other person?

10 Would you raise your right hand, please.

11 (Whereupon, Don Eslick was duly sworn.)

12 THE HEARING EXAMINER: Please give your name and
13 address for the record.

14 MR. ESLICK: I'm Don Eslick. I live at 23029
15 Treecrest Court in Bonita Springs. It's actually
16 Estero, but it's Bonita Springs Post Office.

17 I have a written statement I would like to submit
18 if it's possible.

19 THE HEARING EXAMINER: Certainly. If you would
20 give a copy -- do you have an extra copy for Mr.
21 Ciccarone?

22 MR. ESLICK: Yeah.

23 Basically, I just want to make two quick points.

24 One is that we share the concern for the gasoline
25 station on the corner, primarily from an appearance

1 perspective. Just in our judgment would not be
2 conducive to the overall appearance of the
3 development, but if it is to be determined that that
4 would be an appropriate site and a user is obtained,
5 we think that it and the rest of the development,
6 particularly the commercial portions, ought to be
7 consistent with the work that we're doing relative to
8 the Estero community plan. And we now -- we submitted
9 the plan last September 29th, subject to a review next
10 month by the LPA and by the board the following month
11 in May. We have already raised the money necessary to
12 pay a consultant for the Land Development Code changes
13 that would implement that plan. And there are a lot
14 of implications of that for these kinds of
15 developments in terms of landscaping, lighting,
16 signage and the like, mainly from an appearance
17 perspective.

18 So we're hopeful and would like to work with the
19 developer to make sure that the project is implemented
20 in a way that is consistent with what's going on in
21 the planning process and the Land Development Code
22 changes.

23 THE HEARING EXAMINER: Thank you.

24 MR. ESLICK: Thank you very much.

25 THE HEARING EXAMINER: You're welcome.

1 MR. ESLICK: Who gets the --

2 THE HEARING EXAMINER: I'll take a copy of that.
3 Spell your last name, please.

4 MR. ESLICK: E-S-L-I-C-K. It's down at the
5 bottom.

6 THE HEARING EXAMINER: Okay. Thanks. I'll mark
7 that as Eslick Exhibit Number 1. Thank you.

8 (Whereupon, Eslick Exhibit No. 1 marked for
9 identification.)

10 MR. CICCARONE: We're ready.

11 I'm going to ask -- I'll speak as loudly as I
12 can.

13 Let me get the traffic issues out of the way
14 first. Let me ask Mr. Treesh to come up here. I'm
15 going to ask him a few questions.

16 (Whereupon, Ted Treesh, having been previously
17 duly sworn, testified as follows:)

18 THE HEARING EXAMINER: For the record, you have
19 been sworn?

20 MR. TREESH: Yes.

21 MR. CICCARONE: The Hearing Examiner I'm sure is
22 familiar --

23 THE HEARING EXAMINER: Identify yourself for the
24 record.

25 MR. TREESH: My name is Ted Treesh, senior

1 transportation consultant with Metro Transportation
2 Group, responsible for preparing a traffic impact
3 statement. My resume is on file with the Hearing
4 Examiner's office and I have testified in this forum
5 previously.

6 MR. CICCARONE: That was the question I was going
7 to ask you. Very good.

8 BY MR. CICCARONE:

9 Q. Are you aware of any disagreements between you
10 and the staff with respect to the traffic analysis that
11 you had to perform as part of the application before us?

12 A. No, I'm not aware of any.

13 Q. Let me ask you if the conclusions that you have
14 reached in conjunction with the staff would be altered in
15 any way by the elimination of the right-in and right-out
16 access point that's shown on the master concept plan that
17 we have now agreed to delete?

18 A. No, the conclusions or results would not be
19 altered.

20 Q. You are aware that there is a disagreement
21 between the applicant and the staff as to whether Sandy
22 Lane should be extended along the eastern boundary of this
23 project in a north-south direction, are you not?

24 A. Yes, I am.

25 Q. If that were to be required of this development,

1 would that in any way affect the validity of the
2 conclusions you reached in your traffic analysis?

3 A. No, it would not.

4 Q. Are you aware of any unresolved traffic issues?

5 A. No, I'm not aware of any.

6 MR. CICCARONE: That's all we have to say about
7 traffic, Mr. Hearing Examiner. You may have some
8 questions.

9 THE HEARING EXAMINER: Does anybody from the
10 staff have any questions?

11 Okay, thank you.

12 MR. CICCARONE: That was easy.

13 Let me ask Mr. Myers now to speak to the
14 environmental issues.

15 As you're coming up here, please identify
16 yourself and your expertise for the record.

17 THE HEARING EXAMINER: Also, for the record, you
18 have been sworn?

19 MR. MYERS: Yes, I have.

20 THE HEARING EXAMINER: Thank you.

21 (Whereupon, Michael Myers, having been previously
22 duly sworn, testified as follows:)

23 MR. MYERS: Good morning. For the record, my
24 name is Michael Myers. I am a senior ecologist for
25 Passarella and Associates. I have given expert

1 testimony in this forum in the past on environmentally
2 related issues for development projects and a copy of
3 my resume is on file.

4 BY MR. CICCARONE:

5 Q. In my earlier presentation I identified some
6 language which we proposed be substituted for Condition
7 3-B to provide for gopher tortoise underpasses. Are you
8 the individual that negotiated that with the staff?

9 A. Yes, I am.

10 Q. Are you satisfied with it? Will that work to
11 protect the gopher tortoises?

12 A. Yes, it does.

13 Q. I understand also that you have some questions in
14 your own mind about whether the environmental acreage as
15 shown on the master concept plan and in some of the
16 various staff communications are correct. Would you
17 clarify that for us?

18 I know you prepared a quick exhibit. I don't
19 know if you have copies. But what we want to find out is
20 what do we need to do to make sure the paperwork is
21 internally consistent?

22 A. I had just noticed in staff's report they had
23 quoted over six acres of palmetto prairie that was going
24 to be preserved in the indigenous open spaces and that
25 wasn't correct, so what we did is I got together with Kim

1 and she prepared this document that identifies the
2 acreages and the various established indigenous preserve
3 areas.

4 Q. Do you have any objection if I submit this? Do
5 you agree with it?

6 A. I do agree with it.

7 MR. CICCARONE: So let me submit that for your
8 file, Mr. Hearing Examiner.

9 THE HEARING EXAMINER: That will be marked as
10 Applicant's Exhibit Number 1, consisting of an
11 indigenous preservation and restoration acreage site
12 map.

13 (Whereupon, Applicant's Exhibit No. 1 marked for
14 identification.)

15 BY MR. CICCARONE:

16 Q. Mr. Myers, I know that you and the staff are in
17 agreement, but I know the public also has a keen interest
18 in environmental issues, so I would like you to take a few
19 moments and in narrative form explain the existing
20 environmental conditions on the property and what we
21 propose to do to the property that would affect
22 environmentally sensitive lands.

23 A. Okay.

24 Q. In any manner that you believe would be easily
25 understood by the layman.

1 A. I'll do my best.

2 The project area is primarily a mixture of
3 improved pasture that's located mostly on the east side of
4 the railroad right-of-way. There is also a number of
5 scattered upland and wetland areas that have been heavily
6 invaded by melaleuca, and I'll point out those areas. The
7 upland and wetland areas show up pretty clearly on the
8 aerial and as well as this portion of the project over
9 here.

10 The area on the west side of the railroad
11 right-of-way, there was also a fire that has recently
12 occurred in that region and as a result of the fire
13 there's been -- that has really intensified the exotic
14 invasion and it's resulted in what we affectionately call
15 in the field the regrowth of dog hair melaleuca. It's
16 very difficult to even walk through.

17 A Lee County protected species survey was
18 conducted on the property in May of 2000. The results of
19 that survey identified the presence of 20 gopher tortoise
20 burrows. The burrows are all located on the western
21 portion of the project area. That included eight active
22 and 12 inactive gopher tortoise burrows. The gopher
23 tortoise burrows are located primarily in three areas, and
24 I'll point those out on the aerial. They're primarily
25 located here in the southwest corner. There are also a

1 few located in this area as well as the southeast corner
2 here.

3 The highest quality habitat, gopher tortoise
4 habitat, is located in this area as well as this area
5 here, and the applicant has agreed to preserve those areas
6 as indigenous open space, which would preserve a certain
7 number of existing gopher tortoises in that area. The
8 balance of the tortoises that are currently located in the
9 proposed development tracts, those would be excavated and
10 moved out of harm's way and relocated into the indicated
11 preserve areas.

12 Early on in the testimony they talked about a
13 wildlife crossing. We have worked closely with county
14 staff and had agreed to the construction of a wildlife
15 crossing that will go under the entrance road and connect
16 the two existing indigenous upland, indigenous open space
17 areas. I'll point out the location of that. It would be
18 located in this region right here, connecting these two
19 areas.

20 Again, the purpose of the wildlife crossing would
21 allow safer access for gopher tortoises and other smaller
22 wildlife creatures to, you know, transport from one area
23 to the other.

24 In order to provide a greater diversity of
25 habitats on site as well as visual buffers for the

1 project, the applicant has agreed to the preservation of
2 the majority of the two largest wetland areas on site.
3 Those include -- I'll point those areas out. It would be
4 this area here as well as this area here.

5 Now, those areas have been heavily invaded by
6 melaleuca. The applicant would agree to enhance those
7 areas. That would include the removal of exotics as well
8 as the supplemental plantings of more desirable type
9 vegetation. When that is done in concert with the
10 construction of some neighboring large surface water
11 management lakes along with their associated littoral
12 shelves, that would provide some excellent forage habitat
13 for a number of wildlife species, some of which are Lee
14 County protected species such as the wood stork, little
15 blue heron, tricolored heron and snowy egret.

16 And to clarify the indigenous preserve acreages,
17 those have been outlined and submitted.

18 Q. Are you aware of any unresolved environmental
19 issues in the case?

20 A. No, I'm not.

21 MR. CICCARONE: That completes my questioning of
22 Mr. Myers.

23 THE HEARING EXAMINER: Any questions from staff?

24 MS. DESELEM: No, sir.

25 THE HEARING EXAMINER: Thank you.

1 MR. MYERS: Thank you.

2 MR. CICCARONE: I would like Mr. Higginson to
3 step forward and identify and qualify himself so I can
4 ask him some questions that are a concern to the
5 neighbors.

6 THE HEARING EXAMINER: And you have been sworn as
7 well?

8 MR. HIGGINSON: Yes, sir.

9 THE HEARING EXAMINER: Thank you.

10 (Whereupon, Kevin Higginson, having been
11 previously duly sworn, testified as follows:)

12 MR. HIGGINSON: For the record, my name is Kevin
13 Higginson. I'm a registered professional engineer in
14 the State of Florida and I have testified in this
15 forum. My resume is on file with the office.

16 BY MR. CICCARONE:

17 Q. Mr. Higginson, what I want to do is ask you to
18 address in whatever fashion you think is best some of the
19 concerns the neighbors have expressed to the applicant,
20 and I'll go down them one by one.

21 One is they're concerned about possible damage to
22 their homes caused by blasting for lake excavation. Speak
23 to that issue, please.

24 A. Okay. I am certainly not an expert on blasting,
25 but that blasting is regulated by local and state

1 authorities and any activities that we perform on site as
2 a part of the construction process for utilities and lakes
3 will -- that require blasting will be done in accordance
4 with those permits that are obtained from the authorities.

5 Q. Have we made any conclusions as to how much
6 blasting, if any, is necessary for lake excavation?

7 A. No, sir.

8 Q. Let me ask you about the draining of the lakes
9 because our lakes are too close question. Do you
10 understand the question?

11 A. I believe I understand the concern.

12 We have done a fairly extensive amount of
13 research on control elevations in the area in preparation
14 for applying for environmental resource permits for the
15 project, and based on that research we have established a
16 control elevation of 13 feet NGVD for our project, which
17 is actually significantly higher than the control
18 elevations in The Vines, in The Vines Country Club. It's
19 fairly consistent, which is 11.5 NGVD. That's a foot and
20 a half below our control elevation. It's fairly
21 consistent with the control elevation for Koreshan
22 Boulevard, which is 12.6. And there are other projects
23 within the area that have similar control elevations as
24 what we are proposing.

25 Q. So let me just make sure we understand ourselves

1 here. The control -- explain what a control elevation is
2 to the members of the public.

3 A. Okay. The control elevation is the elevation
4 that we establish as the approximate wet season water
5 table elevation, and we will actually place a structure
6 within our lake that holds the water up to that elevation
7 before it will be released to the outfall.

8 Q. And you refer to NGVD. What is that?

9 A. That is the base sea level data that's used.

10 Q. So if I understand your testimony, our lakes will
11 be a foot to a foot and a half higher than the lakes in
12 The Vines?

13 A. That's correct. So if anything, we would be
14 having the opposite effect on The Vines of actually
15 surcharging their lakes. But based on the distance from
16 our lakes to theirs and the types of soils that we have, I
17 personally in my opinion do not think there will be any
18 adverse impact on their lake system.

19 Q. And if the neighbors in The Vines want to verify
20 this, I presume they could examine the ERP application
21 that the water management district has processed to verify
22 these numbers?

23 A. That's correct.

24 Q. You will have to help me out with the next one.
25 They're concerned about damage to the existing fence along

1 the property line by our clearing contractor. Do you know
2 where this existing fence is?

3 A. I believe there is an existing fence along our
4 border with The Vines Country Club, which is to the
5 northwest, our northwest border.

6 I can show you on the map if that would be --

7 Q. Yeah, why don't you.

8 A. -- more helpful.

9 Along this area right here and I believe a
10 distance along here as well.

11 Q. Are we proposing anything extraordinary in the
12 way of clearing that would create any special dangers for
13 the preservation of that existing fence?

14 A. I don't believe so. There is some vegetation
15 along that fence that would need to be cleared and
16 possibly some fill placed along that border, but we will
17 be providing silt fence and barricades along there and
18 we'll be monitoring the construction to minimize any
19 potential damage that could take place.

20 Q. How about smoke from burning the cleared
21 material? Do we know yet how we would dispose of cleared
22 material?

23 A. That has not been determined yet.

24 Q. You have experience with getting burn permits, I
25 presume?

1 A. Yes, sir. It's normally handled by the clearing
2 contractor, and there are limitations placed on them in
3 their permits as well as by the fire marshal as to the
4 times that they are allowed to burn, prevailing wind
5 directions, et cetera.

6 Q. Is a burn curtain required?

7 A. The gentleman that testified earlier, that
8 commented earlier indicated that he would prefer to either
9 have chipping or, if not that, the air curtain
10 incinerator. That's not always required, but certainly
11 that could be one of the ways that that is handled to
12 reduce the amount of smoke and emissions.

13 Q. All right. I don't know if you have anything to
14 do with the golf course design, but there is some concern
15 about golf courses paralleling the roads in The Vines,
16 thereby creating errant golf ball hazards. Are you able
17 to shed any light on that?

18 A. I don't believe I'm qualified to testify on that.

19 Q. All right. Can you tell us what we're proposing
20 in the way of buffering, if any, between the railroad
21 right-of-way and our multifamily parcel?

22 A. I'd have to go look at the map.

23 Q. Go ahead, look at the map.

24 A. The map indicates that there's no buffer required
25 between the multifamily residential or the residential

1 with golf option and the railroad.

2 MR. CICCARONE: That's all I have for now. I may
3 want to call him back after we hear from the public,
4 so if you would stick around for a while, we would
5 appreciate it.

6 THE HEARING EXAMINER: Any questions from staff?
7 Thank you.

8 MR. CICCARONE: I think at this point we now get
9 into the details, for which Carron Day --

10 MS. DAY: When you say details, I know who it is.

11 MR. CICCARONE: Carron has established quite a
12 reputation, so, Carron, please come up and identify
13 yourself and your expertise and we'll go through it
14 step by step.

15 Before we do that, though, I'm looking here --
16 has Mr. Treesh left? I think Mr. Myers would like to
17 leave also unless we think we need him. I don't see
18 the need.

19 THE HEARING EXAMINER: Since there seem to have
20 been no issues involving either transportation or the
21 environment, I don't know of any problem.

22 MR. CICCARONE: If we find we need him, we'll
23 call him on the cell phone and get him back here.

24 THE HEARING EXAMINER: Identify yourself for the
25 record, please.

1 MS. DAY: Good morning. My name is Carron Day.
2 I'm president of Florida Land Planning. My resume is
3 on file. I have been accepted as an expert witness in
4 this forum and others in planning, zoning and land use
5 lots of times.

6 THE HEARING EXAMINER: And you have been sworn?

7 MS. DAY: Yes, I have.

8 (Whereupon, Carron Day, having been previously
9 duly sworn, testified as follows:)

10 BY MR. CICCARONE:

11 Q. Carron, I'm sure you were paying close attention
12 when I identified the changes in the staff
13 recommendations, and what I think I would like you to do
14 is go through those with me one by one and let's see where
15 we may have resolved some issues and where we still need
16 to work with the staff.

17 A. Before we do that, can I inject something? We
18 talked in response to the golf course question.

19 Q. Yes.

20 A. I have considerable experience working with golf
21 courses along roadways, and generally if the golf course
22 is along a roadway, the fairways are made wider or berms
23 or vegetation is put in place so that that doesn't create
24 a problem.

25 The last thing this applicant wants is to have

1 legal action from people next door with golf balls hitting
2 their cars in the road, so it's something that is
3 absolutely considered in the layout of any golf course.

4 Q. Do you know where the road is that concerns the
5 neighbors? Can you see it on the aerial there?

6 A. I suspect that it's this road here.

7 Q. It lies behind the homes?

8 A. The homes are across the -- our property line is
9 here and then there's a road and then there's the homes,
10 so I expect that that is -- and that's something that
11 every golf course architect is particularly sensitive to.

12 Q. All right. Let's go page by page, if we could.

13 A. Okay.

14 Q. Under the residential schedule of uses, I had
15 told the Hearing Examiner that there was no disagreement
16 about adding accessory uses. I presume that's correct?

17 A. I believe so.

18 Q. I wasn't sure, however, about how we were going
19 to deal with dwelling units. We had suggested deleting
20 the phrase maximum of 300 for MPD-5 or in the alternative
21 changing the number from 300 to 340. Have you reached an
22 agreement with the staff on that?

23 A. The last I talked to Kay, she needed to talk to
24 Matt Noble and I don't know what the conclusion -- let me
25 give you a little background where those numbers came

1 from.

2 Q. Please.

3 A. This application until last month was an RPD and
4 a CPD, and the RPD was east of the railroad, the CPD west,
5 and the CPD included one residential tract that was
6 limited to town house and multifamily because that's all
7 you can do residentialwise in a CPD.

8 Our land development summary indicated that west
9 of the railroad we would have between 300 and 350 units
10 and then east of the railroad we would have the balance,
11 and the total even with that flexibility they were asking
12 for would not exceed 820.

13 When we converted the project to an MPD, we
14 removed that limitation for the units between the two
15 sides, which had always been 300 to 350 west of the
16 railroad and then the balance east of the railroad because
17 it seemed an MPD was allowed to have flexibility, so we
18 didn't do that. It's my understanding that's where the
19 300 limitation came from. And when I have asked staff
20 where it came from, they said that we proposed it, which
21 is sort of accurate. We proposed from 300 to 350.

22 We have proceeded with development plans for this
23 project and 340 is the minimum that we would need for that
24 particular tract, and so we're asking, you know, for the
25 Hearing Examiner to resolve it either by taking out the

1 limitation altogether and let us put - which we would
2 prefer - the 820 where we want it in the whole project.

3 The density for this project is under three units
4 an acre, so spreading that low number of units around, we
5 would prefer to do that. But if there seems to be a need
6 to limit the number of units in that particular tract, and
7 that's this tract here, just west of the railroad, if
8 there's a need to limit it, we would ask that the
9 limitation be no less than the 340.

10 Q. Can you think of any compatibility or density
11 reasons which would justify the staff number of 300?

12 A. Not really. This is in a land use category that
13 allows a considerable number of units an acre. Overall
14 the project is three units an acre. You know, the
15 densities within, you know, individual tracts are -- you
16 know, they average out the overall density, you know, just
17 as The Vines. You can see what their project looks like,
18 and they have some tracts that are obviously more dense
19 than other tracts. And we have proposed a limitation of
20 35 feet along our border with The Vines and augmented that
21 with the two-story limitation because the staff indicated
22 that we didn't provide that.

23 You know, with that limitation I would think --
24 and we've also agreed to the staff's additional buffering
25 along that property line. The buffering that we indicated

1 on the master concept plan was the buffer that's required
2 between multifamily and single family, but we have agreed
3 to the staff's increased buffer along that property line.

4 Q. All right. At the end of your presentation I'm
5 going to give you a chance to address any issues that I
6 don't specifically ask you about, so keep track of those
7 if we happen to skip over them, but humor me for the
8 moment, if you would, and go over to commercial.

9 A. Okay.

10 Q. And again I believe we have agreed to add
11 accessory uses.

12 A. Yes.

13 Q. It wasn't clear to me under drive-through
14 facility whether you thought you had an agreement with the
15 staff to delete the reference to Permitted Use Note B.

16 (A brief recess was taken. After which, the
17 following proceedings were conducted.)

18 THE HEARING EXAMINER: We're back on the record,
19 and I'm just going to be marking something that was
20 just handed to me. Revised Condition Number 3 I will
21 be marking as Applicant's Exhibit Number 2.

22 (Whereupon, Applicant's Exhibit No. 2 marked for
23 identification.)

24 MR. CICCARONE: Yes. That's the environmental
25 language I had read to you earlier that was negotiated

1 with the staff.

2 And at this point we would like to go a little
3 bit out of order.

4 Another one of our neighbors has asked to be able
5 to speak so he can leave, and we are going to
6 therefore ask Carron to retire from the podium for a
7 few minutes and let Charlie Maurer address you.

8 THE HEARING EXAMINER: Have you been sworn?

9 MR. MAURER: No, I haven't.

10 (Whereupon, Charles Maurer, having been first
11 duly sworn, testified as follows:)

12 THE HEARING EXAMINER: Give your name and address
13 for the record, please.

14 MR. MAURER: Charles Maurer, president of
15 Development Associates, Post Office Box 366069, Bonita
16 Springs, Florida, 34110. I have been recognized as an
17 expert witness in front of this forum in the past.

18 I'm here today representing landowner James A.
19 Bernet. He owns the property directly to the east of
20 this parcel along Koreshan Boulevard. It's
21 approximately 160 acres and it's identified as the
22 Villages of Bernwood MPD. I have one copy that Elaine
23 from Lee County DOT was so kind to give me of my
24 master concept plan, and I would like to offer that
25 before I'm completed.

1 The property that I represent is directly to the
2 east, 160 acres and goes back in depth about halfway
3 to the applicant's proposed parcel here. The Villages
4 of Bernwood has a zoning resolution number, and I do
5 not have that handy. I wasn't really prepared today
6 and I apologize, but I believe it was zoned in 1998.
7 The Villages of Bernwood also has a development order
8 that was issued in 1999. We currently are scheduled
9 to commence construction of the development. The
10 development order was for the infrastructure and we're
11 scheduled to commence construction in the second or
12 third quarter of this year of that project.

13 Prior to the hearing I was approached by Lee
14 County DOT representatives and -- to come to a meeting
15 and discuss the potential Sandy Lane road -- is that
16 how it's identified, Sandy Lane? -- Sandy Lane
17 extension that apparently is being proposed on the
18 borders, and I'll use the term borders very loosely,
19 of the property I represent and the applicant's
20 property.

21 For the record, we are zoned and have a zoning
22 resolution, we have an issued development order and we
23 have a preliminary plat that's been submitted.

24 Through the zoning hearings, the development
25 order process, we were never approached by Lee County

1 DOT, the county or anyone to ask for any reservation
2 or any other negotiations of any sort regarding any
3 road requirements, alignments or right-of-ways.

4 With that said, we are developers. We have been
5 in Bonita for 30 years, and if there's a way to work
6 this thing out, and I know you're going to hear some
7 testimony this afternoon on this whole Sandy Lane
8 thing, here's what we're offering.

9 We have -- and I'll go ahead and give you this to
10 follow along.

11 We have two components in our MPD. The first
12 component fronts along Koreshan, is a commercial
13 portion or segment. We show it in our master concept
14 plan as a town center type development, but we also
15 have the ability to go pretty straight commercial
16 along Koreshan.

17 There is an access point that we are proposed or
18 that's in our zoning resolution and development order
19 that actually lays within our property in total on our
20 western boundary line, so there very well could be a
21 potential in that location to work with the applicant
22 and the staff however this thing ultimately ends up in
23 trying to accommodate the county's request to get
24 another north-south artery punched through at that
25 location.

1 We also are willing to look at the rear half of
2 our development, which is residential. We're going to
3 be real tight back there, but if I can get their
4 plans, which they have offered, and I can sit with the
5 county, we may be able to accommodate some water
6 retention or berming or something of that nature.

7 So I'm not here to represent that we're
8 specifically offering something at this juncture other
9 than the ability to relook at our plan and work with
10 the applicant to try to do something with the county's
11 needs for the north-south roadway. I will put that on
12 record with one caveat.

13 I'm sure Mr. Ciccarone, who I have had the
14 pleasure to meet for the first time, will make it
15 clear this afternoon how he expects the impact fee
16 credits to work if we move forward or he moves forward
17 on his project and I will defer to his expertise, that
18 we would be looking for the same.

19 I haven't had any luck, Mr. Hearing Examiner, on
20 east-west collector roads with Lee County. I'm
21 batting oh for two even though I got three pages in my
22 last zoning resolution that says I'm going to get a
23 hundred percent impact fee credits. The last time I
24 met with the county it was over my dead body, so maybe
25 Mr. Ciccarone can do a better job.

1 If we do work with the county, we would expect a
2 hundred percent impact fee credits at this juncture
3 for whatever we do.

4 Unless anybody has any questions --

5 THE HEARING EXAMINER: Any questions?

6 I'll mark the MPD that you gave me as Maurer
7 Exhibit Number 1.

8 (Whereupon, Maurer Exhibit No. 1 marked for
9 identification.)

10 MR. MAURER: Kay, on the record you could provide
11 him the zoning resolution number and the DO number if
12 he felt it appropriate.

13 Thank you.

14 MS. METTAUER: I have a quick question.

15 THE HEARING EXAMINER: Give your name for the
16 record.

17 MS. METTAUER: Elaine Mettauer with Lee County
18 DOT.

19 The development order that's in this does not
20 include that access that lines up with the median
21 opening that we're talking about.

22 MR. MAURER: Yes, it does.

23 The development order is not in. It's been
24 issued. The development order was issued in 1999 and
25 includes the -- if I could show you this real quick.

1 It includes this loop road and it includes this
2 roadway that comes around.

3 THE HEARING EXAMINER: Anything else?

4 MS. METTAUER: No. Thank you.

5 THE HEARING EXAMINER: Thank you, Mr. Maurer.

6 MR. MAURER: You're welcome.

7 MR. CICCARONE: Thanks, Charlie.

8 (Whereupon, Carron Day, having been previously
9 duly sworn, testified as follows:)

10 BY MR. CICCARONE:

11 Q. Carron, I think where we left off, I was asking
12 you under drive-through facilities whether you and the
13 staff have worked something out with respect to our desire
14 to delete the reference to Permitted Use Note B, and the
15 answer is?

16 A. No.

17 Q. You haven't worked anything out?

18 A. That's correct.

19 Q. Explain, explain the essence of that disagreement
20 and your justification for our position.

21 THE HEARING EXAMINER: Before you do that, for
22 the people in the audience, we're on Page 3 of 33 on
23 the document that we're going through right now.

24 BY MR. CICCARONE:

25 Q. Let's start off with Use Note B. What does it

1 say?

2 A. There are two -- you actually have three
3 permitted land use notes on the master concept plan and
4 they're located in this area of the site plan and the
5 first two notes are intended to specify the locations
6 for -- most of them are commercial uses, but for the
7 permitted uses. The Note A says that certain uses will be
8 a minimum of 200 feet from either The Vines or San Carlos
9 Park and Note B says that whatever those uses are are
10 limited to Tracts 3 and 4, MPD-3 and 4, which are these
11 two tracts.

12 If you look at the list of uses that we have
13 proposed, under the drive-through we have proposed the
14 drive-throughs be precluded from 200 feet, the Note A, 200
15 feet along that boundary line. The staff's recommendation
16 is that we only have drive-through facilities in these two
17 tracts.

18 Q. Do you have any idea why the staff opposes the
19 applicant's position?

20 A. I do not.

21 For the record, this roadway which separates
22 MPD-1 from 3 and 4 is approximately 750 feet from this
23 property line, and to me there's -- I have looked in lots
24 and lots of zoning cases. I have never found distances
25 for drive-through that even approach 750 feet.

1 I also should call to your attention that we have
2 agreed to the prohibition for the squawk boxes, if you
3 will, which are usually the problem with the
4 drive-throughs.

5 Q. Where would we find that at?

6 THE HEARING EXAMINER: I remember seeing it, but
7 I'm not sure if it was specific to this particular
8 provision.

9 MS. DAY: No, no. It's just in general no
10 outdoor speakers.

11 THE HEARING EXAMINER: I did see that somewhere.

12 MR. CICCARONE: I did, too. That's what I'm
13 looking for.

14 MS. DAY: We'll find it.

15 MS. DESELEM: I see it in C on Page 5, limited to
16 MPD Tract 1.

17 MS. DAY: And we have agreed to that limitation,
18 so that, you know -- in my experience that generally
19 is the biggest issue with the drive-throughs.

20 And we have set the drive-throughs back a minimum
21 of 200 feet from the adjacent residential property.

22 THE HEARING EXAMINER: Okay. That limits it to
23 one of the four tracts. What about Tracts 2, 3 and 4?
24 And I may not have followed you clearly enough as far
25 as where these are going to be placed on the tract.

1 But right now we have commercial portion Tracts 1
2 through 4. The drive-through facility is subject to
3 Use Permits A and B and doesn't limit it. It says 1
4 through 4. And the prohibition on the outside public
5 address systems is limited --

6 MS. DAY: To Tract 1.

7 THE HEARING EXAMINER: -- to Tract 1. So what
8 about Tracts 2, 3 and 4?

9 MS. DAY: They could have the speakers.

10 THE HEARING EXAMINER: Okay.

11 MS. DAY: So I have really looked at lots and
12 lots of zoning cases.

13 THE HEARING EXAMINER: Maybe I'm not clear as to
14 where the tracts were located. Why would they not be
15 a problem on Tracts 2, 3 and 4, to have outdoor
16 speakers? Do they have locations that's not anywhere
17 near housing?

18 MS. DAY: Yes.

19 THE HEARING EXAMINER: That's fine. I wasn't
20 clear where they were.

21 MS. DAY: Just for everyone's -- this large tract
22 is Tract 1. Two is an office tract.

23 THE HEARING EXAMINER: Okay.

24 MS. DAY: Three is this tract that's on the
25 corner, and 4 is the next tract that's on Koreshan.

1 THE HEARING EXAMINER: So it could only go on
2 Tract 1 is what you're saying?

3 MS. DAY: No.

4 THE HEARING EXAMINER: Why would Tract 2 not have
5 a -- why can't you -- you can have outdoor speakers on
6 Tract 2?

7 MS. DAY: Yes.

8 THE HEARING EXAMINER: Okay. That's not as much
9 of -- why is that not a problem, where Tract 1 would
10 be a problem?

11 MS. DAY: This is commercial, CC zoning here.

12 THE HEARING EXAMINER: Okay.

13 MS. COLLINS: It's a compatibility issue.

14 THE HEARING EXAMINER: What I'm saying is that if
15 you don't want to have outdoor speakers anywhere near
16 where it's going to bother other people, why is Tract
17 2 any different than Tract 1 as far as outdoor
18 speakers are concerned. That's all I'm asking.
19 Because of what's adjacent to it?

20 MS. DAY: Yes.

21 THE HEARING EXAMINER: That's clear. That's all
22 I was asking. All right.

23 MS. DAY: So on the drive-through facilities --

24 THE HEARING EXAMINER: I understand.

25 MS. DAY: -- we prohibited them 200 feet. The

1 staff essentially is saying they need to be 700 feet
2 away. I've not seen any basis for that.

3 THE HEARING EXAMINER: But if it was 200 feet --
4 I don't know if you could put 200 feet on that smaller
5 tract. That's not a problem as far as you're
6 concerned for compatibility with noise outside?

7 MS. DAY: That's correct.

8 THE HEARING EXAMINER: All right. That's all I
9 needed to hear. Thank you. I was not clear on where
10 the locations were.

11 BY MR. CICCARONE:

12 Q. So we have agreed to disagree on that.

13 Let's jump over to self-service fuel pumps. I
14 had told the Hearing Examiner that we had intended to ask
15 for eight machines, if you will, not fully appreciating
16 that the county treats each of those as two pumps, so our
17 request is actually for 16 pumps, as the county would
18 count them. And we had suggested that the balance of that
19 be deleted but that the use be subject to Permitted Use
20 Note B, which as I understand it would be the -- limited
21 to the two commercial tracts that are directly on U.S. 41
22 and Koreshan, right?

23 A. Yes, that's correct.

24 Q. Have you been able to come to some agreement with
25 the staff on this?

1 A. Can I --

2 THE HEARING EXAMINER: Certainly.

3 What I'll do, I'll mark these as Applicant's
4 Exhibits 3 and 4, 3 being the LDC Table 34-934 and 4
5 being the Estero Golf Resort, Lee County Case DCI --
6 well, it's the gas station inventory. I'm sorry.
7 Four is the gas station inventory. Thank you.

8 (Whereupon, Applicant's Exhibits No. 3 and 4
9 marked for identification.)

10 MS. DAY: It's my understanding from
11 conversations with Kay that the basis for the eight
12 limitation came from this Note Number 27 that's on the
13 table, and the Note Number 27 in an MPD says that
14 we're limited to eight self-service pumps. And that's
15 the basis for the limitation to eight.

16 We did not ask for any specific number of pumps
17 because basically I've never asked for a number of
18 pumps before.

19 That limitation that's in Footnote 27 goes on to
20 say, it says limited to eight self-service pumps
21 unless a greater number is specifically approved as
22 part of the planned development and depicted on the
23 master concept plan. So that's what we're intending
24 to augment the record, if you will, to specifically
25 ask for the number. And I believe that locating them

1 in those two tracts is adequate to specifically
2 locating them on the master concept plan as far as
3 this condition is concerned, given that the tracts are
4 fairly small. If the Hearing Examiner needs a more
5 specific location, I'm happy to do that, but I
6 would -- it would be my expectation that limiting the
7 self-service pumps to these two tracts only, which
8 we've already done in the table, to these two tracts,
9 is enough to specifically locate them, given the size
10 of the tracts. The MPD-4 tract is five and a half
11 acres and -- the two tracts are about the same size,
12 five and a half acres. I think as a master concept
13 plan that's specific enough to locate the pumps.

14 The inventory is, you know, absolutely fair
15 inventory. We just drove from the office around and
16 indicated every single gas station that we saw.
17 There's no attempt to weight it one way or another.

18 THE HEARING EXAMINER: I'm asking the same
19 question again. This deals with Tracts 1 through 4.
20 You're attempting to limit it to Tracts 2 -- which
21 tracts are you limiting it to?

22 MS. DAY: Three and 4.

23 THE HEARING EXAMINER: There's nothing on here,
24 but you're saying since it's on the master concept
25 plan, you're saying that's the way it's going to be

1 limited?

2 MR. CICCARONE: I believe what we were suggesting
3 is that if you require that it be subject to Permitted
4 Use Note B on the master concept plan, Permitted Use
5 Note B says that it's limited to 3 and 4.

6 THE HEARING EXAMINER: Okay.

7 MS. DAY: We are agreeable to that.

8 THE HEARING EXAMINER: I see what you're saying.
9 Thank you.

10 MS. DAY: So I think that addresses the
11 background for where the eight came from. And given
12 that we have asked for a specific number and
13 specifically located them to those two tracts, with
14 adding a Note B as Mr. Ciccarone indicates to that,
15 that that should address the pumps.

16 BY MR. CICCARONE:

17 Q. Carron, for the benefit of those who don't have a
18 copy of your inventory, gas station pump inventory, what,
19 does it say? What are the conclusions drawn from it?

20 A. The conclusions are that old stations average a
21 smaller number of pumps than the new stations and that you
22 can have a very attractive looking station with a larger
23 number of pumps. The -- regulating the architectural
24 design of the building is unrelated to the number of
25 pumps.

1 Q. And did you find cases where the county has
2 approved up to 16 or more?

3 A. I have honestly not seen any limitation for pumps
4 in any of the cases that I looked at.

5 Q. But on this table of comparison --

6 A. Yes. I mean the county did specifically approve
7 through a zoning process, but, yes, I have seen -- well,
8 there's a Hess station on Alico that has 28 stations.
9 That's a fairly large, ugly -- and this applicant has no
10 intentions of developing that, but there are stations with
11 lots of gas pumps.

12 Q. Let's take a look at the COP question. I have
13 explained to the Hearing Examiner how we would address
14 this, but I don't know if you and the staff have come to
15 an agreement on both the substance of what we're proposing
16 and the mechanism for incorporating it into this zoning,
17 so why don't you speak to that issue.

18 THE HEARING EXAMINER: I'll mark this Applicant's
19 Exhibit Number 5 consisting of a land use summary
20 plan.

21 (Whereupon, Applicant's Exhibit No. 5 marked for
22 identification.)

23 MS. DAY: That is a part of the master concept
24 plan that addresses the commercial. It's essentially
25 this much of the master concept plan, the southwest

1 half of it, if you will.

2 The -- as it is right now, we have on the master
3 concept plan a note, Permitted Use Note C, that says
4 we would have three restaurant COPs. We're not asking
5 for bars or cocktail lounges in the project. We would
6 have three restaurant COPs and we would have a COP in
7 the clubhouse. And staff recommendation is that
8 because we have not specifically located those COPs
9 that we need to come back through the process for
10 special exception. And as much as some of us love to
11 be here, if there's any way we can avoid coming back
12 through the process we would like to do that. So our
13 alternative is to locate those as indicated on that
14 little handout.

15 The COP that would be in the clubhouse is fairly
16 clear. I mean that's an asterisk that sits in the
17 clubhouse track. The other says -- has asterisk, COP,
18 three restaurants in Tracts 1, 3 and 4.

19 The COP has a setback through our list of uses of
20 200 feet from -- and this is just, again, the COP in
21 restaurants, so all the restaurants that would serve
22 any kind of liquor would be 200 feet from the
23 residential use. And we've not asked for a deviation
24 from any of the COP regulations.

25 THE HEARING EXAMINER: You're saying 200 feet?

1 MS. DAY: Two hundred feet.

2 THE HEARING EXAMINER: Normally there's a
3 500-foot separation is why I'm asking.

4 MS. DAY: These are the restaurants. But we have
5 not asked for, you know, any deviations from any other
6 thing.

7 THE HEARING EXAMINER: The reason I'm asking, I
8 think you need a deviation or something or a variance
9 if you're going to be closer than 500 feet from a
10 residential area, and that's the reason I raised the
11 question.

12 MS. DAY: It depends how you measure it, if you
13 measure it door to door and how you go.

14 THE HEARING EXAMINER: You could assume they're
15 going to measure it in the way that's best for the
16 county, which means it may not be best for you, so I'm
17 saying you may -- if you're asking for something
18 closer than 500 feet, we can do it in this process
19 rather than having you come back if that's what you're
20 asking for, but you're saying 200 feet and that's just
21 not going to fly unless you're going to ask for
22 something specifically to be closer than 500 feet.

23 MS. DAY: If we could come back later if we
24 needed a deviation for that.

25 THE HEARING EXAMINER: Okay. That's fine.

1 MS. DAY: We at the moment would not ask for
2 that, so our --

3 THE HEARING EXAMINER: The reason I'm saying is
4 if you don't ask for it, you may not be able to get
5 closer than 500 feet is the reason I raised the
6 question.

7 MS. DAY: I understand.

8 MR. CICCARONE: Thank you.

9 MS. DAY: So as far as location of the COPS, we
10 believe we have located the COPS. We have limited to
11 a short number of COPS and believe that addresses the
12 intent of, you know, insuring compatibility or
13 whatever the county's problem is with that.

14 BY MR. CICCARONE:

15 Q. Now, Carron, if I'm reading your exhibit
16 correctly, you could have all three in any one of these
17 three tracts, you could have two in one, one in another
18 and nothing in a third?

19 A. That's correct.

20 Q. Or you could have one in each. Is that correct?

21 A. Yes.

22 THE HEARING EXAMINER: Before we go on that
23 point, maybe it was the same question I was asking
24 before from Mr. Ciccarone. Let me ask staff.

25 Kay, why did you have these separated out?

1 Because it looks like you're saying they can have
2 these things and then someplace else we wouldn't
3 expect to find it you have to come in for a special
4 exception. Why didn't you have them as part of the
5 same condition? That's what confused me.

6 MS. DESELEM: For the record, Kay Deselem.

7 In the COP section and in the land development
8 section of the Land Development Code, it's my
9 understanding that you have to list them in the
10 schedule of uses, which we did. However, if you don't
11 show the specific location on the site plan, the
12 master concept plan, even though they're listed, you
13 don't necessarily get approval of them without coming
14 back through whatever process is deemed appropriate,
15 whether it be special exception or administrative
16 amendment.

17 We were trying to make our schedule of uses and
18 our conditions consistent with that portion of the
19 Land Development Code.

20 THE HEARING EXAMINER: Because to me it was
21 confusing because you're saying you can have them and
22 then three pages later you have conditions on when you
23 can have them, where normally those are put together
24 somehow or at least referencing you can have them
25 subject to Condition 13, 14 or whatever. That's what

1 confused me.

2 To me it's ambiguous. You can have them, you
3 can't have them. That's what was confusing me.

4 MS. DESELEM: Well, they're listed specifically
5 on the schedule of uses, so the potential is there to
6 have them.

7 THE HEARING EXAMINER: But they have to come back
8 through another public hearing process?

9 MS. DESELEM: But they have to come back. And
10 that's the way it's listed in the COP portion of the
11 Land Development Code and the matrix.

12 THE HEARING EXAMINER: Okay.

13 MS. COLLINS: It does say as limited below.

14 THE HEARING EXAMINER: All right.

15 MS. DESELEM: We tried to make it clear that
16 since we don't know where they are, it doesn't meet
17 the intent.

18 BY MR. CICCARONE:

19 Q. Carron, a couple more questions.

20 You may recall that I wasn't sure what we were
21 asking for with respect to the number of COPs in the club
22 recreation area, and a minute ago you referred to one in
23 that area. Are you sure you mean one?

24 A. No. To clarify the record, I did not mean one.
25 I mean COP in that area. I'm not sure how the county

1 counts them.

2 I have had lots of discussions with a lot of
3 different people as to exactly what we need to do. I have
4 been before the Hearing Examiner's Office lots of times.
5 I've put an asterisk that said COP -- like this, is
6 proposed to do COP, you know, on the club tract, and that
7 asterisk has been enough to put a COP in a restaurant, in
8 a cocktail lounge, in the clubhouse, if there's a
9 starter's box, starter's station, that they might have
10 beer, you know, outside, whether or not those buildings
11 were a little starter station with sandwiches or beer,
12 that asterisk has been adequate to have liquor in any or
13 all of those places.

14 I don't know whether it's -- we're compelled to
15 say exactly at this point that we're going to have, you
16 know, one starter's box with beer and a cocktail lounge
17 and a restaurant with, you know, COP in the restaurant.
18 If we are compelled to do that, we'll do it. I have never
19 had to do that before. And, you know, these restaurants
20 and cocktail lounges and starter's boxes in the golf
21 course clubhouses have all been built without any problem.

22 If we need to specify, we'll give you a shopping
23 list of wherever, you know, liquor could be in those
24 places.

25 Generally, the county's concern about the COP is

1 for the cocktail lounge, but if we're going to carry it to
2 any place that would have liquor in a restaurant and need
3 to specify that, as it seems to be we need to do on this,
4 we'll do that for you.

5 Q. Carron, have you had a chance to talk to Kay
6 about this? Do you know whether we have an agreement with
7 the staff on what you're proposing?

8 A. I believe the staff wants us to be very specific.

9 Q. You mean more specific than what you're
10 proposing?

11 A. I think so, and I don't know why, but --

12 Q. Well, we'll have to wait until we hear from the
13 staff on that.

14 THE HEARING EXAMINER: More specific than what
15 you're proposing? You just went through a litany of
16 things that might be included. More specific than
17 that or more specific than what you've written down?

18 MS. DAY: More like the litany of things.

19 THE HEARING EXAMINER: They want something more
20 specific than what you have just given me as list of
21 things?

22 MS. DAYS: I think they would like the litany of
23 things.

24 THE HEARING EXAMINER: All right. I wasn't sure
25 what more specificity meant.

1 MS. DAYS: I have never had to do that before,
2 and, you know, these golf course clubhouses are built
3 with liquor in various places. If, you know, the
4 staff position has changed and we need to cull those
5 things out, we're happy to do that. I'm not sure
6 whether that's required.

7 BY MR. CICCARONE:

8 Q. Carron, how about on the specificity for Tracts
9 1, 3 and 4? Do you know whether you and the staff have
10 reached an understanding?

11 A. The staff would like -- I believe the staff would
12 like us to come back through for hearings specifically on
13 each of those COPs. That is the staff position.

14 Q. Okay. All right. So we've agreed to disagree on
15 that.

16 Let's jump down to hours of delivery. It's
17 immediately below that. We had proposed 8:00 to 6:00; the
18 staff had proposed 9:00 to 7:00. Do we have an
19 understanding there or not?

20 A. The -- there's a couple places where there are
21 hours specified in the staff report. There's one on this
22 page that we're coming to. And then there's a little bit
23 different hours of operation for -- on the following page.
24 We have found lots of references to hours of delivery in
25 other zoning cases.

1 THE HEARING EXAMINER: I'll mark this as
2 Applicant's Exhibit Number 6, consisting of a list of
3 hours of delivery.

4 (Whereupon, Applicant's Exhibit No. 6 marked for
5 identification.)

6 BY MR. CICCARONE:

7 Q. Carron, before you do that, I see what you're
8 talking about. In the first instance, the hours of
9 operation are 7:00 to 10:00, but when you go down to B --

10 A. It's 8:00.

11 Q. Yeah, below it. It probably is on the next page,
12 hours of operation for MPD-1 are limited from 8:00 to
13 10:00, so what you're saying is that the 10:00 p.m. is
14 consistent, but not the opening time. The one case it's
15 7:00 and the other it's 8:00.

16 A. Right.

17 MR. CICCARONE: Maybe we could just ask Kay.
18 Which number do you mean?

19 MS. DESELEM: I'm just trying to see if you were
20 checking. No. For the record, it's obviously an
21 error on staff's part.

22 MR. CICCARONE: We prefer 7:00, but which one did
23 you mean?

24 MS. DESELEM: The 7:00 a.m. to 10:00 is
25 appropriate since we had listed that.

1 And for the record, note that that says open to
2 the public. People can be in those buildings other
3 than those times, it's just those are limiting to the
4 open to the public hours.

5 MR. CICCARONE: Thanks, Kay.

6 BY MR. CICCARONE:

7 Q. So, Carron, I guess at this point you're handing
8 out --

9 A. Well, there are a number of things that are
10 covered here. One is hours of operation, one is hours of
11 delivery and then there's -- we have found, you know --

12 Q. Wait. Let's stop for a second. What are you
13 handing out so that we can mark it here?

14 A. There's two exhibits. One addresses hours of
15 delivery in Estero Greens, Williams Place and Pelican
16 Landing Business Park. The first two of these --

17 THE HEARING EXAMINER: Before you go on, I have
18 marked that as Exhibit 7, so we have it on the record.
19 That's Applicant's Exhibit Number 7.

20 (Whereupon, Applicant's Exhibit No. 7 marked for
21 identification.)

22 MS. DAY: The first two of these were cases that
23 had existing residential adjacent and --

24 BY MR. CICCARONE:

25 Q. What's Exhibit 8 now, just so we get that marked,

1 too? That's the other one you handed out.

2 (Whereupon, Applicant's Exhibit No. 8 marked for
3 identification.)

4 A. That's -- that would address a couple of things,
5 but in this instance we would use it to address the
6 Paragraph D, the hours for consumption on premises, which
7 seems to be the primary staff concern.

8 Q. All right.

9 A. And we just -- let me back up. The hours of
10 delivery that were approved in those other cases are
11 consistent with what is suggested here and the applicant
12 has no issue with the hours of delivery.

13 THE HEARING EXAMINER: The hours of delivery you
14 are proposing, those are 6 o'clock, not 7 o'clock, so
15 what I was given before is different hours than what
16 the staff has?

17 MR. CICCARONE: Yes. That's for --

18 MS. DAY: I'm sorry, yes.

19 THE HEARING EXAMINER: So there is an issue on
20 the hours of delivery?

21 MS. DAY: One hour.

22 THE HEARING EXAMINER: Okay. Just want to be
23 clear. Okay.

24 MS. DAY: And that would be consistent with these
25 three cases.

1 THE HEARING EXAMINER: It may not be an issue,
2 but it's a difference?

3 MS. DAY: Yes.

4 BY MR. CICCARONE:

5 Q. So, Carron, what you're saying is that in Estero
6 Greens, Williams Place and I guess Pelican Landing, that
7 the hours that we're requesting are the same?

8 A. The hours of delivery.

9 Q. The hours are the same?

10 A. Yes.

11 Q. All right.

12 A. And in a couple of them they've limited those
13 hours only close to the residential use, but we were happy
14 to have those hours for the --

15 Q. For the whole project?

16 A. Wherever it is.

17 Q. Do you know whether we've got an agreement with
18 the staff on that?

19 A. I don't know.

20 Q. You don't know.

21 All right. So we'll put a question mark there.

22 A. So then the next thing which we would suggest,
23 which is not in the staff report, is coming out of another
24 project that Kay worked with us on. This is for the hours
25 of consumption on premises for outdoor seating, which

1 seems to be a problem, that it would limit the restaurants
2 to cease at 11 o'clock on Sunday through Thursday and
3 midnight on Friday through Saturday.

4 Q. And that would be under Site Development
5 Regulation B below that?

6 A. Yeah, that would be a fine place. It would refer
7 to any outdoor seating, wherever it might be.

8 Q. Whether it's COP or not?

9 A. Yes.

10 Q. All right.

11 A. Because that seems to be a problem for -- I don't
12 know whether it is in this for the neighbors here, but
13 oftentimes where there are adjacent residential uses, you
14 know, restaurant outside noise is a concern, so we would
15 propose to limit it to these hours for the restaurant's
16 outdoor activities.

17 THE HEARING EXAMINER: They're requiring,
18 according to this, that you have to get a special
19 exception for outdoor seating.

20 MR. CICCARONE: Yes.

21 MS. DAY: Yes. We're coming to that. We don't
22 agree with that.

23 THE HEARING EXAMINER: Okay. That's fine.

24 BY MR. CICCARONE:

25 Q. All right. MPD Tract 1, there's a -- right below

1 deliveries, it says outside speaker system, loudspeakers
2 or public address systems are prohibited in this tract.
3 And Tract 1 again is the --

4 A. The large --

5 Q. The large one, the interior one?

6 A. Yes.

7 Q. All right. Are we satisfied with that?

8 A. Yes, we have agreed to that condition.

9 Q. All right.

10 A. So under this MPD-1 we have proposed to adjust
11 the hours of delivery a little bit, to add these hours for
12 any -- you know, the outdoor seating or the consumption on
13 premises and proposed to delete the hours of business
14 because we think we have addressed the concerns of the
15 noise and the -- well, basically the noise, the delivery
16 noise and the outside seating.

17 THE HEARING EXAMINER: I got lost on that. Try
18 that one again. I don't know what you mean, they're
19 limiting the hours of operation. What are you talking
20 about?

21 MS. DAY: Eliminate the staff limitation. We
22 would like to omit from the conditions imposed on
23 MPD-1 this hours of operation provision.

24 MR. CICCARONE: I must have misspoke, then. I
25 thought we had agreed on that. Apparently we --

1 MS. DAY: I have looked in lots and lots of
2 cases, and the only time the hours of operation have
3 been imposed on a project have been for the drugstore,
4 the Walgreens, which we have located away from the
5 residential uses. We have located a drugstore only on
6 Tracts 3 and 4. For Home Depot, you know --

7 THE HEARING EXAMINER: What's going on Tract 1
8 again? I don't have the tracts clear in my mind.
9 What is Tract 1 designated for? Retail?

10 MS. DAY: Yes.

11 THE HEARING EXAMINER: You want to have retail 24
12 hours a day?

13 That's what you're saying, basically. I'm not
14 arguing with you, I'm just asking you the question.
15 You want to have no restrictions, so --

16 MS. DAY: We want to have no restrictions.

17 THE HEARING EXAMINER: If you want retail 24
18 hours a day, like a 24-hour-a-day Walgreens or Publix.
19 I'm just asking. That's what you're saying.

20 MS. DAY: Most of the uses that are 24-hour uses,
21 we have limited those specific uses to the tracts
22 outside. The Walgreens has to be on the outside
23 tracts.

24 THE HEARING EXAMINER: I'm asking a different
25 question. What kind of uses can you have on that

1 tract? And I'm not asking you to explain everything.

2 MS. DAY: The kind of uses we could have on that
3 tract would be restaurants, which we have limited this
4 other way, and a regular strip shopping center.

5 THE HEARING EXAMINER: What do you want to have
6 open 24 hours a day, is all I'm asking you. Anything
7 on that tract? I'm not saying you're going to do
8 that. I'm asking because I don't understand what
9 you're saying. I'm not asking to question you. I'm
10 asking you -- I don't understand what you're saying to
11 me. You say you don't want to have any limitation on
12 hours of operation. For what?

13 MR. CICCARONE: Carron, I think --

14 MS. DAY: For -- because I see no basis for that
15 in any other cases.

16 BY MR. CICCARONE:

17 Q. Carron, before you -- we're talking now just
18 about Tract 1?

19 A. Yes.

20 MR. CICCARONE: That's the question?

21 THE HEARING EXAMINER: Yeah.

22 Q. In other words, what the Hearing Examiner is
23 asking you is: Are you proposing on Tract 1 to have no
24 limit on the hours of operation, and, if so, what uses are
25 you envisioning there that would require that sort of

1 treatment of hours of operation? I think that's what I'm
2 hearing. And we understand that the heavy uses, if you
3 would, would be on the roadway, but the staff --

4 A. Have been eliminated.

5 Q. -- but the staff is not proposing to limit hours
6 of operation along the roadway, so we're just talking
7 about the interior portion. We just want to make it clear
8 what we're asking for.

9 So you're saying that even though we don't
10 envision any 24-hour-use there, we still don't want to
11 have any limitation on the hours of operation?

12 A. Yes.

13 THE HEARING EXAMINER: That's all I was asking.
14 I wasn't trying to limit you. I wanted to know what
15 you're asking for.

16 Okay, I understand now.

17 BY MR. CICCARONE:

18 Q. Do we have an agreement or disagreement with the
19 staff on that?

20 A. I don't know.

21 Q. Well, we'll come back to that.

22 Carron, let's go down to outdoor seating below
23 this.

24 A. Before we move on for that, if the Hearing
25 Examiner feels compelled to impose hours of operation on

1 it, we need more hours than this. I mean a typical
2 restaurant as we talked about here is open until midnight
3 on the weekends, so that ten o'clock hours are not -- if
4 we have to have limitations, we need a broader hour range
5 than this.

6 THE HEARING EXAMINER: It went from one extreme
7 to the other. They had time limitations to no
8 limitations. And I wasn't trying to limit what you're
9 asking for, I just want to know what you're asking
10 for. That's the only reason I raised the question.

11 MR. CICCARONE: We'll come back to that after the
12 staff speaks to it. We'll see if we can come to an
13 agreement.

14 BY MR. CICCARONE:

15 Q. Carron, let's go down to outdoor seating. What I
16 told the Hearing Examiner is we didn't think that a
17 special exception should be required if we modified that
18 to say that outdoor seating may not be located within 200
19 feet from existing residential uses and, if it is located,
20 it must be on the side or sides of the building opposite
21 from residential uses and that regardless of whether it's
22 a COP use or not, it should cease as of 11:00 p.m. Sunday
23 through Thursday and 12:00 midnight on Friday and
24 Saturday. Did I correctly state our position?

25 A. Yes.

1 Q. All right. Do we have an agreement with the
2 staff on that as far as you know?

3 A. I don't know.

4 Q. All right. We'll put a little question mark
5 there.

6 Then below that I believe we heard Kay say that
7 8:00 a.m. to 10:00 p.m. is a typo, that should be 7:00 to
8 10:00, but your position on that is we want that deleted?

9 A. Yes.

10 Q. Okay. All right.

11 A. And can I go back to outdoor seating just for one
12 second?

13 Q. Sure.

14 A. The staff admitted that we probably shot
15 ourselves in the foot by asking for outdoor seating, that
16 if we had not asked for it we would have no limitation on
17 where it would be or what hours it would be, and I would
18 like that we not be penalized for being more
19 straightforward in what we're actually doing.

20 THE HEARING EXAMINER: Would the outdoor seating
21 be 24 hours a day also?

22 MS. DAY: No. We already limited that through
23 the restaurant to, you know, eleven o'clock and twelve
24 o'clock.

25 THE HEARING EXAMINER: Okay.

1 MS. DAY: The only time that I'm aware that the
2 outdoor seating has been debated here is three cases,
3 and the worst limitation was 200 feet from residential
4 use, which we've already conceded. It's never ever
5 had to come back for a special exception for seats
6 outside.

7 THE HEARING EXAMINER: What has never had to come
8 back?

9 MS. DAY: The staff has asked that we have a
10 special exception.

11 THE HEARING EXAMINER: You mean in a planned
12 development concept situation?

13 MS. DAY: Yes. I'm sorry. In planned
14 developments.

15 THE HEARING EXAMINER: Okay. That's what --

16 MS. DAY: I have never ever seen it required that
17 we come back through for a special hearing to be able
18 to sit outside.

19 BY MR. CICCARONE:

20 Q. To paraphrase your testimony, I think you're
21 saying in your experience you have never known this type
22 of requirement to be imposed on a planned development
23 applicant?

24 A. No.

25 Q. All right. Carron, let's jump over to golf

1 course conditions because I know that may take a little
2 discussion.

3 You have the Miromar conditions which we are
4 proposing in the alternative. I don't believe that this
5 Hearing Examiner had that case, so you may have to explain
6 them a little bit.

7 THE HEARING EXAMINER: I'll mark these as
8 Applicant's Exhibit Number 9, the Miromar Lakes MPD
9 DRI conditions for the golf course.

10 (Whereupon, Applicant's Exhibit No. 9 marked for
11 identification.)

12 BY MR. CICCARONE:

13 Q. Let's see if we can speed it up real quick. Do
14 you know if the staff agrees to this?

15 A. I do not.

16 Q. All right. Go ahead. Just explain the
17 difference between Miromar Lakes and what the staff is
18 proposing for Estero Golf Resort.

19 A. There really are not that many differences. The
20 staff has relied on a -- the Miromar Lakes case was after
21 the case that the staff is referring to, and we honestly
22 spent two full days of testimony going over the details of
23 the golf course conditions and we have no intention of
24 exciting you with those conditions here today.

25 THE HEARING EXAMINER: Do any of these, either

1 the staff's or yours, fall under the best management
2 practices kind of a category?

3 MS. DAY: Yes.

4 THE HEARING EXAMINER: All right. Is there a
5 best management practices booklet that spells these
6 out?

7 MS. DAY: There's lots of booklets.

8 THE HEARING EXAMINER: Because I have seen one.
9 I just was wondering if it was easier simply if you
10 can agree among yourselves and the staff that you
11 follow the best management practices; rather than
12 having this detailed information, if there's a way of
13 identifying those best management practices
14 specifically.

15 MS. DAY: The staff refers to best management
16 practices prepared by Florida Department of
17 Environmental Protection, May 1995.

18 THE HEARING EXAMINER: Which is the one I think
19 I'm familiar with. Okay.

20 MS. DAY: And that is, you know, the applicant's
21 intent, and the differences between these, there
22 really are not that many differences. The differences
23 are in the staff report. I, J and K are not included,
24 nor F. They're very specific. We're talking about
25 underdrains for the tees and greens and we just don't

1 see that that level of detail is necessary.

2 BY MR. CICCARONE:

3 Q. F, I, J and K? And your testimony is that in
4 Miromar Lakes, which is --

5 A. And L. F, I, J, K and L were not included in the
6 Miromar Lakes. The numbering system is different. But if
7 you look at the staff report, those are the ones that were
8 not adopted in Miromar Lakes.

9 Q. So if I understand your testimony, Miromar Lakes
10 is the latest example of which you are aware of how the
11 county has dealt with specificity beyond best management
12 practices, and the applicant would be willing to agree to
13 those same conditions, but we certainly wouldn't have any
14 objection if the Hearing Examiner merely recommended best
15 management practices, et cetera. And I guess the question
16 then would be: Do you agree best management practices as
17 prepared by the Florida Department of Environmental
18 Protection, May 1995, as amended?

19 A. There was a lot of stuff. I don't, I don't know
20 whether there's a more recent case than Miromar Lakes that
21 has adopted golf course conditions. What I do know is
22 that Miromar Lakes is more recent than the one that the
23 staff refers to, not by a lot of time but by some time,
24 and that the Miromar Lakes property was -- is much more
25 sensitive. It's adjacent to a slough; there are major

1 lakes there. Much more sensitive than this particular
2 property. And that they were adopted, you know, after the
3 Hawk's Haven or Hawk's whatever it's called, so that we
4 would propose that what was good for that project should
5 be adequate here.

6 Q. Well, let me make sure I understand, though. If
7 the Hearing Examiner were to decide that that's too
8 specific and he would recommend that the board simply
9 require best management practices --

10 A. That would be wonderful.

11 Q. -- do we have an agreement as to what document we
12 would refer to to determine what those practices are?

13 A. It's my understanding that the one that's cited
14 is that one. We could check and make sure that it's the
15 most recent.

16 Q. Well, I think what we better do is make sure when
17 we talk with the applicant that they agree with that. I
18 don't know. But before we would agree to that, I think we
19 better make sure that we know what we're talking about.

20 THE HEARING EXAMINER: I may need some more
21 information on why this is not like Miromar Lakes.
22 You're saying we shouldn't because this is more recent
23 or less recent. I need some planning reasons why the
24 conditions that the staff is recommending are not
25 applicable in this case.

1 I know they may seem somewhat onerous to the
2 applicant, but why are they not applicable? Just
3 because they haven't been used in another project, why
4 shouldn't they be used here? I need something more --

5 MS. DAY: They're very, very specific. You know,
6 as the Hearing Examiner has offered to say best
7 management practices, if you looked at something that,
8 you know, has stood the test of time, that makes more
9 sense.

10 On that case we spent all those days trying to
11 avoid getting into the specific design of the tees and
12 greens because that really is something that's an
13 evolving, you know, process, so to design underdrains
14 for the tees and greens at this point seems ridiculous
15 for the county to be engaged in. So we were able to
16 eliminate those very specific provisions from the
17 Miromar Lakes thing by lots of testimony on it, and we
18 just ask for that same elimination here.

19 THE HEARING EXAMINER: Okay.

20 BY MR. CICCARONE:

21 Q. Carron, let's jump over to Condition 18.

22 A. Do you want to talk about the resolution on
23 Oriole?

24 MS. COLLINS: What about 11?

25 MS. DAY: Yeah, that's 11.

1 BY MR. CICCARONE:

2 Q. Well, I thought we had, I thought we had an
3 agreement on that.

4 A. I think we have an understanding, but if we
5 could --

6 Q. All right. Go ahead and explain it.

7 A. -- talk about it a little bit.

8 Q. All right.

9 A. Condition Number 11 and Deviation 8 are related.
10 Deviation 8 asks for relief from the provision that you
11 have two access points into a residential development, and
12 our request for Deviation 8 was to have the one access and
13 then to have an emergency access connecting to this Oriole
14 Road.

15 Oriole is here. It's to the north of the
16 project. And the concern is for the residential part
17 that's east of -- and it's my understanding that there is
18 an agreement that we could have the connection to Oriole
19 as an emergency as an answer to our Deviation Number 8.
20 The way the staff report is written right now, it says to
21 deny Number 8, but I believe that that conclusion has
22 evolved to an approval, given that the Oriole is a -- that
23 we provide an emergency access there.

24 Q. Okay.

25 A. Eighteen?

1 Q. Eighteen. I think we had suggested that 18 be
2 deleted and that the quadruple asterisk reference in the
3 property development regulations be substituted, but
4 maybe --

5 A. The first part of 18. The second part of 18 says
6 that Type E buffer, which we have agreed to.

7 Q. Okay, so -- and we may want to come back to the
8 question of what to do with the first sentence when we
9 talk about the property development regulation issue in
10 general.

11 A. So 18 is Tract 5, is this residential tract. And
12 as it is now, the applicant has proposed, and this is that
13 triple asterisk, that building height in that tract be
14 limited to 35 feet within 200 feet of The Vines or San
15 Carlos Park. It's actually -- that asterisk applies
16 someplace else also, but 200 feet for this tract, 35 feet
17 limitation.

18 The staff has correctly pointed out that we did
19 not specify a number of stories there, you know, as we
20 have in the rest of the property development regulations,
21 and we would offer two stories within the first 200 feet.

22 THE HEARING EXAMINER: Is it three or four
23 asterisks?

24 MS. DAY: Four. It's the last --

25 THE HEARING EXAMINER: Okay. Thank you.

1 BY MR. CICCARONE:

2 Q. Are you suggesting that we would change the
3 language under the quadruple asterisk to also incorporate
4 a two-story height limit?

5 A. Yes. And we believe that with that limitation
6 and with the Type E buffer, that that should address the
7 compatibility between The Vines and this project.

8 THE HEARING EXAMINER: Question?

9 MS. DESELEM: Yes, just to clarify. She says
10 that -- Carron is saying that the Type E buffer is
11 shown, you have already agreed to it, but on the
12 master concept plan it doesn't show the B.

13 MS. DAY: No, no, no. Type E, we agreed to what
14 the staff has said. We don't object to the staff's --

15 THE HEARING EXAMINER: They want to leave that
16 part of the condition in there.

17 MS. DAY: Yes.

18 MS. DESELEM: You would be also changing the
19 quadruple asterisk note to say that the Type E buffer
20 would extend as noted in the staff report, not the
21 Type B buffer that's shown adjacent to MPD-5.

22 MS. DAY: What I would like to do is when we
23 finish this hearing to, following the consensus that
24 we have, to update the master plan, and when we
25 updated that plan it would show an E along that

1 property line.

2 THE HEARING EXAMINER: So you would like to
3 update it on those points you agree with and leave it
4 up to me and the board to decide on the other issues?

5 MS. DAY: Yes. And one of those updates would be
6 to put in E. We do agree with the E along that
7 stretch.

8 BY MR. CICCARONE:

9 Q. Specifically, Carron, along the office tract it
10 says Type A. Are you saying we would change that to Type
11 E?

12 A. No. It's this segment that's of concern. This
13 is the Tract 5. So we put a Type E buffer here to try to
14 address the compatibility. Type B buffer is what's
15 required between single family and the multifamily, and we
16 have agreed to augment that buffer to address any
17 compatibility issues, so it would just be extending that
18 Type E buffer up to here.

19 There's no need for that kind of a buffer along
20 the office tract because this is a CC existing zoning and
21 I believe it will develop as commercial. There are signs
22 out there now. So it will just be extending the Type E up
23 to the railroad.

24 Q. The reason I asked the question is the staff
25 language says a Type E buffer must be provided along the

1 perimeter property line that is shared with The Vines,
2 extending from the U.S. 41 frontage, and I'm trying to
3 determine whether that language means --

4 A. Okay. Then you're correct. We don't agree with
5 the whole part of that.

6 Q. That's what I'm getting at. In other words,
7 we're proposing on the master concept plan to leave the
8 Type A buffer where it is, but the Type B buffer to the
9 northeast of it we would propose to change to a Type E
10 until we get to the railroad crossing.

11 A. That's correct.

12 Q. Now, I'm going to guess we don't have an
13 agreement with the staff on that.

14 You don't know? All right. Well, we'll take
15 that up when we hear from the staff.

16 Carron, how about the maintenance facility being
17 relocated between MPD-9 and the railroad right-of-way? Do
18 we have an agreement on that?

19 A. Yes, we have an agreement on that. The Hearing
20 Examiner has a little sketch that we talked about the
21 COPS.

22 Q. This one here.

23 A. The little colorful sketch. There it is.

24 THE HEARING EXAMINER: That's Applicant's Exhibit
25 Number 5.

1 A. (Cont'g.) Let me refer to that and the master
2 plan so you understand.

3 The issue is the golf course maintenance facility
4 on the master concept plan that was, you know, submitted
5 through the process is located on Koreshan and the
6 railroad. There was a lot of concern expressed by the
7 staff about the location of this and the impact on the
8 traveling public, and the applicant has agreed to relocate
9 that golf course facility to an area in between the
10 clubhouse tract and the railroad and that's shown on that
11 little handout in that location and I believe that the
12 staff is comfortable with that change.

13 We also as part of that change, and Mr. Ciccarone
14 mentioned it earlier, would remove the right-in, right-out
15 access onto Koreshan and locate the tract there.

16 The way that the staff's staff report is written
17 doesn't exactly do that. It locates the golf course
18 facility to our clubhouse tract, and we'd actually like it
19 to be west of the clubhouse tract, as we have depicted on
20 that little exhibit.

21 And then the other little cleanup part of that
22 item is that they have said that the -- what was formerly
23 the maintenance facility would be residential only, and we
24 just need to be sure that it's residential and golf course
25 in that. And I believe there's no problem with the staff

1 on either of those two little changes.

2 Q. Specifically, what was MPD-7 has now become part
3 of MPD-6?

4 A. Yes.

5 Q. Carron, let's take a look at deviations. I had
6 told the Hearing Examiner that I thought that we were
7 comfortable with withdrawing 5-A, 5-B, 6 and 7. As far as
8 you know, that's correct?

9 A. Those are all the model home related deviations.

10 Q. Do we disagree with the staff recommendation on
11 Deviation Number 2?

12 A. No. The only two deviations that are still under
13 discussion are Deviation Number 8 and 11. We have either
14 agreed to the conditions or we have withdrawn the
15 deviations.

16 Q. Let me go back up to Number 2, though, and ask
17 you to look at the last sentence.

18 To my knowledge, we have not yet agreed to
19 reserve any land for the northerly extension of Sandy
20 Lane. We're willing to talk about it, but as far as I
21 know, the applicant hasn't yet agreed to it.

22 Were we proposing a 25-foot setback for water
23 retention in this area?

24 A. No. At one time we were. We withdrew that
25 months ago.

1 MR. CICCARONE: So I think, Mr. Hearing Examiner,
2 what we wanted clearly understood is that our
3 inclination not to object to this language is because
4 it's irrelevant to our plans, not because we are
5 impliedly agreeing to provide right-of-way for Sandy
6 Lane.

7 MS. DAY: I thank you for that clarification.

8 MR. CICCARONE: We ask you to address that
9 however you deem appropriate.

10 BY MR. CICCARONE:

11 Q. So, Carron, you're saying that with respect to
12 Deviation 8 and 11 we need further discussion?

13 A. Eight, I think we have discussed that fairly
14 fully. That's the emergency connection to Oriole as an
15 answer to providing a second access to the project.

16 Q. Did you say that we must discuss it or we have
17 discussed it?

18 A. I think we have.

19 Q. I kind of thought so, too. Kay will tell us if
20 we're mistaken.

21 Let's look at 11, then. This is the stacking
22 issue. And my understanding is you've got some
23 alternative wording to propose to the Hearing Examiner.

24 A. I do. I also have a couple of newspaper articles
25 for the Hearing Examiner to look at.

1 THE HEARING EXAMINER: I'm going to have to
2 re-number these when I get a chance. I notice that I
3 have the same exhibit marked twice and two different
4 numbers, so I will have to straighten it out at some
5 point. I was looking for a missing exhibit, and
6 actually I called one by two different numbers. So I
7 will straighten the numbering system out when I get it
8 straightened out.

9 I will mark this 10 anyway even though I think
10 it's really 9, and Applicant's Exhibit Number 10
11 consists of four newspaper articles.

12 (Whereupon, Applicant's Exhibit No. 10 marked for
13 identification.)

14 BY MR. CICCARONE:

15 Q. Carron, before we inundate the Hearing Examiner
16 with more exhibits, what is the purpose of Exhibit -- I
17 guess Composite Exhibit 10? What are we trying to show
18 him with these?

19 A. These are four projects, one is in Lee County,
20 the other three are in Collier County, that illustrate the
21 reason we need this deviation. If the Hearing Examiner
22 looks at those photographs or sketches -- I think they're
23 photographs, all of them. Looking at the photographs or
24 driving by, one would think those were town houses. They
25 have -- they're two stories, they're a small number of

1 units, they each have a garage and they each have an
2 individual driveway. And that's what the applicant would
3 like to have the ability to construct on part of this
4 project are units that are -- they're all different
5 designs, but basically they have those same features, two
6 stories, individual garages, individual driveways. Put
7 little lines or underlines next to some of the text there.
8 And you will see when you're looking at it that those in
9 fact are not town houses. Those would be classified in
10 Lee County as multifamily.

11 Q. What's the difference?

12 A. The difference is a town house, the units are
13 beside each other. In a multifamily, they are on top of
14 each other. So in each of these buildings there are flats
15 on top -- there are units on top of each other. So in Lee
16 County's definitions those are not town house, those
17 buildings are multifamily, even though from driving by or
18 looking at those photographs one would think that you were
19 looking at what normally would be considered a town house.

20 Q. For the benefit of the public, what do we mean by
21 stacking?

22 A. Unit on top -- oh, stacking.

23 Q. Stacking, right.

24 A. Our deviation asks to be able to treat these
25 multifamily buildings as a town house or other building

1 products that allow you to be able to park one vehicle
2 behind the other one. You know, as in your single family
3 home you're required to have two parking spots, where in a
4 town house you might be required to have two parking spots
5 and you can put one of those parking spots in your garage
6 and the other one in the driveway behind the garage. And
7 that -- the ability to stack, to put one car behind the
8 other, is permittable in Lee County in single family,
9 two-family attached town house. It's not permittable in
10 multifamily.

11 And because there's no particular provisions for
12 this type of multifamily product that actually functions
13 in that way, like a town house, we have asked for a
14 deviation to be able to stack the cars, to be able to
15 count that parking spot that's in front of the garage.

16 THE HEARING EXAMINER: So it's possible that
17 someone could have a car parked behind them from one
18 of the other tenants?

19 MS. DAY: Yes.

20 THE HEARING EXAMINER: And they can't get their
21 car out?

22 MS. DAY: No, because these are -- if you look at
23 the --

24 THE HEARING EXAMINER: That's why I asked the
25 question. If it's not, tell me.

1 MS. DAY: It would be the same as your house.

2 THE HEARING EXAMINER: But my house is one
3 person, so if my wife says move the car, I move the
4 car. If my neighbor says move the car, I may not want
5 to move the car.

6 If you're allowing different people to be stacked
7 behind different people, that's the only reason I'm
8 asking the question. If I'm wrong, tell me.

9 MS. DAY: When those units are sold, they're sold
10 with that driveway. It's part of the unit. So if
11 someone else were parking in that driveway, they would
12 be parking on your property.

13 THE HEARING EXAMINER: So you're not going to
14 have different owners parking behind one another?

15 MS. DAY: No, no. The stacking that we would
16 want to attribute to the unit would be the one that
17 would be right in front of the garage.

18 THE HEARING EXAMINER: So in effect you want to
19 allow each individual unit to allow stacking for that
20 individual unit, not stacking for multiple units?

21 MS. DAY: Exactly.

22 THE HEARING EXAMINER: I don't know if that's the
23 way the staff understood it. It may have been, may
24 not have been, okay, because I didn't understand it
25 that way.

1 MS. DAY: We have asked for it. We have
2 submitted to the staff and I think I have a copy for
3 you some language that would address what our request
4 is.

5 THE HEARING EXAMINER: Does your language clarify
6 that point that I just brought up?

7 MS. DAY: I hope so.

8 THE HEARING EXAMINER: Thank you.

9 MS. DAY: That's the memo we sent to Kay
10 yesterday.

11 THE HEARING EXAMINER: This is a two-page memo.
12 I'll mark this as Applicant's Exhibit Number 12 -- I'm
13 sorry, Number 11.

14 MS. DAY: If you look at --

15 THE HEARING EXAMINER: Let me finish so I can get
16 it on the record.

17 I'm going to mark this as Applicant's Exhibit
18 Number 11. I'm sorry. There is something -- again I
19 have done something wrong here. I don't know.

20 Let me do something mechanical here first.

21 I'm going to change the Applicant's Exhibit
22 Number 11 to Applicant's Exhibit Number 10, which is
23 the newspaper articles. Now I'm going to mark Florida
24 Land Planning Memorandum to Kay from Carron Day as
25 Applicant's Exhibit Number 11.

1 I want to keep these straight because I'll never
2 get them straight again if I don't do it now.

3 Thank you. I'm sorry.

4 (Whereupon, Applicant's Exhibit No. 11 marked for
5 identification.)

6 BY MR. CICCARONE:

7 Q. Carron, for the benefit of those who don't have a
8 copy of that, why don't you read what you're proposing.

9 A. And if the Hearing Examiner will note, there is
10 one line scratched out. Deviation 11 seeks relief from
11 Land Development Code Section 34-2015(2)c and 34-2020(1)c,
12 which prohibits the stacking of vehicles in multifamily
13 developments to allow stacking of vehicles in driveways of
14 multifamily buildings of eight units or less in total when
15 the first parking space is in an individual garage and
16 when it can be demonstrated at the time of development
17 order that adequate line of sight visibility is provided
18 to insure safe exit onto the road.

19 It maybe needs to be modified when the first
20 parking space is in an individual garage and the stacked
21 is in an individual driveway.

22 THE HEARING EXAMINER: Maybe the same individual
23 driveway. The problem I think everybody is going to
24 have here is the way the language is now, somebody --
25 even though these are individual units, the way it

1 reads, you may change the design and you may have two
2 apartments, one above the other, where you're going to
3 have one of the apartment dwellers parking behind the
4 other one. That's what I think the county is trying
5 to avoid.

6 Maybe that language has to be changed to make
7 sure that the stacking can only be done by a resident
8 of the same unit or something like that. I think
9 that's what -- maybe that's not addressing their
10 issue, but it's unclear to me that that wouldn't be
11 allowed, or that would be allowed the way the language
12 is written now.

13 MS. DAY: Uh-huh.

14 THE HEARING EXAMINER: So it was never your
15 intention to have people parking behind someone else
16 from a different unit?

17 MS. DAY: That's correct.

18 THE HEARING EXAMINER: Okay.

19 MS. DAY: Our intention is to treat these
20 buildings like the town houses are treated where the
21 garage and the driveway configuration is the same.

22 THE HEARING EXAMINER: But you indicated the
23 difference between a town house and a multifamily -- a
24 multi unit was that one was above the other. The town
25 houses side by side is not a problem; you have

1 separate driveways. Here you may have the same
2 driveway for two units, and that's what I think
3 they're trying to avoid. If you don't have the same
4 driveway for two units, it's not a problem. I'm not
5 saying it's not a problem. It's clear to me what
6 you're intending.

7 MS. DAY: That is the intent. And if we need to
8 work on this a little bit, we'll do that.

9 MR. CICCARONE: Carron, let's make a note to work
10 on that. I think we'll have time over lunch and it's
11 an important issue. I don't know that there's
12 opposition to it. We can cure the mechanics of it.
13 But I understand what the Hearing Examiner is saying.
14 He doesn't want to create a series of potential
15 disputes over parking, and so we need to come up with
16 a way to make sure that the owners are not able to
17 interfere with each other's parking.

18 MS. DAY: Okay.

19 MR. CICCARONE: So let's work on that over lunch.

20 Carron, I think that the last significant issue
21 for you is the property development regulations
22 matrix. And I guess you'll have to give us an idea
23 how long you think it would take to make your
24 presentation.

25 MS. DAY: Not very long. Do you want to come

1 back and do it?

2 MR. CICCARONE: Well, it's up to the Hearing
3 Examiner. I just wanted to give him some idea.

4 THE HEARING EXAMINER: When we finish this issue,
5 is that all you're going to be doing? As soon as you
6 get to the other two issues and the staff makes their
7 presentation, do you have another witness?

8 MR. CICCARONE: No. This is it.

9 THE HEARING EXAMINER: Why don't we finish this
10 portion of it, then.

11 UNIDENTIFIED SPEAKER: We would like to witness
12 before lunch. We don't have much to say. We're
13 neighbors in The Vines.

14 THE HEARING EXAMINER: Why don't we do this.
15 After we finish her presentation, I'll have you come
16 up and make your statements and then we'll take a
17 break for lunch. If you want to come back, you're
18 welcome to; if you don't, that's your call.

19 UNIDENTIFIED SPEAKER: Thank you.

20 MR. CICCARONE: I don't have any objection if
21 they want to speak now.

22 THE HEARING EXAMINER: That's all right. We'll
23 finish this up. I'm not going to break for lunch
24 until we're finished.

25 And, again, with my peculiar numbering system,

1 this will be Applicant's Exhibit Number 12, consisting
2 of property development regulations.

3 (Whereupon, Applicant's Exhibit No. 12 marked for
4 identification.)

5 BY MR. CICCARONE:

6 Q. Carron, you handed me two documents. Did you
7 just hand the Hearing Examiner two documents also?

8 A. Yes.

9 Q. One is property development regulations and the
10 other is lot coverages?

11 A. Yes, because the lot coverage is a specifically
12 important issue for us.

13 THE HEARING EXAMINER: All right. The property
14 regulations I will mark as Applicant's Exhibit Number
15 12 and the lot coverage as Applicant's Exhibit Number
16 13.

17 (Whereupon, Applicant's Exhibit No. 13 marked for
18 identification.)

19 BY MR. CICCARONE:

20 Q. Carron, so we can keep this straight, you're
21 trying to compare what we're proposing against what the
22 staff is proposing?

23 A. Yes.

24 Q. Now, how do we do that using these two documents?
25 Which is which?

1 A. The legal sheet has both. The applicant's
2 property development regulations are presented on the
3 master concept plan in the top left of the master concept
4 plan. And we spent a lot of time looking at those
5 regulations and trying to develop a set of property
6 development regulations that would suit this particular
7 property and the products that this developer was
8 proposing to construct on this property. I mean they
9 weren't just out of a cookbook.

10 Q. Let me just ask, this, this sheet you just handed
11 out here, Applicant's Exhibit 12, these are the staff's
12 numbers?

13 A. They're both. The EGR is the Estero Golf Resort.

14 Q. That's what I'm trying to determine.

15 A. We prepared this so that we would see what the
16 differences were because the staff's property development
17 regulations came in a different format for us to look at.

18 Q. Now, I don't want to beat this unnecessarily.
19 You have had some opportunity to talk with the staff about
20 these numbers. Have we been able to resolve any of the
21 differences?

22 A. We have not had a substantive debate on the
23 differences.

24 Q. Well, the numbers --

25 A. It didn't seem to me the staff was very invested

1 in their numbers, but Kay can speak to --

2 Q. All right.

3 THE HEARING EXAMINER: Is it possible at some
4 point for you and the staff to get together and
5 resolve some of these? I think a lot of issues that
6 are coming up now may be resolvable and I'm not sure
7 we're there yet. I'm not sure if we needed more
8 negotiation time before the hearing or what happened.
9 Maybe people came in at later stages of the process.
10 I don't know. But it seems there's an awful lot of I
11 don't knows at this particular point. Normally we
12 have fewer I don't knows at this particular point. I
13 can see having disagreements, but not I don't knows.

14 MS. DAY: Some of the staff members were not in
15 the building yesterday, so it was difficult to reach
16 them.

17 THE HEARING EXAMINER: All right. I don't want
18 to upset anybody's lunch plans, but maybe we can have
19 a little longer lunch and resolve some of those
20 things.

21 MS. DAY: That's not a bad idea.

22 MR. CICCARONE: It seems to me, Mr. Hearing
23 Examiner, maybe we ought to ask Kay and Carron to
24 spend a little time over lunch seeing if they can
25 eliminate some of these differences so we can focus on

1 what's left rather than have Carron justify something
2 that staff may not care to hear. That's just a
3 suggestion.

4 THE HEARING EXAMINER: It's not only on these
5 items, it's some of the earlier items where you
6 weren't sure whether they agreed or disagreed.

7 I don't know if that's amenable to staff.

8 MS. DESELEM: In all candor, I didn't get into
9 most of this until 3:45 yesterday. We haven't had a
10 chance to go over it.

11 THE HEARING EXAMINER: I'm doing a different
12 thing. I'm not faulting anyone for it. I'm simply
13 saying there may be more areas of agreement on this.
14 If there are not, I understand --

15 MS. DESELEM: I think there are. I do believe
16 there are.

17 THE HEARING EXAMINER: Let me do this if you
18 don't mind. Let me stop you at this particular point,
19 have the gentlemen who have to speak before we break
20 for lunch. Then we'll break for lunch, maybe take a
21 longer lunch so maybe you can resolve some of these
22 issues and then come back with what you can't agree
23 with.

24 MS. DAY: That would be very nice.

25 THE HEARING EXAMINER: Who would like to speak?

1 You both?

2 UNIDENTIFIED SPEAKER: Can we both come?

3 THE HEARING EXAMINER: Sure. First come, first
4 serve.

5 And I'll ask you to raise your right hands so I
6 can swear you in.

7 (Whereupon, Kay Rote and Lou Corsiglia were duly
8 sworn.)

9 THE HEARING EXAMINER: Give your name.

10 MR. ROTE: I'll identify myself. I'm Kay Rote,
11 R-O-T-E.

12 THE HEARING EXAMINER: Thank you. And Kay, is
13 that an initial, is that a name?

14 MR. ROTE: That's a first name, K-A-Y.

15 MR. CORSIGLIA: And my name is Lou Corsiglia,
16 C-O-R-S-I-G-L-I-A.

17 THE HEARING EXAMINER: Thank you.

18 MR. ROTE: We represent The Vines Community
19 Association. We're both board members of that
20 association's board, and we will be good neighbors and
21 next-door neighbors of the planned community that's
22 being discussed today.

23 We would first like to thank Miss Davis and her
24 staff for being so cordial with us. We met with them
25 at our request five or six weeks ago and they were

1 very helpful and provided copies of the plans and so
2 on and were very informative. I'd also like to thank
3 the Hearing Examiner for letting us speak today.

4 THE HEARING EXAMINER: You're welcome.

5 MR. ROTE: I wrote a letter to Miss Davis
6 expressing some of our issues and concerns, and I
7 don't have a copy of that. Perhaps I should have
8 brought one. Perhaps she can supply one if it's
9 useful.

10 But I'll summarize, anyway. Our concerns were,
11 and this has been mentioned already, the depth of the
12 lakes excavations that might be done on this property.
13 We would hope that they would not have an effect on
14 the water level of our lakes. Now, we -- perhaps that
15 needs to be verified based upon what the engineering
16 discussions were. It sounds like it's already been
17 addressed and may not be a problem. We wanted to go
18 on record as that is a concern.

19 Secondly, digging and blasting if required for
20 the lake excavations we hope would not result in
21 damage or vibrations that could cause community
22 homes -- Vines community homes any damage. The
23 engineer spoke to that, but by his admission he was,
24 quote, not an expert. Perhaps we should have an
25 expert address that. We're very concerned about

1 blasting because we're only going to be as close as
2 300 feet, homes will be 300 feet from where the lakes
3 would be proposed.

4 Thirdly, we would hope the tree and shrub removal
5 along our southern fence, and that's that straight
6 line that runs on a diagonal there, any work that's
7 done should not destabilize the fence, the footings
8 and the posts or the fence itself. And that's
9 surrounded now by melaleuca trees and brush and trash,
10 and if that's going to be required to be removed,
11 which I suspect it will, we don't want to have our
12 fence fall down as a result of that.

13 The other thing which has again been mentioned
14 here, cut trees and brush and so on would be burned on
15 site. We would hope that that would be properly
16 handled to prevent damage or odors or smoke that would
17 affect The Vines community. I like the idea of
18 chipping and shipping. It's the first I have heard of
19 that, but it sure sounds good as opposed to burning.
20 And perhaps at best an incubator incinerator, air
21 curtain incinerator be used, be more appropriate.

22 I have some question about or concern about golf
23 course holes. Let me just point to the diagram here.
24 This is Vintage Trace Boulevard along here, which is
25 the main access road to The Vines community. Our

1 clubhouse is like right there. This is a major
2 traffic route for our community. This is going to be
3 a golf course. You can see if you had a golf course
4 hole that was like this with the tee here and the
5 green here and the golfers hitting in this direction
6 or either direction parallel to that road, it would
7 cause potential damage with -- or could cause
8 potential damage and injury to our people driving
9 along, and we would hope that they would take that
10 into account in designing the golf course.

11 Also, after hearing some of the comments here
12 today, we also would like to go on record as being
13 opposed, generally opposed to the use of the property
14 as a gas station, auto repair, convenience store.
15 It's going to add traffic, noise, lighting problems
16 potentially 24 hours a day next to our community. We
17 don't think it will contribute to the overall
18 appearance of the neighborhood. There are also two
19 other gas stations, service stations within a mile of
20 the corner.

21 I'm concerned about the railroad. I'm not sure
22 if this can be addressed or it's even appropriate. We
23 felt it's a concern. And again let me look at the
24 diagram for you. The railroad runs here to here.
25 We're right -- The Vines community is here. The

1 railroad separates our community in two. One nine of
2 our golf course is on one side, the other nine is on
3 the other side. Currently that railroad is accessible
4 only from Koreshan Boulevard. Both sides of this is
5 woods, trees, melaleuca trees. We're a gated
6 community, so that there's very little access from
7 this area to our community.

8 If we have this community developed with no
9 buffers here, our gated community now becomes
10 accessible by eight hundred some odd residences of the
11 new community, plus all the people who are going to
12 use this commercial, including the gas station,
13 residents who could walk over this unbuffered thing to
14 the railroad, and our community becomes no longer a
15 secured, gated community. And I don't know whether we
16 get the railroad to do something, whether we ask these
17 folks to put a berm there or fence it. It's a
18 consideration and a concern I think you might
19 understand.

20 THE HEARING EXAMINER: Okay.

21 MR. ROTE: There was a mention of drive-throughs
22 that were not permitted in MPD-1. I'm not sure where
23 we came out on the discussion with this, but our
24 recommendation would be that there would be no
25 drive-throughs permitted in MPD-1, which would allow,

1 I think, a Burger King or McDonald's with the speaker
2 systems. They're going to be closer than 300 feet to
3 people who are living along our Vintage Trace if you
4 have them in MPD-1, so we would ask that you not
5 permit that. And maybe that's already been agreed to.
6 I don't -- I'm not sure we fully understood how that
7 came out.

8 Also, the hours of operation for MPD-1. We would
9 ask that you not change that limitation. Again, we're
10 going to have people living 300 feet from where MPD-1
11 is, and if you're going to have restaurants or outdoor
12 seating, it would have an impact on our people who are
13 living on Vintage Trace.

14 Currently, as I understand it, it says you would
15 limit the hours from whatever the plan calls for, I
16 think, until 10:00 p.m. We ask that you not change
17 that.

18 I think the plan, as I understood it, they're
19 going to take that limitation out completely and they
20 could use the facility 24 hours a day. I don't
21 think -- we think that would be inappropriate, as it
22 would impact our residences.

23 Last thing, again I'm not sure -- I think I
24 understand what came out as a result of clarifying the
25 buffer changes. We certainly would support you

1 continuing Type E buffer along -- I'll point out --

2 MR. CORSIGLIA: All the way to the railroad.

3 MR. ROTE: All the way to the railroad.

4 Currently it shows Type E here, and that's a wall of
5 trees and shrubs. It's good buffer. Type B is much
6 less than that. Maybe you can tell me --

7 MR. CICCARONE: We agree to extend it.

8 MR. ROTE: You're going to have Type E all the
9 way to here?

10 MR. CICCARONE: Yes.

11 MR. ROTE: No further comments on that.

12 Other than that, we had no further comments or --
13 except again we would appreciate the continuing good
14 relationships with the project staff and we have
15 enjoyed them.

16 THE HEARING EXAMINER: Thank you.

17 MR. ROTE: Thank you.

18 THE HEARING EXAMINER: Anyone else have to speak
19 before we go on lunch break?

20 Why don't we go to lunch now and come back at two
21 o'clock. That will give you some time to work among
22 yourselves if you think that's appropriate. Okay?
23 Thank you. Then the hearing is continued, recessed.

24 (Whereupon, the proceedings in recess at 12:00
25 P.M.)

1 (Whereupon, the proceedings continued, commencing
2 at 2:30 p.m.)

3 THE HEARING EXAMINER: We're back on the record.

4 MR. CICCARONE: Mr. Hearing Examiner, we had a
5 reasonably successful negotiation during lunch and
6 have resolved most, but not all issues, so let me just
7 walk you through what I think we accomplished.

8 Let's start by asking you to look at Exhibit 12.
9 That was what Carron Day was testifying with respect
10 to when we broke, and the question here was --

11 THE HEARING EXAMINER: That's the comparison of
12 your land use, your land use regulations with their
13 land use regulations or your property development
14 regulations and their property development
15 regulations?

16 MR. CICCARONE: That's correct.

17 Now, here's what I understand. Carron, just
18 confirm this by answering yes when I'm done here, but
19 my understanding, Carron, is that it is agreed that
20 with respect to maximum lot coverage, which is the far
21 right column, the county is agreeable to using the
22 applicant's percentages.

23 MS. DAY: Yes.

24 MR. CICCARONE: All right. That's EGR.

25 Now, with respect to the other items where there

1 is a disagreement between staff and applicant, except
2 in two places which I will discuss in just a second,
3 it's agreed that we'll use the staff's numbers. Is
4 that correct?

5 MS. DAY: Yeah. I'm assuming those same three
6 places, yes.

7 MR. CICCARONE: Now, I have two places. Let's
8 make sure this is correct.

9 Under single family detached, my understanding is
10 that the numbers we will use for the minimum setback
11 from wetlands, where the staff line is blank, we will
12 agree to 20 feet per wetlands.

13 MS. DAY: Yes.

14 MR. CICCARONE: And zero feet for the golf
15 course?

16 MS. DAY: Yes.

17 MR. CICCARONE: Now, down under town house, which
18 is the bottom line, my understanding is that we'll use
19 all of the staff's numbers except for the maximum lot
20 coverage, which I mentioned a minute ago, and under
21 minimum width --

22 MS. DAY: And area.

23 MR. CICCARONE: -- minimum width and area, okay,
24 we will use the 2000 square foot area for the EGR
25 number, and under minimum width we have agreed to 22

1 feet --

2 MS. DAY: Yes.

3 MR. CICCARONE: -- instead of 25.

4 Mr. Hearing Examiner, do I need to repeat any of
5 those?

6 THE HEARING EXAMINER: No.

7 MR. CICCARONE: Pretty clear on those?

8 MS. COLLINS: So the minimum width actually went
9 down?

10 MS. DAY: Yes.

11 MR. CICCARONE: Now, let me suggest that the next
12 way to cover what we've worked out is just to ask you
13 to go back to the staff report and I'll go through the
14 items that we had questions on and tell you what I
15 think we accomplished. And I think also, to speed
16 things up, I will state the applicant's position on
17 those points where we disagree so we can then get
18 right into the staff testimony.

19 I believe that under the residential portion
20 there continues to be a disagreement with respect to
21 the maximum number of dwelling units that should be
22 permitted within MPD-5. My understanding is the staff
23 is holding firm on 300 and the applicant believes that
24 340 is correct.

25 Now, I understand that the basis for the

1 disagreement has to do with the alleged
2 incompatibility between what the applicant is
3 proposing and what exists in The Vines.

4 Let me ask Carron if she will confirm these
5 numbers.

6 My understanding is that, Carron, the density
7 that we would be proposing at 340 units within MPD-5
8 would be 8.47 dwelling units per acre?

9 MS. DAY: Yes.

10 MR. CICCARONE: Is that correct?

11 All right. And the density at 300 dwelling units
12 per acre would be 7.47 dwelling units per acre?

13 MS. DAY: That's correct.

14 MR. CICCARONE: I understand that you have also
15 done an analysis of the high-density portions within
16 The Vines, and you have identified two areas, one of
17 which shows density of 9.23 dwelling units per acre
18 and one which shows density of 8.84 dwelling units per
19 acre; is that correct?

20 MS. DAY: The work was the staff's, but the
21 numbers are what they represented.

22 MR. CICCARONE: All right, staff's work. Let me
23 ask that this be taken into evidence.

24 THE HEARING EXAMINER: I'll mark this as
25 Applicant's Exhibit Number 14, consisting of sort of a

1 site plan with numbers added to it.

2 (Whereupon, Applicant's Exhibit No. 14 marked for
3 identification.)

4 MR. CICCARONE: The applicant's position on this,
5 Mr. Hearing Examiner, is severalfold. One is we find
6 it insightful that although the representatives from
7 The Vines have appeared today and expressed objections
8 on several points, they had no concerns whatever about
9 the density on MPD-5. If the people who are most
10 directly affected by it don't perceive an
11 incompatibility, we don't know why the county would.

12 Second point is it appears to us that the density
13 within The Vines is higher than what is proposed here.

14 Thirdly, we have a difficult time understanding
15 from a planning basis the significance of 7.47 versus
16 8.47. It doesn't appear to us the externalities of
17 that are any different. All the traffic will be using
18 the same roads. We simply don't perceive a
19 compatibility problem.

20 We respectfully request that you recommend to the
21 County Commissioners that they approve 340 because we
22 believe it is compatible, and we'll say no more about
23 it.

24 Now, when you go to the commercial portion, I
25 think -- Carron, correct me now. I think I'm going to

1 state what I think you agreed on.

2 Under drive-through facility, I think it's been
3 agreed that we would delete the reference to Permitted
4 Use Note B, but we would also add a proviso that a
5 drive-through facility may not be located closer than
6 500 feet to the common property line with The Vines.

7 Did I say that correctly, Carron?

8 MS. DAY: That's correct.

9 Note A should also be deleted. Note A is 200
10 feet.

11 MR. CICCARONE: So Note A and B are deleted, and
12 we would substitute that 500-foot limitation in lieu
13 of those two earlier ones.

14 Now, if you will go over to self-service fuel
15 pumps, we had suggested 16 and the deletion of the
16 special exception requirement but also restricting it
17 by Permitted Use Note B, and my understanding is that
18 the staff is agreeable to those changes. Is that
19 correct, Carron?

20 MS. DAY: That's my understanding.

21 MR. CICCARONE: Now, you had mentioned -- well,
22 let's do consumption on premises. This one is a
23 little bit sloppy to deal with in terms of where to
24 address it in the resolution, but let me tell you what
25 the issue is.

1 You had mentioned, Mr. Hearing Examiner, that you
2 thought that a deviation needed to be added if the
3 applicant were to be consistent because you perceived
4 the existing requirements to prevent the COP within
5 500 feet from adjoining residential uses. Not
6 surprisingly, you are correct. The applicant
7 therefore is requesting that a deviation be approved
8 permitting a deviation under LDC Section 34-1263(e)
9 from 500 feet to 300 feet.

10 Now, I don't believe the staff supports that
11 deviation, but we nevertheless make the request.

12 And that my understanding with respect to the
13 balance of the COP issues is that the staff has no
14 objection to eliminating the special exception
15 requirement for the COP in Tract MPD-9 - that's the
16 club recreation tract - but the staff continues to
17 believe that a special exception should be required
18 for the other three COPs in Tracts MPD-1, 3 and 4.

19 The applicant proposes a compromise, which is to
20 require the special exception in MPD-1 but not in
21 MPD-3 or MPD-4, and our rationale for that, I think,
22 is straightforward, which is we understand that the
23 purpose of the special exception is to establish
24 conditions which might be necessary to insure
25 compatibility. We understand the staff's position

1 with respect to MPD-1 because it abuts residential
2 development. However, we are hard-pressed to see what
3 more would be gained in a special exception hearing
4 with respect to MPD-3 and 4 when it's clear that they
5 abut nothing but major roadways and adjoining
6 commercial. We respectfully suggest that
7 notwithstanding the County Commission's concerns about
8 compatibility and specificity and so forth, that it's
9 overkill, quite frankly, to require a special
10 exception for COPs in MPD-3 and 4. We don't believe
11 that that's a burning public issue. But, on the other
12 hand, we can appreciate the staff's position on MPD-1
13 and we would agree to come back and seek a special
14 exception for any use in MPD-1, whether it's one, two
15 or three COPs.

16 MS. DESELEM: In an effort to save time, if I
17 may, for the record, Kay Deselem, that sounds like an
18 equitable arrangement.

19 MR. CICCARONE: Thanks, Kay.

20 MS. DAY: Before we move off the COP, that
21 citation is incorrect. It should be 34-1264 for the
22 deviation.

23 THE HEARING EXAMINER: Whatever the next one is
24 in the numbers.

25 MR. CICCARONE: I had the wrong number down. My

1 apology.

2 THE HEARING EXAMINER: Let me just, so we can get
3 it clear here --

4 MS. DAY: Twelve --

5 THE HEARING EXAMINER: That would be Deviation
6 13?

7 MS. DAY: Thirteen?

8 THE HEARING EXAMINER: Yeah. I'm not changing
9 the numbering even for the ones that are dropped. It
10 gets too confusing. So this will be Deviation 13 for
11 the COP.

12 MR. BIGELOW: It's 34-1264(b)(a)A-2.

13 MR. CICCARONE: And that's Brian Bigelow for the
14 benefit of the record.

15 It might also be appropriate, and I don't mean to
16 put you on the spot, Kay, but if we're coming back to
17 seek a special exception on MPD-1, do we still have
18 opposition with respect to the deviation from 500 feet
19 to 300 feet?

20 MS. DESELEM: For the COP?

21 MR. CICCARONE: Yes.

22 MS. DESELEM: Yes, because it doesn't meet any of
23 the criteria for a deviation. I have not been
24 provided any justification to show that it enhances
25 the project or acts to the -- not to the detriment of

1 the public. I mean this is the first I have heard of
2 it. I have seen no buildings. I have no idea where
3 it is. I couldn't support it at this point.

4 MR. CICCARONE: All right. So we continue to
5 disagree on that.

6 Now, I understand under hours of operation that
7 the applicant is proposing to use the staff's numbers,
8 which is 7:00 a.m. until 10:00 p.m.

9 THE HEARING EXAMINER: Excuse me. I saw this one
10 go, but that one wasn't going. I put a used tape in.
11 It caught me.

12 It's working. Sorry about that. Thank you.

13 MR. CICCARONE: I'm not quite sure where we left
14 off, so I'll start over.

15 THE HEARING EXAMINER: Hours of operation.

16 MR. CICCARONE: Hours of operation. We agree to
17 the staff's 7:00 a.m. to 10:00 p.m. limitation except
18 we believe in the case of restaurants the hours should
19 be the same as for outdoor seating, which, as we
20 discussed earlier, would be 11:00 p.m. Sunday through
21 Thursday and 12:00 midnight Friday and Saturday.

22 Quite frankly, I'm not sure if we agree on that
23 because there was discussion going back and forth as
24 you were coming in the room and I don't know what
25 Kay's position is on that, but, Kay, why don't you

1 tell us.

2 MS. DESELEM: Do you want me to jump in here?

3 THE HEARING EXAMINER: Sure.

4 MS. DESELEM: For the record, Kay Deselem again.

5 When we initially discussed this and I had agreed
6 with Carron, I was not aware they were going to be
7 asking for the COP deviation. We would support the
8 hours she was asking for, the eleven o'clock, that
9 they would cease operation at 11:00 Monday through
10 Thursday and 12:00 Friday through Sunday, but not if a
11 deviation to allow a lesser distance would be approved
12 for the COP because that raises issues we didn't
13 review.

14 THE HEARING EXAMINER: Okay.

15 MR. CICCARONE: And in response to that, I think
16 the applicant's position would be that if we are going
17 to come back and seek a special exception for COP use
18 within MPD-1, and we understand that the problem is
19 people drink, they're loud and so forth, we think that
20 the hours of operation could be addressed adequately
21 in that context so that what would happen if you
22 approved the change we're suggesting is that the hours
23 of operation would be for restaurant only in MPD-1 and
24 it wouldn't deal with outdoor seating, outdoor COP
25 use, which we think is the source of the staff's

1 concern.

2 THE HEARING EXAMINER: So I understand what
3 you're saying, it's the restaurant that serves the
4 alcohol, you should be allowed to have longer hours
5 even if it's within 300 feet?

6 MR. CICCARONE: Yes, because we think it's the
7 drinking, it's the carousing in the parking lot, the
8 loud laughing and so forth that we all know happens
9 that I think is the main source of concern. And what
10 I'm suggesting is a reasonable way to deal with it
11 would be within the special exception COP request if
12 that should ever come forward, but absent that,
13 there's no particular reason to penalize any other use
14 in there.

15 THE HEARING EXAMINER: That's the point I was
16 making. I wasn't thinking about the special
17 exception. I was thinking about in this particular
18 context if we approve what you want, a restaurant
19 could serve alcohol at later hours and be within 300
20 feet of the residents.

21 MR. CICCARONE: Yes.

22 THE HEARING EXAMINER: That's what you're asking?

23 MR. CICCARONE: Yes. But what I'm suggesting is
24 if you decide --

25 THE HEARING EXAMINER: I understand. That's the

1 only part I was unclear on, and I think that was --
2 because I saw some looks over here and I was just
3 curious.

4 MS. DESELEM: I'm sorry.

5 THE HEARING EXAMINER: No, that's all right.

6 MR. CICCARONE: We're making progress.

7 THE HEARING EXAMINER: I'm trying to get it clear
8 in my mind so when I read this transcript it will make
9 sense to me.

10 MR. CICCARONE: We're making progress.

11 I understand under deliveries we have an
12 agreement that the hours ought to be 8:00 p.m. and
13 6:00 a.m. Is that correct, Carron?

14 MS. DAY: Yes.

15 MR. CICCARONE: I understand that under outdoor
16 seating below that we also have an agreement, which I
17 think is that no special exception will be required.
18 However, outdoor seating may not be located within 200
19 feet from existing and adjoining residential uses and
20 it must be placed on the side or sides of the
21 buildings opposite residential uses and, as we said
22 earlier, it shall cease as of 11:00 p.m. Sunday
23 through Thursday and as of 12:00 midnight on Friday
24 and Saturday.

25 Now, did I correctly state, Carron, what you

1 believe is our agreement?

2 MS. DAY: Yes.

3 MR. CICCARONE: And, Kay, at any point for the
4 sake of speeding this up, if you don't agree, just
5 tell us and we'll go from there.

6 I understand under hours of operation for Tract
7 MPD-1, this more or less ties into the earlier
8 discussion we just had above with respect to uses in
9 MPD-1, and that's that there continues to be a
10 disagreement over whether the 7:00 a.m. to 10:00 p.m.
11 time limit is acceptable to the applicant if
12 restaurants are not excluded and given the same hours
13 as outdoor seating. Am I correct?

14 MS. DAY: Yes.

15 THE HEARING EXAMINER: What I think I'm going to
16 have to do when we finish this whole process, I'll
17 need new conditions. I'm so hopelessly lost. We've
18 got a restaurant with indoor, outdoor 200 feet, 300
19 feet, 500 feet. I don't know where we are. So what
20 we'll have to do is when we finish, on those
21 conditions that everybody can agree on, I would like
22 to see a list of those and I would like to see a list
23 of those where you can't agree and what you are
24 proposing and what they're proposing, because I'm
25 lost.

1 MR. CICCARONE: I kind of expected that you would
2 make that request. It's probably a good idea because
3 we have got so many issues that --

4 THE HEARING EXAMINER: It's the mixture of them,
5 too, when there's a restaurant within a certain number
6 of feet, whether it serves alcohol or doesn't, that's
7 where the confusion is coming in with me.

8 MS. DESELEM: If I can clarify, on that same
9 note, back to the outdoor seating, when I had agreed
10 to the limitation within 200 feet, again, that was
11 before I understood that there was going to be a
12 deviation sought for the COP to be closer. My
13 understanding was the COP would still be within the
14 prescribed distance.

15 THE HEARING EXAMINER: So you would have an
16 outdoor restaurant without alcohol?

17 MS. DESELEM: They can have outdoor seating
18 within 200 feet.

19 THE HEARING EXAMINER: Outdoor seating for a
20 restaurant?

21 MS. DESELEM: Right.

22 THE HEARING EXAMINER: Within 200 feet and they
23 couldn't serve alcohol there. That's where the
24 confusion is coming in with me.

25 I understand your concern. It seems to me if

1 alcohol is going to be allowed, and I'm not saying
2 it's going to be, then you want to deal with the
3 distance, regardless of what it is, and have the
4 alcohol and the outdoor seating somehow linked.
5 That's where I'm getting somewhat confused now. It's
6 going to be 300 feet for alcohol, 200 feet for
7 nonalcohol, outdoor restaurant, indoor, that's what's
8 confusing me.

9 I'm not sure we have thought these things through
10 even ourselves as far as what the implications are.
11 That's why I think we need time when this hearing is
12 over to work out those details, because I'm not sure I
13 can sort them out.

14 MS. DAY: Can I make one comment? We did not ask
15 for a deviation because on reading the regulations, I
16 didn't think one was necessary because it says you
17 have to be within the 500 feet except if you're in a
18 planned development.

19 THE HEARING EXAMINER: When you said that and
20 when you said that, that's what occurred to me, well,
21 in a planned development that may not require the
22 deviation.

23 MS. DAY: It doesn't. And that's why when I put
24 the 200 feet and we asked for the COP, I didn't ask
25 for the deviation because I thought that's what we

1 were --

2 THE HEARING EXAMINER: I thought there was an
3 exception but I wasn't sure. And I thought the
4 planned -- I thought a planned development was the
5 exception to asking for a deviation but I wasn't sure.

6 But that doesn't help you at all because if
7 there's no deviation request required to be closer and
8 they don't have to ask for it, then you may or may not
9 agree with alcohol in that location, I don't know, or
10 outdoor seating.

11 MS. DESELEM: I'm trying to remember. Donna
12 Marie Collins and I had these same discussions to
13 whether or not it was required, and it was our
14 understanding that they had to comply with the
15 separation distance.

16 THE HEARING EXAMINER: I think I had a case
17 dealing with that at one particular point and someone
18 was arguing that point and I thought they were
19 incorrect, that in a planned development it wasn't
20 required. I don't know the answer anymore.

21 MR. CICCARONE: What we'll propose to do, Mr.
22 Hearing Examiner, is at the end of this hearing we'll
23 hold the record open for a short period of time, get
24 together with the staff, agree on everything we can
25 agree on, highlight those points we don't agree on,

1 submit to you opposing suggested conditions, if you
2 will, and it could be this issue will fall out
3 somewhere along the line, and if not and you are
4 forced to make an interpretation of the LDC, well,
5 that's your job. We'll wait to see what you say.

6 You may make a note, if you would, we're at
7 condition -- I believe the last one right before
8 environmental conditions. That's the one that refers
9 to COP, when you do and do not need a special
10 exception.

11 I believe we have now reached an agreement with
12 the staff that a special exception will be required
13 for MPD-1, but not for MPD-3, 4 or 9, and that would
14 have to be reworded appropriately.

15 Is that correct, Carron?

16 MS. DAY: That is -- is the clubhouse in 3 and 4
17 of those two parcels on the outside.

18 MR. CICCARONE: Yes.

19 MS. DAY: And those would not need a special
20 exception.

21 MR. CICCARONE: That's my understanding, but we
22 would require one for MPD-1 because of the adjoining
23 residential.

24 MS. DAY: Yes.

25 MR. CICCARONE: We had told you earlier that we

1 had agreed language on Condition 3-B, and I believe we
2 might have even submitted it. I know we have agreed
3 on it.

4 THE HEARING EXAMINER: There was a 3-B submittal,
5 I believe.

6 MR. CICCARONE: That's the one that --

7 MS. COLLINS: Three-D.

8 MR. CICCARONE: Three-B. Environmental Condition
9 3-B. That's the gopher tortoise crossing.

10 THE HEARING EXAMINER: I thought I saw that one.

11 MR. CICCARONE: I know it's here somewhere in all
12 this sea of paper.

13 THE HEARING EXAMINER: It's Exhibit 2, Revised
14 Condition 3-B, Applicant's Exhibit Number 2.

15 MR. CICCARONE: My understanding is that's agreed
16 to, so we can put that in the win column.

17 We'll talk about Sandy Lane at the very end.
18 That's Number 6 under environmental conditions.

19 On golf course conditions, not only do we
20 continue to disagree with the staff, but the staff is
21 proposing a new condition. You had suggested that we
22 have the burden of showing why these conditions are
23 not justified. We would respectfully suggest that it
24 is just the opposite. I think the burden is on the
25 staff to explain why they are justified, because

1 otherwise we are hard-pressed to react to it.

2 We would also point out that we think this --

3 THE HEARING EXAMINER: That came up in the
4 context of saying we would like to have this. You're
5 right. You have the burden of going forward first and
6 you're coming up with your conditions and we have
7 nothing opposing that, so once you meet that burden --
8 but it was more in the context of your expert
9 witnesses saying we shouldn't have any greater
10 restrictions placed on us than this other development.
11 At that particular point I think it was incumbent on
12 your side to explain why there were differences and
13 why the other conditions were better than the ones
14 that the county was proposing. That's how the context
15 went, I think.

16 MR. CICCARONE: Let me say that we're perfectly
17 happy to go with the best management practices for
18 golf course maintenance departments prepared by the
19 Florida Department of Environmental Protection, May
20 1995, as amended. That language is contained in F-1.
21 Everything else is, in our opinion, the staff's burden
22 to explain why it's needed.

23 I believe the applicant's position is that
24 Miromar Lakes is in the environmentally sensitive
25 area, where this property is not, and it involves a

1 much greater number of wetlands and lakes than this
2 property and many more holes of golf, if you will.
3 And we simply find that with respect to the order of
4 magnitude and the level of environmental sensitivity
5 that Miromar Lakes is clearly a more serious case.
6 And so our position is that if we're going to be
7 required to go beyond the DEP best management
8 practices, we certainly shouldn't be required to go
9 beyond Miromar Lakes, which is a fairly recent
10 approval of much greater sensitivity.

11 We have on Condition 11, which relates to the
12 emergency access, agreed to new language, which I will
13 give you now.

14 THE HEARING EXAMINER: Mark this as Applicant's
15 Exhibit Number 15, consisting of a new -- a Revised
16 Condition 11.

17 (Whereupon, Applicant's Exhibit No. 15 marked for
18 identification.)

19 MR. CICCARONE: And I don't propose to say
20 anything more about it. I think it speaks for itself.

21 We understand this is the sort of thing you would
22 like to see from both sides, if you will, before we
23 close the record. This one's in writing. Everybody
24 is happy with it.

25 If you will go now to Condition 18, this has to

1 do with the buffers. We had previously said that we
2 have no objection to extending the buffer, the E type
3 buffer, up to the railroad right-of-way. We
4 questioned whether anything more than an A type buffer
5 was required where it's shown on the master concept
6 plan.

7 Carron, my understanding is that you and Kay have
8 agreed that that is a typographical error, that A type
9 buffer is acceptable there?

10 MS. DAY: Yes.

11 MR. CICCARONE: Is that correct? So we would --

12 THE HEARING EXAMINER: By acceptable there you
13 mean the extreme western segment?

14 MR. CICCARONE: Yes. We understand that an A
15 type buffer is acceptable.

16 We had previously told you and I believe told you
17 correctly that with respect to Condition 21, the
18 maintenance facility must be relocated between Tract 9
19 and the railroad right-of-way and that Tract MPD-7 is
20 approved for both residential and golf course use.

21 Carron, help me out here. When we go to
22 Deviation 8, this relates back to the number of
23 emergency accesses and so forth?

24 MS. DAY: Yes.

25 MR. CICCARONE: Do we still need this deviation?

1 MS. DAY: I don't know that we need it, but if we
2 do need it, it's my understanding the staff agrees.

3 MS. DESELEM: It would be approved subject to
4 Condition 11 as it was reworded because we had the
5 emergency access, it will act as the second
6 ingress/egress.

7 THE HEARING EXAMINER: So you're changing the
8 recommendation of denial for Deviation 8 to
9 recommending approval subject to Condition 11?

10 MS. DESELEM: That's correct.

11 THE HEARING EXAMINER: Okay.

12 MR. CICCARONE: And, finally, we get to Deviation
13 11. That's the one that had to do with the stacking
14 of parked cars.

15 THE HEARING EXAMINER: Yes.

16 MR. CICCARONE: And we understand both your
17 concern and the staff's to be that in a situation
18 where you have got a common driveway serving two
19 different tenants that the temptation for one to park
20 in front of the other's garage is more than the county
21 would care to deal with in enforcement actions, and so
22 we are proposing that Deviation 11 be approved
23 provided that there is a physical separation, a
24 permanent physical separation installed between the
25 adjoining parking areas where stacking would be

1 permitted.

2 That would be no different than if my neighbor
3 decided to park in my driveway, I think. So we think
4 that's a reasonable way to address it.

5 I don't know what the staff position is on it,
6 but I quite frankly can't think of anything better
7 than that.

8 THE HEARING EXAMINER: That addresses my concern.
9 I'm not sure it addressed their concerns.

10 MR. CICCARONE: Yeah. I mean I understand the
11 county does not want to be in the business of somebody
12 is parked in front of my garage, come and make them
13 move. We understand that, so we're hopeful that will
14 work.

15 Let's talk now about Sandy Lane. The problem we
16 have -- we really do want to work with the staff on
17 this, but our investors are asking me to explain what
18 the rational nexus is between our having to provide
19 right-of-way for a road which has absolutely no
20 benefit to us and which we don't need and the county
21 staff's insistence that we agree to this as a
22 condition of approval. We would respectfully suggest
23 that that is coming pretty close to a regulatory
24 taking and is inappropriate. However, we will listen
25 to the staff's rationale in their presentation and, if

1 we can, we will in our rebuttal discuss how we might
2 work with them. But I would respectfully suggest that
3 the burden is exclusively upon the staff and not upon
4 us to explain why it is that we should be required to
5 do more than what under the New Testament Baptist
6 Church case, the Second District Court of Appeals and
7 the Supreme Court of Florida has said Lee County can't
8 do.

9 So with that we'll close our presentation and I
10 think we'll agree to do battle then, if you will, on
11 the golf course conditions and on the extension of
12 Sandy Lane.

13 THE HEARING EXAMINER: Thank you.

14 MR. CICCARONE: Thank you.

15 THE HEARING EXAMINER: Staff ready for their
16 presentation? Do you need some time?

17 MS. DESELEM: I'm just trying to understand
18 exactly how this is working. They're not going to put
19 on any presentation in opposition to Sandy Lane?

20 THE HEARING EXAMINER: His position is -- I'm
21 not -- I'm going to paraphrase it. His position is
22 the burden is not on him to prove it shouldn't be in
23 there, the burden is on you to prove it should be in
24 there, so he's leaving it up to you to do it.

25 We'll go off the record for a minute while you do

1 it. That's fine.

2 (Discussion off the record.)

3 THE HEARING EXAMINER: We're back on the record.

4 MR. CICCARONE: Mr. Hearing Examiner, before we
5 do the Sandy Lane discussion, I'm informed that our
6 engineers have come to an agreement with the county's
7 environmental staff over the golf course conditions
8 and that we would agree to what is in the staff report
9 with a change in Condition I, and I believe that the
10 change would be in the last sentence. That's the
11 sentence that begins, "The effluent from underdrains".

12 So I believe that the agreement with staff and
13 applicant is that this sentence would read as follows:
14 The effluent from underdrains must not discharge
15 directly into a surface water management system lake.
16 I'll repeat that. The effluent from underdrains must
17 not discharge directly into a surface water management
18 system lake.

19 And I'm told that we also agree to add - I guess
20 this would be Condition M - some additional language
21 taken from the Miromar Lakes DRI development order,
22 and that is set forth in a memorandum from Kay Deselem
23 to you dated today. And let me provide that to you as
24 a final exhibit.

25 THE HEARING EXAMINER: Even though it's a staff

1 document, I'm going to mark it as an applicant's
2 exhibit so I don't get it all confused. This will be
3 Applicant's Exhibit Number 16, being a memorandum to
4 me from Kay Deselem, and this will be the new
5 Condition M. Okay.

6 (Whereupon, Applicant's Exhibit No. 16 marked for
7 identification.)

8 MR. CICCARONE: We would respectfully suggest in
9 your staff -- I'm sorry, in your report and
10 recommendation that notwithstanding the fact that we
11 have an agreement on this, that it is appropriate to
12 call to the attention of the County Commissioners a
13 need to develop a common set of conditions. This
14 case-by-case approach is not very elegant. It makes
15 it almost impossible to advise anyone as to what to
16 expect. Certainly discharge from golf courses is a
17 major environmental issue and should be dealt with,
18 and certainly no opposition to dealing with it, but I
19 think that it is better done by an amendment to the
20 Land Development Code that would apply to all golf
21 courses as opposed to case-by-case development where
22 the unlucky target de jure happens to be part of the
23 process. And since the staff believes that this is an
24 important issue, it seems to us that it would not be
25 inappropriate for you to recommend that the County

1 Commission consider dealing with this in the Land
2 Development Code as something that would apply to
3 everybody, not just us.

4 THE HEARING EXAMINER: Sure.

5 MR. CICCARONE: With that, we'll talk -- I guess
6 we'll hear about Sandy Lane and decide what to do
7 about it.

8 And Elaine definitely wins the battle of the
9 exhibits today. These are big.

10 THE HEARING EXAMINER: Miss Deselem.

11 MS. DESELEM: May I check with Ben just a minute,
12 if I may?

13 THE HEARING EXAMINER: Certainly.

14 Thereupon,

15 KAY DESELEM,

16 produced as a witness on behalf of the Staff, having been
17 previously duly sworn, testified as follows:

18 MS. DESELEM: Good afternoon. For the record, my
19 name is Kay Deselem and I am here representing the
20 Development Services Division to present the staff
21 report. I have been qualified as an expert in land
22 use issues in Lee County before. My resume is on file
23 and I would ask that you accept me as an expert today
24 as well.

25 THE HEARING EXAMINER: Any objections?

1 MR. CICCARONE: No objections.

2 THE HEARING EXAMINER: Without objection you are
3 accepted.

4 MS. DESELEM: Thank you.

5 Somewhere around are numerous staff persons that
6 are available if we need them. They have been in and
7 out throughout the day. We have Kim Trebatoski who is
8 available for environmental issues; we have Elaine
9 Mettauer and Andy Getch from DOT. They're both still
10 here. Ben Chumley is here. I will be asking him to
11 speak later on planning issues. And Matt Noble has
12 been wandering around. We can go grab him if we need
13 to. Tom Beard from the San Carlos Fire District is on
14 call, basically. I have his pager number and his cell
15 number, but I don't think we need him because I think
16 we already resolved the issues. In any case, they are
17 available.

18 Just to identify the staff report, it is a
19 document that is dated in the lower left corner
20 2-27-01. It's been submitted to the Hearing Examiner
21 and it is part of the record and there's been
22 considerable discussions about the conditions that are
23 contained therein, and I'll just hit the high points
24 just so it's a matter of record that it is here, that
25 the application summary is contained in Part 1 and

1 Part 2 is the recommendation. And throughout the day
2 today we've had numerous changes to the recommendation
3 and we have kind of narrowed down to just a few
4 issues.

5 And one of those issues deals with the number of
6 units on MPD Number 5, and staff is maintaining that
7 300 units is the appropriate number for that
8 particular area. We know the applicant is seeking now
9 to have 340 units, I believe. And when I initially
10 started discussing this with Carron yesterday, she was
11 saying that this issue came up because staff had
12 recommended that number, and we had to go back to try
13 to find out where the number came from.

14 And I don't know if you're aware, but this
15 particular project has been in the process for a good
16 long time and it was originally submitted as a CPD RPD
17 and was just recently amended to an MPD. And one of
18 the reasons why it was amended to an MPD was to
19 address staff concerns about the density that was
20 proposed in that Tract 5.

21 And I have -- I'll submit to the record two
22 things. One is the master concept plan that we were
23 reviewing at that time that showed the MPD and the
24 RPD. And in that master concept plan is a density
25 calculation and it shows that the applicant wanted to

1 have 242 dwelling units in Tract 5, which was the top
2 end of the density from that land use category. They
3 wanted to have 58 dwelling units to be used from that
4 area that would come from the RPD, and staff had some
5 serious concerns about how that would be handled. And
6 we believed that, first of all, it was over the
7 density for the area and how to handle that and still
8 give the applicant some flexibility in their site
9 design but make it in such a fashion that staff would
10 be relatively comfortable that we could control it
11 because we assumed that just by the physical
12 dimensions whereby it's separated by the railroad
13 right-of-way, it's logical to assume that that piece
14 will be sold off anyway and be developed by some one
15 individual or one company.

16 So we had some concerns about how to maintain
17 that moving density, and the applicant had submitted
18 the density calculation in an official form that
19 mirrored what was on that master concept plan. These
20 are both date stamped received January 3rd, and I'll
21 submit those to you.

22 THE HEARING EXAMINER: I'll mark the first
23 document, the density calculation, as Staff Exhibit
24 Number 1, and the master concept plan is also stamped
25 January 3rd.

1 MS. DESELEM: That is different than what you
2 have on hand.

3 THE HEARING EXAMINER: I'll mark that as Staff
4 Exhibit 2.

5 (Whereupon, Staff's Exhibits No. 1 and 2 marked
6 for identification.)

7 MS. DESELEM: That is a considerably different
8 site plan than what you have. That's why it is the
9 different date.

10 And -- but my concern is we did go out of our way
11 to work with the applicant to come up with an
12 agreement that would make the project work at a higher
13 density, and we believe that was the maximum that
14 would be allowed and still be compatible and we could
15 still put in reasonable conditions to address concerns
16 about compatibility. And in the planning division
17 memo it talks about that particular limitation and on
18 Page 2 of that it talks about the number of units
19 should be limited to no more than 300 and it talks
20 about the enhanced buffers that would be appropriate
21 for that area and --

22 THE HEARING EXAMINER: Is the staff taking a
23 different position than the way the Land Development
24 Code is written, that you're talking about net density
25 rather than gross density? You seem to be making a

1 distinction that a portion -- it's going to be denser
2 on a portion of the property. I thought we always
3 calculated on the entire property.

4 MS. DESELEM: Ben can address that more
5 carefully. Our concern was the idea of compatibility.
6 And The Vines is next door. If I can refer back to
7 this aerial photograph, it might make it a little
8 easier to understand if you can see it.

9 When The Vines developed, their more intense uses
10 are internal, clearly internal. The single family or
11 the less intense uses are along the perimeter, and
12 that's the way the Land Development Code dictates that
13 planning should be done. And that was our concern,
14 that they were forcing their increased density, the
15 most dense portion of their site, to the portion of
16 the perimeter property line that had the least dense
17 uses on it. Because I think Ben said these are like
18 half-acre tracts, and so they're fairly large tracts
19 of land with single family uses on them, so it was a
20 concern of compatibility.

21 THE HEARING EXAMINER: Is there a street between
22 the two parcels?

23 MS. DESELEM: It's a very narrow street, yes.

24 THE HEARING EXAMINER: Again, I thought generally
25 the staff had taken the position in the past that

1 streets were sufficient barriers between incompatible
2 uses.

3 MS. DESELEM: We have a potential -- they were
4 going to separate or set back the buildings by 200
5 feet, but they still have the potential to have
6 55-high-story buildings, four stories, 55-foot-high
7 buildings, four stories.

8 THE HEARING EXAMINER: How close? I thought they
9 came back and said 35 within a certain number of feet.

10 MS. DESELEM: Thirty-five within 200 feet.
11 Correct me if I'm wrong.

12 MS. DAY: That's correct.

13 MS. DESELEM: Then they could be 55 at 201 feet,
14 basically.

15 THE HEARING EXAMINER: How far would that be to
16 the nearest residence on the other side of the road,
17 considering buffers in between, roads in between?

18 MS. DESELEM: As you can see --

19 THE HEARING EXAMINER: I know it's a narrow road.
20 I see that.

21 MS. DESELEM: It's not a big distance. It's
22 quite small. I mean to see something that large, and
23 that area is at this point pretty much devoid of large
24 trees, so they would be looking at the buildings.

25 THE HEARING EXAMINER: So the staff's position,

1 then, is that even with the conditions they have
2 suggested, it's still too dense?

3 MS. DESELEM: Right. Well, we had come to the
4 agreement at 300 units, but staff did increase the
5 separation setback by the requirement to have a
6 hundred-foot separation distance for one story and
7 then kind of going up to 200, because again we're
8 talking about a huge site. And go back to the site
9 plan to see exactly, but Tract 5 is 40 acres, and
10 trying to visualize where the buildings are going to
11 be in that 40 acres and what the impacts of those
12 buildings could be is very difficult. So in an effort
13 to try to be as consistent with problems we've seen in
14 the past in other projects where we have compatibility
15 issues and to -- if we err, err on the side of
16 conservation and provide for what we perceive could be
17 a problem, we believed that that was the appropriate
18 way to go. We still believe that 300 units is the
19 appropriate number.

20 THE HEARING EXAMINER: Okay.

21 MS. DESELEM: And, like I said, Ben will be
22 addressing that more fully.

23 And as far as going on to the other uses, as Mr.
24 Ciccarone reiterated what the changes were, we kind of
25 went back and forth, so you pretty much know our

1 position on most of those, so I won't belabor those
2 issues. We have worked through most everything, I
3 think.

4 THE HEARING EXAMINER: With the proposed change
5 on the stacking, did that address your issue or did
6 you have a different issue than mine?

7 MS. DESELEM: My concern is it seems as though
8 what they're talking about would work in principle,
9 but it's a little vague for somebody from development
10 review to try to approve a development order plan
11 because we don't know what the separation would be,
12 what the separation distance is, that is, and we don't
13 know what it's to consist of. Is it supposed to be
14 pavement? In which case, how can you tell where the
15 separation is? Is it supposed to be vegetation? If
16 it's vegetation, what is it, how high is it, what's it
17 consist of?

18 We had talked briefly on the break about like a
19 one-foot separation distance, and I have in other
20 situations talked with development services and the
21 environmental staff to say that the heat gain that you
22 get from the concrete that's around a space that's
23 that narrow will in many cases kill the vegetation
24 that exists in such a small area. It just can't
25 exist.

1 THE HEARING EXAMINER: They couldn't just paint a
2 line?

3 MS. DESELEM: It's like how much is enough, and I
4 don't know. And we haven't had the opportunity to
5 review it in its fullest capacity. Because I know Don
6 Blackburn initially reviewed the deviation that was
7 submitted and it was his recommendation that we deny
8 it. And I have seen these things evolve today, but I
9 still --

10 THE HEARING EXAMINER: Was the concern --

11 MS. DAY: -- didn't have anything that's a
12 depiction on paper that development services staff can
13 review for a development order to see what's being
14 approved.

15 THE HEARING EXAMINER: Was the concern by staff
16 that you couldn't tell whose cars are being parked on
17 which piece or is there a different concern?

18 MS. DESELEM: At the point where we were looking
19 at it, we didn't know what it was because we didn't
20 know what they were proposing exactly. We have heard
21 today I think a maximum of six buildings -- or six
22 units in a building and -- but we have yet to see a
23 building that they're actually saying this is what
24 it's going to look like, this is what you're
25 approving.

1 THE HEARING EXAMINER: Isn't this kind of a
2 bubble plan, though, where you don't normally get that
3 kind of --

4 MS. DESELEM: It's a bubble plan, but deviations
5 are required to have depictions. In the justification
6 of the deviations they reference certain exhibits, but
7 we never got them.

8 And that brings me to the issue on one of the
9 other deviations where there's a reference to the
10 eastern side and the water body setback and that it's
11 not approved along there. The rationale that's
12 included as part of this staff report still talks
13 about that eastern perimeter property line as if the
14 deviation had been requested there, so our note was
15 added to make it clear that it had not been requested
16 there and it was specifically not approved there.

17 And I understand their concern as well, that they
18 had removed it, but there might have been confusion if
19 you went back and looked at the deviation, the
20 justification that had been provided.

21 But staff normally gets something concrete they
22 can see and review to when the development order comes
23 in, because when you've got a project of this size
24 with the different types of uses, 320,000 square feet
25 of retail use, 20,000 square feet of office and 820

1 residential dwelling units, that's a large project.
2 It's right below a DRI threshold, so it's difficult
3 for staff to visualize what all this can be, so the
4 more detail that we can get for the deviations, it
5 just makes it easier for everybody when it's submitted
6 for development order.

7 So we would still continue to say that we can't
8 support it because we haven't seen anything. We don't
9 know exactly what they're proposing. It's still too
10 ambiguous.

11 THE HEARING EXAMINER: Okay. Thank you.

12 MS. DESELEM: I have provided in the staff report
13 the findings and conclusions in support of our
14 recommendation. We do have the background information
15 and analysis in Part 3 and we have attempted to
16 explain each deviation and each condition. We have
17 provided the Lee Plan considerations in the staff
18 report as well as you have environmental memos or a
19 memo from environmental sciences, you have a memo from
20 the planning division and you have a memo from DOT.
21 And so I think we've provided ample background
22 information for the conditions and where they have
23 come from. And I don't have anything further to add,
24 but I would ask that you allow Ben then to discuss the
25 planning issues and then from then we'll go on.

1 THE HEARING EXAMINER: Before we do that, are
2 there any questions for Ms. Deselem?

3 BY MR. CICCARONE:

4 Q. Let me ask you on Deviation 11, Kay, if the
5 physical separation is three-dimensional, in other words,
6 it's more than a, more than a line painted on the pavement
7 so that you literally can't get one car from one side over
8 to the other, a physical barrier between crossing from one
9 driveway to the other, why wouldn't that be good enough?
10 What more do you need?

11 A. I'm saying that it sounds like it would be
12 appropriate. I'm conceding that. It's just the idea of
13 when you get to a development review stage and somebody
14 has to look at it and see what was approved, that it gets
15 very difficult. We try to narrow it down as closely as we
16 can as to how much separation is required and what it's to
17 consist of and it helps to take the ambiguity out of it
18 when you come in for a development order.

19 MR. CICCARONE: I don't have any questions of
20 Kay, but to speed this up, let me say to the Hearing
21 Examiner that we don't propose to paint a line there.
22 We would propose to have a three-dimensional barrier
23 of sufficient height to prevent an automobile from
24 traveling from one side to the other. If you want to
25 impose eight inches or whatever a curb stop would be,

1 we don't particularly care.

2 We understand your concern and we want to make it
3 clear that we're talking about more than a line, but
4 at the same time we don't know what purpose would be
5 served by any more specificity than that. We think it
6 addresses the problem and that's really all we should
7 be concerned with. So we won't rebut anything in that
8 regard. We'll just say our piece now and focus on
9 what's left, which I guess is the number of units on
10 MPD-5 and then Sandy Lane.

11 And you're going to have others speak to those
12 issues, right, Kay?

13 MS. DESELEM: Yes. Just to clarify, even with
14 what we have seen, they still haven't addressed the
15 criteria of how it enhances the project and how it
16 protects the public health, safety and welfare. And
17 those are the things that we look for on the exhibits
18 that we see, and we haven't seen those. And those
19 things are required by code.

20 THE HEARING EXAMINER: On this particular one
21 we're talking about now.

22 MS. DESELEM: On Deviation 11.

23 THE HEARING EXAMINER: Anybody have any other
24 questions before we do that?

25 Thank you. Ben.

1 Thereupon,

2 BEN CHUMLEY,

3 produced as a witness on behalf of the Staff, having been
4 previously duly sworn, testified as follows:

5 THE HEARING EXAMINER: Have you been sworn?

6 MR. CHUMLEY: Yes, I have.

7 THE HEARING EXAMINER: Okay, fine. Just identify
8 yourself for the record, please.

9 MR. CHUMLEY: My name is Ben Chumley. I'm a
10 planner with Lee County Division of Planning. Let me
11 go ahead and submit my resume into the record because
12 I don't have one on file.

13 THE HEARING EXAMINER: Give a copy to Mr.
14 Ciccarone as well.

15 What I'll do, I'll mark this as - if I can find
16 my list - as Staff Exhibit Number 3, I believe.

17 Yes, Staff Exhibit Number 3, consisting of Mr.
18 Chumley's resume.

19 (Whereupon, Staff's Exhibit No. 3 marked for
20 identification.)

21 MR. CHUMLEY: I'm just going to talk briefly
22 about the density of the two developments and how we
23 calculated it and try to clarify some of the numbers.
24 I was primarily responsible for coming up with the
25 density calculations and reviewing the density for

1 this project, so I want to submit an exhibit into the
2 record.

3 This is a map showing the density of The Vines
4 versus the density of Estero Golf Resort and
5 specifically the density of the MPD-5 tract versus the
6 single family lots there in The Vines. So I'm going
7 to submit this into the record.

8 THE HEARING EXAMINER: I'll mark this as Staff
9 Exhibit Number 4.

10 (Whereupon, Staff's Exhibit No. 4 marked for
11 identification.)

12 MR. CHUMLEY: It's just a basic GIS plot.

13 We figured out, based on our existing land use
14 data, that the overall density of The Vines is 1.63
15 units per acre and the overall density of this Estero
16 Golf Resort project would be 2.9 units per acre, and
17 to us that's compatible, we don't have an issue with
18 that density at all.

19 What we do have an issue with is when we looked
20 at, when we looked at the density of the MPD-5 tract
21 versus the overall density of The Vines, there's a
22 significant difference. As the exhibit shows, there's
23 going to be eight point -- well, the exhibit shows 7.4
24 dwelling units per acre on the MPD-5 tract. There's
25 actually 8.4, and the lots right along here are about

1 .5 acres, so we're talking two dwelling units an acre
2 right along here. And in our opinion it's just --
3 it's a simple compatibility issue. You have two
4 dwelling units per acre abutting 8.4 dwelling units
5 per acre.

6 THE HEARING EXAMINER: And I ask the same
7 question I asked before, is that it was always my
8 understanding that the position and the policy of the
9 staff was that we were doing gross acreage, not -- I
10 know it's a compatibility question.

11 MR. CHUMLEY: That's correct. When you're
12 calculating density, you know, the Land Development
13 Code says yes, you do look at the overall density of
14 the project, but, you know, the comprehensive plan
15 also talks about issues of compatibility, as does the
16 Land Development Code and to me it's a compatibility
17 issue.

18 THE HEARING EXAMINER: What about the fact
19 there's a road in between?

20 MR. CHUMLEY: I mean the road is probably -- I
21 don't want to guess how wide the road is, but it's not
22 very wide. It's just a local project access road and
23 30, 40 feet. I don't know. But it doesn't really --
24 when you're talking about a scale as large as these
25 projects, that distance really doesn't provide a whole

1 lot of buffer.

2 THE HEARING EXAMINER: And residential to
3 residential can be incompatible in your estimation?

4 MR. CHUMLEY: They can if they're -- you know, if
5 the densities are as grossly different as these two
6 are, yes.

7 THE HEARING EXAMINER: Okay. Thank you.
8 Anything else?

9 MR. CHUMLEY: Yeah. Let me submit one more thing
10 into the record.

11 The applicant talked earlier about the density of
12 the various pods within The Vines development. I have
13 an exhibit here showing the various areas in The Vines
14 and specific densities of those pods, and I would
15 point out that the most intense densities within The
16 Vines are toward the center.

17 THE HEARING EXAMINER: I'll mark that as Staff
18 Exhibit Number 5.

19 MS. DESELEM: Two pages.

20 THE HEARING EXAMINER: Two pages. Okay, that's
21 fine. The first one is actually calculations and the
22 other one --

23 MR. CHUMLEY: The first one is a map and a key
24 and the second one corresponds to the map.

25 (Whereupon, Staff's Exhibit No. 5 marked for

1 identification.)

2 THE HEARING EXAMINER: Good. Thank you.

3 MR. CHUMLEY: That's really all I have to say
4 about the density. If there's any questions, I'll be
5 happy to answer them.

6 THE HEARING EXAMINER: Any questions from the
7 applicant?

8 MR. CICCARONE: Yes, sir.

9 BY MR. CICCARONE:

10 Q. Mr. Chumley, can you give me a list of other
11 projects where this pod-by-pod approach to determining
12 compatibility has been employed?

13 A. I can't give a list of specific projects, but I
14 can tell you that, you know, any project we look at, we're
15 looking at compatibility issues.

16 Q. Well, the reason I asked for specific projects is
17 if I'm going to ask the Hearing Examiner to treat us the
18 same as everybody else is treated, I would like to be able
19 to direct him to cases where this issue has come up. Can
20 you at least give me one example where it's come up
21 before?

22 A. I'm sorry, I can't.

23 Q. Would you like to go get Mr. Noble and ask him to
24 do it? I'll be happy to wait. But I'm looking, I'm
25 looking for at least one example that we can point the

1 Hearing Examiner to for guidance. I haven't been able to
2 find one. That's why I'm asking.

3 MS. DESELEM: If I may, since Mr. Noble isn't
4 available, I know in Estero River Bay, it was adjacent
5 to single family homes along Broadway north on their
6 eastern front boundary. We seriously looked at what
7 was proposed in each pod of that particular project
8 and reviewed it for compatibility with whatever was
9 beside it.

10 MR. CICCARONE: And you made a recommendation of
11 incompatibility based upon a difference in density
12 between one of those pods and something adjoining?

13 MS. DESELEM: We had specific conditions
14 addressing the issues. I don't remember that the
15 density was an issue as far as if we limited the
16 density beyond what the applicant had already limited
17 it to, but it was an issue and we did address the
18 compatibility between the different pods in that large
19 project.

20 If you're working on a small project, it might
21 not necessarily be an issue because the pods aren't
22 there, but in this project you have it. Estero River
23 Bay was a large project. You had the same thing.

24 MR. CICCARONE: Help me out. We're talking about
25 density, and I thought you just said that density

1 wasn't the issue in that case.

2 MS. DESELEM: We didn't necessarily limit the
3 densities on those issues beyond what the applicant
4 had already limited it. We did a lot of negotiation
5 up to the point the staff report was prepared. By the
6 time we went to hearing, we had it to a point where we
7 had a compatible project based on conditions.

8 MR. CICCARONE: All right. Well, I don't care
9 which one of you answers the questions, but would you
10 now supply me with the legal basis for this in the
11 Land Development Code and the comprehensive plan?

12 MS. DESELEM: It's provided in the staff report
13 and the Land Development Code provides that you have
14 to have projects that are incompatible directed
15 internally, and I believe Mr. Noble -- well, I guess
16 Mr. O'Connor signed the actual memo. It also
17 addresses the internal versus the external issues of a
18 planned development and how it's supposed to be
19 reviewed. It's right in the design guidelines for a
20 planned development in the Land Development Code. I
21 believe it's Chapter 34-373.

22 BY MR. CICCARONE:

23 Q. Let's go right into those externalities. How
24 about giving me a list of the externality differences as
25 they will be perceived in The Vines between a pod density

1 of 7.47 dwelling units per acre versus 8.47 with an
2 intervening road and Type E buffer?

3 A. There's noise factors, there are lighting
4 factors, its intensity.

5 Q. How much more noise, how much more lighting?

6 A. Well, there is no way to quantify it. It's
7 logical that if you have more density and intensity, there
8 will be more impact to the adjacent property.

9 Q. You're aware of the Land Development Code
10 lighting conditions that set a maximum lighting at the
11 project boundary regardless of intensity or density within
12 the project? Are you aware of those?

13 A. Yeah, I'm aware of those.

14 Q. So you're telling me that you would expect more
15 light from this?

16 A. It's still a factor, it's still an impact.
17 That's all I'm saying.

18 Q. Do you have anything besides noise and --

19 A. It's the height of the buildings, too.

20 Q. There's something wrong with two-story
21 residential buildings?

22 A. No. Well, there's going to be -- it's my
23 understanding that they're going to be what, 55 feet once
24 you get to 200 feet of the property line? Is that
25 correct?

1 Q. Correct. How far back would they have to be, 300
2 feet to go 55 stories (sic)?

3 A. I can't answer that question.

4 Q. Can you point, can you point to any objective
5 measurement by which we could answer that question
6 anywhere in the Land Development Code, in the planning
7 literature or any other source?

8 A. I'm not sure it's possible to quantify. You have
9 to look at each project on an individual basis.

10 Q. Are you familiar with what a Type E buffer
11 consists of?

12 A. I believe it's a wall and berm combination.

13 Q. Pretty dense, heavy buffer, is it not?

14 A. I would say so; probably one of the more intense.

15 Q. How high is the wall?

16 A. I'm not sure.

17 Do you know, Kay?

18 MS. DESELEM: I believe it to be eight feet.

19 MR. CHUMLEY: Eight feet.

20 BY MR. CICCARONE:

21 Q. Eight-foot wall. What's the purpose of requiring
22 a Type E buffer?

23 A. To lessen the impact on the adjacent properties
24 of the proposed development.

25 Q. Why doesn't this Type E buffer do that, then?

1 A. I think it's because of the height of the
2 buildings and the density differences.

3 Q. Is it the staff's position that the fact that it
4 is theoretically possible for someone from The Vines to
5 look over the top of an eight-foot wall and see a portion
6 of a building 200 feet or more away that might be above
7 two stories is a demonstration of incompatibility? Is
8 that the staff's position?

9 MS. DESELEM: If I may draw your attention to the
10 Crown Colony project that was approved adjacent to a
11 single family neighborhood, that was separated by a
12 fairly wide canal and it was also reviewed for these
13 very same things, and the 200-foot setbacks and
14 similar things are very similar to what was approved
15 in that project. To address compatibility issues for
16 the project, I think they had similar limitations as
17 far as two-story.

18 MR. CICCARONE: They weren't allowed to have
19 anything over two stories within 200 feet, is that
20 what you're saying?

21 MS. DESELEM: I believe it was that, plus they
22 did some changing as far as adding single family uses
23 adjacent to the neighbor as opposed to some of the
24 multifamily buildings. They redesigned their site
25 plan to address intensity of a multifamily use

1 adjacent to single family use as well as the project's
2 density, and these were separated by a golf course.

3 MR. CICCARONE: Do you know what the setback is
4 for that Type E buffer?

5 MS. DESELEM: I'm sorry?

6 MR. CICCARONE: What would the setback be for
7 that Type E buffer?

8 MS. DESELEM: The setback is set forth in the
9 property development regulations. The Type E buffer
10 doesn't set forth a setback. It's a buffer.

11 MR. CICCARONE: What I'm asking is somewhere in
12 this mass of papers we have agreed on whatever the
13 setback should be from that. I'm just asking what the
14 number is.

15 MS. DESELEM: I don't know that we have agreed
16 upon it.

17 MR. CICCARONE: I thought we had. I thought we
18 had agreed on all the property development
19 regulations.

20 MS. DESELEM: I think there's a specific
21 condition in there, and I don't know that you've
22 agreed to the first part of that condition. You
23 agreed to the second part of that condition.

24 But staff has a one-story limitation to a
25 distance of a hundred feet and then the two-story, or

1 the 200-foot limitation after that, which the 200-foot
2 limitation is what was proposed on your master concept
3 plan.

4 I have to find --

5 MR. CICCARONE: Hang on. We're talking two
6 different things. All I want to know is how close can
7 a building be to that property line? I'm just looking
8 at this matrix here. Is it -- is this considered a
9 rear setback, 20 feet? Am I reading this right?

10 MS. DESELEM: I direct your attention to
11 Condition 18 that says structures within Tract 5 are
12 limited to one-story height for a distance of a
13 hundred feet and then two-story for height for the
14 next hundred feet, so that's going to limit how high
15 the buildings can be.

16 MR. CICCARONE: Let's stop for a second. We're
17 talking two different things. I don't care how high
18 they are. I just want to know how close they can be
19 to the property line. Am I correct when I look at
20 this chart that it's 20 feet? That's all I want to
21 know.

22 MS. DESELEM: I misunderstood your question.
23 Yes.

24 MR. CICCARONE: How wide is a Type E buffer?

25 MS. DESELEM: A Type E buffer, I have to check on

1 the Land Development Regulations. I think it's either
2 25 or 30 feet.

3 UNIDENTIFIED SPEAKER: It's 25.

4 MR. CICCARONE: So that's 45 feet. And how wide
5 is the distance on the other side of that property
6 line to the nearest dwelling in The Vines?

7 MS. DESELEM: I'm sorry. I don't understand your
8 question.

9 MR. CICCARONE: How far away from the property
10 line is the nearest dwelling in The Vines?

11 MS. DESELEM: I don't know exactly.

12 MR. CHUMLEY: It can be the distance of a street
13 and a front yard.

14 MS. DESELEM: And then they have a small buffer
15 along their property line from this project, but I
16 don't know the exact distance.

17 MR. CICCARONE: So 7.47 is compatible and 8.47 is
18 not compatible?

19 MR. CHUMLEY: Let me add we weren't aware that
20 this project was going to be requesting 340 units on
21 that parcel until this morning. We did not review
22 this based on 340 units, we reviewed it based on 300
23 units and we wrote that condition. We agreed on 300
24 units. We thought it was going to be compatible and
25 everything was fine. And now we find out it's 340

1 units, and we haven't had a chance to determine what
2 the acceptable distance is between the two projects
3 now.

4 MR. CICCARONE: But you determined in that short
5 period of time that it's incompatible, correct?

6 MS. DESELEM: As I testified, we went through
7 numerous negotiations to get to the point where we
8 went with the MPD because we were uncomfortable
9 supporting anything above 242 units.

10 THE HEARING EXAMINER: Would it be fair to say
11 that you looked at 300, which is what you looked at,
12 and that was okay. But you haven't looked at 340 and
13 it's possible - and I'm not trying to put words in
14 your mouth - it's possible if you looked at 340 that
15 there might not be a problem? I'm not trying to
16 say -- I mean you haven't looked at --

17 MR. CHUMLEY: There might be, there might not be.
18 We really haven't had a chance to review it.

19 THE HEARING EXAMINER: Is the reason for the
20 recommendation of not going above that not because you
21 know it's incompatible but because you haven't had a
22 chance to review it to find out if it's incompatible?
23 Is that a fair statement? I'm not trying to put words
24 in your mouth.

25 MR. CHUMLEY: I think that's probably a fair

1 statement.

2 MR. CICCARONE: Nothing further on that point.

3 THE HEARING EXAMINER: Do you need any more of
4 Mr. Chumley?

5 MR. CICCARONE: No.

6 THE HEARING EXAMINER: Mr. Chumley is excused.

7 Do you have another witness?

8 MS. DESELEM: Yes. Matt Noble, please.

9 THE HEARING EXAMINER: I'm not sure if you were
10 in the room when I swore everybody.

11 MR. NOBLE: No, I have not been sworn.

12 Thereupon,

13 MATT NOBLE,

14 produced as a witness on behalf of the Staff, having been
15 first duly sworn, testified as follows:

16 MR. NOBLE: For the record, Matt Noble, Division
17 of Planning.

18 I first want to beg your indulgence a little bit.
19 It's been a hard day, I think, for a lot of folks here
20 today, and I do want to apologize to the applicant,
21 too. I was a little short earlier today with
22 everything going on.

23 I wanted to deal with a little bit of the golf
24 course conditions, the density and some of why we're
25 where we are at today.

1 MR. CICCARONE: Matt, we have agreed on the golf
2 course, so you don't need to --

3 MR. NOBLE: I know. I'm doing this just as kind
4 of an overall -- for the Hearing Examiner's benefit,
5 more than anything else, for future cases.

6 I would like to submit into the record, this is
7 the current drainage features on the subject property,
8 surrounding property.

9 THE HEARING EXAMINER: I'll mark that as Staff
10 Exhibit Number 6.

11 Thank you.

12 (Whereupon, Staff's Exhibit No. 6 marked for
13 identification.)

14 MR. NOBLE: This is in the county records.
15 Natural Resources actually maintains this data base.
16 This is a printout of part of their GIS data base
17 upstairs on the third floor.

18 The features to note on this, as you can see in
19 kind of the top portion of the drawing, there is a
20 kind of aqua-colored line that represents the existing
21 ditch, farm ditch on the property today. You can see
22 the Koreshan Boulevard is marked on here as well as
23 U.S. 41. So you get a general sense of the location
24 of the project to the river. The property currently
25 outfalls into this ditch as well as the ditch along

1 the railroad tracks.

2 It's kind of interesting to note - at least
3 Natural Resources is noting it to me - that the ditch
4 itself really isn't a legal conveyance at this point,
5 but that's kind of an aside. The legal conveyance is
6 that line in the center of the property. It goes
7 across Koreshan Boulevard and heads south through an
8 additional property. We have already had discussions
9 with that property owner and that piece will be before
10 you at some point, so I really don't want to dwell on
11 that. I just want it for your information that this
12 property does outfall to the south. And eventually,
13 if you follow that line, this yellow line next to that
14 curve, that's the railroad tracks, so the outfall
15 comes down to the ditch side of the railroad track,
16 eventually makes its way under the railroad track and
17 continues south to the Estero River.

18 That's partly the concerns with the surface water
19 system and operation is its proximity to the Estero
20 River and its outfalling to that body and eventually
21 to the bay. And I think I have probably belabored the
22 point. I just wanted the record to clearly show you
23 the outfall situation.

24 MR. CICCARONE: What are the green dots, just for
25 curiosity's sake?

1 MR. NOBLE: That's a good point. Thank you for
2 bringing it up. Really, you should discount -- that's
3 an internal point. It's a flow calculation control
4 point for Natural Resources. They do their flow
5 calculations at those points, so it really doesn't
6 mean anything for this purpose.

7 Density. I wanted to talk a little bit about the
8 density.

9 The 300 units was an issue that internally did
10 cause staff some heartburn. I know I had several
11 conversations with Kay throughout the review process
12 about the location, if you will, of the placement of
13 some of the density on the property, which is -- we're
14 talking about that pod, Pod 5. We really did gnash
15 some teeth about it, given the location of The Vines
16 single family units on the perimeter, the development
17 pattern in The Vines with the higher pods. And I
18 believe Ben put that on the record today.

19 If you look at those pods on a net basis, where
20 the more intense or dense portion of that project is,
21 it's internal to the project. That's just the way
22 that project developed. The less dense portions of it
23 are on the perimeter of that project. They
24 internalized the density at The Vines project. So we
25 had that concern of locating a more intense or dense

1 residential pod adjacent to the single family, and
2 that really resulted in Kay's conditioning on the
3 height and separation and the buffering and all of
4 that. That's where staff ended up.

5 Yes, we only did see - planning staff - I believe
6 Kay had it faxed to her last night at a quarter of
7 4:00 or so, but unfortunately we were -- I was in a
8 public hearing out on Pine Island so I didn't see it
9 until 8:10 this morning.

10 I have talked to the planning director as well as
11 the Development Services director about increasing the
12 density on that pod to 340 dwelling units, which
13 really represents 8.4 units, approximately, per acre
14 on that pod. When we look at the adjacent pod that
15 was developed in The Vines, that's slightly below two
16 units an acre, so we're talking about placement of 8.4
17 units per acre adjacent to two -- a little less than
18 two units an acre. So that caused us some concern and
19 Walter directed me to tell you that he can't support
20 that today just without having the opportunity to look
21 at it more, but he doesn't believe that if we would
22 look at it more, that given past cases and track
23 record, that he doesn't think that staff could support
24 40 additional units, that he more or less felt that we
25 had compromised about as far as we could go with the

1 density, that we are recommending approval of
2 approximately 7.4 units an acre on that pod as
3 included in the staff conditioning; that the reality
4 is we're talking about an additional unit per acre on
5 that pod adjacent to two units an acre and he felt
6 that that really wasn't called for, that we had
7 conditioned it to accommodate the 300 units that the
8 applicant had always asked for up to this point.

9 THE HEARING EXAMINER: Thank you. Another point?

10 MR. NOBLE: That's about all.

11 THE HEARING EXAMINER: I thought you had
12 something.

13 Any questions?

14 MR. CICCARONE: No questions.

15 THE HEARING EXAMINER: Okay, thank you.

16 MS. DESELEM: I believe at this point we're ready
17 for the DOT.

18 I'm sorry.

19 MS. COLLINS: I think I'm going to go first.

20 MS. DESELEM: We're going to have Donna Marie
21 Collins go first.

22 THE HEARING EXAMINER: That's fine.

23 MS. COLLINS: Donna Marie Collins, Assistant
24 County Attorney.

25 I just wanted to speak briefly before Elaine

1 Mettauer. She is specifically going to address
2 Condition 6 that's proposed for incorporation into the
3 zoning resolution once adopted by the board.

4 I just wanted to tell the Hearing Examiner that
5 the decision to incorporate this condition into the
6 zoning resolution will ultimately be a policy decision
7 for the board. The board clearly has the power and
8 the ability through its police powers to protect the
9 health, safety and welfare of the citizens of Lee
10 County by providing for the future road network of the
11 county, and there's no dispute that the county will
12 incur liability by virtue of this condition. If the
13 board elects to preserve the right-of-way, it will be
14 responsible for compensating the property owner the
15 fair market value of the acreage that has to be taken
16 in order to accommodate this roadway.

17 In fact, if you read Condition 6, it's
18 specifically acknowledged in there that there is a
19 plan to compensate, which, by the way, distinguishes
20 this case from the First Evangelical Lutheran case,
21 which you may recall in that case there was an
22 exaction with no plan for compensation and the court
23 essentially held that it was a regulatory taking and
24 that compensation was necessary. We're acknowledging
25 at the front end this is the equivalent of an inverse

1 condemnation. The county will incur liability by this
2 and we will pay.

3 No one has suggested that the Sandy Lane
4 right-of-way is needed because of the impacts of this
5 project. It's needed for the county transportation
6 network, and for that reason it's not site related and
7 there would be compensation.

8 The bottom line is that the value of this
9 right-of-way will not be determined in this forum. It
10 will either be negotiated or resolved in the Circuit
11 Court, so I'm not certain we're going to benefit from
12 spending a lot of time on the merits of this condition
13 except to say that the purpose of the condition is to
14 benefit the general public and also the public that
15 may some day reside within this subdivision in that if
16 the developer and property owner in this case plans
17 ahead to accommodate the right-of-way, they will avoid
18 the displacement of the future residents of the
19 subdivision that may be residing within this area that
20 the county believes that it will need to accommodate
21 this right-of-way.

22 The county is not ignorant of its
23 responsibilities nor is it trying to avoid them. And,
24 as I stated earlier, we feel as though this is a
25 policy decision for the board to make and we would

1 encourage you in your recommendation to pose it to the
2 board in that fashion.

3 And that's all I have to say.

4 THE HEARING EXAMINER: Thank you.

5 If you need to come back, give your name for the
6 record again.

7 MR. NOBLE: Matt Noble, Division of Planning for
8 the record.

9 We had one cleanup item that I think Ben
10 neglected to mention, but we should make that change.

11 It's in the monitoring condition. It references
12 the water, the clean water standards out of the
13 Florida Administrative Code.

14 Subsequent to us creating these conditions, the
15 state staff has renumbered the administrative code, so
16 we need to catch that citation. It's referenced as
17 17-302, I believe.

18 THE HEARING EXAMINER: For the record, it's
19 Condition K for the golf course.

20 MR. NOBLE: It should be 62-302 due to the
21 renumbering.

22 THE HEARING EXAMINER: Okay. That's great.
23 Thank you.

24 Have you been sworn?

25 MS. METTAUER: Yes, sir.

1 THE HEARING EXAMINER: Okay. Thank you.
2 Thereupon,

3 ELAINE METTAUER,
4 produced as a witness on behalf of the Staff, having been
5 previously duly sworn, testified as follows:

6 MS. METTAUER: I'm Elaine Mettauer with Lee
7 County DOT. I'm in the planning department. For the
8 past year I have reviewed all the zoning cases that
9 have come in for DOT issues, right-of-way access,
10 interconnections. I have represented the DOT at other
11 hearings. You have my resume on record.

12 Okay. Well, we all know why we're here is to
13 explain why we need Sandy Lane and the importance that
14 DOT feels that it is to the county and to the public.

15 I hope you will bear with me. I've got a lot of
16 exhibits and I'll try and -- does this thing work?
17 Well, I'm going to have to walk over, maybe leave the
18 podium, if that's okay.

19 THE HEARING EXAMINER: That's fine, as long as
20 you talk up loud.

21 MS. METTAUER: Okay, I will.

22 When this applicant or application came in back
23 in, I believe, May or June of last year, when we first
24 reviewed it, we put the applicant on notice about the
25 Sandy Lane extension. And I would like to give you as

1 an exhibit some of the correspondence that we had.

2 Through the sufficiency, there were two
3 sufficiency responses. In both responses we addressed
4 the need and the desire for Sandy Lane. There's also
5 our substantiative comments, which you already have as
6 part of the staff report. In addition, there is a
7 letter from Scott Gilbertson, our director, also just
8 talking about the Sandy Lane and the importance it is
9 to DOT.

10 THE HEARING EXAMINER: I'll mark this as
11 Composite -- Staff Composite Exhibit Number 7.

12 (Whereupon, Staff's Exhibit No. 7 marked for
13 identification.)

14 MS. METTAUER: I hate to, Mr. Ciccarone, but I'm
15 going to be now referring to some of these exhibits.

16 I kind of want to give you a history of Sandy
17 Lane and let you know this isn't just something we
18 dreamed up. This has been on our plan for quite some
19 time.

20 First I will show you -- this is the MPO 2020
21 plan. Sandy Lane has been on the MPO 2020 plan since
22 1995. It's highlighted here in green. It is
23 currently on the MPO 2010 plan. You can see it's
24 moving up into -- in priority. It's shown here on the
25 2010 plan. It's also shown on our official

1 trafficways map, which is back here, and this was
2 revised in 1991. It's now being updated. It's going
3 to remain in our updated official trafficways map as a
4 two-lane collector road.

5 This is a copy, one of two that I am aware of,
6 because this was done before Autocad, of the original
7 trafficways map, and this was done back in 1985. And
8 Sandy Lane -- let me get my bearings. I think I hid
9 it. Sorry. Here is existing San Carlos Park. Sandy
10 Lane is also shown on the original trafficways map,
11 which was first done back in 1985. And I would like
12 to give you a copy of - because I can't leave that
13 with you, I've got to give that back to its rightful
14 owner - of that section.

15 THE HEARING EXAMINER: Okay. I'll mark that as
16 Staff Exhibit Number 8, consisting of a portion of the
17 official trafficways map.

18 (Whereupon, Staff's Exhibit No. 8 marked for
19 identification.)

20 MS. METTAUER: So I think we've been able to
21 establish that Sandy Lane has been on our plan, it's
22 been on our plan for quite some time and it's not
23 something that we just dreamed up just because we want
24 to. And actually it's kind of comical. This project
25 came in, like I said, about May of last year, and

1 during that time, you know, Sandy Lane was mostly just
2 a line on a map. But since then we have had almost
3 every segment of the Sandy Lane extension come in for
4 either rezoning, been rezoned or in some type of
5 preliminary planning. And I just would like to walk
6 you through that and walk you through the whole length
7 of the project.

8 This is existing Oriole Road. We have got 60
9 feet of existing right-of-way here and an existing
10 two-lane road. This is the segment we're looking for
11 from the applicant. I will -- this here is the
12 approved Bernwood Village which Charlie Maurer spoke
13 to earlier. And I have a copy of his master concept
14 plan here that you can keep.

15 This segment, which is just to the south, lining
16 up with that median opening that Sandy Lane will come
17 into, is the Indigo Isles project. This is a new case
18 that's come in. We have met with them early on before
19 they submitted anything. We talked with them about
20 the Sandy Lane extension. Here is a copy of their
21 master concept plan, and I'll just take this off the
22 wall and hand it to you and I'll put it back up just
23 so you can see. They have incorporated 80 feet of
24 right-of-way -- here's this median -- down to their
25 southern property line.

1 Do you want to see that, Mr. Ciccarone?

2 MR. CICCARONE: Please. Is this your only copy?

3 MS. METTAUER: Yes, sir. It's just an exhibit.

4 THE HEARING EXAMINER: Show him on there again
5 where you showed me.

6 MS. METTAUER: This is the median opening that
7 lines up with Sandy Lane extension.

8 MR. CICCARONE: Okay.

9 MS. METTAUER: They are providing 80 feet of
10 right-of-way to their southern property line.

11 This little piece in here hasn't had any rezoning
12 or activity on it. This is a piece that the county,
13 if this were to get built, the county would come in
14 and develop this piece and we would have to look at
15 that little segment of road and when it would fit into
16 our CIP if and when, when this actually gets
17 constructed.

18 I will note here that there is a champion tree at
19 the intersection of Broadway and Sandy Lane. It is
20 not DOT's intention to cut that down. We would look
21 to, if we made the connection some day, to preserve
22 that champion tree. Just want that on the record in
23 case somebody reads we're going to be extending it
24 down, tying in with Broadway.

25 This is the existing portion of Sandy Lane.

1 Oh, I just want to note 60 feet is existing.
2 Eighty feet is what we're asking for the applicant.
3 Eighty feet is what this proposed development is going
4 to give to the -- not give, but set aside for the
5 county. We've got 60 feet of existing right-of-way
6 here.

7 This is a new development that's just got its
8 rezoning. It's called Kristen Woods. Their master
9 concept plan is here.

10 I'm just trying to show you that this corridor is
11 getting developed.

12 THE HEARING EXAMINER: I have a kind of
13 procedural question. Was it DOT's request to have
14 this condition added in this project?

15 MS. METTAUER: Uh-huh.

16 THE HEARING EXAMINER: The reason I'm asking,
17 it's nice to put them on notice, but if DOT wants to
18 take that piece, whether they agree to it or not, you
19 can go through condemnation and take it. Why was it
20 necessary, except for notification purposes, to put it
21 in this particular proposal and have all this
22 controversy around something you can do anyway?

23 MS. COLLINS: I can answer that. Donna Marie
24 Collins for the record.

25 Laws governing eminent domain have recently been

1 amended in the last two or three years that preclude
2 the county from seeking an order of taking on a plan
3 to acquire right-of-way until the actual right-of-way
4 plan is beyond the planning and engineering stage,
5 that they can go to the property owner and show these
6 are actually the engineering plans of what we're going
7 to take and what we're going to need, et cetera and
8 forth, so the county is not at this time able to
9 pursue eminent domain as a way to obtain this
10 property. Really, our only avenue at this point is
11 through inverse condemnation, and we felt as though it
12 was important at this stage to put the applicant on
13 notice that their property falls within the alignment
14 of this planned very important future collector that
15 the county intends on building and offer to compensate
16 them through impact fee credits or other at this time
17 so we can reserve the right-of-way now rather than
18 having to come in later, as I mentioned before,
19 displace possible residents, disrupt their golf
20 course, et cetera, in order to construct the road.

21 THE HEARING EXAMINER: Also, it's a cost saving,
22 I assume, if there's no development on that parcel.

23 MS. COLLINS: Exactly.

24 THE HEARING EXAMINER: Okay. Good. Thank you.
25 Okay. Thanks.

1 MS. METTAUER: This is Koreshan Unity on the west
2 side of Sandy Lane. Here's a copy of their master
3 concept plan.

4 This segment, this is Corkscrew Road. From here
5 to Williams Road we have had a developer come in,
6 trying to put together a project, this segment of road
7 here. This would be developer -- or is going to be
8 developer driven. They're proposing 120 feet of
9 right-of-way and I think they're proposing a four-lane
10 extension of Sandy Lane, and that's completely based
11 on the development that -- it's supposed to be a
12 two-lane roadway, but their development is increasing
13 the type of road that they're proposing to a
14 four-lane. And here is a copy of what was submitted
15 for us to review as a potential alignment to get from
16 Corkscrew Road to Williams Road.

17 From Williams down to -- this is Bonita Springs,
18 City of Bonita Springs. Here is the Simon Suncoast
19 Mall. They have submitted their DRI and their DCI
20 application. Here is a copy of what they've got
21 proposed for Sandy Lane. There again, they're
22 proposing 120 feet of right-of-way and a four-lane
23 facility.

24 And as you can see, almost every segment of Sandy
25 Lane has come in for some type of development,

1 redevelopment, and so it's important that we get all
2 the pieces of this extension.

3 I want to let you know what exactly we're asking
4 for, and I'll give you a copy of the sketch and
5 description of the area we're asking for.

6 THE HEARING EXAMINER: I'll mark this as Staff
7 Exhibit Number 9, consisting of the legal description
8 of the parcel as well as a survey sketch.

9 (Whereupon, Staff's Exhibit No. 9 marked for
10 identification.)

11 MS. METTAUER: The official trafficways map shows
12 Sandy Lane as a hundred-foot collector road, two-lane,
13 hundred-foot collector roadway. We are asking for 80
14 feet, trying to keep the impacts to the proposed
15 property to a minimum. We are proposing just a
16 two-lane road.

17 The reason for the additional right-of-way at the
18 northern property line is in order to line up with the
19 existing Oriole Road and to meet the minimum curve
20 that's required for this offset, which is, I believe,
21 120 feet. We need at least 700 feet of distance 200
22 feet wide in order to safely make that curve, so
23 that's why the weird configuration up at the north
24 end.

25 I show you -- this is a possible cross section of

1 what Sandy Lane could be. I'm not saying this is
2 exactly what's going to happen, but this is just the
3 possible cross section. Two 12-foot lanes, we've got
4 two paved shoulders, some landscaping and a sidewalk
5 on one side. Type of facility we might be looking at.

6 MS. COLLINS: I have a question on this exhibit
7 that you just submitted. Donna Marie Collins,
8 Assistant County Attorney.

9 This is the legal description that would be
10 needed from the Estero Golf Resort if they were to
11 accommodate all of the right-of-way needed for the
12 Sandy Lane extension?

13 MS. METTAUER: Correct.

14 MS. COLLINS: Mr. Maurer spoke on the record
15 representing James A. Bernet earlier, saying that his
16 project may be able to take on some of the
17 right-of-way for a portion of the alignment or perhaps
18 the storm water. Would that then change the
19 description of the property that may be needed of this
20 property?

21 MS. METTAUER: Yes. Most likely yes.

22 This exhibit just briefly goes over, and if you
23 have any technical information about our model or how
24 this information got developed, Andy Getch is here
25 from our department, but I just wanted to --

1 THE HEARING EXAMINER: And this is a chart
2 dealing with level of service comparisons?

3 MS. METTAUER: Yes.

4 THE HEARING EXAMINER: And that will be Staff
5 Exhibit Number 10.

6 (Whereupon, Staff's Exhibit No. 10 marked for
7 identification.)

8 MS. METTAUER: Just to highlight this real
9 quickly, in 2005 you can see the level of service of
10 these different segments of road. We have got U.S.
11 41, Oriole Road, Three Oaks, I-75 and Ben Hill
12 Griffin. By 2005, as you can see that footnote, this
13 assumes that Three Oaks will be four lanes and U.S. 41
14 will be six lanes, so there's not much difference
15 because, you know, you're having improvements being
16 done to our facilities.

17 By 2020, this assumes now that I-75 will be six
18 lanes as well as Ben Hill Griffin being six lanes.

19 And the thing I would like to note is the five --
20 Columns 5 and 6 is -- during 2020, if Sandy Lane is
21 not part of our network, you can see that U.S. 41 goes
22 to a level of service of F, which is failing.

23 THE HEARING EXAMINER: Go ahead.

24 MS. COLLINS: Donna Marie Collins, Assistant
25 County Attorney.

1 I would like to clarify this exhibit for a
2 second. If you look in the fourth and fifth and sixth
3 columns, you refer to this road as the Oriole Road
4 extension. Is this also synonymous with the Sandy
5 Road, Sandy Lane extension?

6 MS. METTAUER: Yes. I'm sorry about that. It's
7 synonymous, yes.

8 THE HEARING EXAMINER: Okay. I see it. Thank
9 you.

10 I guess as a curiosity, when did you anticipate
11 needing Sandy Lane?

12 MS. METTAUER: Well, sometime before 2010.

13 THE HEARING EXAMINER: So anywhere between now
14 and nine years from now?

15 MS. METTAUER: Possibly, yes.

16 What I have tried to show, though, is that, you
17 know, this area is developing quicker. It might be
18 something where as a little more time goes by might
19 get a little more attention. It could possibly move
20 up into our CIP in the next couple years. It's very
21 hard to determine that. It's driven by development
22 and it's also driven by how much dollars and if
23 they're being spent someplace else, if the money is
24 available.

25 THE HEARING EXAMINER: So when would the county

1 anticipate paying the applicant for this particular
2 piece of property?

3 MS. METTAUER: Well, we have told them we would
4 give them impact fees now, impact fee credits.

5 THE HEARING EXAMINER: I'm not trying to get --
6 this is getting into legal argument that I'm really
7 not going to have to deal with. It almost seems like
8 you're going to do something indirectly you can't do
9 directly.

10 MS. COLLINS: Exactly. That's our avenue.

11 THE HEARING EXAMINER: I know it's your avenue,
12 but if it's not -- if you can't do it directly, then
13 you shouldn't be able to do it indirectly. That's
14 something for the courts to decide, not me. But if
15 you have got condemnation laws changed, eminent domain
16 laws have changed which requires you to do certain
17 things, I'm not sure you can back into it through the
18 back door and not follow the same procedures. I'm not
19 sure they allow you to do that, but that's not for me
20 to decide.

21 MS. COLLINS: I would agree with that if we were
22 choosing not to compensate them at fair market value,
23 but to the extent that they would be compensated at
24 fair market value --

25 THE HEARING EXAMINER: When?

1 MS. COLLINS: At the time we negotiate the
2 dedication of the land.

3 THE HEARING EXAMINER: So in effect they're
4 giving up a parcel of land now that you may pay them
5 for in ten years or nine years?

6 MS. COLLINS: Our plan is to work something out
7 immediately, pay them immediately.

8 THE HEARING EXAMINER: I was just curious.

9 MS. COLLINS: We would like to acquire the
10 right-of-way, you know, within the next month or two.
11 That would be ideal for us.

12 THE HEARING EXAMINER: So rather than making an
13 offer for that parcel, you would rather have it as a
14 condition of this procedure.

15 The reason I'm asking you, it's going to go
16 before the board, and the board, they're going to hear
17 these arguments maybe for the first time on this case,
18 and it seems that maybe it's -- get some of these
19 issues out now so I can at least apprise them of the
20 situation rather than having them hit with it cold,
21 because what may end up happening is that that may be
22 the killer at that particular point and it really
23 wasn't discussed.

24 MS. COLLINS: Well, Your Honor, our aspirational
25 goal is to have this resolved before it gets to the

1 Board of County Commissioners as to the value, but if
2 that does not happen, the condition, if it has to be
3 modified somewhat, then we can do that at that time.

4 THE HEARING EXAMINER: Okay. Thank you.

5 MS. METTAUER: As Donna Marie alluded to, the
6 reason why we're looking to get the right-of-way now
7 as a condition of this zoning is based on the dollars
8 and the potential to future property owners that live
9 there. And as you as a taxpayer, you as a taxpayer,
10 you pay taxes to Lee County, part of those taxes go to
11 build and construct roads. We feel it's not --

12 THE HEARING EXAMINER: I'm sorry. The tape
13 didn't switch.

14 MS. METTAUER: We do not feel it is a wise and
15 prudent way to spend taxpayers' dollars and fund
16 roadway projects to buy property that potentially will
17 have a golf course on it, impact the golf course,
18 could possibly -- they could have lakes that are set
19 back 50 feet from the property line, filling in lakes
20 to build the road, taking new homes, displacing those
21 families. These developers could possibly be gone by
22 then and then you'd have individual property owners
23 who now we've -- at the county level, the board, those
24 people who pay taxes are now going to have to deal
25 with on an individual basis to go back and get the

1 right-of-way. We feel it's -- the wiser way to spend
2 taxpayers' dollars is to get it now even if it
3 potentially puts us into court. We feel like that
4 would be a better avenue, more cost savings, to go
5 that route than to potentially come back and buy golf
6 course holes and impact those people, and that's why
7 we're here.

8 THE HEARING EXAMINER: Thank you.

9 MS. METTAUER: I conclude.

10 THE HEARING EXAMINER: Any questions, Mr.
11 Ciccarone?

12 I'm sorry. Do you have any questions?

13 Go ahead, Donna Marie.

14 BY MS. COLLINS:

15 Q. Elaine, you may be familiar with the Land
16 Development Code, Chapter 34, Section 83 and Section 145.
17 That pertains to the criteria by which the board and the
18 Hearing Examiner must consider applications to rezone.

19 One of the criteria the project must satisfy in
20 order for them to recommend approval is that the request
21 is compatible with existing and planned uses in the
22 surrounding area. Given the history of the official
23 trafficways map and the plans for the county to construct
24 the Sandy Lane extension, do you believe this project
25 would be consistent with that criteria if they do not

1 accommodate the Sandy Road right-of-way at this time?
2 Would you conclude that the request would be compatible
3 with the planned use in the surrounding area?

4 MR. CICCARONE: If you can't answer that after a
5 leading question of that magnitude, I don't know
6 what --

7 MS. METTAUER: No. I don't think it would be
8 wise. I don't know about compatibility.

9 MS. COLLINS: Is this project consistent with the
10 planned extension of Sandy Lane?

11 MS. METTAUER: No, it is not.

12 MS. COLLINS: Thank you.

13 MS. METTAUER: Thank you.

14 THE HEARING EXAMINER: Do you want to ask him
15 some leading questions yourself now?

16 MS. METTAUER: Well, I -- you know, you get kind
17 of touchy stepping on other people.

18 MS. COLLINS: If you have a nervous witness
19 you're allowed to ask a leading question.

20 BY MR. CICCARONE:

21 Q. I know you have been looking forward to your
22 baptism of fire with me. I have been known to
23 cross-examine the staff somewhat harshly at times, but I
24 don't have anything harsh to ask you, but I do have a
25 couple of questions.

1 The road that comes up, the Sandy Lane extension
2 from the south of Koreshan, where it intersects Koreshan,
3 where would that be in relation to the common property
4 line between this development and the Bernwood Village
5 development to the east?

6 A. It would split it.

7 Q. In other words, half on one side and half on the
8 other?

9 A. Correct.

10 Q. If I'm looking at this legal description, you're
11 coming down our property line, aren't you?

12 A. That is correct.

13 Q. So those -- that, that road on the north side of
14 Koreshan would actually be offset to the west of the road
15 coming up from the south, right?

16 A. Correct.

17 Q. You say this has been on the map since 1985. Can
18 you tell me why when Bernwood Village was approved in 1997
19 the county didn't ask them to provide any of this
20 important right-of-way?

21 A. I wasn't here at that time. I don't know.

22 Q. Okay. I understand that the county's had this
23 potential acquisition appraised by Mike Maxwell; is that
24 correct?

25 A. That's correct. It's in the process. He hasn't

1 finalized his appraisal.

2 Q. Do you know what highest and best use Mr. Maxwell
3 was instructed to apply to this area that he's appraising?

4 A. No. I have not seen the appraisal.

5 THE HEARING EXAMINER: If I'm not mistaken,
6 aren't appraisals not subject to public records? I
7 thought they were not. I'm not sure, but -- you can
8 ask questions about them, but I'm not sure they're
9 even subject to public records, an appraisal that's
10 done by a governmental agency.

11 MS. COLLINS: I don't think it's public record
12 until 30 days before the acquisition.

13 THE HEARING EXAMINER: He can ask the question.
14 I not sure she has to answer it, so even if she knew
15 the answer.

16 BY MR. CICCARONE:

17 Q. I just want to know what the highest and best use
18 is. Is the highest and best use as golf course
19 development or is the highest and best use proposed future
20 right-of-way? Do you know the answer?

21 A. No.

22 MR. CICCARONE: I have no further questions.

23 THE HEARING EXAMINER: Thank you.

24 Anything else from the county?

25 Okay, thank you.

1 MS. DESELEM: That concludes us.

2 THE HEARING EXAMINER: Do you need a little break
3 before your rebuttal?

4 MR. CICCARONE: We're ready to go.

5 THE HEARING EXAMINER: How long do you think it
6 will take?

7 MR. CICCARONE: Very short. I just need to call
8 Carron back to clarify a couple things. She can do it
9 sitting right there.

10 THE HEARING EXAMINER: As long as you speak loud.

11 MS. DAY: I'll scream rather than stand up.

12 MR. CICCARONE: It's up to you, if you want to go
13 up there.

14 She can speak loud.

15 Thereupon,

16 CARRON DAY,

17 produced as a witness on behalf of the Applicant in
18 rebuttal, having been previously duly sworn, testified as
19 follows:

20 MR. CICCARONE: Kay made a point of explaining
21 that we had not provided sufficient justification for
22 Deviation Number 11. That's the stacked parking. And
23 I wanted Carron to address that so we have it in the
24 record.

25 BY MR. CICCARONE:

1 Q. So the question, Carron, is: What is the
2 justification and how have we provided that to the staff?

3 A. We submitted yesterday -- I have a copy of the
4 fax that I sent from Naples to my office that's timed
5 12:30, so it was sent at that time. This is a fax that's
6 solely on the deviations, and it's a three-page fax that
7 was sent to Kay. I don't know when she received it. And
8 it said that we withdrew the model home deviation. And
9 then on the Deviation Number 11 it described a little bit
10 that we were going to limit it to the -- the limitations
11 to the eight units and attached a copy of one of the
12 pieces of the articles you have. On the second page, it
13 addresses the criteria for the deviations and says that
14 the request will enhance the development because it will
15 allow the applicant to introduce a very positive building
16 product for the project --

17 THE HEARING EXAMINER: You have to read it
18 slowly.

19 A. This request will enhance the development because
20 it will allow the applicant to introduce a very positive
21 building product to this project, while still providing
22 the required number of parking spaces. The parking spaces
23 will be closer to the units than they would be if a
24 parking lot were required as is the usual case with
25 multifamily development. These driveways and individual

1 garages are more attractive and safer than an expansive
2 parking lot.

3 And then we submitted the language, so we
4 provided what I thought was sufficient to address the --
5 and we added the condition of -- we added the provision to
6 the end of the condition approving the deviation that we
7 needed to demonstrate at the time of development order
8 that an adequate line of sight visibility is provided to
9 insure safe exit from driveway onto the road, which I
10 believe was Mr. Blackburn's concern.

11 Q. Final question. Existing use is AG-2, am I
12 correct?

13 A. Yes. Vacant AG-2.

14 Q. Vacant AG-2. In your professional opinion, is
15 that a reasonable use, long-term use for this property,
16 given the development that's occurring around it and the
17 comprehensive plan that has been adopted for this area?

18 A. No, it is not.

19 Q. In fact, it would be an oasis of agriculture
20 within existing commercial and residential development
21 once that occurs, wouldn't it?

22 A. Yes. An area that's quickly developing.

23 MR. CICCARONE: I have no further questions.

24 Anyone has questions regarding that?

25 THE HEARING EXAMINER: Any questions?

1 MR. CICCARONE: I only want to make two points in
2 closing, and they deal with the two major issues, Mr.
3 Hearing Examiner.

4 One is on the question of the density in MPD-5.
5 It seems to me that the staff position is simply not
6 persuasive. There has to be a better reason to
7 declare something incompatible than the fact that the
8 number seems too high. If the best that the staff can
9 say about the externalities that would render one
10 number incompatible when another number wouldn't be is
11 that there might be more light and noise, I would
12 respectfully submit that that's pretty slim. And I
13 think it's totally unpersuasive when you couple it
14 with the fact that we're dealing with setbacks from
15 the Type E buffer, heavily vegetated with an
16 eight-foot wall, we have additional space from that to
17 the adjoining residences and we are proposing low
18 buildings, two-story buildings, typical
19 two-family-house type, no difference between
20 two-family town house, two-family multifamily,
21 two-family single family. We're proposing that within
22 200 feet of the property line. We're going up to a
23 55-foot-high limitation beyond it.

24 I believe we had, I think, the hotel case on San
25 Carlos Boulevard, I think we had last year, where a

1 great deal was said about the alleged incompatibility
2 of having to look at a structure, and that was
3 literally five or six stories across the street from
4 single family. You weren't persuaded then and I would
5 respectfully submit that this shouldn't persuade you
6 today either. This just isn't believable.

7 I would suggest that the number, the difference,
8 7.47 to 8.47, absent some externalities is a
9 distinction without substance. The fact of the matter
10 is that the overall density is well within what's
11 approved in the comprehensive plan for this area and
12 no one has suggested why putting more of the units on
13 MPD-5 than the staff would like to see is going to
14 create any external problems for anybody. And I would
15 respectfully point out that the neighbors in The Vines
16 did appear, and although they did have issues to raise
17 with you, that certainly wasn't one of them, and they
18 have been intimately involved with the evolution of
19 this project.

20 And I think a second point is, I'm disturbed with
21 the evolution of the internal pod approach to density.
22 This appears to me to be new ground we are breaking.
23 And if this is how the County Commission would like to
24 see it handled, then again I respectfully suggest this
25 needs to be incorporated into the Land Development

1 Code so everybody plays by the same set of rules.
2 Otherwise, it's make it up as you go along and it puts
3 every property owner at a severe disadvantage not
4 knowing what the subjective opinions of the staff may
5 be on any particular application until one is at the
6 end of the process.

7 That's not a reasonable way to do it, and I would
8 respectfully suggest that the applicant has met its
9 burden of proof in demonstrating compatibility, the
10 staff has not demonstrated incompatibility and that
11 the opinion of the staff essentially is unsupported.
12 Even an expert opinion needs to be supported by
13 something, and I would respectfully suggest there's no
14 support for it.

15 Deviation 11 we're not going to dwell on. We
16 have suggested a physical separation. Quite frankly,
17 I don't know why that wouldn't work. It's an issue
18 that you're familiar with. I'm sure you will do the
19 right thing by it.

20 Let's talk about Sandy Lane. The problem we have
21 here is that we owe a fiduciary responsibility to the
22 company's investors. It's difficult for a corporation
23 to be a, quote, good citizen, unquote, without also
24 finding the right balance with its fiduciary
25 obligation to its investors.

1 Paula Davis is sitting here with me as the
2 president of Keystone, but she is not the exclusive
3 owner of it. We have other people we need to answer
4 to, and their concern is: What is this going to cost
5 me? Well, what am I, what am I getting in return for
6 what I'm giving up?

7 As a lawyer, my perception is somewhat similar to
8 the thoughts you have, which is I don't believe that
9 there's any doubt that this proposed extension of
10 Sandy Lane is intended to benefit the public at large
11 without conferring any special benefit on this
12 property and in effect we're being asked to provide
13 land for the public good. It may be within the police
14 power of Lee County to condemn it, but it's not within
15 the police power of Lee County to condemn it without
16 fair and adequate compensation. It's a constitutional
17 requirement which can't be avoided by any means.

18 Now, I understand that the county's response is
19 well, we intend to compensate you. I have been down
20 this road before. I wrote the impact fee ordinance
21 with respect to transferable credits. First
22 jurisdiction in the world that had it. And its
23 purpose was to motivate people to build public roads
24 at a time when the county wanted to get roads built
25 but didn't have the funds to do it. The understanding

1 was in turn for doing that, one would get impact fee
2 credits.

3 It was embraced with enthusiasm and worked very
4 well. Over the years, there are some in DOT who seem
5 to have forgotten the trade-off. There's a lot of
6 enthusiasm for getting the road, but a fight to the
7 bitter death when it comes to getting the credits.
8 That's what Mr. Maurer was referring to earlier.

9 And I know how the game is played. I don't
10 believe legally we can be required to set this land
11 aside. And let's make it clear what happens if we do
12 that. This then becomes a dead zone. We may own it.
13 There's nothing we can do with it. It's going to be
14 shown as a future right-of-way and valued as such.

15 We are willing to work with the county to provide
16 them with this right-of-way, but not under
17 circumstances that we think are unfair.

18 If it is the county's desire to provide us with
19 impact fee credits, using what we believe is the
20 appropriate highest and best use, that's doable. If
21 it is the county's desire to compensate us with impact
22 fee credits for something less than that, that's not
23 fair. That's taking our property without compensation
24 and we're utterly opposed to it.

25 And I don't want to play the come back and we'll

1 agree on the credits later game. We either agree on
2 the dollar amount beforehand or we don't have an
3 agreement. If we're not able to reach an agreement --
4 and I hope we do, I really do. As long as we are
5 fairly compensated, we have no desire to stand in the
6 county's way, but we owe it to our investors to make
7 sure that the value of that land is recognized in
8 terms of compensation. As you know, impact fee
9 credits are inevitably sold at a discount, which means
10 that even when we get a hundred cents on the dollar on
11 paper, in fact that is not a hundred cents on the
12 dollar in cash. We inevitably are paying a discount,
13 usually a broker's fee, so we'll subsidize this no
14 matter what, is the long and short of it. We just
15 don't want to be bled too much.

16 If the county is willing to provide an honest
17 appraisal, valuing this land with the highest and best
18 use of residential golf course development as opposed
19 to future right-of-way, and if they are willing to
20 provide 100 percent of that land value as opposed to
21 some discounted amount based on a theory that somehow
22 this road serves some site-related purpose, then we
23 can do business and we'll be happy to continue those
24 negotiations and maybe something will get worked out.

25 But if that doesn't happen, I would respectfully

1 suggest that it is not a policy question for the Board
2 of County Commissioners as to whether they are going
3 to inflict the depressing impact of this future
4 right-of-way reservation upon us. It is a
5 constitutional question. We're entitled to the fair
6 value of it and we will resist vigorously any
7 suggestion that the county be allowed to do
8 indirectly, as you suggested, that which they cannot
9 do directly.

10 So on that basis we will wish you the best of
11 luck because it's clear you're going to have to write
12 a recommendation without knowing if we've ever come to
13 terms on this.

14 I would suggest to you that the evidence you have
15 heard today is uncontroverted, which is that this road
16 admittedly serves no purpose whatever to us. We don't
17 need it. We don't want it. We'll provide it, but
18 only under the right circumstances.

19 I don't believe there is any nexus, rational or
20 not, between what is being requested of us and the
21 impacts of this development, and we would hope that
22 your recommendation will reflect that.

23 That's not to say that we won't continue to work
24 with the county, but we will not be blackmailed into
25 working with the county.

1 It's even possible we may come to some terms with
2 respect to building part of the road and shifting our
3 entrance from the south to the east where it might
4 border Sandy Lane. If we do that, that will be with
5 the understanding that the specifications will have to
6 be agreed upon and that there will be full credit
7 given for the construction. We will not play the site
8 related versus nonsite related allocation game. It's
9 too expensive, we don't have time for it and I don't
10 want to see it abused.

11 If the county's not interested in that
12 construction, well, we don't have to do it, but what
13 we're telling the county is we're willing to talk
14 about it but it has to be on those terms. And if the
15 county isn't willing to do it, to my knowledge there's
16 no precedent whatever that would require us to build
17 it, so we won't. But we will at least attempt to work
18 out something on the right-of-way.

19 And I realize that Elaine wasn't here to explain
20 what happened in the 1997 case next door to us, but it
21 is pretty clear that this process has not been a
22 particularly neat one, and I commend her for coming in
23 at this stage and trying to make some sense of it, so
24 we're certainly not in any way faulting her for doing
25 her job. I mean this is what she's paid to do. Our

1 objection, if there is an objection, will simply be to
2 the fairness of the compensation when we get to that
3 stage.

4 I don't know when this will reach the board.
5 We'll do our best to have an agreement by then. It's
6 pretty clear we're not going to have an agreement by
7 the time that we close the record for this case, which
8 brings me to my final point, which is that pursuant to
9 your request I think what we ought to do is confirm
10 with Kay that her schedule is such that it would
11 permit her and Carron to get together, oh, sometime
12 before let's say next Wednesday, agree on what we've
13 agreed on and agree on what to disagree on so that by
14 next Friday we may provide you with a set of agreed
15 conditions and then separate proposed conditions on
16 those points where we simply can't agree. And I
17 checked with Carron and that's okay with her schedule.

18 I certainly want to look at them before they're
19 submitted.

20 I don't know what Kay's schedule looks like, but
21 the applicant has no objection to the record being
22 held open for that purpose until a week from this
23 Friday.

24 THE HEARING EXAMINER: I'll give Kay a chance to
25 address that.

1 What I would like to see when we get to that
2 point is I would like to see if we can do it in one
3 document, everything you've agreed to, those
4 conditions be one way, and have a separate set of
5 staff's recommendation and applicant's recommendation,
6 even on the same page. That way I can compare them.

7 If you can't do it that way, I'll take two
8 separate documents, but I prefer one.

9 We haven't decided on a time frame yet, but
10 that's what I prefer.

11 MR. CICCARONE: I think if we work soon enough,
12 that's possible. But I know in the past when we've
13 done this, it seems like everybody waits until the
14 last day and you seem to get two documents, but we'll
15 try to do it in one.

16 THE HEARING EXAMINER: Do you have something you
17 want to say, Donna Marie?

18 MS. COLLINS: No.

19 THE HEARING EXAMINER: I saw a hand. I'm sorry.
20 Kay?

21 MS. DESELEM: I, too, will keep my comments
22 brief.

23 I won't reiterate the traffic issues. Elaine
24 took care of those. I won't reiterate any of the golf
25 course things, but I will touch on two things, the --

1 in the Parcel Number 5.

2 And I just want to make it clear that the
3 applicant has known or at least the agent has known
4 since at least June that we had issues about
5 compatibility, so it's not like it's a big surprise.
6 And we have worked diligently with the applicant
7 trying to keep this project on track. And that's why
8 I submitted the documents to you that I did that
9 showed that up until a very short time ago we were
10 still looking at a project that was a CPD and an RPD.
11 And we thought we had it all resolved and then
12 yesterday we found out they wanted more units.

13 And I think it's an unfair characterization to
14 say that, you know, staff is now taking a hard line on
15 this and bringing up issues we hadn't brought up
16 before. I think they have been well aware of it. And
17 staff did not impose what I believe our right to be,
18 is we could have asked for a continuance and given
19 ourselves adequate time and we could have gone over
20 and reviewed a lot more things and perhaps have
21 presented more testimony to you to support our
22 position that 300 units is the appropriate time. But
23 in an effort of fairness and keeping the project
24 moving forward, we did not ask for that continuance.
25 I think that needs to be considered.

1 And Deviation Number 11, yes, there was written
2 justification provided to me yesterday. However,
3 that's only a part of what's required by Section
4 34-412(a). I quote: "Sample detail drawings," end of
5 quote, are required. We never got any. I still don't
6 have any, so I don't know what we're looking at.

7 So I don't have anything further, but I thank you
8 for listening to everything and thank the applicant
9 for working with us. It's been a long day.

10 THE HEARING EXAMINER: Thank you.

11 Is the one-week time frame adequate for you or do
12 you need more time?

13 MS. DESELEM: I would say I need two because I
14 have another hearing next Wednesday. I have a DRI
15 notice of proposed change next Wednesday that I have
16 to prepare for, so I don't know if that's going to
17 give me enough time.

18 THE HEARING EXAMINER: What I can do is I can go
19 with the long -- with the further out date and request
20 if there's time to get it in sooner than that.

21 MS. DESELEM: That's no problem. We would be
22 more than happy to try to get it in as soon as we can.

23 MS. DAY: Would you be available the day after
24 that hearing?

25 MS. DESELEM: That kind of depends upon that

1 hearing. At this point I think -- the only thing I
2 looked at on my calendar was next Friday, was this
3 coming Friday, because that's all we had talked about
4 earlier, and I haven't looked beyond that. But I'll
5 work with you as much as I can. But I want to make
6 sure that I understand who is supposed to submit to
7 whom and how that's supposed to work.

8 THE HEARING EXAMINER: What I'm assuming is going
9 to happen - maybe I'm being naive - is that you have a
10 conversation, agree on language on those conditions
11 and deviation conditions that you can agree on and
12 come up with some common language. Those things you
13 can't agree on, I would get two different versions; I
14 would get their version and I'd get the staff's
15 version. Now, if you could do that on one document,
16 fine; if you can't, if you have any question on any of
17 the wording, I need two separate documents of what
18 you're trying to submit with two separate documents
19 with two separate sets of conditions.

20 MS. DESELEM: I think we have it narrowed down to
21 just a few issues and I think we could -- since I have
22 it available to me on a Word Perfect document, it's
23 very easy for me to manipulate that and move it around
24 and I can share that with Carron. And then if she
25 wants to change anything in her document that she

1 disagrees with, then we can somehow highlight the
2 differences or something. I don't know how we could
3 put it in one document.

4 THE HEARING EXAMINER: If you can't, then that's
5 fine. What I'm basically asking for is a new set of
6 conditions and a new set of deviations with conditions
7 because I got confused on what's going to happen at
8 this time of the day, that time of the day, on this
9 parcel, on that parcel. So if you can go through the
10 conditions -- that's all I'm looking for, not a new
11 staff report, but some common language on all the
12 conditions. Those which are not in dispute, I don't
13 need those.

14 MS. DAY: Why don't you let me try to do that and
15 I'll send it to you?

16 MS. DESELEM: Let me clarify. You said you don't
17 need the conditions that there's no agreement --
18 disagreement on or do you want a whole list of
19 conditions?

20 THE HEARING EXAMINER: Well, if it's easier to
21 just do the whole list -- I don't want the numbers
22 changed, let's put it that way.

23 MS. DESELEM: I think it would be easier just to
24 do the whole list of conditions.

25 THE HEARING EXAMINER: Fine. Those would be the

1 same. Just highlight for me, underline, mark through,
2 whatever you normally do on the changes so I'll know
3 that one -- because I'm not going to be looking at the
4 transcript for probably two weeks, anyway, so I won't
5 have a transcript in front of me. If I want to start
6 reviewing this before then, I'll have your conditions.
7 But I need to know what's changed and what's not
8 changed. And if there's a condition that hasn't
9 changed, I'm not going to deal with it at that point.

10 MS. DESELEM: If Carron could get something to me
11 by say next Thursday.

12 MS. DAY: So that we could meet on Thursday,
13 maybe.

14 MS. DESELEM: Well --

15 THE HEARING EXAMINER: I don't want to work out
16 the details of how you're going to get together.
17 That's for you to work out. I just need to know the
18 time frame, and if it's two weeks --

19 MS. DESELEM: Give me at least two weeks.

20 THE HEARING EXAMINER: All right. We'll do that.
21 Okay. Two weeks from this Friday?

22 MS. COLLINS: That's fine. I have a question
23 when you're done with this.

24 THE HEARING EXAMINER: Two weeks from this
25 Friday.

1 MS. DESELEM: That would be acceptable. I don't
2 have my calendar with me and I can't --

3 THE HEARING EXAMINER: It would be the 29th --
4 the 30th. If I'm not mistaken, I'll use the 30th
5 right now as the date. And if it's the wrong date for
6 that Friday, I'll change the order to correspond to
7 the correct date, two weeks from this coming Friday.

8 MS. COLLINS: It is the 30th.

9 MS. DESELEM: I believe that's acceptable. Like
10 I said, I just checked for this coming Friday. I
11 didn't have my calendar with me.

12 MS. DAY: If you can't get to it until then, then
13 that's going to work out fine.

14 THE HEARING EXAMINER: I'm not sure, we haven't
15 decided yet who's going to be doing next week's --
16 which cases I'm going to be doing next week and so
17 forth. I probably won't get to it before then,
18 anyway. We won't have a transcript until that time,
19 anyway, at the earliest.

20 Mr. Ciccarone?

21 MR. CICCARONE: The public has departed long ago
22 and that makes it somewhat difficult to discuss their
23 concerns. I was going to suggest that in lieu of
24 having that discussion in a vacuum, we'll represent to
25 you that we'll get with the homeowner representatives

1 who we have been working with and we'll do our best to
2 work those out prior to the board hearing to the
3 extent they can be. I think in the meantime you'll
4 have to make whatever recommendations you deem
5 appropriate with respect to their particular requests
6 and --

7 THE HEARING EXAMINER: As long as you make it
8 clear to them when you discuss it with them that I
9 can't accept anything from them. I'm leaving the
10 record open only for the applicant and for the staff
11 to work out a new set of conditions and deviations or
12 how the wording of the deviation is going to be.

13 MR. CICCARONE: It's not uncommon for the public
14 to go to the board hearing with unresolved issues, and
15 so what I'm saying is since they're not here to
16 resolve them with, we'll try and do that before the
17 board hearing. But we understand that since you're
18 not part of the process, you can't deal with it, but
19 that's -- I don't want the, I don't want the neighbors
20 to get the impression from whatever media reports
21 might emerge from this meeting that we're not willing
22 to talk with them, it's just they're not here to talk
23 to, but we know who they are and we'll get with them
24 and see what we can work out.

25 They have been very helpful, very polite and

1 courteous. We want to continue that relationship.

2 THE HEARING EXAMINER: Ms. Collins?

3 MS. COLLINS: I would like to request a new
4 master concept plan be submitted to the Hearing
5 Examiner along with this revised set of conditions and
6 deviations since there has been numerous discussed
7 changes to the access and the location of the golf
8 course maintenance facility, et cetera, the notes are
9 revising, so I would request that in addition to this
10 other document that they also provide the revised
11 master concept plan to you so that you can refer to it
12 in the preparation of your recommendation.

13 THE HEARING EXAMINER: I thought about that as
14 well, but at the same time I think there are going to
15 be conditions upon which they can't agree, so what do
16 you put on the master concept plan? The applicant's
17 proposal?

18 MS. COLLINS: Those should not appear. The list
19 should not appear on the master concept plan, so
20 basically you would just have their proposal as they
21 wish to see it. The things that they've agreed to
22 already is superimposed onto it.

23 THE HEARING EXAMINER: As long as there's no --
24 the county doesn't have a problem with them submitting
25 a master concept plan with which the county may not

1 agree. I'm not sure that's going to happen.

2 MS. COLLINS: We don't have a problem with that,
3 because whatever the board decides, the Land
4 Development Code requires them to update it to what
5 they decide, so --

6 MR. CICCARONE: We will incorporate whatever we
7 have agreed on.

8 THE HEARING EXAMINER: Just like the change on
9 that A, B buffer, those kind of things are obvious
10 kinds of changes.

11 MR. CICCARONE: Take out the right-in, right-out,
12 move the golf course maintenance building.

13 MS. DAY: In the latest cases that we have done
14 for the resolutions and the way we have been
15 submitting them now, it was actually on the master
16 concept plan as just the graphic. The list of uses
17 and the list of deviations and the property
18 development regulations are actually coming off and
19 they're ending up as attachments to the resolution, so
20 I think that will make it easier for you to deal with
21 and it's how the resolutions have been prepared on
22 some of these big cases.

23 THE HEARING EXAMINER: Okay. So then it's
24 subject to the verification of that date being the
25 30th, what I will do is I will keep the record open

1 for written submissions from the county staff and from
2 the applicant on new conditions and also a new master
3 concept plan from the applicant.

4 Yes.

5 MS. DESELEM: I would like to get a copy of that
6 master concept plan when they submit -- whatever they
7 submit to me as well.

8 MS. DAY: Absolutely.

9 THE HEARING EXAMINER: Anything else?

10 Okay. Then we are adjourned subject to the
11 continuation of the written documentation.

12 Thank you.

13 (Whereupon, the proceedings were concluded at
14 4:50 p.m.)

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1 STATE OF FLORIDA)

2 COUNTY OF LEE)

3 I, Janet K. North, contract court reporter, 20th
4 Judicial Circuit of Florida, do certify that I was
5 authorized to and did stenographically report the
6 foregoing proceedings and that the typewritten transcript,
7 consisting of pages numbered 1 through 222, is a true
8 record.

9 Dated this 28th day of March, 2001.

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Janet K. North, Registered
Professional Reporter.

1	3-14-01 - Estero Golf Resort	
2		
3	A-1	14-1
4	A-2	125-12
5	A-6	14-1
6	ability	51-15, 52-9, 98-3, 99-7, 178-8
7	above	103-2, 103-24, 130-8, 167-6, 171-9,
8		171-20
9	absent	128-12, 204-8
10	absolutely	45-3, 61-14, 140-19, 222-8
11	abused	210-10
12	abut	124-5
13	abuts	124-1
14	abutting	160-4
15	academic	19-9
16	accept	144-23, 219-9
17	acceptable	13-13, 130-11, 138-9, 138-12, 138-15,
18		171-2, 218-1, 218-9
19	accepted	44-3, 145-3
20	access	23-16, 23-20, 31-16, 36-21, 51-17,
21		53-20, 89-11, 89-12, 89-13, 89-23,
22		94-15, 96-15, 112-25, 114-6, 137-12,
23		139-5, 160-22, 181-9, 220-7
24	accesses	138-23
25	accessible	114-3, 114-10

1	action	45-1
2	actions	139-21
3	active	35-21
4	activities	39-1, 76-16
5	activity	185-12
6	acts	125-25
7	actual	164-16, 187-3
8	actually	7-13, 12-15, 28-15, 39-17, 40-5, 40-14,
9		51-19, 55-2, 59-17, 82-19, 90-15, 94-18,
10		97-6, 99-12, 119-8, 153-23, 159-25,
11		161-21, 173-15, 183-24, 185-16, 187-6,
12		198-14, 221-15, 221-18
13	add	10-11, 11-3, 12-8, 48-10, 77-11, 113-15,
14		122-4, 142-19, 155-23, 170-19
15	added	121-1, 123-2, 154-15, 186-14, 202-5
16	adding	45-16, 62-14, 167-22
17	addition	182-6, 220-9
18	additional	47-24, 142-20, 174-8, 176-24, 177-4,
19		189-17, 203-16
20	address	5-12, 15-17, 23-10, 24-23, 25-4, 25-13,
21		25-17, 26-1, 26-14, 27-13, 28-13, 38-18,
22		48-5, 49-7, 49-12, 57-5, 62-15, 63-13,
23		74-4, 74-5, 77-2, 91-6, 92-14, 92-16,
24		96-8, 101-3, 111-25, 122-24, 140-4,
25		146-19, 148-15, 149-4, 152-5, 163-17,

1	accessory	10-12, 11-3, 45-16, 48-11
2	accommodate	20-20, 51-23, 52-5, 177-7, 178-16,
3		179-17, 179-20, 190-11, 197-1
4	accomplish	17-21
5	accomplished	23-20, 117-7, 119-15
6	accordance	39-3
7	according	76-18
8	account	113-10
9	accurate	46-21
10	acknowledged	178-18
11	acknowledging	178-24
12	acquire	187-3, 194-9
13	acquisition	198-23, 199-12
14	acre	47-4, 47-13, 47-14, 120-8, 120-12,
15		120-17, 120-19, 159-15, 159-16, 159-24,
16		160-1, 160-4, 160-5, 165-1, 176-13,
17		176-16, 176-17, 176-18, 177-2, 177-4,
18		177-5
19	acreage	33-14, 34-11, 160-9, 178-15
20	acreages	34-2, 37-16
21	acres	7-18, 33-23, 49-21, 50-2, 61-11, 61-12,
22		151-9, 151-11, 160-1
23	acronyms	7-24
24	across	45-8, 174-7, 204-3
25	act	139-5

1		167-15, 167-25, 178-1, 200-23, 202-4,
2		211-25
3	addressed	22-8, 77-14, 111-17, 113-22, 127-20,
4		140-9, 157-14, 182-3
5	addresses	62-10, 63-24, 66-11, 73-14, 140-8,
6		157-6, 164-17, 201-13
7	addressing	103-9, 151-22, 163-14
8	adequate	21-16, 21-17, 61-1, 69-12, 87-5, 102-17,
9		202-8, 206-16, 213-19, 214-11
10	adequately	24-8, 127-20
11	adjacent	8-21, 56-21, 58-19, 73-23, 76-13, 86-25,
12		91-21, 163-4, 165-8, 166-23, 167-10,
13		167-23, 168-1, 176-1, 176-14, 176-17,
14		177-5
15	adjoining	16-2, 22-13, 123-5, 124-5, 129-19,
16		134-22, 139-25, 163-12, 203-17
17	adjourned	222-10
18	adjust	77-10
19	administrative	10-11, 17-25, 19-6, 67-15, 180-13,
20		180-15
21	admission	111-23
22	admit	26-6
23	admitted	82-14
24	admittedly	209-16
25	adopted	28-1, 86-8, 86-21, 87-2, 178-3, 202-17

1	adverse	40-18
2	advise	143-15
3	aerial	35-8, 35-24, 45-5, 149-7
4	aesthetic	26-5
5	affect	32-1, 34-21, 112-17
6	affected	121-10
7	affectionately	35-14
8	afraid	13-8
9	afternoon	51-7, 52-15, 144-18
10	Ag-2	7-18, 202-11, 202-13, 202-14
11	again	10-24, 15-19, 16-12, 20-17, 25-16,
12		36-20, 48-10, 61-19, 64-20, 77-3, 77-18,
13		78-8, 101-18, 102-2, 105-25, 112-13,
14		113-23, 115-9, 115-23, 116-13, 127-4,
15		131-10, 149-24, 151-7, 180-6, 185-4,
16		188-21, 204-24
17	against	106-21
18	agency	199-10
19	agent	213-3
20	ago	68-22, 95-25, 110-25, 118-20, 213-9,
21		218-21
22	agree	19-23, 21-15, 34-5, 34-6, 37-6, 76-22,
23		85-10, 86-12, 86-16, 87-17, 87-18, 92-3,
24		92-6, 93-4, 109-22, 116-7, 118-12,
25		124-13, 126-16, 126-22, 130-4, 130-21,

1	ahead	27-5, 42-23, 51-9, 84-16, 89-6, 158-11,
2		179-17, 191-23, 196-13
3	air	27-23, 42-9, 112-20
4	alcohol	128-4, 128-19, 131-6, 131-16, 131-23,
5		132-1, 132-4, 132-6, 133-9
6	Alico	63-8
7	alignment	187-13, 188-15, 190-17
8	alignments	51-3
9	alleged	120-1, 204-1
10	allocation	210-8
11	allow	8-5, 11-24, 18-13, 20-16, 36-21, 99-1,
12		100-19, 102-13, 114-25, 127-11, 155-24,
13		193-19, 201-15, 201-20
14	allowed	42-4, 46-17, 103-11, 128-4, 132-1,
15		148-14, 167-18, 197-19, 209-7
16	allowing	100-6
17	allows	47-13
18	alluded	195-5
19	almost	15-8, 143-15, 184-2, 188-24, 193-7
20	along	5-18, 8-20, 9-3, 12-12, 14-9, 24-4,
21		25-11, 26-11, 31-22, 37-11, 40-25, 41-3,
22		41-9, 41-10, 41-15, 41-16, 41-17, 44-21,
23		44-22, 47-20, 47-25, 48-3, 49-20, 51-10,
24		51-12, 51-16, 55-15, 80-6, 91-25, 92-6,
25		92-9, 92-19, 92-25, 112-5, 112-24,

1		130-23, 133-9, 133-24, 133-25, 140-21,
2		141-10, 142-8, 142-19, 186-18, 193-21,
3		208-1, 211-12, 211-13, 211-16, 215-10,
4		215-11, 215-13, 220-15, 221-1
5	agreeable	12-5, 62-7, 117-21, 122-18
6	agreed	10-2, 10-5, 10-10, 11-2, 23-1, 31-17,
7		36-5, 36-14, 37-1, 47-24, 48-2, 48-10,
8		56-2, 56-17, 59-12, 71-14, 77-8, 77-25,
9		90-6, 91-11, 91-13, 92-16, 94-8, 95-14,
10		95-18, 95-21, 109-6, 115-5, 117-19,
11		118-3, 118-25, 122-1, 122-3, 127-5,
12		131-9, 135-1, 135-2, 135-15, 137-12,
13		138-8, 168-12, 168-15, 168-18, 168-22,
14		168-23, 170-23, 173-1, 210-6, 211-13,
15		211-14, 212-3, 220-21, 221-7
16	agreeing	10-4, 96-5
17	agreement	10-18, 15-20, 21-21, 22-16, 22-17,
18		34-17, 45-22, 48-14, 59-24, 63-15, 70-6,
19		75-17, 80-18, 81-13, 82-1, 87-11, 89-3,
20		89-18, 93-13, 93-18, 93-19, 109-13,
21		129-12, 129-16, 130-1, 134-11, 142-6,
22		142-12, 143-11, 148-12, 151-4, 208-3,
23		211-5, 211-6, 216-17
24	agrees	11-15, 21-14, 23-5, 84-14, 139-2
25	agriculture	7-18, 202-19

1		113-9, 115-3, 116-1, 134-3, 149-11,
2		154-11, 159-25, 160-2, 163-5, 170-15,
3		173-25, 205-2, 220-5
4	altered	31-14, 31-19
5	alternative	15-23, 23-4, 45-20, 64-13, 84-4, 96-23
6	although	8-22, 121-6, 204-16
7	altogether	47-1
8	always	42-10, 46-15, 149-2, 160-7, 177-8
9	ambiguity	156-17
10	ambiguous	68-2, 155-10
11	amenable	6-22, 109-7
12	amended	17-23, 86-18, 136-20, 146-17, 146-18,
13		187-1
14	amendment	67-16, 143-19
15	among	85-10, 116-21
16	amount	39-12, 42-12, 208-2, 208-21
17	ample	155-21
18	analysis	31-10, 32-2, 120-15, 155-15
19	Andy	145-9, 190-24
20	answer	5-21, 26-25, 54-15, 89-19, 96-15,
21		133-20, 162-5, 166-3, 166-5, 186-23,
22		197-4, 199-14, 199-15, 199-20, 206-3
23	answered	5-18
24	answering	26-24, 117-18
25	answers	164-9

1	anticipate	192-10, 193-1
2	anybody	32-9, 53-4, 157-23, 204-14
3	anybody's	108-18
4	anymore	133-20
5	anyone	5-10, 5-23, 51-1, 109-12, 116-18,
6		143-15, 202-24
7	anything	13-9, 40-13, 41-11, 42-13, 54-3, 54-17,
8		79-6, 137-20, 138-4, 140-6, 153-11,
9		155-8, 155-23, 157-7, 161-8, 165-18,
10		167-19, 171-9, 173-5, 175-6, 184-19,
11		197-24, 199-24, 214-7, 215-25, 219-9,
12		222-9
13	anyway	97-9, 111-10, 147-14, 186-22, 217-4,
14		218-18, 218-19
15	anywhere	18-14, 57-16, 58-15, 166-6, 192-13
16	apartment	103-3
17	apartments	103-2
18	apologize	50-6, 172-20
19	apology	125-1
20	apparently	15-12, 17-8, 50-17, 77-25
21	Appeals	141-6
22	appear	121-16, 204-16, 220-18, 220-19
23	appearance	28-25, 29-2, 29-16, 113-18
24	appeared	121-7
25	appears	24-5, 121-12, 204-22

1	applications	196-18
2	applies	90-15
3	apply	12-18, 143-20, 144-2, 199-3
4	applying	39-14
5	appraisal	199-1, 199-4, 199-9, 208-17
6	appraisals	199-6
7	appraised	198-23
8	appraising	199-3
9	appreciate	28-6, 43-5, 116-13, 124-12
10	appreciating	59-15
11	apprise	194-19
12	apprised	24-17
13	approach	55-25, 143-14, 162-11, 204-21
14	approached	50-13, 50-25
15	appropriate	15-25, 21-7, 21-13, 24-24, 26-12, 29-4,
16		53-12, 67-14, 72-25, 96-9, 112-21,
17		113-22, 116-22, 125-15, 143-11, 146-7,
18		148-20, 151-17, 151-19, 156-12, 207-20,
19		213-22, 219-5
20	appropriately	134-14
21	approval	17-25, 19-7, 21-10, 67-13, 89-22,
22		137-10, 139-9, 140-22, 177-1, 196-20
23	approve	63-6, 121-21, 128-18, 152-10
24	approved	10-22, 19-6, 22-22, 24-9, 60-21, 63-2,
25		74-10, 123-7, 127-11, 127-22, 138-20,

1	applicable	12-7, 87-25, 88-2
2	applicant	5-7, 7-4, 7-12, 7-15, 10-19, 13-13,
3		19-22, 31-21, 36-5, 37-1, 37-6, 38-19,
4		44-25, 51-21, 52-10, 63-9, 74-11, 83-23,
5		86-12, 87-17, 88-2, 90-12, 94-8, 95-21,
6		98-2, 118-1, 119-23, 120-2, 123-3,
7		123-6, 123-19, 126-7, 130-11, 142-13,
8		146-8, 146-25, 147-8, 147-17, 148-11,
9		161-11, 162-7, 163-16, 164-3, 172-20,
10		177-8, 181-22, 181-24, 184-11, 186-2,
11		187-12, 193-1, 200-17, 201-15, 201-20,
12		205-8, 211-21, 213-3, 213-6, 214-8,
13		219-10, 222-2, 222-3
14	applicant's	15-12, 34-10, 34-13, 48-21, 48-22, 50-3,
15		50-19, 55-19, 60-3, 60-8, 63-18, 63-21,
16		72-2, 72-4, 73-19, 73-20, 74-2, 84-8,
17		84-10, 85-20, 93-24, 97-10, 97-12,
18		101-12, 101-17, 101-21, 101-22, 101-25,
19		102-4, 106-1, 106-3, 106-14, 106-15,
20		106-17, 107-1, 107-11, 117-22, 119-16,
21		120-25, 121-2, 121-4, 127-16, 135-14,
22		136-23, 137-14, 137-17, 143-1, 143-3,
23		143-6, 212-5, 220-16
24	application	7-13, 8-11, 31-11, 40-20, 46-3, 145-25,
25		181-22, 188-20, 205-5

1		139-3, 139-22, 153-14, 154-11, 154-16,
2		156-14, 167-10, 167-14, 184-12, 198-18,
3		204-11
4	approving	153-25, 202-6
5	approximate	40-4
6	approximately	49-21, 55-22, 176-13, 177-2
7	aqua-colored	173-20
8	architect	26-7, 45-11
9	architectural	62-23
10	architecture	26-8
11	area	8-21, 19-25, 20-1, 21-11, 35-2, 35-10,
12		35-21, 36-1, 36-4, 36-7, 36-22, 37-4,
13		39-13, 39-23, 41-9, 55-4, 65-10, 68-22,
14		68-23, 68-25, 94-9, 95-23, 114-7,
15		118-22, 118-23, 118-24, 136-25, 146-8,
16		147-4, 147-7, 148-21, 150-23, 152-24,
17		179-19, 189-5, 192-17, 196-22, 197-3,
18		199-3, 202-17, 202-22, 204-11
19	areas	34-3, 35-5, 35-6, 35-7, 35-23, 36-5,
20		36-11, 36-17, 36-19, 37-2, 37-3, 37-5,
21		37-7, 109-13, 120-16, 139-25, 161-13
22	argue	19-7
23	arguing	78-14, 133-18
24	argument	19-8, 193-6
25	arguments	194-17

1	Arnold	27-11, 27-14
2	around	6-17, 6-19, 27-1, 43-4, 47-4, 54-2,
3		61-15, 145-5, 145-12, 152-22, 186-22,
4		202-16, 215-23
5	arrangement	124-18
6	artery	51-24
7	articles	96-24, 97-11, 101-23, 201-12
8	aside	6-21, 174-5, 186-4, 207-11
9	ask	5-17, 7-4, 9-24, 11-4, 11-16, 12-19,
10		23-6, 23-19, 23-24, 25-2, 28-3, 30-11,
11		30-14, 30-15, 31-7, 31-13, 32-13, 38-4,
12		38-17, 39-8, 47-8, 48-6, 49-6, 51-1,
13		59-14, 60-16, 60-25, 65-21, 66-1, 66-4,
14		66-24, 72-17, 88-18, 95-16, 96-8,
15		107-10, 108-23, 110-5, 114-16, 115-4,
16		115-9, 115-16, 119-12, 120-4, 120-23,
17		132-14, 132-24, 133-8, 144-23, 155-24,
18		156-4, 160-6, 162-17, 162-23, 197-14,
19		197-19, 197-24, 198-19, 199-8, 199-13,
20		213-24
21	asked	26-22, 46-19, 49-4, 60-17, 62-12, 64-23,
22		65-5, 82-16, 83-9, 92-24, 99-13, 99-24,
23		101-1, 132-24, 160-7, 162-16, 177-8,
24		206-12, 213-18
25	asking	13-19, 18-12, 46-11, 46-24, 54-11,

1	attachments	24-1, 221-19
2	attempt	10-4, 24-23, 61-17, 210-17
3	attempted	155-15
4	attempting	61-20
5	attention	10-8, 44-11, 56-1, 143-12, 167-9,
6		169-10, 192-19
7	attorney	7-11, 177-24, 190-8, 191-25
8	attractive	62-22, 202-1
9	attribute	100-16
10	audience	5-10, 7-2, 8-25, 54-22
11	augment	60-24, 92-16
12	augmented	47-20
13	authorities	39-1, 39-4
14	authorize	6-4
15	auto	113-14
16	Autocad	183-6
17	automobile	156-23
18	available	145-6, 145-8, 145-17, 163-4, 192-24,
19		214-23, 215-22
20	avenue	187-10, 193-10, 193-11, 196-4
21	average	47-16, 62-20
22	avoid	7-25, 64-11, 88-11, 103-5, 104-3,
23		179-17, 179-23
24	avoided	206-17
25	award	26-7

1		58-18, 58-22, 61-18, 64-4, 65-3, 65-7,
2		65-17, 65-20, 66-23, 68-21, 78-14,
3		78-19, 78-24, 79-1, 79-6, 79-8, 79-9,
4		79-10, 79-23, 80-8, 80-13, 80-15, 81-9,
5		82-15, 100-8, 117-8, 127-7, 127-8,
6		128-22, 133-5, 140-17, 145-10, 163-2,
7		168-11, 168-13, 186-2, 186-16, 189-3,
8		189-5, 189-13, 194-15, 216-5
9	asks	89-10, 98-24
10	aspects	21-6
11	aspirational	194-24
12	Assistant	177-23, 190-8, 191-24
13	assisted	8-8
14	associated	37-11
15	Associates	32-25, 49-15
16	Association	110-19
17	association's	110-20
18	assume	65-14, 147-13, 187-22
19	assumed	147-11
20	assumes	191-13, 191-17
21	assuming	118-5, 215-8
22	asterisk	64-16, 64-17, 69-5, 69-7, 69-12, 90-2,
23		90-13, 90-15, 91-3, 91-19
24	asterisks	22-11, 90-23
25	attached	99-9, 201-11

1	aware	31-9, 31-12, 31-20, 32-4, 32-5, 37-18,
2		83-1, 86-10, 127-6, 146-14, 165-9,
3		165-12, 165-13, 170-19, 183-5, 213-16
4	awful	108-10
5	awhile	20-24
6		
7	Ba-1	15-4
8	back	43-3, 43-23, 48-18, 50-2, 52-3, 56-20,
9		64-9, 64-11, 65-19, 65-23, 67-14, 68-7,
10		68-9, 71-12, 74-9, 80-21, 81-11, 82-11,
11		83-5, 83-8, 83-17, 90-7, 95-16, 105-1,
12		105-17, 109-22, 116-20, 117-3, 119-13,
13		124-13, 125-16, 126-23, 127-17, 131-9,
14		138-22, 142-3, 146-12, 149-6, 150-4,
15		150-9, 151-8, 151-25, 154-19, 166-1,
16		180-5, 181-22, 183-1, 183-7, 183-11,
17		183-13, 184-22, 193-17, 193-18, 195-19,
18		195-25, 196-5, 200-8, 207-25
19	background	45-25, 62-11, 155-14, 155-21
20	bad	108-21
21	balance	9-5, 12-6, 36-8, 46-10, 46-16, 59-18,
22		123-13, 205-24
23	ball	25-23, 42-16
24	balls	45-1
25	baptism	197-22

- 1 Baptist 141-5
- 2 barricades 41-17
- 3 barrier 156-8, 156-22
- 4 barriers 150-1
- 5 bars 64-5
- 6 base 40-9, 173-15, 173-16
- 7 based 39-15, 40-15, 111-15, 159-13, 163-11,
- 8 164-7, 170-22, 188-10, 195-7, 208-21
- 9 basic 159-12
- 10 basically 28-23, 60-17, 77-15, 78-13, 98-5,
- 11 145-14, 150-14, 216-5, 220-20
- 12 basis 59-2, 60-11, 60-15, 79-14, 119-25,
- 13 121-15, 164-10, 166-9, 175-19, 195-25,
- 14 209-10
- 15 batting 52-21
- 16 battle 141-10, 144-8
- 17 bay 163-4, 163-23, 174-21
- 18 bear 181-15
- 19 Beard 145-13
- 20 bearings 183-8
- 21 beat 107-18
- 22 become 19-13, 27-4, 95-2
- 23 becomes 114-9, 114-14, 207-12
- 24 beer 69-10, 69-11, 69-16
- 25 beforehand 208-2

- 1 believes 119-23, 143-23, 179-20
- 2 below 10-11, 15-18, 22-25, 39-20, 68-13,
- 3 71-17, 72-11, 76-5, 76-25, 80-22, 82-6,
- 4 129-16, 155-2, 176-15
- 5 Ben 144-11, 145-10, 149-4, 149-17, 151-21,
- 6 155-24, 157-25, 158-2, 158-9, 175-18,
- 7 180-9, 191-11, 191-18
- 8 beneath 13-14
- 9 benefit 7-20, 8-18, 62-17, 98-20, 102-7, 125-14,
- 10 140-20, 173-4, 179-11, 179-14, 206-10,
- 11 206-11
- 12 berm 114-17, 166-12
- 13 berming 52-6
- 14 berms 44-22
- 15 Bernet 49-19, 190-15
- 16 Bernwood 49-22, 50-4, 50-7, 184-12, 198-4, 198-18
- 17 beside 98-13, 163-9
- 18 besides 165-18
- 19 best 9-23, 35-1, 38-18, 65-15, 65-16, 85-1,
- 20 85-5, 85-11, 85-13, 85-15, 86-11, 86-14,
- 21 86-16, 87-9, 88-6, 112-20, 136-17,
- 22 137-7, 199-2, 199-17, 199-18, 199-19,
- 23 203-8, 207-20, 208-17, 209-10, 211-5,
- 24 219-1
- 25 better 20-17, 52-25, 87-16, 87-19, 136-13,

- 1 beg 172-18
- 2 beginning 11-3
- 3 begins 142-11
- 4 behalf 144-16, 158-3, 172-14, 181-4, 200-17
- 5 behind 9-4, 10-17, 45-7, 99-2, 99-6, 99-7,
- 6 99-17, 100-7, 100-14, 103-3, 103-15
- 7 belabor 152-1
- 8 belabored 174-21
- 9 believable 204-6
- 10 believe 8-22, 10-1, 11-2, 12-20, 13-16, 14-8,
- 11 17-24, 21-20, 21-21, 22-5, 22-15, 22-16,
- 12 24-8, 26-5, 26-12, 27-8, 34-24, 39-11,
- 13 41-3, 41-9, 41-14, 42-18, 45-17, 48-10,
- 14 50-6, 60-25, 62-2, 66-10, 66-11, 70-8,
- 15 71-11, 82-6, 84-4, 89-21, 91-5, 92-21,
- 16 94-11, 94-25, 109-15, 119-19, 121-22,
- 17 123-10, 123-17, 124-10, 126-18, 130-1,
- 18 134-7, 134-11, 135-1, 135-5, 136-23,
- 19 138-16, 142-9, 142-12, 146-9, 148-13,
- 20 151-18, 158-16, 164-15, 164-21, 166-12,
- 21 166-18, 167-21, 175-18, 176-5, 176-21,
- 22 177-16, 180-17, 181-23, 189-20, 196-24,
- 23 202-10, 203-24, 206-8, 207-10, 207-19,
- 24 209-19, 213-17, 218-9
- 25 believed 147-6, 151-17

- 1 140-6, 143-19, 196-4, 203-6
- 2 between 13-15, 14-9, 19-25, 22-19, 26-17, 31-9,
- 3 31-21, 42-20, 42-25, 46-9, 46-14, 48-2,
- 4 84-17, 85-21, 91-7, 92-15, 93-17, 94-9,
- 5 103-23, 118-1, 120-2, 138-18, 139-24,
- 6 140-18, 149-21, 150-1, 150-17, 156-8,
- 7 160-19, 163-12, 163-18, 164-25, 171-2,
- 8 192-13, 198-4, 203-19, 209-20
- 9 beyond 86-11, 137-7, 137-9, 163-16, 164-3,
- 10 187-4, 203-23, 215-4
- 11 big 144-9, 150-21, 213-5, 221-22
- 12 Bigelow 125-12, 125-13
- 13 biggest 24-5, 56-19
- 14 bit 49-3, 71-22, 77-11, 84-6, 89-7, 104-8,
- 15 122-23, 172-18, 172-23, 175-7, 201-9
- 16 bitter 207-7
- 17 Blackburn 153-6
- 18 Blackburn's 202-10
- 19 blackmailed 209-24
- 20 blank 118-11
- 21 blasting 25-1, 38-22, 38-24, 38-25, 39-3, 39-6,
- 22 111-19, 112-1
- 23 bled 208-15
- 24 blue 37-15
- 25 board 6-3, 6-5, 8-14, 29-10, 87-8, 92-4,

1	110-19, 110-20, 178-3, 178-7, 178-13,
2	179-25, 180-2, 194-16, 195-1, 195-23,
3	196-17, 209-1, 211-4, 219-2, 219-14,
4	219-17, 221-3
5	board's 6-10
6	body 52-24, 154-10, 174-20
7	Bonita 28-15, 28-16, 49-15, 51-5, 188-17,
8	188-18
9	booklet 85-5
10	booklets 85-7
11	border 41-4, 41-5, 41-16, 47-20, 210-4
12	borders 50-18
13	both 5-16, 63-15, 107-1, 107-13, 110-1,
14	110-2, 110-19, 114-4, 137-22, 138-20,
15	139-16, 145-9, 147-20, 182-3
16	bother 58-16
17	bottom 11-9, 20-10, 20-18, 30-5, 118-18, 179-8
18	Boulevard 39-22, 49-20, 112-24, 114-4, 173-22,
19	174-7, 203-25
20	boundary 14-9, 14-11, 31-22, 51-20, 55-15, 163-6,
21	165-11
22	box 49-15, 69-9, 69-16
23	boxes 56-2, 69-20
24	break 6-17, 6-19, 105-17, 105-23, 109-19,
25	109-20, 116-19, 152-18, 200-2

1	108-15, 153-22, 153-23, 167-6, 169-7,
2	187-15, 201-15, 201-21, 210-2, 221-12
3	buildings 8-12, 16-4, 69-10, 73-2, 98-14, 98-17,
4	98-25, 102-14, 103-20, 126-2, 129-21,
5	150-4, 150-6, 150-7, 150-24, 151-10,
6	151-12, 153-21, 165-19, 165-21, 167-2,
7	167-24, 169-15, 203-18
8	built 69-21, 71-2, 185-13, 206-24
9	burden 21-15, 135-22, 135-24, 136-5, 136-7,
10	136-21, 141-3, 141-22, 141-23, 205-9
11	Burger 115-1
12	burn 28-3, 41-24, 42-4, 42-6
13	burned 112-14
14	burning 25-15, 27-22, 41-20, 112-19, 124-11
15	burrows 35-20, 35-22, 35-23
16	business 73-16, 77-13, 140-11, 208-23
17	buy 195-16, 196-5
18	
19	C-o-r-s-i-g-l-i-a 110-16
20	calculated 149-3, 158-23
21	calculating 160-12
22	calculation 146-25, 147-18, 147-23, 175-3
23	calculations 158-25, 161-21, 175-5
24	calendar 215-2, 218-2, 218-11
25	call 7-20, 8-24, 10-7, 35-14, 43-3, 43-23,

1	breaking 204-22
2	Brian 125-13
3	brief 6-11, 48-16, 212-22
4	briefly 152-18, 158-21, 177-25, 190-22
5	bringing 175-2, 213-15
6	brings 154-8, 211-8
7	broaden 81-4
8	Broadway 163-5, 185-19, 185-24
9	broke 117-10
10	broker's 208-13
11	brought 101-6, 111-8, 213-15
12	brush 112-9, 112-14
13	bubble 154-2, 154-4
14	buffer 26-16, 42-24, 48-1, 48-3, 90-6, 91-6,
15	91-10, 91-19, 91-21, 92-13, 92-14,
16	92-16, 92-18, 92-19, 92-25, 93-8,
17	115-25, 116-1, 116-5, 138-2, 138-3,
18	138-4, 138-9, 138-15, 161-1, 165-2,
19	166-10, 166-13, 166-22, 166-25, 168-4,
20	168-7, 168-9, 168-10, 169-24, 169-25,
21	170-14, 203-15, 221-9
22	buffering 42-20, 47-24, 47-25, 176-3
23	buffers 36-25, 114-9, 138-1, 148-20, 150-17
24	build 195-11, 195-20, 206-23, 210-16
25	building 22-12, 62-24, 81-20, 90-13, 98-25,

1	56-1, 105-18, 143-12, 145-14, 200-7
2	called 9-3, 87-3, 97-6, 177-6, 186-8
3	calls 115-15
4	came 45-25, 46-19, 46-20, 60-12, 62-11,
5	107-17, 108-9, 114-23, 115-7, 115-24,
6	136-3, 146-11, 146-13, 150-9, 181-22,
7	183-25
8	can't 8-18, 14-11, 15-9, 18-7, 18-16, 18-23,
9	25-14, 58-5, 68-3, 99-20, 109-22,
10	130-23, 140-6, 141-7, 152-24, 155-7,
11	156-7, 162-13, 162-22, 166-3, 176-19,
12	183-12, 193-8, 193-12, 197-4, 206-17,
13	211-16, 212-7, 215-13, 215-16, 216-4,
14	218-2, 218-12, 219-9, 219-18, 220-15
15	canal 167-12
16	candor 109-8
17	cannot 209-8
18	capacity 153-5
19	car 99-7, 99-17, 99-21, 100-3, 100-4, 100-5,
20	156-7
21	carcinogens 27-24
22	care 109-2, 139-21, 157-1, 164-8, 169-17,
23	212-24
24	carefully 149-5
25	Carlos 28-1, 55-8, 90-15, 145-13, 183-9, 203-25

1	carousing	128-7
2	Carron	11-4, 12-19, 13-18, 16-15, 17-20, 23-5,
3		24-7, 43-9, 43-11, 43-12, 44-1, 44-8,
4		44-11, 49-6, 54-8, 54-11, 62-17, 66-15,
5		68-19, 70-5, 71-8, 72-7, 73-7, 75-5,
6		79-13, 79-17, 80-22, 81-15, 83-25,
7		88-21, 91-10, 92-9, 93-16, 95-5, 96-11,
8		97-15, 101-24, 102-7, 104-9, 104-20,
9		106-6, 106-20, 108-23, 109-1, 117-9,
10		117-17, 117-19, 120-4, 120-6, 121-25,
11		122-7, 122-19, 127-6, 129-13, 129-25,
12		134-15, 138-7, 138-21, 146-10, 200-8,
13		200-16, 200-23, 201-1, 211-11, 211-17,
14		215-24, 217-10
15	carry	70-1
16	cars	45-2, 99-14, 139-14, 153-16
17	case	5-3, 6-22, 12-7, 17-24, 24-6, 37-19,
18		60-5, 72-14, 84-5, 84-20, 84-21, 86-20,
19		87-25, 88-10, 126-18, 133-16, 137-5,
20		141-6, 145-16, 152-14, 164-1, 178-20,
21		178-21, 179-16, 184-17, 185-23, 194-17,
22		201-24, 203-24, 210-20, 211-7
23	case-by-case	143-14, 143-21
24	cases	24-9, 55-24, 57-12, 63-1, 63-4, 71-25,
25		73-22, 74-10, 74-25, 78-2, 79-15, 83-2,

1		93-9, 94-12, 94-13, 101-21, 103-1,
2		115-9, 115-16, 127-22, 142-9, 142-10,
3		152-4, 180-10, 190-18, 214-15, 215-25,
4		218-6, 221-8
5	changed	9-7, 10-20, 22-18, 71-4, 103-6, 193-15,
6		193-16, 216-22, 217-7, 217-8, 217-9
7	changes	10-2, 24-20, 29-12, 29-22, 44-12, 95-1,
8		115-25, 122-18, 146-2, 151-24, 217-2,
9		220-7, 221-10
10	changing	45-21, 91-18, 125-8, 139-7, 167-22
11	Chapter	164-21, 196-16
12	characterization	213-13
13	Charles	49-10, 49-14
14	Charlie	49-7, 54-7, 184-12
15	chart	169-20, 191-1
16	check	87-14, 144-11, 169-25
17	checked	211-17, 218-10
18	checking	72-20
19	chipping	28-5, 42-9, 112-18
20	choosing	193-22
21	Chumley	145-10, 158-2, 158-6, 158-9, 158-21,
22		159-12, 160-11, 160-20, 161-4, 161-9,
23		161-23, 162-3, 162-10, 166-19, 170-12,
24		170-19, 171-17, 171-25, 172-4, 172-6
25	Chumley's	158-18

1		152-23, 162-19, 173-5, 176-22, 181-8,
2		218-16, 221-13, 221-22
3	cash	208-12
4	catch	180-16
5	category	14-3, 14-6, 15-2, 15-6, 47-12, 85-2,
6		147-2
7	caught	126-11
8	cause	111-21, 113-7, 175-10
9	caused	25-1, 38-22, 176-18
10	caveat	52-12
11	Cc	58-11, 92-20
12	cease	16-5, 16-7, 76-2, 81-22, 127-9, 129-22
13	cell	43-23, 145-14
14	center	51-14, 79-4, 161-16, 174-6
15	cents	208-10, 208-11
16	certain	18-6, 36-6, 55-7, 131-5, 150-9, 154-6,
17		179-11, 193-16
18	certainly	13-8, 25-12, 28-19, 38-24, 42-10, 60-2,
19		86-13, 115-25, 137-8, 143-16, 143-18,
20		144-13, 204-17, 210-24, 211-18
21	cetera	42-5, 86-15, 187-7, 187-20, 220-8
22	champion	185-18, 185-22
23	chance	48-5, 70-5, 97-2, 109-10, 171-1, 171-18,
24		171-22, 211-24
25	change	10-22, 12-1, 12-3, 14-5, 91-2, 92-10,

1	Church	141-6
2	Ciccarone	7-8, 7-9, 7-11, 14-24, 15-11, 16-11,
3		16-20, 16-23, 17-6, 17-12, 17-16, 18-9,
4		18-20, 19-3, 19-12, 23-12, 23-14, 23-24,
5		28-21, 30-10, 30-21, 31-6, 31-8, 32-6,
6		32-12, 33-4, 34-7, 34-15, 37-21, 38-2,
7		38-16, 43-2, 43-8, 43-11, 43-22, 44-10,
8		48-24, 52-13, 52-25, 54-7, 54-10, 54-24,
9		56-12, 59-11, 62-2, 62-14, 62-16, 66-8,
10		66-14, 66-24, 68-18, 71-7, 72-6, 72-17,
11		72-22, 73-5, 73-6, 73-24, 74-17, 75-4,
12		76-20, 76-24, 77-24, 79-13, 79-16,
13		79-20, 80-17, 81-11, 81-14, 83-19,
14		84-12, 86-2, 88-20, 89-1, 91-1, 92-8,
15		94-13, 96-1, 96-8, 96-10, 97-14, 102-6,
16		104-9, 104-19, 105-2, 105-8, 105-20,
17		106-5, 106-19, 108-22, 116-7, 116-10,
18		117-4, 117-16, 117-24, 118-7, 118-14,
19		118-17, 118-23, 119-3, 119-7, 119-11,
20		120-10, 120-14, 120-22, 121-4, 122-11,
21		122-21, 124-19, 124-25, 125-13, 125-21,
22		126-4, 126-13, 126-16, 127-15, 128-6,
23		128-21, 128-23, 129-6, 129-10, 129-15,
24		130-3, 131-1, 133-21, 134-18, 134-21,
25		134-25, 135-6, 135-8, 135-11, 135-15,

1	136-16, 137-19, 138-11, 138-14, 138-25,
2	139-12, 139-16, 140-10, 141-14, 142-4,
3	143-8, 144-5, 145-1, 151-24, 156-3,
4	156-19, 158-14, 162-8, 162-9, 163-10,
5	163-24, 164-8, 164-22, 166-20, 167-18,
6	168-3, 168-6, 168-11, 168-17, 169-5,
7	169-16, 169-24, 170-4, 170-9, 170-17,
8	171-4, 172-2, 172-5, 173-1, 174-24,
9	177-14, 182-14, 185-1, 185-2, 185-8,
10	196-11, 197-4, 197-20, 199-16, 199-22,
11	200-4, 200-7, 200-12, 200-20, 200-25,
12	202-23, 203-1, 212-11, 218-20, 218-21,
13	219-13, 221-6, 221-11
14	Cip 185-16, 192-20
15	Circuit 179-10
16	circumstances 207-17, 209-18
17	citation 124-21, 180-16
18	cited 87-13
19	citizen 27-15, 205-23
20	citizens 178-9
21	City 188-18
22	clarification 9-20, 18-5, 22-22, 96-7
23	clarify 33-17, 37-16, 68-24, 91-9, 101-5, 131-8,
24	157-13, 158-23, 192-1, 200-8, 216-16
25	clarifying 12-1, 115-24

1	cocktail 64-5, 69-8, 69-16, 69-20, 70-1
2	code 29-12, 29-21, 67-8, 67-19, 68-11,
3	102-11, 143-20, 144-2, 148-24, 149-12,
4	157-19, 160-13, 160-16, 164-11, 164-13,
5	164-20, 165-9, 166-6, 180-13, 180-15,
6	196-16, 205-1, 221-4
7	cold 194-20
8	collector 52-20, 183-4, 187-14, 189-12, 189-13
9	Collier 97-20
10	Collins 58-13, 68-13, 88-24, 119-8, 133-12,
11	135-7, 177-19, 177-21, 177-23, 186-23,
12	186-24, 187-23, 190-6, 190-7, 190-14,
13	191-24, 193-10, 193-21, 194-1, 194-6,
14	194-9, 194-24, 196-14, 197-9, 197-12,
15	197-18, 199-11, 212-18, 217-22, 218-8,
16	220-2, 220-3, 220-18, 221-2
17	Colony 167-10
18	colorful 93-23
19	column 9-13, 117-21, 135-16
20	columns 191-20, 192-3
21	combination 7-22, 8-3, 166-12
22	come 5-11, 7-3, 27-21, 30-14, 43-12, 50-14,
23	59-24, 63-14, 64-9, 65-19, 65-23, 67-3,
24	68-7, 68-9, 71-12, 80-21, 81-11, 81-12,
25	83-5, 83-7, 83-17, 90-7, 104-15, 104-25,

1	classified 98-9
2	clean 180-12
3	cleanup 94-21, 180-9
4	clear 13-23, 13-25, 14-15, 15-15, 26-24,
5	48-13, 52-15, 57-13, 57-20, 58-21, 59-9,
6	64-16, 68-15, 74-23, 78-8, 80-7, 104-5,
7	119-7, 124-4, 125-3, 129-7, 154-15,
8	157-3, 207-11, 209-11, 210-21, 211-6,
9	213-2, 219-8
10	cleared 25-16, 41-15, 41-20, 41-21
11	clearing 25-11, 41-1, 41-12, 42-1
12	clearly 35-7, 56-24, 96-2, 137-5, 149-10,
13	174-22, 178-7
14	close 25-9, 39-9, 44-11, 75-13, 112-1, 137-23,
15	140-23, 141-9, 150-8, 169-6, 169-18,
16	211-7
17	closely 36-13, 156-15
18	closer 65-9, 65-18, 65-22, 66-5, 115-2, 122-5,
19	131-12, 133-7, 201-23
20	closing 203-2
21	club 12-23, 39-18, 41-4, 68-21, 69-6, 123-16
22	clubhouse 13-2, 13-5, 13-10, 64-7, 64-15, 64-17,
23	69-8, 94-10, 94-18, 94-19, 113-1, 134-16
24	clubhouses 69-21, 71-2
25	Coastline 9-9

1	105-15, 105-17, 109-22, 110-2, 110-3,
2	116-20, 124-13, 127-17, 128-12, 140-12,
3	142-6, 147-4, 148-11, 151-3, 155-23,
4	156-18, 162-19, 162-20, 180-5, 181-9,
5	184-3, 184-16, 184-18, 185-13, 187-18,
6	188-5, 188-25, 196-5, 207-25, 209-12,
7	210-1, 215-12
8	comes 54-2, 154-22, 174-15, 198-1, 207-7
9	comfortable 94-12, 95-7, 147-10
10	comical 183-24
11	coming 32-15, 64-11, 67-13, 71-22, 75-23,
12	76-21, 108-6, 125-16, 126-24, 131-7,
13	131-24, 136-6, 140-23, 158-24, 198-11,
14	198-15, 210-22, 215-3, 218-7, 218-10,
15	221-18
16	commence 50-9, 50-11
17	commencing 117-1
18	commend 210-22
19	comment 132-14
20	commented 42-8
21	comments 5-22, 6-11, 6-14, 113-11, 116-11,
22	116-12, 182-5, 212-21
23	commercial 7-23, 8-3, 8-23, 9-2, 10-17, 11-1, 14-2,
24	14-7, 14-20, 15-5, 29-6, 48-8, 51-12,
25	51-15, 55-6, 57-1, 58-11, 59-21, 63-24,

1		92-21, 114-12, 121-24, 124-6, 202-20
2	Commission	5-24, 6-2, 144-1, 204-23
3	Commission's	124-7
4	Commissioners	6-4, 121-21, 143-12, 195-1, 209-2
5	commitment	8-12
6	common	122-6, 139-18, 143-13, 198-3, 215-12,
7		216-11
8	communications	33-16
9	community	29-8, 110-18, 110-21, 111-21, 111-22,
10		112-17, 112-25, 113-2, 113-16, 113-25,
11		114-1, 114-6, 114-7, 114-8, 114-9,
12		114-11, 114-14, 114-15
13	company	147-15
14	company's	205-22
15	compare	106-21, 212-6
16	comparison	63-5, 117-11
17	comparisons	191-2
18	compatibility	47-10, 58-13, 59-6, 66-12, 91-7, 92-14,
19		92-17, 121-19, 123-25, 124-8, 148-16,
20		149-5, 149-20, 151-14, 160-3, 160-10,
21		160-15, 160-16, 162-12, 162-15, 163-8,
22		163-18, 167-15, 197-8, 205-9, 213-5
23	compatible	27-18, 121-22, 148-14, 159-17, 164-7,
24		170-17, 170-18, 170-24, 196-21, 197-2
25	compelled	69-14, 69-18, 80-25

1	compensate	178-19, 187-15, 193-22, 206-19, 207-21
2	compensated	193-23, 208-5
3	compensating	178-14
4	compensation	178-22, 178-24, 179-7, 206-16, 207-23,
5		208-8, 211-2
6	completed	49-25
7	completely	115-19, 188-10
8	completes	37-21
9	comply	133-14
10	component	51-12
11	components	51-11
12	Composite	97-17, 182-11
13	comprehensive	160-14, 164-11, 202-17, 204-11
14	compromise	123-19
15	compromised	176-25
16	conceded	83-4
17	conceding	156-12
18	concept	8-15, 12-16, 16-15, 17-19, 17-22, 22-10,
19		24-3, 24-21, 31-16, 33-15, 48-1, 49-24,
20		51-13, 55-3, 60-23, 61-2, 61-12, 61-24,
21		62-4, 63-23, 63-25, 64-3, 67-12, 83-12,
22		91-12, 93-7, 94-4, 107-3, 138-5, 146-22,
23		146-24, 147-19, 147-24, 169-2, 184-13,
24		184-21, 186-9, 188-3, 220-4, 220-11,
25		220-16, 220-19, 220-25, 221-16, 222-3,

1		222-6
2	concern	15-12, 25-12, 26-16, 26-18, 28-24, 38-4,
3		39-11, 42-14, 69-25, 74-7, 76-14, 89-16,
4		92-12, 94-6, 111-18, 112-22, 113-23,
5		114-18, 128-1, 128-9, 131-25, 139-17,
6		140-8, 148-10, 149-5, 149-13, 149-20,
7		152-7, 153-10, 153-15, 153-17, 154-17,
8		157-2, 175-25, 176-18, 202-10, 206-4
9	concerned	19-4, 24-25, 25-8, 25-10, 25-15, 27-15,
10		38-21, 40-25, 58-18, 59-6, 61-3, 111-25,
11		113-21, 157-7
12	concerns	24-23, 26-14, 38-19, 45-4, 77-14, 111-6,
13		111-10, 121-8, 124-7, 140-9, 146-19,
14		147-5, 147-16, 148-15, 174-18, 218-23
15	concert	37-9
16	conclude	196-9, 197-2
17	concluded	222-13
18	concludes	200-1
19	conclusion	45-24, 89-21
20	conclusions	31-13, 31-18, 32-2, 39-5, 62-19, 62-20,
21		155-13
22	concrete	20-5, 152-22, 154-21
23	condemn	206-14, 206-15
24	condemnation	179-1, 186-19, 187-11, 193-15
25	condition	11-12, 16-17, 17-17, 18-1, 18-10, 19-14,

1		19-15, 19-17, 19-23, 20-19, 21-3, 21-20,
2		22-6, 22-15, 23-2, 33-6, 48-20, 61-3,
3		67-5, 67-25, 77-8, 88-21, 89-9, 91-16,
4		134-7, 135-1, 135-8, 135-14, 135-21,
5		137-11, 137-16, 137-25, 138-17, 139-4,
6		139-9, 140-22, 142-9, 142-20, 143-5,
7		155-16, 168-21, 168-22, 168-23, 169-11,
8		170-23, 178-2, 178-5, 178-12, 178-17,
9		179-12, 179-13, 180-11, 180-19, 186-14,
10		194-14, 195-2, 195-7, 202-5, 202-6,
11		217-8
12	conditioned	177-7
13	conditioning	176-2, 177-3
14	conditions	12-14, 13-17, 18-3, 21-3, 21-13, 21-19,
15		22-6, 25-21, 34-20, 67-18, 67-22, 77-22,
16		84-1, 84-3, 84-9, 84-23, 84-24, 86-13,
17		86-21, 87-24, 95-14, 123-24, 130-17,
18		130-21, 134-1, 134-8, 135-18, 135-19,
19		135-22, 136-6, 136-13, 141-11, 142-7,
20		143-13, 145-22, 148-15, 151-1, 155-22,
21		163-13, 164-7, 165-10, 172-24, 180-14,
22		211-15, 212-4, 215-10, 215-11, 215-19,
23		216-6, 216-10, 216-12, 216-17, 216-19,
24		216-24, 217-6, 219-11, 220-5, 220-15,
25		222-2

1	conductive	29-2
2	conducted	35-18, 48-17
3	conferring	206-11
4	configuration	103-21, 189-23
5	confirm	117-18, 120-4, 211-9
6	confused	67-5, 68-1, 132-5, 143-2, 216-7
7	confusing	67-21, 68-3, 125-10, 132-8
8	confusion	131-7, 131-24, 154-18
9	conjunction	31-14
10	connect	36-15
11	connecting	36-18, 89-13
12	connection	19-24, 20-3, 89-18, 96-14, 185-21
13	connections	20-7
14	consensus	91-23
15	conservation	19-25, 20-1, 151-16
16	consider	15-4, 144-1, 196-18
17	considerable	44-20, 47-13, 145-22
18	considerably	148-7
19	consideration	114-18
20	considerations	155-17
21	considered	45-3, 98-19, 169-8, 213-25
22	considering	150-17
23	consist	152-13, 152-17, 156-17
24	consistent	13-17, 29-7, 29-20, 33-21, 39-19, 39-21,
25		67-18, 72-14, 74-11, 74-24, 123-3,

1	control	39-13, 39-16, 39-17, 39-20, 39-21,
2		39-23, 40-1, 40-3, 147-10, 175-3
3	controversy	186-22
4	convenience	113-14
5	conversation	215-10
6	conversations	60-11, 175-11
7	converted	46-13
8	conveyance	174-4, 174-5
9	cookbook	107-9
10	Cop	12-18, 12-21, 13-1, 17-18, 63-12, 64-6,
11		64-15, 64-17, 64-19, 64-20, 64-24, 67-7,
12		68-10, 68-25, 69-5, 69-6, 69-7, 69-17,
13		69-25, 76-8, 81-22, 123-4, 123-13,
14		123-15, 124-20, 125-11, 125-20, 127-7,
15		127-12, 127-17, 127-24, 128-11, 131-12,
16		131-13, 132-24, 134-9
17	copies	33-19, 111-1
18	Cops	18-7, 64-4, 64-6, 64-8, 66-9, 66-10,
19		66-11, 68-21, 71-13, 93-21, 123-18,
20		124-10, 124-15
21	copy	6-2, 19-18, 28-20, 30-2, 33-2, 49-22,
22		62-18, 101-2, 102-8, 111-7, 158-13,
23		183-5, 183-12, 184-13, 184-20, 185-2,
24		188-2, 188-14, 188-20, 189-4, 201-3,
25		201-11, 222-5

1		151-13, 196-25, 197-9
2	consisting	8-5, 34-10, 63-19, 72-2, 106-1, 120-25,
3		137-15, 158-17, 183-16, 189-7
4	consists	97-11, 166-11
5	constitutional	206-16, 209-5
6	construct	98-3, 107-8, 187-20, 195-11, 196-23
7	constructed	20-4, 185-17
8	construction	36-14, 37-10, 39-2, 41-18, 50-9, 50-11,
9		210-7, 210-12
10	consultant	29-12, 31-1
11	consumption	8-11, 12-21, 16-12, 16-14, 18-6, 74-6,
12		75-25, 77-12, 122-22
13	Cont'g	94-1
14	contained	136-20, 145-23, 145-25
15	context	127-21, 128-18, 136-4, 136-8, 136-14
16	continuance	213-18, 213-24
17	continuation	17-13, 222-11
18	continue	126-4, 135-20, 155-7, 208-23, 209-23,
19		220-1
20	continued	116-23, 117-1
21	continues	119-20, 123-16, 130-9, 174-17
22	continuing	116-1, 116-13
23	contractor	25-12, 41-1, 42-2
24	contractors	25-14
25	contribute	113-17

1	cordial	110-24
2	Corkscrew	188-4, 188-16
3	corner	9-2, 11-11, 12-11, 19-25, 22-9, 28-25,
4		35-25, 36-1, 57-25, 113-20, 145-19
5	corporation	205-22
6	correct	33-16, 33-25, 40-13, 40-23, 45-16,
7		54-18, 59-7, 59-23, 66-19, 66-20, 93-4,
8		93-11, 95-8, 103-17, 117-16, 118-4,
9		118-8, 119-24, 120-10, 120-13, 120-19,
10		121-25, 122-8, 122-19, 123-6, 129-13,
11		130-13, 134-15, 138-11, 139-10, 150-11,
12		150-12, 160-11, 165-25, 166-1, 169-19,
13		171-5, 190-13, 198-9, 198-12, 198-16,
14		198-24, 198-25, 202-12, 218-7
15	correctly	66-16, 81-24, 90-18, 122-7, 129-25,
16		138-17
17	correspond	218-6
18	correspondence	182-1
19	corresponds	161-24
20	corridor	186-10
21	Corsiglia	110-7, 110-15, 116-2
22	cost	187-21, 196-4, 206-4
23	count	59-18, 99-15
24	counting	13-1
25	Country	39-18, 41-4

1	counts	11-19, 11-21, 11-23, 12-4, 69-1
2	county	5-2, 5-23, 6-1, 6-4, 11-19, 12-4, 13-1,
3		13-17, 13-20, 19-22, 21-5, 24-9, 35-17,
4		36-13, 37-14, 49-23, 50-14, 50-25, 51-1,
5		52-5, 52-20, 52-24, 53-1, 53-17, 59-16,
6		59-17, 60-5, 63-1, 63-6, 65-16, 68-25,
7		86-11, 88-15, 97-19, 97-20, 98-10, 99-8,
8		103-4, 117-21, 121-11, 121-21, 124-7,
9		136-14, 139-20, 140-11, 140-20, 141-7,
10		143-12, 143-25, 144-22, 158-10, 173-14,
11		177-24, 178-10, 178-11, 179-1, 179-5,
12		179-20, 179-22, 181-7, 181-14, 185-12,
13		185-13, 186-5, 187-2, 187-8, 187-15,
14		190-8, 191-25, 192-25, 195-1, 195-10,
15		195-23, 196-23, 198-19, 199-24, 204-23,
16		206-14, 206-15, 206-24, 207-15, 208-16,
17		209-2, 209-7, 209-24, 209-25, 210-13,
18		210-15, 220-24, 220-25, 222-1
19	county's	19-16, 20-8, 20-21, 51-23, 52-10, 66-13,
20		69-25, 98-16, 142-6, 198-22, 206-18,
21		207-18, 207-21, 208-6, 210-11
22	couple	24-17, 68-19, 71-20, 74-4, 75-12, 96-24,
23		192-20, 197-25, 200-8, 203-13
24	course	8-9, 9-6, 13-2, 13-5, 18-15, 21-3, 21-6,
25		21-10, 21-11, 21-19, 22-23, 25-21,

1	criteria	125-23, 157-15, 196-17, 196-19, 196-25,
2		201-13
3	cross	20-16, 189-25, 190-3
4	cross-examine	197-23
5	crossing	36-13, 36-15, 36-20, 93-10, 135-9, 156-8
6	Crown	167-10
7	cull	71-4
8	curb	156-25
9	cure	104-12
10	curiosity	192-10
11	curiosity's	174-25
12	curious	129-3, 194-8
13	current	173-7
14	currently	36-8, 50-8, 114-3, 115-14, 116-4,
15		173-24, 182-23
16	curtain	27-23, 42-6, 42-9, 112-21
17	curve	174-14, 189-19, 189-22
18	Custom	5-3, 7-12
19	cut	112-14, 185-20
20	cutting	14-6
21		
22	damage	24-25, 25-10, 38-21, 40-25, 41-19,
23		111-21, 111-22, 112-16, 113-7, 113-8
24	damaging	25-14
25	dangerous	25-23

1		25-25, 28-4, 42-14, 44-18, 44-21, 45-3,
2		45-11, 69-21, 71-2, 84-1, 84-9, 84-23,
3		86-21, 94-3, 94-9, 94-17, 94-24, 112-23,
4		113-3, 113-10, 114-2, 118-15, 135-19,
5		136-18, 138-20, 141-11, 142-7, 168-2,
6		172-24, 173-2, 180-19, 187-20, 195-17,
7		196-6, 199-18, 208-18, 212-25, 220-8,
8		221-12
9	courses	42-15, 44-21, 143-16, 143-21
10	court	28-15, 141-6, 141-7, 178-22, 179-11,
11		196-3
12	courteous	220-1
13	courts	193-14
14	cover	119-12
15	coverage	106-11, 106-15, 117-20, 118-20
16	coverages	106-10
17	covered	73-10
18	Cpd	46-4, 46-5, 46-7, 146-16, 213-10
19	create	41-12, 44-23, 104-14, 204-14
20	creating	42-16, 180-14
21	creatures	36-22
22	credit	210-6
23	credits	52-16, 52-23, 53-2, 187-16, 193-4,
24		206-21, 207-2, 207-7, 207-19, 207-22,
25		208-1, 208-9

1	dangers	41-12
2	data	40-9, 159-14, 173-15, 173-16
3	date	147-20, 148-9, 214-19, 218-5, 218-7,
4		221-24
5	dated	142-23, 145-19
6	Davis	110-23, 111-5, 206-1
7	day	6-20, 11-4, 12-19, 16-15, 23-13, 43-9,
8		43-10, 44-1, 44-7, 44-8, 54-8, 56-9,
9		56-14, 56-17, 57-6, 57-9, 57-11, 57-18,
10		57-21, 57-24, 58-3, 58-7, 58-11, 58-20,
11		58-23, 58-25, 59-7, 60-10, 61-22, 62-7,
12		62-10, 63-23, 65-1, 65-4, 65-12, 65-23,
13		66-1, 66-7, 66-9, 70-18, 73-22, 74-18,
14		74-21, 74-24, 75-3, 76-21, 77-21, 78-1,
15		78-10, 78-12, 78-16, 78-18, 78-20, 79-2,
16		79-6, 79-14, 82-21, 82-22, 83-1, 83-9,
17		83-13, 83-16, 85-3, 85-7, 85-15, 85-20,
18		88-5, 88-25, 90-24, 91-13, 91-17, 91-22,
19		92-5, 96-7, 99-19, 99-22, 100-1, 100-9,
20		100-15, 100-21, 101-1, 101-7, 101-9,
21		101-14, 101-24, 103-13, 103-17, 103-19,
22		104-7, 104-18, 104-25, 108-14, 108-21,
23		109-24, 113-16, 115-20, 117-9, 117-23,
24		118-5, 118-13, 118-16, 118-22, 119-2,
25		119-10, 120-9, 120-13, 120-20, 122-8,

1	122-20, 124-20, 125-4, 125-7, 129-14,
2	130-2, 130-14, 132-14, 132-23, 134-16,
3	134-19, 134-24, 138-10, 138-24, 139-1,
4	145-7, 146-1, 150-12, 153-11, 172-19,
5	179-15, 185-21, 200-11, 200-16, 212-14,
6	214-9, 214-23, 216-8, 216-14, 217-12,
7	218-12, 221-13, 222-8
8 days	70-22, 71-1, 84-22, 88-10, 199-12
9 Dci	60-5, 188-19
10 Dci2000-00032	5-3
11 de	143-22
12 dead	52-24, 207-12
13 deal	21-5, 45-19, 122-23, 127-24, 128-10,
14	132-2, 139-21, 172-23, 193-7, 195-24,
15	203-2, 204-1, 217-9, 219-18, 221-20
16 dealing	5-14, 133-17, 143-18, 144-1, 191-2,
17	203-14
18 deals	61-19, 146-5
19 dealt	23-11, 86-11, 143-17
20 death	207-7
21 debate	21-7, 107-22
22 debated	83-2
23 decide	87-7, 92-4, 128-24, 144-6, 193-14,
24	193-20, 221-5
25 decided	140-3, 212-9, 218-15

1 denser	149-1
2 densities	47-15, 161-5, 161-14, 161-15, 164-3
3 density	47-3, 47-10, 47-16, 120-6, 120-11,
4	120-17, 120-18, 121-9, 121-12, 146-19,
5	146-24, 147-2, 147-7, 147-17, 147-18,
6	147-23, 148-13, 148-24, 148-25, 149-14,
7	158-22, 158-25, 159-3, 159-4, 159-5,
8	159-14, 159-15, 159-18, 159-20, 159-21,
9	160-12, 160-13, 161-11, 162-4, 163-11,
10	163-15, 163-16, 163-25, 164-25, 165-7,
11	165-11, 167-2, 168-2, 172-24, 175-7,
12	175-8, 175-13, 175-24, 176-12, 177-1,
13	203-4, 204-10, 204-21
14 deny	89-21, 153-7
15 Dep	137-7
16 departed	218-21
17 department	85-16, 86-17, 136-19, 181-7, 190-25
18 departments	136-18
19 depends	65-12, 214-25
20 depicted	60-22, 94-19
21 depiction	153-12
22 depictions	154-5
23 Depot	78-6
24 depressing	209-3
25 depth	50-2, 111-11

1 decides	221-3
2 decision	178-5, 178-6, 179-25
3 declare	203-7
4 dedication	194-2
5 deem	96-9, 219-4
6 deemed	67-14
7 defer	52-17
8 definitely	144-8
9 definitions	98-16
10 delete	18-10, 31-17, 48-15, 54-14, 77-13, 122-3
11 deleted	9-10, 10-20, 11-13, 12-6, 12-17, 15-22,
12	18-2, 18-21, 22-7, 59-19, 82-8, 90-2,
13	122-9, 122-11
14 deleting	45-19
15 deletion	122-15
16 deliveries	13-14, 13-15, 13-21, 77-1, 129-11
17 delivery	71-16, 71-24, 72-3, 73-11, 73-15, 74-10,
18	74-12, 74-13, 74-20, 75-8, 77-11, 77-15
19 demonstrate	24-8, 202-7
20 demonstrated	102-16, 205-10
21 demonstrating	205-9
22 demonstration	167-7
23 denial	23-10, 139-8
24 dense	47-18, 149-15, 149-16, 151-2, 166-13,
25	175-20, 175-22, 175-25

1 describe	13-7
2 described	12-14, 201-9
3 description	189-5, 189-7, 190-9, 190-19, 198-10
4 Deselem	17-10, 37-24, 56-15, 67-6, 68-4, 68-9,
5	68-15, 72-19, 72-24, 91-9, 91-18, 109-8,
6	109-15, 124-16, 124-17, 125-20, 125-22,
7	127-2, 127-4, 129-4, 131-8, 131-17,
8	131-21, 133-11, 139-3, 139-10, 141-17,
9	142-22, 143-4, 144-10, 144-11, 144-15,
10	144-18, 144-19, 145-4, 148-1, 148-7,
11	149-4, 149-23, 150-3, 150-10, 150-13,
12	150-18, 150-21, 151-3, 151-21, 152-7,
13	153-3, 153-18, 154-4, 155-12, 156-2,
14	157-13, 157-22, 161-19, 163-3, 163-13,
15	164-2, 164-12, 166-18, 167-9, 167-21,
16	168-5, 168-8, 168-15, 168-20, 169-10,
17	169-22, 169-25, 170-7, 170-11, 170-14,
18	171-6, 172-8, 177-16, 177-20, 200-1,
19	212-21, 214-13, 214-21, 214-25, 215-20,
20	216-16, 216-23, 217-10, 217-14, 217-19,
21	218-1, 218-9, 222-5
22 design	21-6, 42-14, 62-24, 88-11, 88-13, 103-1,
23	147-9, 164-19
24 designated	78-9
25 designing	113-10

1	designs	98-5
2	desirable	37-8
3	desire	21-5, 54-13, 182-4, 207-18, 207-21,
4		208-5
5	destabilize	112-7
6	detached	118-9
7	detail	21-2, 24-14, 86-1, 155-4, 214-4
8	detailed	85-12
9	details	27-19, 43-9, 43-10, 84-22, 132-12,
10		217-16
11	determine	27-19, 87-12, 93-3, 107-14, 171-1,
12		192-21
13	determined	29-3, 41-23, 171-4, 179-9
14	determining	162-11
15	detriment	125-25
16	develop	92-21, 107-5, 143-13, 185-14
17	developed	114-8, 147-14, 149-9, 175-22, 176-15,
18		186-11, 190-24
19	developer	29-19, 107-7, 179-16, 188-5, 188-7,
20		188-8
21	developers	51-4, 195-21
22	developing	63-10, 192-17, 202-22
23	development	7-19, 13-22, 13-25, 14-7, 16-3, 16-4,
24		17-2, 19-24, 20-20, 21-16, 21-18, 22-8,
25		22-14, 24-2, 24-10, 29-3, 29-5, 29-12,

1		29-21, 31-25, 33-2, 36-9, 46-8, 46-22,
2		49-15, 50-7, 50-9, 50-10, 50-22, 50-24,
3		51-14, 51-18, 52-2, 53-19, 53-23, 53-24,
4		60-22, 67-7, 67-8, 67-19, 68-11, 76-4,
5		83-12, 83-22, 89-11, 90-3, 90-9, 90-20,
6		102-11, 102-16, 104-21, 106-2, 106-9,
7		107-2, 107-6, 107-16, 117-13, 117-14,
8		124-2, 132-18, 132-21, 133-4, 133-19,
9		136-10, 142-21, 143-20, 143-21, 144-2,
10		144-20, 148-23, 149-12, 152-9, 152-10,
11		152-20, 153-12, 153-13, 154-22, 155-6,
12		156-13, 156-18, 160-12, 160-16, 161-12,
13		164-11, 164-13, 164-18, 164-20, 165-9,
14		166-6, 166-24, 168-9, 168-18, 170-1,
15		175-16, 176-11, 186-3, 186-7, 187-22,
16		188-11, 188-12, 188-25, 192-21, 196-16,
17		198-4, 198-5, 199-19, 201-14, 201-19,
18		201-25, 202-7, 202-16, 202-20, 204-25,
19		208-18, 209-21, 221-4, 221-18
20	developments	22-4, 23-3, 29-15, 83-14, 102-13, 158-22
21	deviation	23-9, 23-17, 64-23, 65-8, 65-24, 89-9,
22		89-10, 89-12, 89-19, 95-11, 95-13,
23		96-12, 97-21, 98-24, 99-14, 102-10,
24		123-2, 123-7, 123-8, 123-11, 124-22,
25		125-5, 125-10, 125-18, 125-23, 127-7,

1		127-11, 131-12, 132-15, 132-22, 132-25,
2		133-5, 133-7, 138-22, 138-25, 139-8,
3		139-12, 139-22, 153-6, 154-14, 154-19,
4		155-16, 156-4, 157-22, 200-22, 201-8,
5		201-9, 202-6, 205-15, 214-1, 215-11,
6		219-12
7	deviations	9-12, 9-14, 22-24, 65-5, 95-5, 95-9,
8		95-12, 95-15, 154-4, 154-6, 154-9,
9		155-4, 201-6, 201-13, 216-6, 219-11,
10		220-6, 221-17
11	devoid	150-23
12	diagonal	112-6
13	diagram	112-23, 113-24
14	dictates	149-12
15	differ	24-2
16	difference	75-2, 84-17, 98-11, 98-12, 103-23,
17		159-22, 163-11, 191-14, 203-19, 204-7
18	differences	84-19, 85-21, 85-22, 107-16, 107-21,
19		107-23, 108-25, 136-12, 164-24, 167-2,
20		216-2
21	different	5-20, 18-12, 58-17, 69-3, 71-23, 74-15,
22		78-24, 86-6, 97-3, 97-6, 98-4, 100-6,
23		100-7, 100-14, 103-16, 107-17, 109-11,
24		121-17, 139-19, 140-2, 148-1, 148-7,
25		148-9, 148-23, 152-6, 153-17, 154-24,

1		161-5, 163-18, 169-6, 169-17, 191-10,
2		215-13
3	differently	17-9
4	difficult	35-16, 108-15, 121-14, 151-12, 155-2,
5		156-15, 205-22, 218-22
6	digging	111-19
7	diligently	19-16, 213-6
8	dimensions	147-12
9	direct	162-19, 169-10
10	directed	20-8, 164-14, 176-19
11	direction	14-10, 31-23, 113-5, 113-6
12	directions	42-5
13	directly	49-19, 50-1, 59-21, 121-10, 142-15,
14		142-17, 193-9, 193-12, 209-9
15	director	176-10, 176-11, 182-7
16	disadvantage	205-3
17	disagree	10-2, 19-3, 59-12, 71-14, 95-10, 119-17,
18		126-5, 135-20, 211-13
19	disagreed	109-6
20	disagreement	9-21, 10-19, 20-22, 24-6, 31-20, 45-15,
21		54-19, 80-18, 118-1, 119-20, 120-1,
22		130-10, 216-18
23	disagreements	31-9, 108-13
24	disagrees	216-1
25	discharge	142-14, 142-17, 143-16

1	discount	175-2, 208-9, 208-12
2	discounted	208-21
3	discuss	50-15, 96-16, 118-2, 141-1, 155-24,
4		218-22, 219-8
5	discussed	5-15, 96-13, 96-17, 110-22, 126-20,
6		127-5, 194-23, 220-6
7	discussing	146-10
8	discussion	84-2, 95-13, 96-12, 114-23, 126-23,
9		130-8, 142-2, 142-5, 218-24
10	discussions	69-2, 111-16, 133-12, 145-22, 174-8
11	displace	187-19
12	displacement	179-18
13	displacing	195-20
14	dispose	41-21
15	dispute	178-11, 216-12
16	disputes	104-15
17	disrupt	187-19
18	distance	40-15, 41-10, 127-11, 131-14, 132-3,
19		133-15, 150-21, 151-6, 152-12, 152-19,
20		160-25, 168-25, 169-12, 170-5, 170-12,
21		170-16, 171-2, 189-21
22	distances	55-24
23	distinction	149-1, 204-9
24	distinguishes	178-19
25	district	7-19, 40-21, 141-6, 145-13

1	doubt	206-9
2	down	5-21, 9-13, 19-21, 22-6, 27-23, 30-4,
3		38-20, 70-17, 71-16, 72-9, 80-22, 81-15,
4		112-12, 118-17, 119-9, 124-25, 146-3,
5		156-15, 174-15, 184-24, 185-20, 185-24,
6		188-17, 198-11, 206-19, 215-20
7	drainage	173-7
8	draining	25-8, 39-8
9	draw	167-9
10	drawing	173-19
11	drawings	214-4
12	drawn	62-19
13	dreamed	182-18, 183-23
14	Dri	84-9, 142-21, 155-2, 188-19, 214-14
15	drink	127-19
16	drinking	128-7
17	drive-through	11-3, 11-6, 11-13, 48-13, 54-12, 55-13,
18		55-16, 55-25, 57-2, 58-23, 122-2, 122-5
19	drive-throughs	55-14, 56-4, 56-19, 56-20, 114-21,
20		114-25
21	driven	188-8, 192-21, 192-22
22	driveway	98-2, 99-6, 100-10, 100-11, 102-21,
23		102-23, 103-21, 104-2, 104-4, 139-18,
24		140-3, 156-9, 202-9
25	driveways	98-6, 102-13, 104-1, 201-25

1	disturbed	204-20
2	ditch	173-21, 173-25, 174-3, 174-15
3	diversity	36-24
4	division	144-20, 148-16, 155-20, 158-10, 172-16,
5		180-7
6	doable	207-20
7	document	34-1, 54-23, 87-11, 143-1, 145-19,
8		147-23, 212-3, 215-15, 215-22, 215-25,
9		216-3, 220-10
10	documentation	222-11
11	documents	106-6, 106-7, 106-24, 212-8, 212-14,
12		213-8, 215-17, 215-18
13	dog	35-15
14	dollar	208-2, 208-10, 208-12
15	dollars	192-22, 195-7, 195-15, 196-2
16	domain	186-25, 187-9, 193-15
17	Don	28-11, 28-14, 153-5
18	Donna	133-11, 177-20, 177-23, 186-23, 190-7,
19		191-24, 195-5, 196-13, 212-17
20	door	45-1, 65-13, 149-6, 193-18, 210-20
21	Dot	49-23, 50-14, 51-1, 53-18, 145-9,
22		155-20, 177-17, 181-7, 181-9, 181-10,
23		181-14, 182-9, 186-17, 207-4
24	Dot's	185-20, 186-13
25	dots	174-24

1	driving	97-24, 98-17, 113-8
2	dropped	125-9
3	drove	61-15
4	drugstore	78-3, 78-5
5	due	25-1, 180-20
6	duly	7-6, 27-11, 28-11, 30-17, 32-22, 38-11,
7		44-9, 49-11, 54-9, 110-7, 144-17, 158-4,
8		172-15, 181-5, 200-18
9	during	16-16, 20-12, 117-5, 184-1, 191-20
10	dwell	174-10, 205-15
11	dwellers	103-3
12	dwelling	8-5, 8-6, 10-13, 45-19, 119-21, 120-8,
13		120-11, 120-12, 120-17, 120-18, 147-1,
14		147-3, 155-1, 159-24, 160-1, 160-4,
15		165-1, 170-6, 170-10, 176-12
16		
17	e-mailed	17-8
18	E-s-l-i-c-k	30-4
19	earlier	18-5, 33-5, 42-7, 42-8, 48-25, 94-14,
20		109-5, 122-13, 126-20, 129-22, 130-7,
21		134-25, 161-11, 172-21, 179-24, 184-13,
22		190-15, 207-8, 215-4
23	earliest	218-19
24	early	36-12, 184-18
25	easier	85-9, 149-8, 155-5, 216-20, 216-23,

1	221-20
2	easily 34-24
3	east 9-9, 35-3, 46-4, 46-10, 46-16, 49-19,
4	50-2, 89-17, 198-5, 210-3
5	east-west 52-20
6	eastern 20-2, 31-22, 154-10, 154-13, 163-6
7	easy 32-12, 215-23
8	ecologist 32-24
9	educate 9-23
10	effect 11-21, 11-23, 23-15, 40-14, 100-18,
11	111-13, 194-3, 206-12
12	effluent 142-11, 142-14, 142-16
13	effort 24-16, 124-16, 151-12, 213-23
14	Egr 107-13, 117-24, 118-24
15	egress 139-6
16	egret 37-15
17	eight 11-24, 11-25, 12-2, 35-21, 59-15, 60-11,
18	60-14, 60-15, 60-20, 62-11, 96-13,
19	102-14, 114-10, 156-25, 159-23, 166-18,
20	166-19, 201-11
21	eight-foot 166-21, 167-5, 203-16
22	Eighteen 89-25, 90-1
23	Eighty 186-2, 186-3
24	either 7-4, 10-1, 42-8, 43-20, 46-25, 55-8,
25	84-25, 95-1, 95-13, 113-6, 170-1,

1	ended 176-4
2	ending 221-19
3	ends 51-22
4	enforcement 139-21
5	engaged 88-15
6	engineer 38-13, 111-23
7	engineering 111-15, 187-4, 187-6
8	engineers 24-22, 25-2, 142-6
9	enhance 37-6, 201-14, 201-19
10	enhanced 148-20
11	enhances 125-24, 157-15
12	enjoyed 116-15
13	enough 56-24, 61-9, 61-13, 69-7, 153-3, 156-9,
14	212-11, 214-17
15	enthusiasm 207-3, 207-6
16	entire 149-3
17	entirely 13-1, 13-23, 14-14, 23-16
18	entirety 18-10
19	entitled 209-5
20	entrance 36-15, 210-3
21	entrap 10-4
22	environment 43-21
23	environmental 18-3, 19-14, 20-9, 21-6, 32-14, 33-14,
24	34-18, 34-20, 37-18, 39-14, 48-24,
25	85-17, 86-17, 134-8, 135-8, 135-18,

1	179-10, 184-4, 204-6, 208-1
2	Elaine 49-22, 53-17, 144-8, 145-8, 177-25,
3	181-3, 181-6, 196-15, 210-19, 212-23
4	elects 178-13
5	elegant 143-14
6	elevation 39-16, 39-20, 39-21, 40-1, 40-3, 40-5,
7	40-6
8	elevations 39-13, 39-18, 39-23
9	eleven 82-23, 127-8
10	eliminate 77-21, 88-16, 108-25
11	eliminated 80-4
12	eliminating 123-14
13	elimination 31-15, 88-18
14	elliptical 20-5, 20-6
15	embraced 207-3
16	emerge 219-21
17	emergency 22-2, 23-16, 23-20, 89-13, 89-19, 89-23,
18	96-14, 137-12, 138-23, 139-5
19	eminent 186-25, 187-9, 193-15
20	emissions 27-24, 42-12
21	employed 162-12
22	encourage 180-1
23	end 5-22, 10-13, 11-5, 20-13, 23-25, 24-12,
24	48-4, 133-22, 135-17, 147-2, 178-25,
25	189-24, 194-21, 202-6, 205-6, 214-4

1	136-19, 137-4, 142-7, 143-17, 145-8,
2	152-21, 155-18, 155-19
3	environmentalist 19-15, 19-16, 20-14
4	environmentally 21-11, 33-1, 34-22, 136-24
5	envision 80-10
6	envisioning 13-9, 79-25
7	equitable 124-18
8	equivalent 178-25
9	Erp 40-20
10	err 151-15
11	errant 25-22, 42-16
12	error 10-3, 72-21, 138-8
13	Eslick 28-11, 28-14, 28-22, 29-24, 30-1, 30-4,
14	30-7, 30-8
15	essence 54-19
16	essentially 59-1, 63-24, 178-23, 205-11
17	establish 40-4, 123-23, 183-21
18	established 34-2, 39-15, 43-11
19	Estero 5-4, 27-15, 27-22, 28-16, 29-8, 60-5,
20	73-15, 75-5, 84-18, 107-13, 159-4,
21	159-15, 163-4, 163-22, 174-17, 174-19,
22	190-10
23	estimation 161-3
24	et 42-5, 86-15, 187-7, 187-20, 220-8
25	Evangelical 178-20

1	even	18-24, 35-16, 46-11, 52-21, 55-25,
2		67-12, 80-9, 97-9, 98-17, 102-25,
3		113-22, 125-9, 128-5, 132-10, 135-2,
4		142-25, 151-1, 157-13, 196-2, 199-9,
5		199-14, 205-12, 208-10, 210-1, 212-6
6	eventually	174-12, 174-16, 174-20
7	everybody	5-16, 6-22, 6-25, 102-23, 130-21,
8		137-23, 144-3, 155-5, 162-18, 172-10,
9		205-1, 212-13
10	everyone's	57-21
11	everything	79-1, 133-24, 136-21, 152-2, 170-25,
12		172-22, 212-3, 214-8
13	evidence	120-23, 209-14
14	evolution	21-5, 204-18, 204-21
15	evolve	153-8
16	evolved	89-22
17	evolving	88-13
18	exact	170-16
19	exaction	178-22
20	exactly	69-3, 69-15, 94-17, 100-21, 141-18,
21		151-9, 153-20, 155-9, 170-11, 187-23,
22		189-3, 190-2, 193-10
23	examine	27-19, 40-20
24	Examiner	5-1, 5-2, 7-8, 7-9, 9-15, 14-22, 15-7,
25		15-18, 16-10, 16-19, 16-21, 16-25,

1	102-22, 103-14, 103-18, 103-22, 104-13,
2	105-3, 105-4, 105-9, 105-14, 105-22,
3	106-7, 106-13, 108-3, 108-17, 108-23,
4	109-4, 109-11, 109-17, 109-25, 110-3,
5	110-9, 110-12, 110-17, 111-3, 111-4,
6	114-20, 116-16, 116-18, 117-3, 117-4,
7	117-11, 119-4, 119-6, 120-24, 121-5,
8	123-1, 124-23, 125-2, 125-5, 125-8,
9	126-9, 126-15, 127-3, 127-14, 128-2,
10	128-15, 128-22, 128-25, 129-5, 129-7,
11	130-15, 131-4, 131-15, 131-19, 131-22,
12	132-19, 133-2, 133-16, 133-22, 135-4,
13	135-10, 135-13, 136-3, 137-14, 138-12,
14	139-7, 139-11, 139-15, 140-8, 141-13,
15	141-15, 141-20, 142-3, 142-4, 142-25,
16	144-4, 144-10, 144-13, 144-25, 145-2,
17	145-20, 147-22, 148-3, 148-22, 149-21,
18	149-24, 150-8, 150-15, 150-19, 150-25,
19	151-20, 152-4, 153-1, 153-10, 153-15,
20	154-1, 155-11, 156-1, 156-21, 157-20,
21	157-23, 158-5, 158-7, 158-13, 159-8,
22	160-6, 160-18, 161-2, 161-7, 161-17,
23	161-20, 162-2, 162-6, 162-17, 163-1,
24	171-10, 171-19, 172-3, 172-6, 172-9,
25	173-9, 177-9, 177-11, 177-15, 177-22,

1	17-13, 18-4, 18-12, 18-22, 19-11, 22-5,
2	22-25, 23-9, 23-23, 27-7, 27-12, 28-8,
3	28-12, 28-19, 29-23, 29-25, 30-2, 30-6,
4	30-18, 30-21, 30-23, 32-7, 32-9, 32-17,
5	32-20, 34-8, 34-9, 37-23, 37-25, 38-6,
6	38-9, 43-6, 43-19, 43-24, 44-6, 45-15,
7	46-25, 48-18, 49-8, 49-12, 52-19, 53-5,
8	53-15, 54-3, 54-5, 54-21, 56-6, 56-11,
9	56-22, 57-7, 57-10, 57-13, 57-19, 57-23,
10	58-1, 58-4, 58-8, 58-12, 58-14, 58-21,
11	58-24, 59-3, 59-8, 59-14, 60-2, 61-4,
12	61-18, 61-23, 62-6, 62-8, 63-13, 63-18,
13	64-25, 65-2, 65-7, 65-14, 65-25, 66-3,
14	66-22, 67-20, 68-7, 68-12, 68-14, 70-14,
15	70-19, 70-24, 72-1, 73-17, 74-13, 74-19,
16	74-22, 75-1, 76-17, 76-23, 77-17, 78-7,
17	78-11, 78-17, 78-24, 79-5, 79-21, 79-22,
18	80-13, 80-25, 81-6, 81-16, 82-20, 82-25,
19	83-7, 83-11, 83-15, 84-5, 84-7, 84-25,
20	85-4, 85-8, 85-18, 86-14, 87-7, 87-20,
21	88-6, 88-19, 90-22, 90-25, 91-8, 91-15,
22	92-2, 93-20, 93-24, 95-6, 96-1, 96-23,
23	96-25, 97-1, 97-15, 97-21, 99-16, 99-20,
24	99-24, 100-2, 100-13, 100-18, 100-22,
25	101-5, 101-8, 101-11, 101-15, 102-9,

1	178-4, 180-4, 180-18, 180-22, 181-1,
2	181-19, 182-10, 183-15, 185-4, 186-12,
3	186-16, 187-21, 187-24, 189-6, 191-1,
4	191-4, 191-23, 192-8, 192-13, 192-25,
5	193-5, 193-11, 193-25, 194-3, 194-8,
6	194-12, 195-4, 195-12, 196-8, 196-10,
7	196-18, 197-14, 199-5, 199-13, 199-23,
8	200-2, 200-5, 200-10, 201-17, 202-25,
9	203-3, 211-24, 212-16, 212-19, 214-10,
10	214-18, 215-8, 216-4, 216-20, 216-25,
11	217-15, 217-20, 217-24, 218-3, 218-14,
12	219-7, 220-2, 220-5, 220-13, 220-23,
13	221-8, 221-23, 222-9
14	Examiner's 31-4, 69-4, 173-4
15	example 13-3, 13-25, 86-10, 162-20, 162-25
16	excavated 36-9
17	excavation 25-1, 38-22, 39-6
18	excavations 111-12, 111-20
19	exceed 8-13, 14-4, 46-12
20	excellent 37-12
21	except 26-14, 116-13, 118-1, 118-19, 126-17,
22	132-17, 179-13, 186-20
23	exception 17-25, 18-8, 18-17, 19-6, 64-10, 67-4,
24	67-15, 76-19, 81-17, 83-5, 83-10,
25	122-16, 123-14, 123-17, 123-20, 123-23,

1	124-3, 124-10, 124-14, 125-17, 127-17,
2	128-11, 128-17, 129-17, 133-3, 133-5,
3	134-10, 134-12, 134-20
4	exciting 84-24
5	excluded 130-12
6	exclusive 206-2
7	exclusively 141-3
8	Excuse 126-9
9	excused 172-6
10	exhibit 30-7, 30-8, 33-18, 34-10, 34-13, 48-21,
11	48-22, 53-7, 53-8, 63-19, 63-21, 66-15,
12	72-2, 72-4, 73-18, 73-19, 73-20, 73-25,
13	74-2, 84-8, 84-10, 93-24, 94-20, 97-3,
14	97-5, 97-10, 97-12, 97-16, 97-17,
15	101-12, 101-17, 101-21, 101-22, 101-25,
16	102-4, 106-1, 106-3, 106-14, 106-15,
17	106-17, 107-11, 117-8, 120-25, 121-2,
18	135-13, 135-14, 137-15, 137-17, 142-24,
19	143-2, 143-3, 143-6, 147-23, 148-4,
20	158-16, 158-17, 158-19, 159-1, 159-9,
21	159-10, 159-22, 159-23, 161-13, 161-18,
22	161-25, 173-10, 173-12, 182-1, 182-11,
23	182-12, 183-16, 183-18, 185-3, 189-7,
24	189-9, 190-6, 190-22, 191-5, 191-6,
25	192-1

1	26-19, 34-19, 40-1, 54-19, 79-1, 84-5,
2	84-16, 89-6, 135-25, 136-12, 136-22,
3	140-17, 141-4, 155-16, 181-13, 210-19
4	explained 63-13
5	explaining 200-20
6	expressed 38-19, 94-6, 121-7
7	expressing 111-6
8	extend 20-21, 91-20, 116-7
9	extended 31-22
10	extending 92-17, 92-22, 93-2, 138-2, 185-23
11	extension 24-4, 50-17, 95-19, 141-11, 181-25,
12	184-3, 184-20, 185-7, 188-10, 189-2,
13	190-12, 192-4, 192-5, 196-24, 197-10,
14	198-1, 206-9
15	extensive 39-12
16	extent 27-19, 193-23, 219-3
17	external 164-17, 204-14
18	externalities 121-16, 164-23, 203-9, 204-8
19	externality 164-24
20	extra 6-21, 28-20
21	extraordinary 41-11
22	extras 19-19
23	extreme 81-6, 138-13
24	
25	F-1 136-20

1	exhibits 60-4, 60-8, 73-14, 97-16, 144-9, 148-5,
2	154-6, 157-17, 181-16, 182-15
3	exist 152-25
4	existing 16-2, 20-11, 25-10, 25-20, 34-19, 36-7,
5	36-16, 40-25, 41-2, 41-3, 41-13, 73-23,
6	81-19, 92-20, 123-4, 129-19, 159-13,
7	173-20, 183-9, 184-8, 184-9, 185-25,
8	186-1, 186-5, 189-19, 196-21, 202-11,
9	202-20
10	exists 120-3, 152-24
11	exit 102-18, 202-9
12	exotic 35-13
13	exotics 37-7
14	expansive 202-1
15	expect 45-10, 53-1, 67-3, 143-16, 165-14
16	expectation 61-6
17	expected 131-1
18	expects 52-15
19	expensive 210-9
20	experience 41-24, 44-20, 56-18, 83-21
21	expert 32-25, 38-24, 44-3, 49-17, 111-24,
22	111-25, 136-8, 144-21, 144-23, 205-12
23	expertise 32-16, 43-13, 52-17
24	experts 21-1, 24-24, 27-1
25	explain 5-5, 8-16, 11-4, 12-19, 21-16, 23-6,

1	facilities 11-6, 54-12, 55-16, 58-23, 191-16
2	facility 8-8, 11-4, 11-13, 22-19, 48-14, 57-2,
3	93-16, 94-3, 94-9, 94-18, 94-23, 115-20,
4	122-2, 122-5, 138-18, 188-23, 190-5,
5	220-8
6	fact 9-8, 98-9, 143-10, 160-18, 167-3,
7	178-17, 202-19, 203-7, 203-14, 204-9,
8	208-11
9	factor 165-16
10	factors 165-3, 165-4
11	failing 191-22
12	fair 61-14, 171-10, 171-23, 171-25, 178-15,
13	193-22, 193-24, 206-16, 207-23, 209-5
14	fairly 39-12, 39-19, 39-20, 61-4, 63-9, 64-15,
15	96-13, 137-9, 149-18, 167-12, 208-5
16	fairness 211-2, 213-23
17	fairways 44-22
18	fall 85-1, 112-12, 134-2
19	falls 187-13
20	familiar 30-22, 85-19, 166-10, 196-15, 205-18
21	families 195-21
22	family 48-2, 92-15, 99-2, 99-8, 118-9, 149-10,
23	149-19, 159-6, 163-5, 167-11, 167-22,
24	168-1, 175-16, 176-1, 203-21, 204-4
25	far 56-24, 58-17, 59-5, 61-2, 66-9, 82-2,

1	95-7, 95-20, 117-20, 132-10, 150-15,
2	151-23, 163-15, 166-1, 167-17, 167-22,
3	170-9, 176-25
4	farm 173-21
5	fashion 38-18, 147-9, 180-2
6	faulting 109-12, 210-24
7	fax 201-4, 201-5, 201-6
8	faxed 176-6
9	fear 25-22
10	features 98-5, 173-7, 173-18
11	fee 52-15, 52-23, 53-2, 187-16, 193-4,
12	206-20, 207-1, 207-19, 207-22, 208-8,
13	208-13
14	feel 179-24, 195-11, 195-14, 196-1, 196-3
15	feels 25-2, 80-25, 181-14
16	fees 193-4
17	feet 8-10, 8-13, 14-4, 14-17, 14-18, 14-19,
18	16-2, 22-13, 39-16, 47-20, 55-8, 55-14,
19	55-15, 55-22, 55-25, 56-21, 58-25, 59-1,
20	59-3, 59-4, 64-20, 64-22, 64-25, 65-1,
21	65-9, 65-18, 65-20, 65-22, 66-5, 81-19,
22	83-3, 90-14, 90-16, 90-21, 112-2, 115-2,
23	115-10, 118-12, 118-14, 119-1, 122-6,
24	122-10, 123-5, 123-9, 125-18, 125-19,
25	128-5, 128-20, 129-19, 130-18, 130-19,

1	final 142-24, 202-11, 211-8
2	finalized 199-1
3	finally 26-21, 139-12
4	find 26-7, 33-19, 43-22, 56-5, 56-14, 63-1,
5	67-3, 121-5, 137-3, 146-13, 158-15,
6	163-2, 169-4, 170-25, 171-22
7	finding 16-19, 205-24
8	findings 155-13
9	fine 57-19, 65-25, 76-6, 76-23, 142-1, 158-7,
10	161-21, 170-25, 177-22, 181-19, 215-16,
11	216-5, 216-25, 217-22, 218-13
12	finish 6-3, 9-16, 91-23, 101-15, 105-4, 105-9,
13	105-15, 105-23, 130-16, 130-20
14	finished 5-8, 105-24
15	finishes 28-6
16	fire 35-11, 35-12, 42-3, 145-13, 197-22
17	firm 119-23
18	first 5-8, 10-15, 17-2, 18-13, 26-6, 30-14,
19	49-10, 51-11, 52-14, 55-5, 72-8, 73-16,
20	73-22, 90-5, 90-8, 90-21, 101-20,
21	102-15, 102-19, 110-3, 110-14, 110-23,
22	112-18, 126-1, 136-5, 147-6, 147-22,
23	161-21, 161-23, 168-22, 172-15, 172-18,
24	177-19, 177-21, 178-20, 181-23, 182-20,
25	183-11, 194-17, 206-21

1	131-6, 131-10, 131-18, 131-22, 132-6,
2	132-17, 132-24, 150-5, 150-9, 150-10,
3	150-13, 154-24, 154-25, 160-23, 165-23,
4	165-24, 166-2, 166-18, 166-19, 167-6,
5	167-19, 168-25, 169-9, 169-13, 169-14,
6	169-20, 170-2, 170-4, 184-9, 184-23,
7	185-9, 186-1, 186-2, 186-3, 186-5,
8	188-8, 188-22, 189-14, 189-21, 189-22,
9	195-19, 203-22
10	felt 53-12, 113-23, 176-24, 177-5, 187-11
11	fence 25-11, 40-25, 41-2, 41-3, 41-13, 41-15,
12	41-17, 112-5, 112-7, 112-8, 112-12,
13	114-17
14	few 30-15, 34-18, 36-1, 49-7, 146-3, 215-21
15	fewer 108-12
16	fiduciary 205-21, 205-24
17	field 35-15
18	fifth 192-2
19	fight 207-6
20	figured 159-13
21	file 31-3, 33-3, 34-8, 38-15, 44-3, 144-22,
22	158-12
23	filing 7-13
24	fill 41-16
25	filling 5-25, 195-19

1	fit 185-15
2	five 61-10, 61-12, 110-25, 191-19, 204-3
3	flats 98-14
4	flexibility 46-11, 46-17, 147-8
5	floor 173-17
6	Florida 38-14, 44-2, 49-16, 85-16, 86-17,
7	101-23, 136-19, 141-7, 180-13
8	flow 175-3, 175-4
9	fly 65-21
10	focus 108-25, 157-8
11	folks 26-21, 114-17, 172-19
12	follow 51-10, 85-11, 174-13, 193-18
13	followed 56-24
14	following 24-22, 29-10, 48-17, 71-23, 91-23
15	follows 12-20, 16-1, 19-23, 21-22, 22-18, 30-17,
16	32-22, 38-11, 44-9, 49-11, 54-9, 142-13,
17	144-17, 158-4, 172-15, 181-5, 200-19
18	foot 39-19, 40-11, 65-3, 82-15, 95-22,
19	118-24, 122-12, 167-13, 169-1, 190-3
20	foot-high 150-6, 203-23
21	footage 14-2
22	footings 112-7
23	footnote 60-19, 191-12
24	forage 37-12
25	forced 134-4

1	forcing	149-14
2	forgotten	207-5
3	form	34-19, 147-18
4	format	107-17
5	formerly	94-22
6	forms	5-25
7	forth	7-16, 24-21, 124-8, 126-23, 127-19,
8		128-8, 138-23, 142-22, 151-25, 168-8,
9		168-10, 187-8, 218-17
10	forum	31-4, 33-1, 38-15, 44-4, 49-17, 179-9
11	forward	38-3, 52-16, 128-12, 136-5, 197-21,
12		213-24
13	found	55-24, 71-24, 73-11, 213-12
14	founding	27-15
15	four	8-13, 22-11, 56-23, 60-7, 90-22, 90-24,
16		97-11, 97-19, 150-6, 150-7, 191-13
17	four-lane	188-9, 188-14, 188-22
18	fourth	192-2
19	frame	212-9, 214-11, 217-18
20	frankly	23-17, 25-19, 124-9, 126-22, 140-6,
21		205-16
22	frequently	7-21
23	Friday	6-21, 6-23, 16-7, 76-3, 81-23, 126-21,
24		127-10, 129-23, 211-14, 211-23, 215-2,
25		215-3, 217-21, 217-25, 218-6, 218-7,

1	gasoline	28-24
2	gated	114-5, 114-9, 114-15
3	gave	53-6
4	general	56-9, 90-10, 173-23, 179-14
5	generally	44-21, 56-18, 69-25, 113-13, 149-24
6	gentleman	42-7
7	gentlemen	109-19
8	Getch	145-9, 190-24
9	Gilbertson	182-7
10	Gis	159-12, 173-16
11	give	6-2, 27-12, 28-12, 28-20, 45-25, 48-5,
12		49-12, 49-23, 51-9, 53-15, 69-22,
13		104-22, 105-3, 110-9, 116-21, 137-13,
14		147-8, 158-13, 162-10, 162-13, 162-20,
15		180-5, 181-25, 182-16, 183-12, 183-13,
16		186-4, 189-4, 193-4, 211-24, 214-17,
17		217-19
18	given	32-25, 61-3, 61-9, 62-11, 70-20, 74-15,
19		89-22, 130-12, 175-15, 176-22, 196-22,
20		202-16, 210-7, 213-18
21	giving	18-6, 18-18, 164-24, 194-4, 206-6
22	gnash	175-14
23	goal	194-25
24	goes	50-2, 60-19, 174-6, 190-22, 191-21,
25		192-18

1		218-10
2	front	8-14, 49-17, 99-15, 100-17, 139-20,
3		140-12, 163-6, 170-13, 178-25, 217-5
4	frontage	93-2
5	fronts	51-12
6	fuel	11-18, 12-9, 59-13, 122-14
7	full	84-22, 210-6
8	fullest	153-5
9	fully	59-15, 96-14, 115-6, 151-22
10	functions	99-12
11	fund	195-15
12	funds	206-25
13	further	96-12, 116-11, 116-12, 155-23, 172-2,
14		199-22, 202-23, 214-7, 214-19
15	future	8-23, 173-5, 178-10, 179-18, 187-14,
16		195-8, 199-19, 207-14, 208-19, 209-3
17		
18	gain	152-21
19	gained	124-3
20	game	207-9, 208-1, 210-8
21	garage	98-1, 99-5, 99-6, 99-15, 100-17, 102-15,
22		102-20, 103-21, 139-20, 140-12
23	garages	98-6, 202-1
24	gas	11-22, 26-5, 26-8, 60-6, 60-7, 61-16,
25		62-18, 63-11, 113-14, 113-19, 114-12

1	going	6-11, 6-24, 9-16, 20-23, 23-15, 27-4,
2		29-20, 30-11, 30-15, 31-6, 33-23, 45-18,
3		48-5, 48-19, 49-5, 51-6, 52-2, 52-22,
4		54-23, 56-25, 58-16, 61-25, 65-9, 65-15,
5		65-21, 69-15, 70-1, 78-7, 79-7, 84-22,
6		93-12, 97-1, 100-13, 101-17, 101-21,
7		101-23, 102-23, 103-2, 105-5, 105-23,
8		112-1, 112-10, 113-2, 113-15, 114-11,
9		115-2, 115-10, 115-11, 115-19, 116-8,
10		121-25, 126-10, 126-23, 127-6, 127-16,
11		130-15, 131-11, 132-1, 132-2, 132-6,
12		136-5, 137-6, 141-18, 141-21, 143-1,
13		149-1, 150-4, 151-7, 151-10, 151-23,
14		153-24, 157-11, 158-21, 159-6, 159-23,
15		162-17, 165-22, 165-23, 169-14, 170-20,
16		170-24, 171-20, 172-22, 177-19, 177-20,
17		178-1, 179-11, 181-17, 182-15, 183-2,
18		185-23, 186-3, 187-6, 187-7, 188-7,
19		190-2, 193-7, 193-8, 194-15, 194-16,
20		195-24, 201-10, 203-22, 204-13, 205-15,
21		206-4, 207-13, 209-2, 209-11, 211-6,
22		214-16, 215-8, 216-7, 217-3, 217-9,
23		217-16, 218-13, 218-15, 218-16, 218-23,
24		219-12, 220-14, 221-1
25	golf	5-4, 8-9, 9-6, 13-2, 13-5, 18-14, 21-3,

1	21-6, 21-10, 21-19, 22-23, 25-21, 25-23,
2	25-25, 42-14, 42-15, 42-16, 43-1, 44-18,
3	44-20, 44-21, 45-1, 45-3, 45-11, 60-5,
4	69-20, 71-2, 83-25, 84-9, 84-18, 84-23,
5	86-21, 94-3, 94-9, 94-17, 94-24, 107-13,
6	112-22, 113-3, 113-10, 114-2, 118-14,
7	135-19, 136-18, 137-2, 138-20, 141-11,
8	142-7, 143-16, 143-20, 159-4, 159-16,
9	168-2, 172-23, 173-1, 180-19, 187-19,
10	190-10, 195-17, 196-5, 199-18, 208-18,
11	212-24, 220-7, 221-12
12 golfers	113-5
13 gone	195-21, 213-19
14 good	5-1, 7-9, 15-16, 25-2, 28-2, 31-7,
15	32-23, 44-1, 87-4, 110-20, 112-19,
16	116-5, 116-13, 131-2, 144-18, 146-15,
17	156-9, 162-2, 175-1, 187-24, 205-23,
18	206-13
19 gopher	20-16, 33-7, 33-11, 35-19, 35-22, 36-3,
20	36-7, 36-21, 135-9
21 governing	186-25
22 governmental	199-10
23 grab	145-12
24 grade	20-11
25 graphic	221-16

1	148-2, 184-22, 212-19
2 handed	48-20, 74-1, 106-6, 107-10
3 handing	73-7, 73-13
4 handle	147-7
5 handled	42-1, 42-11, 112-16, 147-5, 204-24
6 handout	16-16, 64-14, 94-11
7 hands	7-5, 110-5
8 handy	50-5
9 Hang	169-5
10 happen	48-7, 127-21, 190-2, 195-2, 208-25,
11	215-9, 216-7, 221-1
12 happened	108-8, 210-20
13 happening	24-17, 194-21
14 happens	5-19, 128-8, 143-22, 207-11
15 happy	16-9, 61-5, 71-5, 75-13, 136-17, 137-24,
16	162-5, 162-24, 208-23, 214-22
17 hard	172-19, 192-21, 213-14
18 hard-pressed	124-2, 136-1
19 harm's	36-10
20 harsh	197-24
21 harshly	197-23
22 hate	182-14
23 Haven	87-3
24 having	6-12, 30-16, 32-21, 38-10, 40-14, 44-8,
25	49-10, 54-8, 65-19, 85-12, 108-13,

1 great	21-2, 180-22, 204-1
2 greater	36-24, 60-21, 136-9, 137-1, 137-10
3 green	113-5, 174-24, 182-22
4 greens	73-15, 75-6, 85-25, 88-12, 88-14
5 Griffin	191-12, 191-18
6 gross	148-25, 160-9
7 grossly	161-5
8 ground	204-22
9 grounds	26-6
10 Group	31-2
11 guess	23-18, 73-7, 75-6, 86-15, 93-12, 97-17,
12	104-22, 142-19, 144-5, 157-9, 160-21,
13	164-15, 192-10
14 guidance	13-6, 163-1
15 guidelines	164-19
16	
17 habit	19-13
18 habitat	36-3, 36-4, 37-12
19 habitats	36-25
20 hair	35-15
21 half	39-20, 40-11, 52-1, 61-10, 61-12, 64-1,
22	198-7
23 half-acre	149-18
24 halfway	9-13, 50-2
25 hand	18-18, 26-8, 28-10, 106-7, 124-12,

1	140-18, 144-16, 158-3, 172-14, 176-20,
2	181-4, 187-18, 191-15, 194-20, 200-18,
3	204-2, 218-24
4 Hawk's	87-3
5 hazards	42-16
6 heads	174-7
7 health	157-16, 178-9
8 hear	7-21, 24-15, 43-3, 51-6, 59-9, 70-12,
9	93-15, 109-2, 144-6, 194-16
10 heard	27-18, 82-6, 112-18, 126-1, 153-20,
11	209-15
12 hearing	5-1, 5-2, 6-20, 7-8, 7-9, 9-15, 14-22,
13	15-7, 15-18, 16-10, 16-19, 16-21, 16-25,
14	17-13, 18-4, 18-12, 18-22, 19-11, 22-5,
15	22-24, 23-9, 23-23, 27-7, 27-12, 28-8,
16	28-12, 28-19, 29-23, 29-25, 30-2, 30-6,
17	30-18, 30-21, 30-23, 31-3, 32-7, 32-9,
18	32-17, 32-20, 34-8, 34-9, 37-23, 37-25,
19	38-6, 38-9, 43-6, 43-19, 43-24, 44-6,
20	45-15, 46-25, 48-18, 49-8, 49-12, 50-13,
21	52-19, 53-5, 53-15, 54-3, 54-5, 54-21,
22	56-6, 56-11, 56-22, 57-7, 57-10, 57-13,
23	57-19, 57-23, 58-1, 58-4, 58-8, 58-12,
24	58-14, 58-21, 58-24, 59-3, 59-8, 59-14,
25	60-2, 61-4, 61-18, 61-23, 62-6, 62-8,

1 63-13, 63-18, 64-25, 65-2, 65-7, 65-14,
 2 65-25, 66-3, 66-22, 67-20, 68-7, 68-8,
 3 68-12, 68-14, 69-4, 70-14, 70-19, 70-24,
 4 72-1, 73-17, 74-13, 74-19, 74-22, 75-1,
 5 76-17, 76-23, 77-17, 78-7, 78-11, 78-17,
 6 78-24, 79-5, 79-21, 79-22, 80-2, 80-13,
 7 80-24, 81-6, 81-16, 82-20, 82-25, 83-7,
 8 83-11, 83-15, 83-17, 84-5, 84-7, 84-25,
 9 85-4, 85-8, 85-18, 86-14, 87-7, 87-20,
 10 88-6, 88-19, 90-22, 90-25, 91-8, 91-15,
 11 91-23, 92-2, 93-19, 93-24, 95-6, 96-1,
 12 96-23, 96-25, 97-1, 97-15, 97-21, 99-16,
 13 99-20, 99-24, 100-2, 100-13, 100-18,
 14 100-22, 101-5, 101-8, 101-11, 101-15,
 15 102-9, 102-22, 103-14, 103-18, 103-22,
 16 104-13, 105-2, 105-4, 105-9, 105-14,
 17 105-22, 106-7, 106-13, 108-3, 108-8,
 18 108-17, 108-22, 109-4, 109-11, 109-17,
 19 109-25, 110-3, 110-9, 110-12, 110-17,
 20 111-3, 111-4, 113-11, 114-20, 116-16,
 21 116-18, 116-23, 117-3, 117-4, 117-11,
 22 119-4, 119-6, 120-24, 121-5, 123-1,
 23 124-3, 124-23, 125-2, 125-5, 125-8,
 24 126-9, 126-15, 127-3, 127-14, 128-2,
 25 128-15, 128-22, 128-25, 129-5, 129-7,

1 130-15, 131-4, 131-15, 131-19, 131-22,
 2 132-11, 132-19, 133-2, 133-16, 133-22,
 3 135-4, 135-10, 135-13, 136-3, 137-14,
 4 138-12, 139-7, 139-11, 139-15, 140-8,
 5 141-13, 141-15, 141-20, 142-3, 142-4,
 6 142-25, 144-4, 144-10, 144-13, 144-25,
 7 145-2, 145-20, 147-22, 148-3, 148-22,
 8 149-21, 149-24, 150-8, 150-15, 150-19,
 9 150-25, 151-20, 152-4, 153-1, 153-10,
 10 153-15, 154-1, 155-11, 156-1, 156-20,
 11 157-20, 157-23, 158-5, 158-7, 158-13,
 12 159-8, 160-6, 160-18, 161-2, 161-7,
 13 161-17, 161-20, 162-2, 162-6, 162-17,
 14 163-1, 164-6, 171-10, 171-19, 172-3,
 15 172-6, 172-9, 173-4, 173-9, 176-8,
 16 177-9, 177-11, 177-15, 177-22, 178-4,
 17 180-4, 180-18, 180-22, 181-1, 181-19,
 18 182-10, 183-15, 185-4, 186-12, 186-16,
 19 187-21, 187-24, 189-6, 191-1, 191-4,
 20 191-23, 192-8, 192-13, 192-25, 193-5,
 21 193-11, 193-25, 194-3, 194-8, 194-12,
 22 195-4, 195-12, 196-8, 196-10, 196-18,
 23 197-14, 199-5, 199-13, 199-23, 200-2,
 24 200-5, 200-10, 201-17, 202-25, 203-3,
 25 211-24, 212-16, 212-19, 214-10, 214-14,

1 214-18, 214-24, 215-1, 215-8, 216-4,
 2 216-20, 216-25, 217-15, 217-20, 217-24,
 3 218-3, 218-14, 219-2, 219-7, 219-14,
 4 219-17, 220-2, 220-4, 220-13, 220-23,
 5 221-8, 221-23, 222-9
 6 hearings 5-6, 6-10, 50-24, 71-12, 181-11
 7 heartburn 175-10
 8 heat 152-21
 9 heavily 35-5, 37-5, 203-15
 10 heavy 80-2, 166-13
 11 height 22-12, 90-13, 91-4, 156-23, 165-19,
 12 167-1, 169-12, 169-13, 176-3
 13 held 178-23, 211-22
 14 help 20-11, 40-24, 133-6, 138-21, 163-24
 15 helpful 41-8, 111-1, 219-25
 16 helps 156-17
 17 heron 37-15
 18 Hess 63-8
 19 hid 183-8
 20 Higginson 38-2, 38-8, 38-10, 38-12, 38-13, 38-17
 21 high 145-23, 152-16, 166-15, 169-14, 169-17,
 22 203-8
 23 high-density 120-15
 24 high-story 150-6
 25 higher 39-17, 40-11, 121-13, 148-12, 175-17

1 highest 36-3, 199-2, 199-17, 199-18, 199-19,
 2 207-20, 208-17
 3 highlight 133-25, 191-8, 216-1, 217-1
 4 highlighted 182-22
 5 Hill 191-11, 191-18
 6 himself 38-3
 7 history 182-16, 196-22
 8 hit 145-23, 194-20
 9 hits 25-23
 10 hitting 45-1, 113-5
 11 hold 27-23, 133-23
 12 holding 119-23
 13 holds 40-6
 14 hole 113-4
 15 holes 25-22, 26-1, 112-23, 137-2, 196-6
 16 home 78-6, 95-9, 99-3, 201-8
 17 homeowner 218-25
 18 homes 5-3, 7-12, 38-22, 45-7, 45-8, 45-9,
 19 111-22, 112-2, 163-5, 195-20
 20 honest 208-16
 21 honestly 63-3, 84-21
 22 Honor 194-24
 23 hope 19-13, 101-7, 111-13, 111-20, 112-4,
 24 112-15, 113-9, 181-15, 208-4, 209-21
 25 hopeful 29-18, 140-13

1	hopefully	23-7
2	hopelessly	130-17
3	hotel	203-24
4	hour	74-21, 78-20, 81-4
5	hour-a-day	78-18
6	hour-use	80-10
7	hours	13-11, 13-16, 13-21, 16-5, 71-16, 71-21,
8		71-23, 71-24, 72-3, 72-8, 72-12, 73-4,
9		73-10, 73-14, 74-6, 74-9, 74-12, 74-13,
10		74-15, 74-20, 75-7, 75-8, 75-9, 75-13,
11		75-14, 75-24, 76-15, 77-11, 77-13,
12		77-19, 77-23, 78-2, 78-12, 78-18, 79-6,
13		79-12, 79-24, 80-1, 80-5, 80-11, 80-25,
14		81-1, 81-3, 82-17, 82-21, 113-16, 115-8,
15		115-15, 115-20, 126-6, 126-15, 126-16,
16		126-18, 127-8, 127-20, 127-22, 128-4,
17		128-19, 129-12, 130-6, 130-12
18	house	46-6, 98-12, 98-16, 98-19, 98-25, 99-4,
19		99-9, 99-13, 100-1, 100-2, 103-23,
20		118-17, 203-20
21	houses	97-24, 98-9, 103-20, 103-25
22	housing	57-17
23	however	13-13, 45-18, 51-22, 67-10, 96-9, 124-2,
24		129-18, 140-24, 214-2
25	huge	151-8

1		72-5, 73-21, 74-3, 84-11, 97-13, 102-5,
2		106-4, 106-18, 121-3, 137-18, 143-7,
3		148-6, 158-20, 159-11, 162-1, 173-13,
4		182-13, 183-19, 189-10, 191-7
5	identified	24-22, 33-5, 35-19, 44-12, 49-21, 50-16,
6		120-16
7	identifies	34-1
8	identify	30-23, 32-15, 38-3, 43-12, 43-24,
9		110-10, 145-18, 158-7
10	identifying	85-13
11	ignorant	179-22
12	illustrate	16-16, 97-20
13	illustration	17-21
14	immediately	8-21, 10-11, 12-11, 13-13, 15-18, 21-19,
15		22-25, 71-17, 194-7
16	impact	31-2, 40-18, 52-15, 52-23, 53-2, 94-7,
17		115-12, 115-22, 165-8, 165-16, 166-23,
18		187-16, 193-4, 195-17, 196-6, 206-20,
19		207-1, 207-19, 207-21, 208-8, 209-3
20	impacts	151-11, 179-4, 189-14, 209-21
21	implement	29-13
22	implemented	29-19
23	implications	29-14, 132-10
24	impliedly	96-5
25	importance	181-13, 182-8

1	humor	48-7
2	hundred	14-16, 15-9, 15-14, 52-23, 53-2, 65-1,
3		114-10, 168-25, 169-13, 169-14, 208-10,
4		208-11
5	hundred-foot	151-6, 189-12, 189-13
6		
7	I'd	5-15, 5-21, 42-22, 111-2, 215-14
8	I'll	5-10, 5-11, 8-16, 10-7, 11-4, 11-16,
9		16-9, 19-19, 20-14, 25-2, 30-2, 30-6,
10		30-11, 35-1, 35-6, 35-24, 36-17, 37-3,
11		38-20, 50-18, 51-9, 53-6, 60-3, 63-18,
12		72-1, 84-7, 101-12, 102-1, 105-15,
13		110-5, 110-10, 111-10, 116-1, 119-13,
14		120-24, 126-14, 130-16, 142-16, 145-23,
15		146-21, 147-20, 147-22, 148-3, 158-15,
16		159-8, 161-17, 162-4, 162-24, 173-9,
17		181-16, 182-10, 183-15, 184-21, 184-22,
18		189-4, 189-6, 200-11, 211-24, 212-7,
19		215-4, 216-15, 217-2, 217-6, 218-4,
20		218-6
21	I-75	191-11, 191-17
22	idea	55-18, 104-22, 105-3, 108-21, 112-17,
23		126-2, 131-2, 149-5, 156-12
24	ideal	194-11
25	identification	30-9, 34-14, 48-23, 53-9, 60-9, 63-22,

1	important	104-11, 106-12, 143-24, 187-12, 187-14,
2		189-1, 198-20
3	impose	15-23, 80-25, 156-25, 213-17
4	imposed	13-17, 77-22, 78-3, 83-22
5	impossible	8-25, 143-15
6	impression	219-20
7	improved	35-3
8	improvements	191-15
9	inactive	35-22
10	inappropriate	115-21, 140-24, 143-25
11	inch-high	20-5
12	inch-wide	20-5
13	inches	156-25
14	incinerator	27-23, 42-10, 112-20, 112-21
15	inclination	96-3
16	include	8-9, 20-4, 37-3, 37-7, 53-20
17	included	35-21, 46-5, 70-16, 85-23, 86-5, 154-12,
18		177-3
19	includes	53-25, 54-1
20	including	114-12
21	incompatibility	120-2, 121-11, 163-11, 167-7, 204-1,
22		205-10
23	incompatible	150-1, 161-3, 164-14, 171-5, 171-21,
24		171-22, 203-7, 203-10
25	incorporate	91-3, 178-5, 221-6

- 1 incorporated 5-4, 184-23, 204-25
- 2 incorporating 63-16
- 3 incorporation 178-2
- 4 incorrect 124-21, 133-19
- 5 increase 151-4
- 6 increased 48-3, 149-14
- 7 increasing 176-11, 188-12
- 8 incubator 112-20
- 9 incumbent 136-11
- 10 incur 178-12, 179-1
- 11 indicate 23-19
- 12 indicated 36-10, 42-8, 46-8, 47-21, 47-25, 61-16,
- 13 64-13, 103-22
- 14 indicates 42-24, 62-14
- 15 indigenous 33-24, 34-2, 34-11, 36-6, 36-16, 37-16
- 16 Indigo 184-17
- 17 indirectly 193-8, 193-13, 209-8
- 18 individual 33-8, 47-15, 98-2, 98-6, 100-19, 100-20,
- 19 102-15, 102-20, 102-21, 102-22, 102-25,
- 20 147-15, 166-9, 195-22, 195-25, 201-25
- 21 indoor 130-18, 132-7
- 22 indulgence 172-18
- 23 inevitably 208-9, 208-12
- 24 inflict 209-3
- 25 information 85-12, 87-21, 155-14, 155-22, 174-11,

- 1 intent 12-3, 13-4, 15-11, 66-12, 68-17, 85-21,
- 2 104-7
- 3 intention 15-15, 84-23, 103-15, 103-19, 185-20
- 4 intentions 63-10
- 5 interconnection 22-1, 22-3
- 6 interconnections 181-10
- 7 interest 34-17
- 8 interested 210-11
- 9 interesting 174-2
- 10 interfere 104-17
- 11 interior 9-4, 77-5, 80-7
- 12 internal 149-10, 164-17, 175-3, 175-21, 204-21
- 13 internalized 175-24
- 14 internally 33-21, 164-15, 175-9
- 15 interpretation 134-4
- 16 intersection 185-19
- 17 intersects 198-2
- 18 intervening 165-2
- 19 intimately 204-18
- 20 introduce 201-15, 201-20
- 21 inundate 97-15
- 22 inundation 20-12
- 23 invaded 35-6, 37-5
- 24 invasion 35-14
- 25 inventory 60-6, 60-7, 61-14, 61-15, 62-18

- 1 190-23, 190-24
- 2 informative 111-2
- 3 informed 142-5
- 4 infrastructure 50-10
- 5 ingress 139-6
- 6 initial 110-13
- 7 initially 127-5, 146-9, 153-6
- 8 inject 44-17
- 9 injury 113-8
- 10 insightful 121-6
- 11 insistence 140-21
- 12 installed 139-24
- 13 instance 72-8, 74-5
- 14 instead 119-3
- 15 instructed 199-3
- 16 insure 102-18, 123-24, 202-9
- 17 insuring 66-12
- 18 intend 206-19
- 19 intended 55-5, 59-14, 206-10
- 20 intending 5-23, 60-23, 104-6
- 21 intends 187-15
- 22 intense 149-9, 149-11, 161-15, 166-14, 175-20,
- 23 175-25
- 24 intensified 35-13
- 25 intensity 165-4, 165-7, 165-11, 167-25

- 1 inverse 178-25, 187-11
- 2 invested 107-25
- 3 investors 140-17, 205-22, 205-25, 208-6
- 4 involved 204-18
- 5 involves 136-25
- 6 involving 43-20
- 7 irrelevant 96-4
- 8 Island 176-8
- 9 islands 11-22
- 10 Isles 184-17
- 11 issue 26-10, 38-23, 56-19, 58-13, 63-17,
- 12 74-12, 74-19, 75-1, 90-9, 94-3, 96-22,
- 13 103-10, 104-11, 104-20, 105-4, 106-12,
- 14 122-25, 124-11, 134-2, 143-17, 143-24,
- 15 146-11, 152-5, 152-6, 154-8, 159-17,
- 16 159-19, 160-3, 160-17, 162-19, 163-15,
- 17 163-17, 163-21, 164-1, 175-9, 205-17
- 18 issued 50-8, 50-22, 53-24
- 19 issues 9-18, 9-24, 20-25, 30-13, 32-4, 32-14,
- 20 33-2, 34-18, 37-19, 43-20, 44-15, 48-5,
- 21 92-4, 92-17, 105-6, 108-5, 109-22,
- 22 111-6, 117-6, 123-13, 127-12, 131-3,
- 23 144-22, 145-8, 145-11, 145-16, 146-4,
- 24 146-5, 151-15, 152-2, 155-25, 157-12,
- 25 160-15, 162-15, 163-14, 164-3, 164-17,

1	167-15, 181-9, 194-19, 203-2, 204-16,
2	212-23, 213-4, 213-15, 215-21, 219-14
3 item	17-10, 22-10, 94-22, 180-9
4 items	17-23, 109-5, 117-25, 119-14
5 its	18-10, 23-21, 153-5, 165-4, 174-16,
6	174-19, 174-20, 178-8, 179-22, 183-13,
7	186-7, 205-8, 205-24, 205-25, 206-22
8 itself	112-8, 137-20, 174-4
9	
10 James	49-18, 190-15
11 January	147-20, 147-25
12 jargon	7-24
13 job	52-25, 134-5, 210-25
14 judgment	15-16, 29-1
15 jump	59-13, 71-16, 83-25, 88-21, 127-2
16 juncture	52-8, 53-2
17 June	181-23, 213-4
18 jure	143-22
19 jurisdiction	206-22
20 just	6-21, 9-9, 9-17, 9-20, 12-10, 13-7,
21	15-3, 19-7, 22-25, 23-12, 28-23, 29-1,
22	33-22, 39-25, 47-7, 47-16, 48-19, 48-20,
23	56-9, 57-21, 61-15, 64-20, 65-20, 70-15,
24	70-20, 72-17, 72-19, 73-3, 73-25, 74-9,
25	74-22, 78-14, 78-19, 79-17, 80-6, 80-7,

1 Kay	10-7, 11-16, 17-6, 45-23, 53-10, 60-11,
2	66-25, 67-6, 70-5, 72-17, 73-5, 75-24,
3	82-6, 96-19, 101-9, 101-24, 108-1,
4	108-23, 110-7, 110-10, 110-12, 124-17,
5	124-19, 125-16, 126-25, 127-4, 130-3,
6	138-7, 142-22, 143-4, 144-15, 144-19,
7	156-4, 156-20, 157-12, 166-17, 175-11,
8	176-6, 200-20, 201-7, 211-10, 211-24,
9	212-20
10 Kay's	126-25, 176-2, 211-20
11 keen	34-17
12 keep	6-9, 6-10, 24-16, 48-6, 102-1, 106-20,
13	184-14, 189-14, 212-21, 213-7, 221-25
14 keeping	213-23
15 Kevin	25-5, 25-7, 25-16, 38-10, 38-12
16 key	161-23
17 Keystone	5-3, 7-12, 206-2
18 kill	152-23
19 killer	194-22
20 Kim	33-25, 145-7
21 kind	6-23, 49-23, 64-22, 78-25, 79-2, 85-2,
22	92-19, 96-19, 131-1, 146-3, 151-7,
23	151-24, 154-1, 154-3, 173-3, 173-19,
24	173-20, 174-2, 174-5, 182-16, 183-24,
25	186-12, 197-16, 214-25, 221-9

1	81-9, 82-11, 84-16, 85-9, 85-25, 88-2,
2	88-18, 91-9, 92-17, 92-22, 94-24, 101-6,
3	105-3, 106-7, 107-9, 107-10, 109-2,
4	112-23, 117-6, 117-17, 118-2, 119-12,
5	125-2, 129-2, 130-4, 130-8, 135-24,
6	141-17, 144-3, 144-11, 145-18, 145-23,
7	145-24, 146-3, 146-17, 147-11, 152-24,
8	153-1, 155-5, 156-12, 157-8, 157-13,
9	158-7, 158-21, 159-12, 160-2, 160-22,
10	163-25, 168-13, 169-7, 169-18, 173-3,
11	174-11, 174-22, 174-24, 175-21, 176-20,
12	177-25, 178-4, 182-7, 182-17, 183-23,
13	184-1, 184-5, 184-15, 184-21, 184-22,
14	185-3, 185-22, 186-1, 186-7, 186-10,
15	189-15, 190-2, 190-7, 190-22, 190-25,
16	191-8, 194-8, 199-17, 200-7, 204-6,
17	208-14, 213-2, 215-21, 216-21, 216-23,
18	217-1, 217-17, 218-10, 219-22, 220-20,
19	221-8, 221-16
20 justification	54-20, 125-24, 154-5, 154-20, 200-21,
21	201-2, 214-2
22 justified	135-23, 135-25
23 justify	23-7, 47-11, 109-1
24	
25 K-a-y	110-14

1 kinds	29-14, 221-10
2 King	115-1
3 knew	199-14
4 knowing	205-4, 209-12
5 knowledge	95-18, 210-15
6 known	83-21, 197-22, 213-3
7 knows	108-11, 108-12, 108-13
8 Koreshan	9-3, 9-8, 12-12, 39-21, 49-20, 51-12,
9	51-16, 57-25, 59-22, 94-5, 94-15, 114-4,
10	173-22, 174-7, 188-1, 198-2, 198-14
11 Kristen	186-8
12	
13 lake	25-1, 38-22, 39-6, 40-6, 40-18, 111-20,
14	142-15, 142-18
15 lakes	21-9, 21-17, 25-9, 37-11, 39-2, 39-8,
16	39-9, 40-10, 40-11, 40-15, 40-16, 84-8,
17	84-17, 84-20, 86-4, 86-6, 86-8, 86-9,
18	86-20, 86-22, 86-24, 87-1, 87-21, 88-17,
19	111-12, 111-14, 112-2, 136-24, 137-1,
20	137-5, 137-9, 142-21, 195-18, 195-19
21 land	7-18, 14-3, 14-6, 15-1, 15-6, 29-12,
22	29-21, 44-2, 44-4, 46-8, 47-12, 55-3,
23	63-19, 67-7, 67-8, 67-19, 68-11, 95-19,
24	101-24, 102-11, 117-12, 117-13, 143-20,
25	144-1, 144-21, 147-2, 148-23, 149-12,

1	149-19, 159-13, 160-12, 160-16, 164-11,
2	164-13, 164-20, 165-9, 166-6, 170-1,
3	194-2, 194-4, 196-15, 204-25, 206-13,
4	207-10, 208-7, 208-17, 208-20, 221-3
5	Landing 73-16, 75-6
6	landowner 49-18
7	lands 34-22
8	landscaping 29-15, 190-4
9	Lane 17-3, 20-21, 21-2, 24-4, 31-22, 50-15,
10	50-16, 51-7, 95-20, 96-6, 135-17,
11	140-15, 141-12, 141-19, 142-5, 144-6,
12	157-10, 179-3, 181-13, 181-25, 182-4,
13	182-8, 182-17, 182-21, 183-8, 183-10,
14	183-21, 184-1, 184-3, 184-16, 184-20,
15	185-7, 185-19, 185-25, 188-2, 188-10,
16	188-21, 188-25, 189-12, 190-1, 190-12,
17	191-20, 192-5, 192-11, 196-24, 197-10,
18	198-1, 205-20, 206-10, 210-4
19	lanes 190-3, 191-13, 191-14, 191-18
20	language 13-24, 15-4, 19-17, 23-4, 23-6, 33-6,
21	48-25, 91-3, 92-25, 93-3, 96-3, 101-3,
22	101-5, 102-24, 103-6, 103-11, 135-1,
23	136-20, 137-12, 142-20, 202-3, 215-10,
24	215-12, 216-11
25	large 21-17, 37-10, 57-21, 63-9, 77-4, 77-5,

1	Lee 5-2, 35-17, 37-13, 49-23, 50-13, 50-25,
2	52-20, 53-17, 60-5, 97-19, 98-10, 98-15,
3	99-8, 141-7, 144-22, 155-17, 158-10,
4	178-9, 181-6, 195-10, 206-14, 206-15
5	left 22-9, 43-16, 54-11, 107-3, 109-1,
6	126-13, 145-19, 157-9
7	legal 45-1, 107-1, 164-10, 174-4, 174-5,
8	189-7, 190-9, 193-6, 198-10
9	legally 207-10
10	legitimate 25-12
11	length 184-6
12	less 47-9, 87-23, 102-14, 116-6, 130-7,
13	149-11, 175-22, 176-17, 176-24, 207-22
14	lessen 166-23
15	lesser 127-11
16	let's 10-15, 44-14, 45-12, 54-25, 59-13,
17	63-12, 71-16, 73-12, 80-22, 81-15,
18	83-25, 84-13, 88-21, 95-5, 96-21, 104-9,
19	104-19, 117-8, 118-7, 122-22, 140-15,
20	164-23, 169-16, 205-20, 207-11, 211-12,
21	216-22
22	letter 111-5, 182-7
23	letting 111-3
24	level 40-9, 86-1, 111-14, 137-4, 191-2, 191-9,
25	191-22, 195-23

1	149-18, 150-22, 150-23, 155-1, 160-24,
2	163-18, 163-23, 206-10
3	larger 26-10, 62-22
4	largest 37-2
5	last 21-22, 21-25, 23-24, 29-9, 30-3, 44-25,
6	45-23, 46-3, 52-22, 52-23, 90-24, 95-17,
7	104-20, 115-23, 134-7, 142-10, 176-6,
8	181-23, 183-25, 187-1, 203-25, 212-14
9	later 20-23, 65-23, 67-22, 108-9, 128-19,
10	145-11, 187-18, 208-1
11	latest 8-14, 86-10, 221-13
12	laughing 128-8
13	laws 186-25, 193-15, 193-16
14	lawyer 206-7
15	layman 34-25
16	layout 45-3
17	lays 51-19
18	Ldc 60-4, 123-8, 134-4
19	leading 197-5, 197-15, 197-19
20	least 10-23, 67-24, 149-16, 162-20, 162-25,
21	174-2, 189-21, 194-19, 210-17, 213-3,
22	213-4, 217-19
23	leave 15-16, 43-17, 49-5, 91-15, 92-3, 93-7,
24	181-17, 183-12
25	leaving 141-24, 219-9

1	liability 178-12, 179-1
2	lies 45-7
3	lieu 15-21, 16-13, 122-12, 218-23
4	light 42-17, 165-15, 203-11
5	lighting 29-15, 113-15, 165-3, 165-5, 165-10
6	like 5-10, 5-13, 6-18, 6-24, 10-19, 10-23,
7	11-12, 20-24, 25-6, 28-17, 29-16, 29-18,
8	34-18, 38-2, 43-16, 44-13, 47-17, 49-2,
9	49-24, 64-12, 67-1, 69-5, 70-18, 70-22,
10	71-11, 71-12, 77-22, 78-18, 82-18,
11	87-21, 91-22, 92-2, 94-18, 98-3, 99-13,
12	103-8, 103-20, 105-11, 109-25, 110-23,
13	111-2, 111-16, 112-17, 113-1, 113-4,
14	113-12, 124-17, 130-21, 130-22, 136-4,
15	137-22, 149-17, 151-21, 152-18, 153-3,
16	153-24, 156-11, 162-18, 162-23, 173-6,
17	181-25, 183-11, 183-25, 184-5, 191-19,
18	192-1, 193-7, 194-9, 196-3, 204-13,
19	204-23, 211-20, 212-1, 212-2, 212-13,
20	213-5, 218-9, 220-3, 221-8, 222-5
21	likely 190-21
22	limit 47-6, 47-8, 57-3, 61-20, 76-1, 76-15,
23	79-24, 80-5, 80-14, 81-8, 91-4, 115-15,
24	130-11, 164-2, 169-14, 201-10
25	limitation 12-2, 13-20, 46-14, 46-19, 47-1, 47-9,

101	
1	47-19, 47-21, 47-23, 56-17, 60-12,
2	60-15, 60-19, 63-3, 77-21, 79-11, 80-11,
3	82-16, 83-3, 90-17, 91-5, 115-9, 115-19,
4	122-12, 126-17, 131-10, 148-17, 168-24,
5	169-1, 169-2, 203-23
6	limitations 42-2, 81-4, 81-7, 81-8, 167-16, 201-10
7	limited 6-9, 6-10, 11-10, 12-10, 12-21, 22-12,
8	46-6, 55-10, 56-15, 57-5, 59-20, 60-14,
9	60-20, 62-1, 62-5, 66-10, 68-13, 72-12,
10	75-12, 78-21, 79-3, 82-22, 90-14,
11	148-19, 163-15, 163-16, 164-4, 169-12
12	limiting 61-6, 61-21, 73-3, 77-19
13	limits 56-22
14	line 8-19, 25-11, 41-1, 45-8, 47-25, 48-3,
15	51-20, 55-15, 55-23, 92-1, 93-1, 102-10,
16	102-17, 112-6, 118-11, 118-18, 122-6,
17	134-3, 149-16, 153-2, 154-13, 156-6,
18	156-21, 157-3, 165-24, 169-7, 169-19,
19	170-6, 170-10, 170-15, 173-20, 174-6,
20	174-13, 179-8, 184-2, 184-25, 185-10,
21	189-18, 195-19, 198-4, 198-11, 202-8,
22	203-22, 213-14
23	lines 53-20, 98-7, 185-7
24	lining 184-15
25	linked 132-4

102	
1	liquor 64-22, 69-12, 69-23, 70-2, 71-3
2	list 13-19, 25-3, 26-2, 55-12, 64-19, 67-9,
3	69-23, 70-20, 72-2, 130-22, 158-16,
4	162-10, 162-13, 164-24, 216-18, 216-21,
5	216-24, 220-18, 221-16, 221-17
6	listed 67-12, 68-4, 68-10, 72-25
7	listen 140-24
8	listening 214-8
9	litany 70-15, 70-18, 70-22
10	literally 156-7, 204-3
11	literature 166-7
12	little 37-14, 45-25, 49-2, 64-14, 69-11, 71-22,
13	77-11, 82-4, 84-1, 84-6, 89-7, 93-20,
14	93-23, 94-11, 94-20, 94-21, 95-1, 98-7,
15	104-8, 108-19, 108-24, 114-6, 122-23,
16	149-7, 152-9, 172-18, 172-21, 172-23,
17	175-7, 176-17, 185-11, 185-15, 192-18,
18	192-19, 200-2, 201-9
19	littoral 37-11
20	live 18-25, 28-14, 195-8
21	living 8-8, 115-3, 115-10, 115-13
22	local 38-25, 160-22
23	locate 10-15, 14-12, 16-14, 17-20, 17-23, 19-8,
24	61-9, 61-13, 64-13, 94-15
25	located 9-9, 15-6, 16-1, 16-3, 17-19, 19-5,

103	
1	35-3, 35-20, 35-23, 35-25, 36-1, 36-4,
2	36-8, 36-18, 55-4, 57-14, 62-13, 64-8,
3	66-10, 78-4, 78-5, 81-18, 81-19, 94-5,
4	122-5, 129-18
5	locates 94-17
6	locating 60-25, 61-2, 175-25
7	location 21-12, 36-17, 51-21, 51-25, 61-5, 66-9,
8	67-11, 94-7, 94-11, 133-9, 173-23,
9	175-12, 175-15, 220-7
10	locations 55-5, 57-16, 59-10
11	logical 147-13, 165-7
12	long 6-12, 6-18, 6-19, 9-15, 9-17, 15-15,
13	104-23, 104-25, 146-16, 181-19, 200-5,
14	200-10, 208-4, 208-14, 214-9, 214-19,
15	218-21, 219-7, 220-23
16	long-term 202-15
17	longer 108-19, 109-21, 114-14, 128-4
18	look 9-24, 10-7, 23-12, 23-25, 26-19, 42-22,
19	42-23, 52-1, 55-12, 63-12, 86-7, 95-5,
20	95-17, 96-21, 96-25, 99-22, 101-14,
21	107-17, 113-23, 117-8, 153-24, 156-14,
22	157-17, 160-13, 162-14, 166-9, 167-5,
23	169-19, 175-19, 176-14, 176-20, 176-22,
24	185-14, 185-20, 192-2, 204-2, 211-18
25	looked 55-23, 57-11, 63-4, 78-1, 88-7, 154-19,

104	
1	159-19, 159-20, 163-6, 171-11, 171-12,
2	171-14, 171-16, 215-2, 215-4
3	looking 8-17, 17-7, 43-15, 52-18, 56-13, 62-22,
4	97-5, 97-23, 98-8, 98-18, 98-19, 107-4,
5	150-24, 153-18, 162-15, 162-24, 162-25,
6	169-7, 184-10, 190-5, 195-6, 197-21,
7	198-10, 213-10, 214-6, 216-10, 217-3
8	looks 6-18, 47-17, 67-1, 97-22, 129-2, 211-20
9	loop 54-1
10	loosely 50-18
11	lost 77-17, 130-17, 130-25
12	lot 29-13, 69-2, 86-19, 86-23, 94-6, 106-10,
13	106-11, 106-15, 107-4, 108-5, 108-10,
14	117-20, 118-19, 128-7, 161-1, 164-4,
15	172-19, 179-12, 181-15, 201-24, 202-2,
16	207-5, 213-20
17	lots 44-5, 55-23, 55-24, 57-11, 57-12, 63-11,
18	69-2, 69-4, 71-24, 78-1, 85-7, 88-17,
19	159-6, 159-25
20	lou 110-7, 110-15
21	loud 127-19, 128-8, 181-20, 200-10, 200-14
22	loudly 30-11
23	loudspeakers 77-1
24	lounge 13-4, 69-8, 69-16, 70-1
25	lounges 64-5, 69-20

1	love	64-10
2	low	47-4, 203-17
3	lower	20-10, 145-19
4	Lpa	29-10
5	luck	52-19, 209-11
6	lunch	6-17, 104-10, 104-19, 105-12, 105-17,
7		105-23, 108-18, 108-19, 108-24, 109-20,
8		109-21, 116-19, 116-20, 117-5
9	Lutheran	178-20
10		
11	machines	59-15
12	made	5-16, 24-16, 39-5, 44-22, 163-10,
13		185-21, 200-20
14	magnitude	137-4, 197-5
15	main	26-11, 112-25, 128-9
16	mainly	29-16
17	maintain	147-16
18	maintaining	146-6
19	maintains	173-15
20	maintenance	22-18, 93-16, 94-3, 94-23, 136-18,
21		138-18, 220-8, 221-12
22	major	20-22, 86-25, 113-1, 124-5, 143-17,
23		203-2
24	majority	37-2
25	make	5-8, 5-22, 6-8, 6-14, 13-24, 14-15,

1	mark	14-13, 30-6, 53-6, 60-3, 63-18, 72-1,
2		73-13, 75-21, 82-4, 84-7, 97-9, 101-12,
3		101-17, 101-23, 106-14, 120-24, 137-14,
4		143-1, 147-22, 148-3, 158-15, 159-8,
5		161-17, 173-9, 182-10, 183-15, 189-6,
6		217-1
7	marked	22-11, 30-8, 34-9, 34-13, 48-22, 53-8,
8		60-9, 63-21, 72-4, 73-18, 73-20, 73-25,
9		74-2, 84-10, 97-3, 97-12, 102-4, 106-3,
10		106-17, 121-2, 137-17, 143-6, 148-5,
11		158-19, 159-10, 161-25, 173-12, 173-22,
12		182-12, 183-18, 189-9, 191-6
13	market	178-15, 193-22, 193-24
14	marking	48-19, 48-21
15	marshal	42-3
16	mass	168-12
17	master	8-15, 12-16, 16-15, 17-19, 17-22, 22-10,
18		24-3, 24-20, 31-16, 33-15, 48-1, 49-24,
19		51-13, 55-3, 60-23, 61-2, 61-12, 61-24,
20		62-4, 63-23, 63-25, 64-2, 67-12, 91-12,
21		91-24, 93-7, 94-1, 94-4, 107-3, 138-5,
22		146-22, 146-24, 147-19, 147-24, 169-2,
23		184-13, 184-21, 186-8, 188-2, 220-4,
24		220-11, 220-16, 220-19, 220-25, 221-15,
25		222-2, 222-6

1		17-6, 26-24, 28-23, 29-19, 33-20, 39-25,
2		52-14, 67-17, 68-15, 80-7, 87-6, 87-14,
3		87-16, 87-19, 103-6, 104-9, 104-16,
4		104-23, 105-16, 118-8, 123-11, 129-8,
5		131-2, 132-14, 134-4, 134-6, 140-12,
6		147-9, 148-12, 149-7, 154-15, 157-2,
7		179-25, 180-10, 189-22, 203-1, 205-2,
8		207-11, 208-6, 210-23, 213-2, 215-5,
9		219-4, 219-7, 221-20
10	makes	88-8, 105-6, 143-14, 155-5, 174-16,
11		218-22
12	making	128-16, 129-6, 129-10, 148-25, 194-12
13	Mall	188-19
14	management	21-7, 37-11, 40-21, 85-1, 85-5, 85-11,
15		85-13, 85-15, 86-11, 86-15, 86-16, 87-9,
16		88-7, 136-17, 137-7, 142-15, 142-17
17	manipulate	215-23
18	manner	34-24
19	many	22-3, 84-19, 85-22, 131-3, 137-2, 152-23
20	map	14-8, 14-13, 34-12, 41-6, 42-22, 42-23,
21		42-24, 159-3, 161-23, 161-24, 183-1,
22		183-3, 183-7, 183-10, 183-17, 184-2,
23		189-11, 196-23, 198-17
24	Marie	133-12, 177-20, 177-23, 186-23, 190-7,
25		191-24, 195-5, 196-13, 212-17

1	material	25-16, 41-21, 41-22
2	matrix	68-11, 104-22, 169-8
3	Matt	45-24, 145-11, 172-8, 172-13, 172-16,
4		173-1, 180-7
5	matter	9-20, 145-24, 204-9, 208-14
6	Maurer	49-7, 49-9, 49-10, 49-14, 53-6, 53-8,
7		53-10, 53-22, 54-5, 54-6, 184-12,
8		190-14, 207-8
9	maximum	10-14, 22-12, 45-20, 117-20, 118-19,
10		119-21, 148-13, 153-21, 165-10
11	Maxwell	198-23, 199-2
12	may	6-9, 6-18, 8-22, 8-23, 15-2, 16-1,
13		24-12, 25-1, 25-9, 25-23, 29-11, 32-7,
14		35-18, 43-2, 44-15, 52-5, 56-24, 65-16,
15		65-17, 66-4, 68-20, 75-1, 81-18, 84-1,
16		84-5, 85-17, 86-18, 87-20, 88-1, 90-7,
17		100-4, 100-23, 103-1, 104-1, 108-6,
18		109-2, 109-13, 111-17, 122-5, 124-17,
19		129-18, 132-21, 133-8, 134-6, 136-19,
20		144-11, 144-12, 163-3, 167-9, 178-21,
21		179-15, 179-19, 181-23, 183-25, 190-16,
22		190-19, 194-4, 194-21, 196-15, 205-4,
23		206-13, 207-12, 210-1, 211-14, 220-25
24	maybe	15-7, 15-13, 18-17, 26-18, 52-24, 57-13,
25		66-23, 72-17, 90-4, 102-19, 102-22,

1	103-6, 103-9, 108-9, 108-18, 108-23,
2	109-20, 109-21, 115-5, 116-6, 181-17,
3	194-17, 194-18, 208-24, 215-9, 217-13
4	McDonald's 115-1
5	mean 26-25, 63-6, 64-16, 68-23, 68-24, 68-25,
6	70-9, 72-18, 72-23, 77-18, 81-1, 83-11,
7	98-20, 107-8, 125-15, 126-1, 138-13,
8	140-10, 150-22, 160-20, 171-16, 175-6,
9	210-25
10	means 7-21, 12-9, 65-16, 93-3, 206-17, 208-9
11	meant 70-25
12	meantime 219-3
13	measure 65-12, 65-13, 65-15
14	measurement 166-5
15	mechanical 101-20
16	mechanics 104-12
17	mechanism 63-16
18	media 219-20
19	median 53-20, 184-16, 184-24, 185-6
20	meet 52-14, 68-16, 125-22, 136-7, 189-19,
21	217-12
22	meeting 50-14, 219-21
23	meetings 7-25
24	melaleuca 35-6, 35-15, 37-6, 112-9, 114-5
25	member 27-3, 27-15

1	members 7-2, 40-2, 108-14, 110-19
2	memo 101-9, 101-11, 148-17, 155-19, 155-20,
3	164-16
4	memorandum 101-24, 142-22, 143-3
5	memos 155-18
6	mention 27-21, 114-21, 180-10
7	mentioned 7-21, 94-14, 111-11, 112-13, 118-20,
8	122-21, 123-1, 187-18
9	merely 86-14
10	merits 179-12
11	met 24-17, 52-24, 110-24, 184-18, 205-8
12	method 28-4
13	methods 25-17
14	Metro 31-1
15	Mettauer 53-14, 53-17, 54-4, 145-9, 178-1,
16	180-25, 181-3, 181-6, 181-21, 182-14,
17	183-20, 185-3, 185-6, 185-9, 186-15,
18	188-1, 189-11, 190-13, 190-21, 191-3,
19	191-8, 192-6, 192-12, 192-15, 193-3,
20	195-5, 195-14, 196-9, 197-7, 197-11,
21	197-13, 197-16
22	Michael 7-11, 32-21, 32-24
23	microphone 5-11
24	midnight 16-7, 76-3, 81-2, 81-23, 126-21, 129-23
25	might 15-3, 69-9, 70-16, 76-7, 99-4, 111-12,

1	114-18, 123-24, 125-15, 135-2, 141-1,
2	149-7, 154-18, 163-20, 167-6, 171-15,
3	171-17, 190-5, 192-17, 192-18, 203-11,
4	210-3, 219-21
5	Mike 198-23
6	mile 113-19
7	mind 6-9, 33-14, 78-8, 109-18, 129-8
8	minimize 41-18
9	minimum 20-9, 46-23, 55-8, 56-20, 118-10,
10	118-21, 118-23, 118-25, 119-8, 189-15,
11	189-19
12	minor 9-19
13	minute 68-22, 118-20, 141-25, 144-11
14	minutes 49-7
15	Miromar 21-9, 21-17, 84-3, 84-8, 84-17, 84-20,
16	86-4, 86-6, 86-8, 86-9, 86-20, 86-22,
17	86-24, 87-21, 88-17, 136-24, 137-5,
18	137-9, 142-21
19	mirrored 147-19
20	misprint 14-21, 22-20
21	misread 15-13
22	misreading 15-7, 18-17
23	Miss 110-23, 111-5, 144-10
24	missing 97-5
25	misspeak 10-3, 10-5

1	misspoke 77-24
2	mistaken 96-20, 199-5, 218-4
3	misunderstood 14-17, 169-22
4	mixed 7-19, 7-22
5	mixture 35-2, 131-4
6	model 95-9, 190-23, 201-8
7	modern 11-22
8	modified 81-17, 102-19, 195-3
9	modify 21-25, 23-19
10	moment 48-8, 66-1
11	moments 34-19
12	Monday 127-9
13	money 29-11, 192-23
14	monitoring 41-18, 180-11
15	month 29-10, 46-3, 194-10
16	months 95-25
17	more 13-8, 14-16, 15-9, 18-22, 37-8, 41-8,
18	47-18, 61-4, 63-2, 68-19, 70-9, 70-14,
19	70-16, 70-17, 70-18, 70-19, 70-25, 81-1,
20	82-18, 86-20, 86-22, 86-24, 87-1, 87-20,
21	87-22, 88-4, 88-8, 97-16, 108-7, 109-13,
22	112-21, 121-22, 124-3, 130-7, 136-8,
23	137-2, 137-5, 137-20, 138-4, 139-20,
24	141-5, 148-19, 149-4, 149-9, 151-22,
25	155-4, 156-6, 156-10, 157-3, 157-5,

- 1 161-9, 165-5, 165-7, 165-8, 165-14,
- 2 166-14, 167-6, 172-3, 173-5, 175-20,
- 3 175-25, 176-21, 176-22, 176-24, 192-18,
- 4 192-19, 196-4, 202-1, 203-11, 204-12,
- 5 213-12, 213-20, 213-21, 214-12, 214-22
- 6 morning 5-1, 7-10, 32-23, 44-1, 170-21, 176-9
- 7 mostly 35-3, 184-1
- 8 motivate 206-23
- 9 motor 25-23
- 10 mouth 171-14, 171-24
- 11 moved 36-10
- 12 moves 52-16
- 13 moving 147-17, 182-24, 213-24
- 14 Mpd 5-4, 7-20, 7-21, 8-2, 20-1, 22-19,
- 15 22-22, 46-13, 46-17, 49-22, 51-11, 53-6,
- 16 56-16, 60-13, 76-25, 84-8, 146-6,
- 17 146-17, 146-18, 146-23, 171-8
- 18 Mpd-1 9-5, 12-23, 14-10, 55-22, 72-12, 77-10,
- 19 77-23, 114-22, 114-25, 115-4, 115-8,
- 20 115-10, 123-18, 123-20, 124-1, 124-12,
- 21 124-14, 125-17, 127-18, 127-23, 130-7,
- 22 130-9, 134-13, 134-22
- 23 Mpd-2 8-24, 8-25
- 24 Mpd-3 9-3, 11-10, 12-10, 55-10, 123-21, 124-4,
- 25 124-10, 134-13

- 1
- 2 naive 215-9
- 3 name 5-12, 7-11, 27-12, 27-14, 28-12, 30-3,
- 4 30-25, 32-24, 38-12, 44-1, 49-12, 53-15,
- 5 110-9, 110-13, 110-14, 110-15, 144-19,
- 6 158-9, 180-5
- 7 Naples 201-4
- 8 narrative 34-19
- 9 narrow 149-23, 150-19, 152-23, 156-15
- 10 narrowed 146-3, 215-20
- 11 narrowest 8-19
- 12 Natural 173-15, 174-3, 175-4
- 13 nature 52-6
- 14 near 57-17, 58-15
- 15 nearest 150-16, 170-6, 170-10
- 16 neat 210-22
- 17 necessarily 67-13, 163-21, 164-2
- 18 necessary 5-24, 17-18, 18-11, 29-11, 39-6, 86-1,
- 19 123-24, 132-16, 178-24, 186-20
- 20 need 6-21, 9-10, 13-24, 17-24, 18-4, 23-17,
- 21 23-21, 24-13, 33-20, 41-15, 43-17,
- 22 43-18, 43-22, 44-15, 46-23, 47-5, 47-8,
- 23 59-1, 64-9, 65-8, 69-3, 69-22, 70-2,
- 24 70-3, 71-4, 81-1, 81-4, 87-20, 87-23,
- 25 88-4, 92-19, 94-24, 96-12, 97-21, 104-7,

- 1 Mpd-4 9-4, 11-10, 14-10, 61-10, 123-21
- 2 Mpd-5 10-14, 10-15, 10-16, 45-20, 91-21,
- 3 119-22, 120-7, 121-9, 157-10, 159-5,
- 4 159-20, 159-24, 203-4, 204-13
- 5 Mpd-6 95-3
- 6 Mpd-7 95-2, 138-19
- 7 Mpd-9 93-17, 123-15
- 8 Mpo 182-20, 182-21, 182-23
- 9 much 7-25, 26-4, 28-7, 29-24, 39-5, 58-8,
- 10 63-25, 64-10, 86-24, 87-1, 105-12,
- 11 116-5, 137-1, 137-10, 150-23, 151-25,
- 12 153-3, 156-16, 165-5, 191-14, 192-22,
- 13 208-15, 215-5
- 14 multi 103-24
- 15 multifamily 23-3, 26-17, 42-21, 42-25, 46-6, 48-2,
- 16 92-15, 98-10, 98-13, 98-17, 98-25,
- 17 99-10, 99-12, 102-12, 102-14, 103-23,
- 18 167-24, 167-25, 201-25, 203-20
- 19 multiple 100-20
- 20 must 14-4, 22-19, 27-22, 77-24, 81-20, 92-25,
- 21 96-16, 129-20, 138-18, 142-14, 142-16,
- 22 196-18, 196-19
- 23 mutagens 27-24
- 24 Myers 32-13, 32-19, 32-21, 32-23, 32-24,
- 25 34-16, 37-22, 38-1, 43-16

- 1 104-15, 119-4, 130-17, 132-11, 134-9,
- 2 134-19, 138-25, 139-1, 139-2, 140-20,
- 3 141-16, 143-13, 145-6, 145-12, 145-15,
- 4 156-10, 172-3, 173-2, 179-20, 180-5,
- 5 180-16, 181-13, 182-4, 187-7, 189-21,
- 6 200-2, 200-7, 206-3, 209-17, 214-12,
- 7 214-13, 215-17, 216-13, 216-17, 217-7,
- 8 217-17
- 9 needed 45-23, 59-9, 65-24, 108-7, 123-2,
- 10 136-22, 179-4, 179-5, 190-10, 190-11,
- 11 190-19, 202-7
- 12 needing 192-11
- 13 needs 13-23, 52-11, 61-4, 102-19, 111-15,
- 14 204-25, 205-12, 213-25
- 15 neglected 180-10
- 16 negotiate 194-1
- 17 negotiated 33-8, 48-25, 179-10
- 18 negotiation 108-8, 117-5, 164-4
- 19 negotiations 51-2, 171-7, 208-24
- 20 neighbor 100-4, 140-2, 167-23
- 21 neighborhood 113-18, 167-11
- 22 neighboring 37-10
- 23 neighbors 24-16, 38-5, 38-19, 40-19, 45-5, 49-4,
- 24 76-12, 105-13, 110-20, 110-21, 204-15,
- 25 219-19

1	neighbors'	26-14
2	nervous	197-18
3	net	148-24, 175-19
4	network	178-10, 179-6, 191-21
5	never	26-7, 50-25, 55-24, 60-17, 69-18, 71-1,
6		83-4, 83-7, 83-16, 83-21, 102-1, 103-14,
7		154-7, 214-5
8	nevertheless	8-15, 21-8, 123-11
9	new	62-21, 114-11, 130-17, 135-21, 137-12,
10		137-15, 141-5, 143-4, 184-17, 186-7,
11		195-20, 204-22, 216-5, 216-6, 216-10,
12		219-11, 220-3, 222-2
13	newspaper	96-24, 97-11, 101-23
14	next	5-20, 8-21, 9-2, 9-3, 11-1, 11-11,
15		11-18, 12-13, 16-11, 17-1, 17-14, 22-21,
16		25-7, 25-19, 26-15, 29-9, 40-24, 45-1,
17		57-25, 72-11, 75-22, 98-7, 113-16,
18		119-11, 124-23, 149-6, 169-14, 174-13,
19		192-20, 194-10, 210-20, 211-12, 211-14,
20		214-14, 214-15, 215-2, 217-11, 218-15,
21		218-16
22	next-door	110-21
23	nexus	140-18, 209-19
24	Ngvd	39-16, 39-19, 40-8
25	nice	109-24, 186-17

1		102-9, 104-9, 122-4, 122-9, 122-11,
2		122-17, 131-9, 134-6, 154-14, 173-18,
3		174-2, 185-18, 186-1, 191-19
4	noted	13-23, 91-20
5	notes	11-7, 11-8, 11-9, 12-15, 55-3, 55-5,
6		220-8
7	nothing	61-23, 66-18, 124-5, 136-7, 172-2,
8		207-13
9	notice	97-2, 181-24, 186-17, 187-13, 214-15
10	noticed	33-22
11	notification	186-20
12	noting	174-3
13	notwithstanding	124-7, 143-10
14	number	9-18, 10-20, 10-22, 12-23, 16-21, 17-1,
15		17-4, 18-6, 21-20, 24-9, 30-7, 34-10,
16		35-4, 36-7, 37-13, 45-21, 47-4, 47-6,
17		47-11, 47-13, 48-20, 48-21, 50-4, 53-7,
18		53-11, 60-12, 60-13, 60-16, 60-17,
19		60-21, 60-25, 62-12, 62-21, 62-23,
20		62-24, 63-19, 66-11, 68-21, 72-2, 72-18,
21		73-9, 73-19, 84-8, 89-9, 89-19, 89-21,
22		90-19, 93-25, 95-11, 95-13, 95-16,
23		97-10, 97-25, 101-12, 101-13, 101-18,
24		101-22, 101-25, 106-1, 106-14, 106-15,
25		118-25, 119-21, 120-25, 124-25, 131-5,

1	night	16-6, 176-6
2	nights	16-8
3	nine	114-1, 114-2, 192-14, 194-5
4	Noble	45-24, 145-11, 162-23, 163-3, 164-15,
5		172-8, 172-11, 172-13, 172-16, 173-3,
6		173-14, 175-1, 177-10, 180-7, 180-20
7	noise	59-6, 76-14, 77-15, 77-16, 113-15,
8		165-3, 165-5, 165-18, 203-11
9	nonalcohol	132-7
10	noncompatibility	27-20
11	none	15-2
12	nonsite	210-8
13	noon	6-17
14	normal	5-7
15	normally	42-1, 65-2, 67-23, 98-19, 108-11, 154-2,
16		154-21, 217-2
17	north	22-2, 89-15, 163-5, 189-23, 198-13
18	north-south	31-23, 51-24, 52-11
19	northeast	12-11, 93-9
20	northerly	95-19
21	northern	189-18
22	northwest	41-5
23	note	11-14, 12-8, 12-17, 48-15, 54-14, 54-25,
24		55-7, 55-9, 55-14, 59-20, 60-12, 60-13,
25		62-4, 62-5, 62-14, 64-3, 73-1, 91-19,

1		135-14, 135-18, 137-1, 137-15, 138-22,
2		143-3, 145-14, 145-15, 146-5, 146-6,
3		146-7, 146-12, 146-13, 147-24, 148-18,
4		150-9, 151-19, 157-9, 158-16, 158-17,
5		159-9, 161-18, 168-14, 173-10, 182-11,
6		183-16, 189-7, 191-5, 200-22, 201-9,
7		201-22, 203-8, 203-10, 204-7, 213-1,
8		214-1
9	numbered	16-23
10	numbering	86-6, 97-7, 105-25, 125-9
11	numbers	40-22, 45-25, 97-4, 97-6, 107-12,
12		107-20, 107-24, 108-1, 118-3, 118-10,
13		118-19, 120-5, 120-21, 121-1, 124-24,
14		126-7, 158-23, 216-21
15	numerous	145-5, 146-2, 171-7, 220-6
16		
17	o'clock	6-19, 16-7, 74-14, 76-2, 81-3, 82-23,
18		82-24, 116-21, 127-8
19	O'connor	164-16
20	Oaks	191-11, 191-13
21	oasis	202-19
22	object	91-14, 96-3
23	objection	23-21, 26-23, 27-3, 34-4, 86-14, 105-20,
24		123-14, 138-2, 145-2, 211-1, 211-21
25	objections	121-7, 144-25, 145-1

1	objective	166-4
2	obligation	205-25
3	obtain	187-9
4	obtained	29-4, 39-4
5	obvious	221-9
6	obviously	10-7, 25-14, 47-18, 72-20
7	occurred	35-12, 132-20
8	occurring	202-16
9	occurs	202-21
10	odd	114-10
11	odors	112-16
12	off	54-11, 54-25, 124-20, 126-14, 141-25,
13		142-2, 147-14, 184-21, 221-18
14	offer	49-24, 90-21, 187-15, 194-13
15	offered	52-4, 88-6
16	offering	51-8, 52-8
17	office	7-23, 8-3, 8-11, 8-24, 9-1, 28-16, 31-4,
18		38-15, 49-15, 57-22, 61-15, 69-4, 92-9,
19		92-20, 154-25, 201-4
20	offices	10-11
21	official	147-18, 182-25, 183-3, 183-17, 189-11,
22		196-22
23	offset	189-20, 198-14
24	often	5-17, 5-19
25	oftentimes	76-13

1	old	62-20
2	omit	77-22
3	once	136-7, 165-23, 178-3, 202-21
4	one	5-6, 5-25, 11-22, 13-4, 13-8, 15-24,
5		18-5, 18-7, 18-13, 18-14, 18-15, 18-16,
6		18-18, 21-18, 21-24, 23-11, 24-22, 25-2,
7		25-7, 25-19, 27-21, 28-24, 36-22, 38-20,
8		38-21, 40-24, 42-11, 44-14, 46-5, 49-4,
9		49-22, 52-12, 56-23, 61-17, 66-16,
10		66-17, 66-20, 68-22, 68-23, 68-24,
11		69-16, 71-21, 72-14, 72-22, 73-10,
12		73-14, 74-1, 74-21, 77-5, 77-18, 81-6,
13		82-11, 85-8, 85-18, 86-22, 87-13, 87-14,
14		89-12, 92-5, 93-22, 95-24, 97-6, 97-19,
15		97-24, 98-18, 99-1, 99-2, 99-5, 99-6,
16		99-7, 99-17, 100-2, 100-14, 100-16,
17		102-10, 103-2, 103-3, 103-4, 103-24,
18		106-9, 111-8, 114-1, 114-2, 120-16,
19		120-18, 121-5, 122-22, 124-14, 124-23,
20		126-9, 126-10, 132-14, 132-16, 133-17,
21		134-7, 134-8, 134-22, 135-6, 135-10,
22		139-13, 139-19, 146-5, 146-17, 146-22,
23		147-14, 147-15, 151-6, 154-8, 156-7,
24		156-8, 156-24, 157-20, 158-12, 161-9,
25		161-21, 161-22, 161-23, 161-24, 162-20,

1		162-25, 163-2, 163-12, 164-9, 166-14,
2		179-3, 180-9, 183-5, 190-5, 196-19,
3		198-7, 201-11, 203-4, 203-9, 204-12,
4		204-17, 205-5, 207-1, 210-22, 212-2,
5		212-4, 212-8, 212-15, 215-15, 216-3,
6		217-3
7	one's	137-23
8	one-foot	152-19
9	one-story	168-24, 169-12
10	one-week	214-11
11	onerous	88-1
12	ones	12-10, 86-7, 122-13, 125-9, 136-13
13	only	6-5, 7-14, 11-14, 12-22, 17-18, 18-11,
14		19-5, 22-2, 22-23, 55-16, 58-1, 61-7,
15		75-13, 78-2, 78-5, 81-10, 83-1, 94-23,
16		95-12, 100-7, 103-7, 109-4, 112-1,
17		114-4, 127-23, 129-1, 135-19, 176-5,
18		185-2, 187-10, 203-1, 209-18, 214-3,
19		215-1, 219-10
20	onto	94-15, 102-18, 202-9, 220-22
21	open	21-7, 33-24, 36-6, 36-16, 73-1, 73-4,
22		79-6, 81-2, 133-23, 211-22, 219-10,
23		221-25
24	opening	53-21, 72-14, 184-16, 185-6
25	operate	13-5

1	operation	13-12, 16-5, 71-23, 72-9, 72-12, 73-10,
2		77-19, 77-23, 78-2, 79-12, 79-24, 80-1,
3		80-6, 80-11, 80-25, 115-8, 126-6,
4		126-15, 126-16, 127-9, 127-20, 127-23,
5		130-6, 174-19
6	opinion	40-17, 136-21, 160-2, 202-14, 205-11,
7		205-12
8	opinions	205-4
9	opportunity	28-7, 107-19, 153-4, 176-20
10	opposed	11-25, 26-4, 112-19, 113-13, 143-21,
11		167-23, 207-24, 208-18, 208-20
12	opposes	55-18
13	opposing	134-1, 136-7
14	opposite	16-4, 40-14, 81-20, 129-21, 135-24
15	opposition	104-12, 125-18, 141-19, 143-18
16	option	43-1
17	order	17-2, 19-24, 24-24, 36-24, 49-3, 50-7,
18		50-10, 50-22, 50-25, 51-18, 53-19,
19		53-23, 53-24, 102-17, 137-3, 142-21,
20		152-10, 153-13, 154-22, 155-6, 156-18,
21		178-16, 187-2, 187-20, 189-18, 189-22,
22		196-20, 202-7, 218-6
23	ordinance	206-20
24	ordinarily	25-5
25	organization	27-16

1	original	183-6, 183-10
2	originally	146-16
3	Oriole	22-1, 23-13, 23-14, 88-23, 89-13, 89-15,
4		89-18, 89-22, 96-14, 184-8, 189-19,
5		191-11, 192-3
6	other's	104-17, 139-20
7	otherwise	20-8, 136-1, 205-2
8	ought	12-8, 19-23, 29-6, 108-23, 129-12, 211-9
9	our	10-25, 11-19, 12-1, 12-3, 13-4, 15-11,
10		17-17, 19-15, 20-14, 24-16, 24-22,
11		24-23, 25-2, 25-9, 25-11, 25-21, 25-25,
12		26-2, 26-17, 27-1, 27-6, 29-1, 39-9,
13		39-16, 39-20, 40-6, 40-10, 40-16, 41-1,
14		41-3, 41-5, 42-21, 45-8, 46-8, 47-20,
15		49-4, 51-11, 51-13, 51-18, 51-19, 52-2,
16		52-9, 54-13, 54-20, 59-16, 64-12, 64-19,
17		66-2, 67-17, 67-18, 81-24, 89-12, 89-19,
18		94-18, 96-2, 96-4, 98-24, 101-3, 103-19,
19		110-25, 111-6, 111-10, 111-14, 112-5,
20		112-11, 112-25, 113-2, 113-8, 113-16,
21		114-1, 114-2, 114-7, 114-9, 114-14,
22		114-23, 115-3, 115-12, 115-22, 123-21,
23		130-1, 133-13, 136-21, 137-6, 140-17,
24		140-18, 141-1, 141-9, 142-5, 148-10,
25		149-5, 149-13, 151-25, 154-14, 155-13,

1		157-8, 159-13, 160-2, 182-5, 182-7,
2		182-18, 182-25, 183-3, 183-21, 183-22,
3		185-16, 187-10, 190-23, 190-25, 191-16,
4		191-21, 192-20, 193-10, 194-6, 194-24,
5		198-11, 207-23, 208-6, 210-2, 210-25,
6		211-5, 213-17, 213-21, 219-1
7	ourselves	39-25, 82-15, 132-10, 213-19
8	outdoor	15-19, 16-1, 56-10, 57-15, 58-5, 58-15,
9		58-17, 75-25, 76-7, 76-16, 76-19, 77-12,
10		80-22, 81-15, 81-18, 82-11, 82-15,
11		82-20, 83-2, 115-11, 126-19, 127-24,
12		129-15, 129-18, 130-13, 130-18, 131-9,
13		131-16, 131-17, 131-19, 132-4, 132-7,
14		133-10
15	outfall	40-7, 174-12, 174-14, 174-23
16	outfalling	174-20
17	outfalls	173-25
18	outlined	37-17
19	outside	57-4, 59-6, 69-10, 76-14, 77-1, 77-16,
20		78-22, 83-6, 83-18, 134-17
21	over	6-12, 6-14, 33-23, 35-8, 48-7, 48-8,
22		52-24, 59-13, 83-25, 84-22, 88-21,
23		104-10, 104-15, 104-19, 108-24, 109-10,
24		114-13, 122-14, 126-14, 129-2, 130-10,
25		132-12, 142-7, 147-6, 156-7, 167-5,

1		167-19, 181-17, 190-22, 207-4, 213-19
2	overall	29-2, 47-13, 47-16, 113-17, 159-14,
3		159-15, 159-21, 160-13, 173-4, 204-10
4	overkill	124-9
5	owe	205-21, 208-6
6	own	33-14, 207-12
7	owner	7-15, 174-9, 178-14, 179-16, 183-14,
8		187-5, 205-3, 206-3
9	owners	100-14, 104-16, 195-8, 195-22
10	owns	49-19
11		
12	page	11-1, 11-18, 12-13, 16-11, 16-18, 16-22,
13		17-1, 17-4, 17-7, 17-10, 17-12, 17-14,
14		45-12, 54-22, 56-15, 71-22, 71-23,
15		72-11, 148-18, 201-12, 212-6
16	pager	145-14
17	pages	16-23, 52-21, 67-22, 161-19, 161-20
18	paginated	17-9
19	paid	210-25
20	paint	153-1, 156-21
21	painted	156-6
22	palmetto	33-23
23	paper	135-12, 153-12, 208-11
24	papers	168-12
25	paperwork	33-20

1	Paragraph	74-6
2	parallel	25-22, 113-6
3	paralleling	42-15
4	paraphrase	83-20, 141-21
5	parcel	26-17, 42-21, 49-20, 50-3, 170-21,
6		187-22, 189-8, 194-4, 194-13, 213-1,
7		216-9
8	parcels	134-17, 149-22
9	park	55-9, 73-16, 90-15, 99-1, 139-19, 140-3,
10		183-9
11	parked	99-17, 139-14, 140-12, 153-16
12	parking	99-3, 99-4, 99-5, 99-15, 100-11, 100-12,
13		100-14, 102-15, 102-20, 103-3, 103-15,
14		104-15, 104-17, 128-7, 139-25, 200-22,
15		201-22, 201-24, 202-2
16	part	10-3, 15-13, 17-1, 25-5, 31-11, 39-2,
17		60-22, 63-23, 67-4, 72-21, 89-16, 90-5,
18		91-16, 93-5, 94-13, 94-21, 95-2, 98-3,
19		100-10, 129-1, 143-22, 145-21, 145-25,
20		146-1, 154-12, 155-15, 168-22, 168-23,
21		173-16, 182-6, 191-21, 195-10, 210-2,
22		214-3, 219-18
23	particular	5-13, 14-2, 46-24, 47-6, 56-7, 87-1,
24		99-11, 107-6, 108-11, 108-12, 109-18,
25		128-13, 128-17, 133-17, 136-11, 146-8,

1	146-15, 148-17, 157-20, 163-7, 186-21,
2	193-1, 194-22, 205-5, 219-5
3	particularly 29-6, 45-11, 157-1, 210-22
4	partly 174-18
5	party 27-4
6	Passarella 32-25
7	past 33-1, 49-17, 149-25, 151-14, 176-22,
8	181-8, 212-12
9	pasture 35-3
10	pattern 175-17
11	Paula 206-1
12	paved 190-4
13	pavement 152-14, 156-6
14	pay 29-12, 179-2, 194-4, 194-7, 195-10,
15	195-24
16	paying 44-11, 193-1, 208-12
17	peculiar 105-25
18	Pelican 73-15, 75-6
19	penalize 128-13
20	penalized 82-18
21	pencil 14-13
22	people 5-5, 28-2, 45-1, 54-22, 58-16, 69-3,
23	73-2, 100-6, 100-7, 103-15, 108-9,
24	113-8, 114-11, 115-3, 115-10, 115-12,
25	121-9, 127-19, 195-24, 196-6, 197-17,

1	permitting 123-8
2	person 28-9, 100-3
3	personally 40-17
4	persons 145-5
5	perspective 29-1, 29-17
6	persuade 204-5
7	persuaded 204-4
8	persuasive 203-6
9	pertains 196-17
10	phone 43-23
11	photocopy 19-20
12	photograph 149-7
13	photographs 97-22, 97-23, 98-18
14	phrase 10-14, 10-20, 45-20
15	physical 139-23, 139-24, 147-11, 156-5, 156-8,
16	205-16
17	piece 26-22, 147-13, 153-17, 157-8, 174-9,
18	185-11, 185-12, 185-14, 186-18, 193-2
19	pieces 189-2, 201-12
20	Pine 176-8
21	pipe 20-6
22	pipes 20-10, 20-12
23	place 40-5, 41-19, 44-23, 70-2, 73-15, 75-6,
24	76-6
25	placed 20-7, 20-10, 41-16, 42-2, 56-25, 129-20,

1	206-3, 206-23
2	per 118-12, 120-8, 120-12, 120-17, 120-18,
3	159-15, 159-16, 159-24, 160-4, 160-5,
4	165-1, 176-13, 176-17, 177-4
5	perceive 121-10, 121-18, 151-16
6	perceived 123-3, 164-25
7	percent 27-25, 52-23, 53-2, 208-20
8	percentages 117-22
9	perception 206-7
10	Perfect 215-22
11	perfectly 136-16
12	perform 31-11, 39-1
13	perhaps 13-6, 15-3, 111-7, 111-8, 111-14,
14	111-24, 112-20, 190-17, 213-20
15	perimeter 93-1, 149-11, 149-16, 154-13, 175-16,
16	175-23
17	period 133-23, 171-5
18	permanent 139-24
19	permit 8-7, 115-5, 211-11
20	permits 39-4, 39-14, 41-24, 42-3, 57-3
21	permittable 99-8, 99-9
22	permitted 11-7, 11-9, 11-14, 12-8, 14-25, 48-15,
23	54-14, 55-3, 55-7, 59-19, 62-3, 62-4,
24	64-3, 114-22, 114-25, 119-22, 122-3,
25	122-17, 140-1

1	136-10
2	placement 175-12, 176-16
3	places 10-1, 69-13, 69-24, 71-3, 71-20, 118-2,
4	118-6, 118-7
5	plan 6-17, 8-15, 9-7, 12-16, 16-15, 17-19,
6	17-22, 22-10, 24-3, 24-21, 29-8, 29-9,
7	29-13, 31-16, 33-15, 48-1, 49-24, 51-14,
8	52-9, 55-3, 55-4, 60-23, 61-2, 61-13,
9	61-25, 62-4, 63-20, 63-24, 63-25, 64-3,
10	67-11, 67-12, 91-12, 91-24, 91-25, 93-7,
11	94-2, 94-4, 107-3, 107-4, 115-15,
12	115-18, 121-1, 138-6, 146-22, 146-24,
13	147-19, 147-24, 148-8, 151-9, 152-10,
14	154-2, 154-4, 155-17, 160-14, 164-11,
15	167-25, 169-3, 178-19, 178-22, 182-18,
16	182-21, 182-23, 182-25, 183-21, 183-22,
17	184-14, 184-21, 186-9, 187-2, 187-4,
18	188-3, 194-6, 202-17, 204-11, 220-4,
19	220-11, 220-16, 220-19, 220-25, 221-16,
20	222-3, 222-6
21	planned 7-19, 60-22, 83-11, 83-13, 83-22,
22	110-21, 132-18, 132-21, 133-4, 133-19,
23	164-18, 164-20, 187-14, 196-21, 197-3,
24	197-10
25	planner 158-10

1	planning	21-5, 29-21, 44-2, 44-4, 87-23, 101-24,
2		121-15, 145-11, 148-16, 149-13, 155-20,
3		155-25, 158-10, 166-6, 172-17, 176-5,
4		176-10, 180-7, 181-7, 184-5, 187-4
5	plans	19-24, 20-6, 20-21, 46-22, 52-4, 96-4,
6		108-18, 111-1, 179-16, 187-6, 196-23
7	plantings	37-8
8	plat	50-23
9	play	207-25, 210-7
10	played	207-9
11	plays	205-1
12	pleasant	24-19
13	please	27-12, 27-13, 28-10, 28-12, 30-3, 32-15,
14		38-23, 43-12, 43-25, 46-2, 49-13, 158-8,
15		172-8, 185-2
16	pleasure	52-14
17	plot	159-12
18	plus	114-11, 167-21
19	pod	163-7, 164-25, 175-14, 176-1, 176-12,
20		176-14, 177-2, 177-5, 204-21
21	pod-by-pod	162-11
22	podium	49-6, 181-18
23	pods	161-12, 161-14, 163-12, 163-18, 163-21,
24		175-17, 175-19
25	point	5-9, 5-13, 7-15, 13-7, 15-15, 19-9,

1	position	10-25, 20-8, 54-20, 55-19, 71-4, 71-13,
2		81-24, 82-8, 119-16, 121-4, 123-25,
3		124-12, 126-25, 127-16, 136-23, 137-6,
4		140-5, 141-20, 141-21, 148-23, 149-25,
5		150-25, 152-1, 160-8, 167-3, 167-8,
6		203-5, 213-22
7	positive	201-15, 201-20
8	possible	8-1, 24-11, 25-8, 28-18, 38-21, 99-16,
9		108-3, 166-8, 167-4, 171-13, 171-14,
10		187-19, 189-25, 190-3, 210-1, 212-12
11	possibly	41-16, 192-15, 192-19, 195-18, 195-21
12	Post	28-16, 49-15
13	posts	112-8
14	potential	41-19, 50-15, 51-21, 68-5, 104-14,
15		113-7, 113-8, 150-3, 150-5, 188-15,
16		195-8, 198-23
17	potentially	113-16, 195-16, 196-3, 196-5
18	power	178-7, 206-14, 206-15
19	powers	178-8
20	practices	85-2, 85-5, 85-11, 85-13, 85-16, 86-12,
21		86-15, 86-16, 87-9, 87-12, 88-7, 136-17,
22		137-8
23	prairie	33-23
24	precedent	24-8, 210-16
25	preclude	187-1

1		19-10, 20-22, 27-21, 31-16, 35-6, 35-24,
2		36-17, 37-3, 43-8, 49-2, 51-17, 66-23,
3		69-15, 73-7, 88-14, 97-5, 101-6, 108-4,
4		108-11, 108-12, 109-18, 112-23, 116-1,
5		121-12, 126-3, 128-15, 130-3, 133-17,
6		133-18, 136-2, 136-11, 150-23, 153-18,
7		159-23, 161-15, 162-25, 164-5, 164-6,
8		166-4, 171-7, 172-2, 174-4, 174-10,
9		174-22, 175-1, 175-3, 175-4, 177-8,
10		177-9, 177-16, 187-10, 194-22, 200-20,
11		204-15, 204-20, 211-8, 212-2, 215-1,
12		217-9
13	pointed	90-18
14	points	9-21, 24-6, 28-23, 89-11, 92-3, 119-17,
15		121-8, 133-25, 145-23, 175-5, 203-1,
16		211-16
17	police	178-8, 206-13, 206-15
18	policy	160-8, 178-6, 179-25, 209-1
19	polite	24-18, 219-25
20	portion	10-10, 11-1, 35-8, 35-21, 51-13, 57-1,
21		67-18, 68-10, 80-7, 105-10, 119-19,
22		121-24, 149-1, 149-2, 149-15, 167-5,
23		173-19, 175-20, 183-16, 185-25, 190-17
24	portions	29-6, 120-15, 175-22
25	pose	180-1

1	precluded	55-14
2	prefer	5-15, 5-22, 42-8, 47-2, 47-5, 72-22,
3		212-8, 212-10
4	preferred	28-4
5	preliminary	50-23, 184-5
6	premises	8-12, 12-21, 16-12, 16-14, 74-6, 75-25,
7		77-13, 122-22
8	preparation	39-13, 220-12
9	prepare	214-16
10	prepared	33-18, 34-1, 50-5, 85-16, 86-17, 107-15,
11		136-18, 164-5, 221-21
12	preparing	31-2
13	prescribed	131-14
14	presence	35-19
15	present	27-6, 144-20
16	presentation	5-8, 5-9, 6-13, 16-16, 24-7, 25-6, 33-5,
17		48-4, 104-24, 105-7, 105-15, 140-25,
18		141-9, 141-16, 141-19
19	presentations	5-16, 6-8
20	presented	107-2, 213-21
21	preservation	34-11, 37-1, 41-13
22	preserve	20-11, 34-2, 36-5, 36-6, 36-11, 37-16,
23		178-13, 185-21
24	preserved	33-24
25	president	44-2, 49-14, 206-2

1	presume	40-20, 41-25, 45-16
2	pretty	35-7, 51-15, 119-7, 140-23, 150-23,
3		151-25, 166-13, 203-12, 210-21, 211-6
4	prevailing	42-4
5	prevent	20-11, 25-18, 112-16, 123-4, 156-23
6	previously	30-16, 31-5, 32-21, 38-11, 44-8, 54-8,
7		138-1, 138-16, 144-17, 158-4, 181-5,
8		200-18
9	primarily	28-25, 35-2, 35-23, 35-24, 158-24
10	primary	74-7
11	principle	152-8
12	printout	173-16
13	prior	50-13, 219-2
14	priority	182-24
15	probably	24-13, 25-17, 26-9, 72-11, 82-14, 131-2,
16		160-20, 166-14, 171-25, 174-21, 217-4,
17		218-17
18	problem	14-11, 26-13, 43-21, 44-24, 56-3, 57-15,
19		58-9, 58-10, 59-5, 66-13, 69-21, 76-1,
20		76-11, 94-25, 102-23, 103-25, 104-4,
21		104-5, 111-17, 121-19, 127-18, 140-15,
22		151-17, 157-6, 171-15, 205-20, 214-21,
23		220-24, 221-2
24	problems	113-15, 151-13, 204-14
25	procedural	18-23, 186-13

1		162-14, 163-7, 163-19, 163-20, 163-22,
2		163-23, 164-7, 165-11, 165-12, 166-9,
3		167-10, 167-15, 167-16, 170-15, 170-20,
4		173-24, 175-20, 175-21, 175-22, 175-23,
5		175-24, 179-5, 183-24, 184-7, 184-17,
6		186-14, 188-6, 190-16, 196-19, 196-24,
7		197-9, 201-16, 201-21, 204-19, 213-7,
8		213-10, 213-23
9	project's	168-1
10	projects	15-24, 33-2, 39-22, 97-19, 151-14,
11		160-25, 162-11, 162-13, 162-16, 164-14,
12		171-2, 195-16
13	proof	205-9
14	properly	112-15
15	properties	166-23
16	property	7-14, 18-14, 22-8, 24-1, 25-11, 25-14,
17		34-20, 34-21, 35-18, 41-1, 45-8, 47-25,
18		48-3, 49-19, 50-1, 50-19, 50-20, 51-19,
19		55-23, 56-21, 86-24, 87-2, 90-3, 90-9,
20		90-20, 92-1, 93-1, 100-12, 104-21,
21		106-2, 106-9, 106-13, 107-2, 107-5,
22		107-7, 107-8, 107-16, 111-12, 113-13,
23		117-13, 117-14, 122-6, 136-25, 137-2,
24		149-2, 149-3, 149-16, 154-13, 165-8,
25		165-24, 168-9, 168-18, 169-7, 169-19,

1	procedure	194-14
2	procedures	6-16, 193-18
3	proceeded	46-22
4	proceedings	48-17, 116-24, 117-1, 222-13
5	process	5-5, 5-18, 5-21, 29-21, 39-2, 50-25,
6		63-7, 64-9, 64-12, 65-18, 67-14, 68-8,
7		88-13, 94-5, 108-9, 130-16, 143-23,
8		146-15, 175-11, 198-25, 205-6, 210-21,
9		219-18
10	processed	40-21
11	produced	144-16, 158-3, 172-14, 181-4, 200-17
12	product	99-12, 201-16, 201-21
13	products	99-1, 107-7
14	professional	38-13, 202-14
15	progress	129-6, 129-10
16	prohibited	13-15, 58-25, 77-2
17	prohibition	56-2, 57-4
18	prohibits	102-12
19	project	8-8, 9-5, 26-10, 29-19, 31-23, 35-2,
20		35-8, 35-21, 37-1, 39-15, 39-16, 46-13,
21		46-23, 47-2, 47-3, 47-14, 47-17, 50-12,
22		52-17, 64-5, 75-15, 75-24, 78-3, 87-4,
23		88-3, 89-16, 91-7, 96-15, 98-4, 116-14,
24		125-25, 146-15, 148-12, 154-23, 155-1,
25		157-15, 159-1, 159-16, 160-14, 160-22,

1		170-5, 170-9, 170-15, 173-7, 173-8,
2		173-21, 173-24, 174-6, 174-8, 174-9,
3		174-12, 175-13, 178-14, 179-16, 184-25,
4		185-10, 187-5, 187-10, 187-13, 189-15,
5		189-18, 190-19, 190-20, 193-2, 195-8,
6		195-16, 195-19, 195-22, 198-3, 198-11,
7		202-15, 203-22, 205-3, 206-12, 207-23,
8		221-17
9	property's	8-19
10	proposal	186-21, 220-17, 220-20
11	propose	12-18, 13-15, 15-21, 17-19, 17-22,
12		18-20, 22-7, 23-4, 34-21, 76-15, 87-4,
13		93-9, 96-23, 133-21, 137-19, 156-21,
14		156-22
15	proposed	8-9, 8-24, 24-1, 24-4, 25-25, 33-6,
16		36-9, 46-20, 46-21, 47-19, 50-3, 50-17,
17		51-17, 55-13, 69-6, 71-17, 71-18, 77-10,
18		77-13, 90-12, 112-3, 121-13, 146-20,
19		152-4, 163-7, 166-24, 169-2, 178-2,
20		186-3, 188-21, 189-14, 199-19, 206-9,
21		211-15, 214-15
22	proposes	123-19
23	proposing	12-17, 16-13, 18-9, 23-8, 26-11, 39-24,
24		41-11, 42-19, 63-15, 70-7, 70-10, 70-15,
25		74-14, 79-23, 80-5, 84-4, 84-18, 93-7,

1	95-22, 102-8, 106-21, 106-22, 107-8,
2	120-3, 120-7, 126-7, 130-24, 135-21,
3	136-14, 139-22, 153-20, 155-9, 188-8,
4	188-9, 188-13, 188-22, 189-15, 203-17,
5	203-21
6	prospective 7-6
7	protect 33-11, 178-8
8	protected 35-17, 37-14
9	Protection 85-17, 86-18, 136-19
10	protects 157-16
11	prove 141-22, 141-23
12	provide 13-6, 13-18, 17-21, 19-20, 21-12, 23-15,
13	33-7, 36-24, 37-12, 47-22, 53-10, 89-23,
14	96-5, 140-18, 142-23, 151-16, 160-25,
15	198-19, 206-12, 207-15, 207-18, 208-16,
16	208-20, 209-17, 211-14, 220-10
17	provided 92-25, 102-17, 111-1, 125-24, 139-23,
18	154-20, 155-12, 155-17, 155-21, 164-12,
19	200-21, 201-2, 202-4, 202-8, 214-2
20	provides 164-13
21	providing 41-17, 96-15, 178-10, 185-9, 201-21
22	provision 18-25, 56-8, 77-23, 89-10, 202-5
23	provisions 88-16, 99-11
24	proviso 122-4
25	proximity 174-19

1	135-16, 141-18, 148-15, 171-13, 171-23,
2	175-18, 181-24, 184-22, 186-17, 186-20,
3	187-12, 188-6, 216-3, 216-22, 220-16
4	puts 196-3, 205-2
5	putting 204-12
6	
7	quadruple 90-2, 91-3, 91-19
8	qualified 42-18, 144-21
9	qualify 38-3
10	quality 36-3
11	quantify 165-6, 166-8
12	quarter 50-12, 176-6
13	question 5-19, 18-13, 18-23, 31-6, 39-9, 39-10,
14	44-18, 53-14, 61-19, 63-12, 65-11, 66-6,
15	66-23, 75-21, 78-14, 78-25, 79-9, 79-20,
16	81-10, 82-4, 86-15, 90-8, 91-8, 92-24,
17	99-25, 100-8, 112-22, 117-10, 160-7,
18	160-10, 166-3, 166-5, 169-22, 170-8,
19	186-13, 190-6, 197-5, 197-19, 199-13,
20	201-1, 202-11, 203-4, 209-1, 209-5,
21	215-16, 217-22
22	questioned 138-4
23	questioning 37-21
24	questions 5-14, 5-17, 6-16, 26-24, 26-25, 30-15,
25	32-8, 32-10, 33-13, 37-23, 38-4, 43-6,

1	prudent 195-15
2	public 7-20, 8-18, 21-1, 26-21, 27-4, 34-17,
3	40-2, 43-3, 57-4, 68-8, 73-2, 73-4,
4	77-2, 94-8, 98-20, 124-11, 126-1,
5	157-16, 176-8, 179-14, 181-14, 199-6,
6	199-9, 199-11, 206-10, 206-13, 206-23,
7	218-21, 219-13
8	Publix 78-18
9	pump 11-20, 11-21, 11-23, 62-18
10	pumps 11-18, 11-20, 11-24, 11-25, 12-2, 12-9,
11	59-13, 59-16, 59-17, 60-14, 60-16,
12	60-18, 60-20, 61-7, 61-13, 62-15, 62-21,
13	62-23, 62-25, 63-3, 63-11, 122-15
14	punched 51-24
15	purchased 7-13
16	purpose 16-17, 23-7, 36-20, 97-16, 123-23,
17	157-4, 166-21, 175-6, 179-13, 206-23,
18	208-22, 209-16, 211-22
19	purposes 186-20
20	pursuant 211-8
21	pursue 187-9
22	put 14-18, 15-9, 18-14, 25-3, 26-11, 44-23,
23	47-1, 52-11, 59-4, 67-23, 69-5, 69-7,
24	75-21, 82-4, 92-6, 92-13, 98-6, 99-5,
25	99-7, 114-17, 125-16, 126-10, 132-23,

1	53-4, 53-5, 68-19, 119-14, 156-2,
2	156-19, 157-24, 162-4, 162-6, 164-9,
3	177-13, 177-14, 196-10, 196-12, 197-15,
4	197-25, 199-8, 199-22, 202-23, 202-24,
5	202-25
6	quick 23-12, 28-23, 33-18, 53-14, 53-25, 84-13
7	quicker 192-17
8	quickly 191-9, 202-22
9	quite 13-7, 21-4, 23-17, 25-13, 25-19, 26-1,
10	26-13, 26-18, 43-11, 124-9, 126-13,
11	126-22, 140-6, 150-22, 182-18, 183-22,
12	205-16
13	quote 20-13, 111-24, 205-23, 214-4, 214-5
14	quoted 33-23
15	
16	R-o-t-e 110-11
17	railroad 9-10, 10-16, 10-24, 22-20, 26-17, 35-4,
18	35-10, 42-20, 43-1, 46-4, 46-9, 46-10,
19	46-16, 47-7, 92-23, 93-10, 93-17, 94-6,
20	94-10, 113-21, 113-24, 114-1, 114-3,
21	114-14, 114-16, 116-2, 116-3, 138-3,
22	138-19, 147-12, 174-1, 174-14, 174-15,
23	174-16
24	raise 7-5, 28-10, 110-5, 204-16
25	raised 29-11, 65-10, 66-5, 81-10

- 1 raises 127-12
- 2 range 6-20, 81-4
- 3 rather 6-12, 14-22, 17-14, 19-7, 65-19, 85-11,
- 4 109-1, 148-25, 187-17, 194-12, 194-13,
- 5 194-20, 200-11
- 6 rational 140-18, 209-19
- 7 rationale 123-21, 140-25, 154-11
- 8 re-number 97-2
- 9 reach 108-15, 208-3, 211-4
- 10 reached 31-14, 32-2, 45-21, 71-10, 134-11
- 11 react 136-1
- 12 read 12-20, 19-19, 19-23, 22-18, 48-25,
- 13 102-8, 129-8, 142-13, 178-17, 201-17
- 14 reading 66-15, 132-15, 169-9
- 15 reads 103-1, 185-23
- 16 ready 30-10, 141-15, 177-16, 200-4
- 17 real 52-3, 53-25, 84-13, 191-8
- 18 reality 177-3
- 19 realize 210-19
- 20 really 5-20, 35-13, 47-12, 50-5, 57-11, 84-19,
- 21 85-22, 88-12, 97-10, 140-16, 157-6,
- 22 160-23, 160-25, 162-3, 171-18, 174-4,
- 23 174-10, 175-2, 175-5, 175-14, 176-2,
- 24 176-13, 177-6, 187-10, 193-6, 194-22,
- 25 208-4

- 1 recommending 87-24, 139-9, 177-1
- 2 record 7-17, 13-24, 27-4, 27-5, 27-10, 27-13,
- 3 27-17, 28-13, 30-18, 30-24, 32-16,
- 4 32-17, 32-23, 38-12, 43-25, 48-18,
- 5 49-13, 50-21, 52-12, 53-10, 53-16,
- 6 55-21, 60-24, 67-6, 68-24, 72-20, 73-1,
- 7 73-18, 101-16, 111-18, 113-12, 117-3,
- 8 124-17, 125-14, 127-4, 133-23, 137-23,
- 9 141-25, 142-2, 142-3, 144-18, 145-21,
- 10 145-24, 146-21, 158-8, 158-11, 159-2,
- 11 159-7, 161-10, 172-16, 173-6, 174-22,
- 12 175-18, 176-23, 180-6, 180-8, 180-18,
- 13 181-11, 185-22, 186-24, 190-14, 199-11,
- 14 200-24, 211-7, 211-21, 219-10, 221-25
- 15 records 173-14, 199-6, 199-9
- 16 recreation 12-24, 13-9, 68-22, 123-16
- 17 redesigned 167-24
- 18 redevelopment 189-1
- 19 reduce 42-12
- 20 reduces 27-25
- 21 refer 40-8, 76-6, 87-12, 94-1, 149-6, 192-3,
- 22 220-11
- 23 reference 5-4, 11-6, 11-12, 12-14, 13-11, 13-14,
- 24 14-1, 16-12, 48-15, 54-14, 90-2, 122-3,
- 25 154-6, 154-9

- 1 rear 52-1, 169-9
- 2 reason 12-25, 65-7, 65-10, 66-3, 66-5, 81-10,
- 3 92-24, 97-21, 100-7, 128-13, 162-16,
- 4 171-19, 179-6, 186-16, 189-17, 194-15,
- 5 195-6, 203-6
- 6 reasonable 15-23, 128-10, 140-4, 148-15, 202-15,
- 7 205-7
- 8 reasonably 117-5
- 9 reasons 47-11, 87-23, 146-18
- 10 rebut 157-7
- 11 rebuttal 141-1, 200-3, 200-18
- 12 recall 68-20, 178-21
- 13 received 147-20, 201-7
- 14 recent 86-20, 86-22, 87-15, 87-22, 87-23, 137-9
- 15 recently 35-11, 146-17, 186-25
- 16 recess 48-16, 116-24
- 17 recessed 116-23
- 18 recognized 21-11, 49-16, 208-7
- 19 recommend 87-8, 121-20, 143-25, 196-20
- 20 recommendation 6-3, 23-10, 55-15, 64-7, 95-10, 114-24,
- 21 139-8, 143-10, 146-1, 146-2, 153-7,
- 22 155-14, 163-10, 171-20, 180-1, 209-12,
- 23 209-22, 212-5, 220-12
- 24 recommendations 44-13, 219-4
- 25 recommended 86-14, 146-12

- 1 referenced 180-16
- 2 references 71-24, 180-11
- 3 referencing 67-24
- 4 referred 68-22
- 5 referring 84-21, 182-15, 207-8
- 6 refers 85-15, 86-23, 134-8
- 7 reflect 9-7, 209-22
- 8 regard 23-8, 157-8
- 9 regarding 51-2, 202-24
- 10 regardless 81-21, 132-3, 165-11
- 11 region 35-12, 36-18
- 12 registered 38-13
- 13 regrowth 35-15
- 14 regular 79-4
- 15 regulated 38-25
- 16 regulating 62-23
- 17 regulation 14-1, 76-5, 90-9
- 18 regulations 13-22, 22-9, 24-2, 24-10, 64-24, 90-3,
- 19 90-20, 104-21, 106-2, 106-9, 106-14,
- 20 107-2, 107-5, 107-6, 107-17, 117-12,
- 21 117-13, 117-14, 117-15, 132-15, 168-9,
- 22 168-19, 170-1, 221-18
- 23 regulatory 140-23, 178-23
- 24 reiterate 212-23, 212-24
- 25 reiterated 151-24

1	related	33-2, 89-9, 95-9, 179-6, 210-8
2	relates	23-2, 137-11, 138-22
3	relation	198-3
4	relationship	220-1
5	relationships	116-14
6	relative	29-7
7	relatively	147-10
8	released	40-7
9	relied	84-20
10	relief	89-10, 102-10
11	relocate	94-8
12	relocated	22-19, 36-10, 93-17, 138-18
13	relook	52-9
14	remain	183-3
15	remaining	21-25
16	remember	56-6, 133-11, 163-14
17	reminder	22-25
18	removal	37-7, 112-4
19	remove	94-14
20	removed	46-14, 112-10, 154-18
21	render	203-9
22	renumbered	180-15
23	renumbering	180-21
24	repair	113-14
25	repeat	16-9, 27-2, 119-4, 142-16

1		99-4, 111-19, 112-10, 123-17, 129-17,
2		133-7, 133-13, 133-20, 134-12, 137-7,
3		137-8, 138-5, 141-4, 154-5, 156-16,
4		157-19, 189-20, 201-22, 201-24, 207-10,
5		214-3, 214-5
6	requirement	15-5, 83-22, 122-16, 123-15, 151-5,
7		206-17
8	requirements	51-3, 123-4
9	requires	193-16, 221-4
10	requiring	9-11, 76-17, 166-21
11	research	39-13, 39-15
12	reservation	51-1, 209-4
13	reserve	20-23, 95-19, 187-17
14	reserved	8-23
15	reside	179-15
16	residence	150-16
17	residences	114-10, 115-22, 203-17
18	resident	103-7
19	residential	7-22, 8-3, 8-6, 9-6, 10-10, 16-2, 16-4,
20		22-14, 22-23, 42-25, 45-14, 46-5, 52-2,
21		56-21, 64-23, 65-10, 73-23, 75-13,
22		76-13, 78-5, 81-19, 81-21, 83-3, 89-11,
23		89-16, 90-11, 94-23, 94-24, 119-19,
24		123-5, 124-1, 129-19, 129-21, 134-23,
25		138-20, 155-1, 161-2, 161-3, 165-21,

1	report	7-17, 9-25, 14-21, 33-22, 71-21, 75-23,
2		85-23, 86-7, 89-20, 91-20, 94-16,
3		119-13, 142-8, 143-9, 144-21, 145-18,
4		154-12, 155-12, 155-18, 164-5, 164-12,
5		182-6, 216-11
6	reports	219-20
7	represent	21-4, 50-1, 50-19, 52-7, 110-18, 218-24
8	representatives	24-18, 50-14, 121-6, 218-25
9	represented	120-21, 181-10
10	representing	49-18, 144-19, 190-15
11	represents	24-5, 173-20, 176-13
12	reputation	43-12
13	request	7-16, 8-4, 8-7, 10-25, 11-23, 12-1,
14		14-19, 14-25, 51-23, 59-17, 89-12,
15		101-3, 110-25, 121-20, 123-11, 128-11,
16		131-2, 133-7, 186-13, 196-20, 197-2,
17		201-14, 201-19, 211-9, 214-19, 220-3,
18		220-9
19	requested	12-1, 154-14, 154-15, 209-20
20	requesting	24-11, 75-7, 123-7, 170-20
21	requests	219-5
22	require	15-13, 22-17, 39-3, 62-3, 79-25, 87-9,
23		123-20, 124-9, 132-21, 134-22, 210-16
24	required	20-20, 21-9, 31-25, 42-6, 42-10, 42-24,
25		48-1, 71-6, 81-17, 83-16, 92-15, 99-3,

1		176-1, 202-20, 208-18
2	residentialwise	46-7
3	residents	114-13, 128-20, 179-18, 187-19
4	residing	179-19
5	resist	209-6
6	resolution	50-4, 50-22, 51-18, 52-22, 53-11, 88-22,
7		122-24, 178-3, 178-6, 221-19
8	resolutions	221-14, 221-21
9	resolvable	108-6
10	resolve	46-25, 107-20, 108-5, 108-19, 109-21,
11		219-16
12	resolved	9-19, 44-15, 117-6, 145-16, 179-10,
13		194-25, 213-11
14	Resort	5-4, 60-5, 84-18, 107-13, 159-4, 159-16,
15		190-10
16	resource	39-14
17	Resources	173-15, 174-3, 175-4
18	respect	16-5, 23-18, 31-10, 54-13, 68-21, 96-11,
19		117-9, 117-20, 117-25, 119-20, 123-12,
20		124-1, 124-4, 125-18, 130-8, 137-3,
21		138-17, 206-21, 210-2, 219-5
22	respectfully	121-20, 124-6, 135-23, 140-22, 141-2,
23		143-8, 203-12, 204-5, 204-15, 204-24,
24		205-8, 205-13, 208-25
25	response	44-18, 127-15, 206-18

1	responses	182-3
2	responsibilities	179-23
3	responsibility	205-21
4	responsible	31-2, 158-24, 178-14
5	rest	29-5, 90-20
6	restaurant	13-3, 64-4, 64-6, 69-7, 69-17, 70-2,
7		76-14, 81-2, 82-23, 127-23, 128-3,
8		128-18, 130-18, 131-5, 131-16, 131-20,
9		132-7
10	restaurant's	76-15
11	restaurants	12-22, 64-18, 64-21, 65-4, 69-19, 76-1,
12		79-3, 115-11, 126-18, 130-12
13	restoration	34-11
14	restored	20-2
15	restricting	122-16
16	restrictions	15-23, 78-15, 78-16, 136-10
17	result	35-12, 111-20, 112-12, 115-24
18	resulted	35-14, 176-2
19	results	31-18, 35-18
20	resume	31-3, 33-3, 38-15, 44-2, 144-22, 158-11,
21		158-18, 181-11
22	retail	8-10, 14-1, 14-20, 15-5, 78-9, 78-11,
23		78-17, 154-25
24	retention	52-6, 95-23
25	retire	49-6

1		119-18, 120-11, 120-22, 126-4, 129-5,
2		131-21, 134-7, 136-5, 151-3, 155-2,
3		157-12, 159-25, 160-2, 164-8, 164-19,
4		164-23, 169-9, 198-15, 200-9, 205-19,
5		205-24, 209-18, 213-17, 217-20, 218-5
6	right-in	9-8, 31-15, 94-14, 221-11
7	right-of-way	9-10, 10-16, 10-24, 22-21, 35-4, 35-11,
8		42-21, 93-17, 96-5, 138-3, 138-19,
9		140-19, 147-13, 178-13, 179-4, 179-9,
10		179-17, 179-21, 181-9, 184-9, 184-24,
11		185-10, 186-5, 187-3, 187-17, 188-9,
12		188-22, 189-17, 190-11, 190-17, 194-10,
13		195-6, 196-1, 197-1, 198-20, 199-20,
14		207-14, 207-16, 208-19, 209-4, 210-18
15	right-of-ways	51-3
16	right-out	9-8, 31-15, 94-14, 221-11
17	rightful	183-13
18	river	163-4, 163-22, 173-24, 174-17, 174-20
19	road	20-3, 20-7, 20-16, 22-2, 25-22, 25-24,
20		36-15, 45-2, 45-4, 45-6, 45-9, 50-15,
21		51-3, 54-1, 89-14, 102-18, 112-25,
22		113-6, 140-19, 150-16, 150-19, 160-19,
23		160-20, 160-21, 160-22, 165-2, 178-10,
24		183-4, 184-8, 184-10, 185-15, 187-20,
25		188-4, 188-5, 188-6, 188-13, 188-16,

1	return	206-5
2	review	29-9, 127-13, 152-10, 153-5, 153-13,
3		154-22, 156-13, 170-21, 171-18, 171-22,
4		175-11, 188-15
5	reviewed	153-6, 163-8, 164-19, 167-12, 170-22,
6		181-8, 181-24, 213-20
7	reviewing	146-23, 158-25, 217-6
8	revised	48-20, 135-13, 137-15, 183-2, 220-5,
9		220-10
10	revising	220-9
11	revisions	8-16, 16-15
12	reworded	134-14, 139-4
13	rezone	7-17, 196-18
14	rezoned	184-4
15	rezoning	184-4, 185-11, 186-8
16	ridiculous	88-14
17	right	8-16, 9-2, 9-13, 12-11, 14-6, 14-8,
18		17-15, 28-10, 36-18, 41-9, 42-13, 42-19,
19		45-12, 48-4, 54-23, 57-1, 58-22, 59-8,
20		59-22, 64-2, 68-14, 70-24, 71-14, 72-16,
21		74-8, 75-11, 75-21, 76-10, 76-25, 77-7,
22		77-9, 82-1, 82-4, 82-10, 83-25, 84-16,
23		85-4, 89-6, 89-8, 89-20, 93-14, 98-23,
24		100-17, 105-22, 106-13, 108-2, 108-17,
25		110-5, 113-1, 113-25, 117-21, 117-24,

1		189-12, 189-16, 189-19, 191-10, 191-11,
2		192-3, 192-5, 195-20, 197-1, 198-1,
3		198-13, 198-14, 202-9, 206-20, 207-6,
4		208-22, 209-15, 210-2
5	roads	25-24, 26-11, 42-15, 52-20, 121-18,
6		150-17, 195-11, 206-23, 206-24
7	roadway	44-22, 52-11, 54-2, 55-21, 80-3, 80-6,
8		178-16, 188-12, 189-13, 195-16
9	roadways	44-21, 124-5
10	room	126-24, 172-10
11	Rosenthal	27-8, 27-11, 27-14
12	Rote	110-7, 110-10, 110-14, 110-18, 111-5,
13		114-21, 116-3, 116-8, 116-11, 116-17
14	route	113-2, 196-5
15	Rpd	46-3, 46-4, 146-16, 146-24, 147-4,
16		213-10
17	rules	205-1
18	run	20-3
19	runs	14-8, 112-6, 113-24
20		
21	safe	102-18, 202-9
22	safely	189-22
23	safer	36-21, 202-1
24	safety	157-16, 178-9
25	said	27-2, 46-20, 51-4, 69-5, 91-14, 94-22,

1	129-21, 132-19, 132-20, 138-1, 141-7,
2	149-17, 150-9, 151-21, 163-25, 183-25,
3	201-8, 204-1, 216-16, 218-10
4	sake 22-22, 130-4, 174-25
5	Sal 5-1
6	same 8-17, 17-7, 21-9, 52-18, 61-11, 61-18,
7	66-23, 67-5, 75-7, 75-9, 86-13, 88-18,
8	97-3, 98-5, 100-1, 102-22, 103-8,
9	103-21, 104-1, 104-3, 118-5, 121-18,
10	126-19, 130-12, 131-8, 133-12, 157-4,
11	160-6, 162-18, 163-23, 167-13, 193-18,
12	205-1, 212-6, 217-1, 220-14
13	Sample 214-4
14	San 28-1, 55-8, 90-14, 145-13, 183-9, 203-24
15	sandwiches 69-11
16	Sandy 17-3, 20-21, 21-2, 24-4, 31-21, 50-15,
17	50-16, 51-7, 95-19, 96-5, 135-17,
18	140-15, 141-12, 141-19, 142-5, 144-6,
19	157-10, 179-3, 181-13, 181-25, 182-4,
20	182-8, 182-16, 182-21, 183-8, 183-9,
21	183-21, 184-1, 184-3, 184-16, 184-20,
22	185-7, 185-19, 185-25, 188-2, 188-10,
23	188-21, 188-24, 189-12, 190-1, 190-12,
24	191-20, 192-4, 192-5, 192-11, 196-24,
25	197-1, 197-10, 198-1, 205-20, 206-10,

1	says 10-14, 11-10, 14-3, 18-15, 22-11, 52-22,
2	55-7, 55-9, 57-3, 60-13, 60-20, 62-5,
3	64-3, 64-17, 73-1, 77-1, 89-20, 90-5,
4	91-9, 92-10, 92-25, 100-3, 100-4,
5	115-14, 132-16, 160-13, 169-11, 201-13
6	scale 160-24
7	scattered 35-5
8	schedule 9-12, 10-9, 45-14, 67-10, 67-17, 68-5,
9	211-10, 211-17, 211-20
10	scheduled 50-8, 50-11
11	sciences 155-19
12	Scott 182-7
13	scratched 102-10
14	scream 200-11
15	sea 40-9, 135-12
16	Seaboard 9-9
17	season 20-12, 40-4
18	seating 15-19, 16-1, 75-25, 76-7, 76-19, 77-12,
19	77-16, 80-22, 81-15, 81-18, 82-11,
20	82-15, 82-20, 83-2, 115-12, 126-19,
21	127-24, 129-16, 129-18, 130-13, 131-9,
22	131-17, 131-19, 132-4, 133-10
23	seats 83-5
24	second 9-13, 21-23, 50-11, 73-12, 82-12, 90-5,
25	96-15, 118-2, 121-12, 139-5, 141-6,

1	210-4
2	satisfied 24-12, 33-10, 77-7
3	satisfy 196-19
4	Saturday 16-7, 76-3, 81-24, 126-21, 129-24
5	save 124-16
6	saving 187-21
7	savings 196-4
8	saw 61-16, 126-9, 129-2, 135-10, 212-19
9	say 5-12, 5-13, 15-4, 19-7, 20-17, 24-15,
10	25-20, 26-14, 26-22, 32-6, 43-10, 55-1,
11	60-20, 62-19, 68-13, 69-15, 79-11,
12	81-18, 82-6, 88-6, 91-19, 96-16, 105-12,
13	121-22, 122-7, 134-5, 136-16, 137-19,
14	152-21, 155-7, 156-20, 157-8, 162-3,
15	166-14, 171-10, 171-16, 179-13, 180-3,
16	198-17, 203-9, 209-23, 211-12, 212-17,
17	213-14, 214-13, 217-11
18	saying 15-8, 17-16, 18-7, 18-18, 19-1, 58-2,
19	58-14, 59-1, 61-24, 61-25, 62-8, 64-25,
20	65-17, 65-20, 66-3, 67-1, 67-21, 72-13,
21	75-5, 78-13, 78-19, 79-7, 79-9, 79-10,
22	80-9, 83-21, 87-22, 91-10, 92-10, 96-11,
23	104-5, 104-13, 109-13, 128-3, 132-1,
24	136-4, 136-9, 146-11, 153-23, 156-11,
25	165-17, 167-20, 190-1, 190-15, 219-15

1	161-24, 168-23, 169-16, 192-2, 201-12,
2	204-20
3	Secondly 111-19
4	section 17-1, 17-3, 67-7, 67-8, 102-11, 123-8,
5	183-14, 189-25, 190-3, 196-16, 214-3
6	secured 114-15
7	see 8-18, 8-25, 11-9, 14-1, 22-6, 43-17,
8	44-14, 45-5, 47-17, 56-11, 56-15, 62-8,
9	72-7, 72-19, 79-14, 81-12, 84-13, 86-1,
10	98-8, 107-15, 108-13, 113-3, 124-2,
11	130-22, 134-5, 137-22, 149-8, 150-18,
12	150-20, 150-22, 151-9, 153-13, 153-22,
13	154-22, 156-14, 157-18, 167-5, 173-18,
14	173-21, 176-5, 176-8, 182-23, 184-23,
15	185-1, 188-24, 191-9, 191-12, 191-21,
16	192-8, 204-13, 204-24, 210-10, 212-1,
17	212-2, 219-24, 220-21
18	seeing 56-6, 108-24
19	seek 124-13, 125-17, 127-17
20	seeking 8-2, 146-8, 187-2
21	seeks 102-10
22	seem 43-19, 88-1, 107-25, 148-25, 207-4,
23	212-14
24	seemed 46-17
25	seems 15-8, 18-13, 18-18, 47-5, 70-3, 74-7,

1		76-1, 76-11, 88-14, 108-10, 108-22,
2		131-25, 143-24, 152-7, 193-7, 194-18,
3		203-5, 203-8, 212-13
4	seen	59-2, 63-3, 63-7, 83-16, 85-8, 126-2,
5		151-13, 153-8, 155-8, 157-14, 157-18,
6		199-4
7	segment	51-13, 92-12, 138-13, 184-3, 184-10,
8		184-15, 185-15, 188-4, 188-6, 188-24
9	segments	191-10
10	self-service	11-18, 12-9, 59-13, 60-14, 60-20, 61-7,
11		122-14
12	send	216-15
13	senior	30-25, 32-24
14	sense	88-9, 129-9, 173-23, 210-23
15	sensitive	21-12, 34-22, 45-11, 86-25, 87-1, 136-24
16	sensitivity	137-4, 137-10
17	sent	101-9, 201-4, 201-5, 201-7
18	sentence	21-22, 22-1, 22-17, 22-21, 90-8, 95-17,
19		142-10, 142-11, 142-13
20	sentences	21-23, 21-24
21	separate	11-21, 12-14, 13-3, 104-1, 150-4,
22		211-15, 212-4, 212-8, 215-17, 215-18,
23		215-19
24	separated	66-25, 147-12, 167-11, 168-2
25	separates	55-21, 114-1

1	shall	16-3, 16-5, 16-6, 129-22
2	share	28-24, 215-24
3	shared	93-1
4	shed	42-17
5	sheet	107-1, 107-10
6	shelves	37-12
7	shifting	210-2
8	shipping	28-5, 112-18
9	shopping	69-22, 79-4
10	short	66-11, 133-23, 171-4, 172-21, 200-7,
11		208-14, 213-9
12	shorten	6-13
13	shortened	6-12
14	shot	82-14
15	shoulders	190-4
16	show	10-1, 11-8, 14-7, 19-24, 20-6, 20-14,
17		22-1, 35-7, 41-6, 51-13, 53-25, 67-11,
18		91-12, 91-25, 97-17, 125-24, 174-22,
19		182-20, 185-4, 186-10, 187-5, 189-25,
20		192-16
21	showed	146-23, 185-5, 213-9
22	showing	135-22, 159-3, 161-13
23	shown	12-15, 31-16, 33-15, 91-11, 91-21,
24		94-10, 138-5, 182-24, 182-25, 183-10,
25		207-14

1	separation	65-3, 133-15, 139-23, 139-24, 151-5,
2		151-6, 152-11, 152-12, 152-15, 152-19,
3		156-5, 156-16, 176-3, 205-16
4	September	29-9
5	series	104-14
6	serious	137-5, 147-5
7	seriously	163-6
8	serve	64-21, 110-4, 128-19, 131-23
9	served	157-5
10	serves	128-3, 131-6, 208-22, 209-16
11	service	113-19, 191-2, 191-9, 191-22
12	services	20-9, 144-20, 152-20, 153-12, 176-11
13	serving	139-18
14	set	6-20, 7-16, 20-4, 56-20, 107-5, 142-22,
15		143-13, 150-4, 165-10, 168-8, 168-10,
16		186-4, 195-18, 205-1, 207-10, 211-14,
17		212-4, 216-5, 216-6, 219-11, 220-5
18	setback	64-19, 95-22, 118-10, 151-5, 154-10,
19		168-3, 168-6, 168-8, 168-10, 168-13,
20		169-9
21	setbacks	167-13, 203-14
22	sets	215-19
23	several	9-20, 121-8, 175-10
24	severalfold	121-5
25	severe	205-3

1	shows	116-4, 120-17, 120-18, 146-25, 159-22,
2		159-23, 189-11
3	shrub	112-4
4	shrubs	116-5
5	sic	166-2
6	side	11-20, 16-3, 20-2, 35-3, 35-10, 81-20,
7		103-25, 114-2, 114-3, 129-20, 136-12,
8		150-16, 151-15, 154-10, 156-7, 156-24,
9		170-5, 174-15, 188-2, 190-5, 198-7,
10		198-13
11	side-by-side	20-7
12	sides	5-17, 16-3, 46-15, 81-20, 114-4, 129-20,
13		137-22
14	sidewalk	190-4
15	sight	102-17, 202-8
16	signage	29-16
17	signed	164-16
18	significance	121-15
19	significant	104-20, 159-22
20	significantly	39-17
21	signs	92-21
22	silt	41-17
23	similar	13-18, 24-10, 39-23, 167-14, 167-16,
24		206-7
25	Simon	188-18

1	simple	160-3
2	simply	12-3, 13-23, 85-9, 87-8, 109-12, 121-18,
3		137-3, 203-5, 211-1, 211-16
4	since	7-12, 43-19, 61-24, 68-16, 72-25,
5		143-23, 163-3, 182-21, 184-2, 198-17,
6		213-4, 215-21, 219-15, 219-17, 220-6
7	single	48-2, 61-16, 92-15, 99-2, 99-8, 118-9,
8		149-10, 149-19, 159-6, 163-5, 167-11,
9		167-22, 168-1, 175-16, 176-1, 203-21,
10		204-4
11	sit	52-4, 83-18
12	site	13-22, 13-25, 29-4, 34-11, 36-25, 37-2,
13		39-1, 55-4, 67-11, 76-4, 112-15, 121-1,
14		147-8, 148-8, 149-15, 151-8, 167-24,
15		179-6, 210-7
16	site-related	208-22
17	sits	64-16
18	sitting	200-9, 206-1
19	situation	83-12, 139-17, 174-23, 194-20
20	situations	13-18, 152-20
21	six	33-23, 110-25, 153-21, 191-14, 191-17,
22		191-18, 204-3
23	sixth	192-2
24	size	61-9, 61-11, 154-23
25	sketch	93-20, 93-23, 189-4, 189-8

1		144-2, 150-22, 154-21, 163-12, 165-20,
2		177-12, 182-17, 183-23, 186-22, 192-18,
3		193-8, 193-14, 194-6, 203-7, 205-13,
4		207-22, 208-24, 210-18, 212-16, 216-2,
5		217-10
6	sometime	192-12, 211-11
7	somewhat	6-11, 14-5, 88-1, 132-5, 195-3, 197-23,
8		206-7, 218-22
9	somewhere	5-18, 56-11, 134-3, 135-11, 145-5,
10		168-11
11	soon	105-5, 212-11, 214-22
12	sooner	214-20
13	sorry	14-20, 21-24, 60-6, 74-18, 83-13,
14		101-13, 101-18, 102-3, 126-12, 129-4,
15		143-9, 162-22, 168-5, 170-7, 177-18,
16		183-9, 192-6, 195-12, 196-12, 212-19
17	sort	14-10, 46-21, 51-2, 79-25, 120-25,
18		132-13, 137-21
19	sought	131-12
20	sounds	111-16, 112-19, 124-17, 156-11
21	source	127-25, 128-9, 166-7
22	south	174-7, 174-12, 174-17, 184-15, 198-2,
23		198-15, 210-3
24	southeast	19-25, 36-1
25	southern	112-5, 184-25, 185-10

1	sketches	97-22
2	skip	48-7
3	slightly	176-15
4	slim	203-12
5	sloppy	122-23
6	slough	86-25
7	slowly	201-18
8	slows	5-21
9	small	21-18, 61-4, 97-25, 150-22, 152-24,
10		163-20, 170-14
11	smaller	36-21, 59-4, 62-21
12	smoke	25-15, 41-20, 42-12, 112-16
13	snowy	37-15
14	soils	40-16
15	sold	100-9, 147-14, 208-9
16	solely	201-6
17	somebody	102-24, 140-11, 152-9, 156-13, 185-23
18	somehow	67-24, 132-4, 208-21, 216-1
19	someone	5-19, 27-8, 99-17, 100-11, 103-15,
20		133-17, 167-4
21	someplace	67-2, 90-16, 192-23
22	something	5-14, 10-6, 44-17, 45-2, 45-10, 48-19,
23		52-6, 52-8, 52-10, 54-13, 65-8, 65-17,
24		65-22, 70-19, 88-4, 88-7, 88-12, 101-18,
25		101-19, 101-20, 103-8, 109-1, 114-16,

1	southwest	8-20, 35-25, 63-25
2	space	36-6, 36-16, 102-15, 102-20, 152-22,
3		203-16
4	spaces	33-24, 201-22
5	speak	5-10, 5-23, 5-24, 6-1, 6-5, 6-6, 6-7,
6		7-24, 11-16, 23-6, 25-6, 30-11, 32-13,
7		38-22, 49-5, 63-17, 105-21, 108-1,
8		109-19, 109-25, 111-3, 116-18, 145-11,
9		157-11, 177-25, 200-10, 200-14
10	speaker	17-5, 77-1, 105-11, 105-19, 110-2,
11		115-1, 170-3
12	speakers	56-10, 57-9, 57-16, 58-5, 58-15, 58-18
13	Speaking	27-17
14	speaks	81-12, 137-20
15	special	17-25, 18-8, 18-17, 19-6, 41-12, 64-10,
16		67-3, 67-15, 76-18, 81-17, 83-5, 83-10,
17		83-17, 122-16, 123-14, 123-17, 123-20,
18		123-23, 124-3, 124-9, 124-13, 125-17,
19		127-17, 128-11, 128-16, 129-17, 134-9,
20		134-12, 134-19, 206-11
21	species	35-17, 37-13, 37-14
22	specific	56-7, 60-16, 61-5, 61-13, 62-12, 67-11,
23		70-8, 70-9, 70-14, 70-16, 70-17, 70-20,
24		78-21, 85-24, 87-8, 88-5, 88-11, 88-16,
25		161-14, 162-13, 162-16, 163-13, 168-20

1	specifically	8-4, 14-12, 16-14, 17-18, 17-20, 19-5,
2		48-6, 52-8, 60-21, 60-24, 61-1, 61-9,
3		62-13, 63-6, 64-8, 65-22, 68-4, 71-12,
4		85-14, 92-9, 95-2, 106-11, 154-16,
5		159-5, 178-1, 178-18
6	specifications	210-5
7	specificity	70-25, 71-8, 86-11, 124-8, 157-5
8	specified	12-25, 71-21
9	specify	55-5, 69-22, 70-3, 90-19
10	speed	84-13, 119-15, 156-20
11	speeding	130-4
12	Spell	30-3
13	spells	85-5
14	spend	9-21, 24-13, 108-24, 195-15, 196-1
15	spending	179-12
16	spent	84-22, 88-10, 107-4, 192-23
17	split	198-6
18	spoke	111-23, 184-12, 190-14
19	spot	99-15, 125-16
20	spots	99-3, 99-4, 99-5
21	spreading	47-4
22	Springs	28-15, 28-16, 49-16, 188-17, 188-18
23	square	8-10, 14-2, 14-4, 14-16, 14-18, 14-19,
24		118-24, 154-24, 154-25
25	squawk	56-2

1		135-20, 135-25, 139-2, 140-5, 140-16,
2		141-3, 141-15, 142-7, 142-8, 142-12,
3		142-25, 143-9, 143-23, 144-16, 144-20,
4		145-5, 145-18, 146-6, 146-11, 146-19,
5		147-4, 147-9, 147-23, 148-3, 148-22,
6		149-25, 151-4, 152-21, 153-12, 153-15,
7		154-12, 154-21, 155-3, 155-12, 155-17,
8		158-3, 158-16, 158-17, 159-8, 160-9,
9		161-17, 164-5, 164-12, 168-24, 172-14,
10		173-9, 175-10, 176-4, 176-5, 176-23,
11		177-3, 180-15, 181-4, 182-6, 182-11,
12		183-16, 189-6, 191-4, 197-23, 201-2,
13		203-5, 203-8, 204-13, 205-4, 205-10,
14		205-11, 213-14, 213-17, 216-11, 219-10,
15		222-1
16	staff's	33-22, 47-24, 48-3, 55-15, 72-21, 85-1,
17		91-14, 94-16, 107-11, 107-16, 118-3,
18		118-19, 120-20, 120-22, 123-25, 124-12,
19		126-7, 126-17, 127-25, 136-21, 139-17,
20		140-21, 140-25, 148-5, 150-25, 158-19,
21		159-10, 161-25, 167-3, 167-8, 173-12,
22		182-12, 183-18, 189-9, 191-6, 212-5,
23		215-14
24	stage	156-13, 187-4, 187-12, 210-23, 211-3
25	stages	108-9

1	stack	99-7, 99-14
2	stacked	100-6, 102-20, 200-22
3	stacking	23-3, 96-21, 98-21, 98-22, 98-23,
4		100-15, 100-19, 100-20, 102-12, 102-13,
5		103-7, 139-13, 139-25, 152-5
6	staff	5-9, 7-4, 7-16, 9-11, 9-24, 10-4, 10-25,
7		11-15, 11-16, 14-21, 15-14, 15-20,
8		15-21, 19-4, 19-13, 20-9, 21-14, 22-16,
9		23-5, 24-1, 24-12, 26-12, 31-10, 31-14,
10		31-21, 32-10, 33-8, 33-16, 34-16, 36-14,
11		37-23, 43-6, 44-12, 44-16, 45-22, 46-19,
12		47-11, 47-21, 48-15, 49-1, 51-22, 54-13,
13		55-18, 59-1, 59-25, 63-14, 64-7, 66-24,
14		70-7, 70-8, 70-13, 71-4, 71-9, 71-11,
15		71-13, 71-18, 71-21, 74-7, 74-16, 75-18,
16		75-23, 77-21, 80-3, 80-5, 80-19, 81-12,
17		82-2, 82-14, 83-9, 84-14, 84-17, 84-20,
18		84-21, 85-10, 85-15, 85-23, 86-7, 86-23,
19		87-24, 89-20, 90-18, 91-14, 91-20,
20		92-24, 93-13, 93-15, 94-7, 94-12, 94-16,
21		94-25, 95-10, 100-23, 101-2, 105-6,
22		106-22, 107-19, 107-25, 108-4, 108-14,
23		109-2, 109-7, 110-24, 116-14, 118-1,
24		118-11, 119-13, 119-18, 119-22, 122-18,
25		123-10, 123-13, 123-16, 133-24, 134-12,

1	stamped	147-20, 147-24
2	stand	27-18, 200-11, 208-5
3	standard	12-22
4	standards	180-12
5	start	54-25, 117-8, 126-14, 217-5
6	started	146-10
7	starter	69-11
8	starter's	69-9, 69-16, 69-20
9	state	10-5, 38-14, 38-25, 81-24, 119-16,
10		122-1, 129-25, 180-15
11	stated	179-24
12	statement	28-17, 31-3, 171-23, 172-1
13	statements	105-16
14	station	11-22, 26-5, 26-8, 28-25, 60-6, 60-7,
15		61-16, 62-18, 62-22, 63-8, 69-9, 69-11,
16		113-14, 114-12
17	stations	62-20, 62-21, 63-8, 63-10, 113-19
18	step	38-3, 43-14
19	stepping	197-17
20	stick	27-1, 43-4
21	sticking	19-12
22	still	18-25, 44-15, 80-10, 95-12, 125-17,
23		131-13, 138-25, 145-9, 147-7, 148-14,
24		148-15, 150-5, 151-2, 151-18, 153-9,
25		154-12, 155-7, 155-9, 157-14, 165-16,

1	201-21, 213-10, 214-5
2 stood	88-8
3 stop	73-12, 109-18, 156-25, 169-16
4 store	113-14
5 stories	8-13, 90-19, 90-21, 97-25, 98-6, 150-6,
6	150-7, 166-2, 167-7, 167-19, 204-3
7 stork	37-14
8 storm	190-18
9 story	151-6
10 straight	16-25, 51-15, 102-1, 102-2, 106-20,
11	112-5
12 straighten	97-4, 97-7
13 straightened	97-8
14 straightforward	82-19, 123-22
15 street	149-21, 149-23, 170-12, 204-3
16 streets	150-1
17 stretch	92-7
18 strictly	10-3
19 strike	21-22, 21-23, 21-25
20 strip	79-4
21 structure	40-5, 204-2
22 structures	169-11
23 stuff	27-25, 86-19
24 subdivision	179-15, 179-19
25 subject	11-6, 11-14, 12-8, 29-9, 57-2, 59-19,

1 such	16-4, 37-14, 147-9, 152-24, 207-14,
2	211-10
3 sufficiency	182-2, 182-3
4 sufficient	6-1, 150-1, 156-23, 200-21, 202-4
5 suggest	9-23, 75-22, 119-11, 124-6, 135-23,
6	140-22, 141-2, 143-8, 204-7, 204-24,
7	205-8, 205-13, 209-1, 209-14, 218-23
8 suggested	45-19, 59-18, 74-11, 90-1, 122-15,
9	134-1, 135-21, 151-2, 179-3, 204-12,
10	205-16, 209-8
11 suggesting	10-21, 62-2, 91-2, 127-22, 128-10,
12	128-23
13 suggestion	109-3, 209-7
14 suit	107-6
15 summarize	111-10
16 summary	46-8, 63-19, 145-25
17 Suncoast	188-18
18 Sunday	16-6, 76-2, 81-22, 126-20, 127-10,
19	129-22
20 superimposed	220-22
21 supplemental	37-8
22 supplied	24-19
23 supply	111-8, 164-10
24 support	115-25, 126-3, 127-7, 155-8, 155-13,
25	176-19, 176-23, 205-14, 213-21

1	62-3, 67-25, 139-3, 139-9, 173-7, 199-6,
2	199-9, 221-24, 222-10
3 subjective	205-4
4 submissions	222-1
5 submit	28-17, 34-4, 34-7, 134-1, 146-21,
6	147-21, 158-11, 159-1, 159-7, 161-9,
7	173-6, 203-12, 204-5, 215-6, 215-18,
8	222-6, 222-7
9 submittal	17-2, 135-4
10 submitted	24-20, 29-8, 37-17, 50-23, 94-4, 101-2,
11	135-2, 145-20, 146-16, 147-17, 153-7,
12	155-5, 184-19, 188-14, 188-19, 190-7,
13	201-3, 202-3, 211-19, 213-8, 220-4
14 submitting	220-24, 221-15
15 Subsequent	180-14
16 subsidize	208-13
17 substance	63-15, 204-9
18 substantial	9-18
19 substantially	21-10, 24-2, 24-10
20 substantiative	182-5
21 substantive	107-22
22 substitute	12-18, 12-20, 19-17, 122-12
23 substituted	33-6, 90-3
24 suburban	14-3, 15-1, 15-6, 15-9
25 successful	117-5

1 supported	205-12
2 supporting	171-9
3 supports	123-10
4 supposed	152-13, 152-15, 164-18, 188-11, 215-6,
5	215-7
6 Supreme	141-7
7 surcharging	40-15
8 sure	8-24, 9-15, 9-16, 10-18, 10-24, 11-15,
9	13-1, 14-11, 14-14, 15-19, 17-3, 17-6,
10	17-9, 19-19, 23-4, 23-16, 25-13, 26-1,
11	26-13, 26-18, 29-19, 30-21, 33-20,
12	39-25, 44-11, 45-18, 52-13, 56-7, 68-20,
13	68-23, 68-25, 70-24, 71-5, 82-13, 87-6,
14	87-14, 87-16, 87-19, 94-24, 103-7,
15	104-16, 108-6, 108-7, 109-6, 110-3,
16	112-19, 113-21, 114-22, 115-6, 115-23,
17	118-8, 126-13, 126-22, 127-3, 132-9,
18	132-12, 133-3, 133-5, 140-9, 144-4,
19	166-8, 166-16, 172-9, 193-17, 193-19,
20	199-7, 199-8, 199-14, 205-18, 208-7,
21	215-6, 218-14, 221-1
22 surface	37-10, 142-15, 142-17, 174-18
23 surprise	213-5
24 surprisingly	123-6
25 surrounded	112-9

- 1 surrounding 173-8, 196-22, 197-3
- 2 survey 35-17, 35-19, 189-8
- 3 suspect 45-6, 112-11
- 4 swear 5-11, 6-25, 7-2, 27-10, 110-6
- 5 switch 195-13
- 6 swore 172-10
- 7 sworn 7-7, 27-11, 28-11, 30-17, 30-19, 32-18,
- 8 32-22, 38-6, 38-11, 44-6, 44-9, 49-8,
- 9 49-11, 54-9, 110-8, 144-17, 158-4,
- 10 158-5, 172-11, 172-15, 180-24, 181-5,
- 11 200-18
- 12 synonymous 192-4, 192-7
- 13 system 40-18, 77-1, 86-6, 97-7, 105-25, 142-15,
- 14 142-18, 174-19
- 15 systems 57-5, 77-2, 115-2
- 16
- 17 table 22-9, 40-5, 60-4, 60-13, 61-8, 63-5
- 18 take 9-16, 9-17, 18-23, 19-21, 20-24, 23-12,
- 19 23-25, 26-19, 30-2, 34-18, 41-19, 63-12,
- 20 84-1, 93-14, 95-5, 104-23, 105-16,
- 21 109-20, 113-9, 115-19, 156-17, 184-21,
- 22 186-18, 186-19, 187-7, 190-16, 200-6,
- 23 212-7, 221-11
- 24 taken 19-10, 48-16, 120-23, 142-21, 149-25,
- 25 178-15

- 1 tee 113-4
- 2 tees 85-25, 88-11, 88-14
- 3 teeth 175-15
- 4 tell 42-19, 96-19, 99-25, 100-8, 116-6,
- 5 119-14, 122-24, 127-1, 130-5, 152-14,
- 6 153-16, 162-14, 176-19, 178-4, 198-18
- 7 telling 165-14, 210-13
- 8 temptation 139-19
- 9 ten 81-3, 194-5
- 10 tenants 99-18, 139-19
- 11 tend 7-24
- 12 term 50-18
- 13 terms 29-15, 122-23, 208-8, 209-13, 210-1,
- 14 210-14
- 15 Territo 5-2
- 16 test 88-8
- 17 Testament 141-5
- 18 testified 30-17, 31-4, 32-22, 38-11, 38-14, 42-7,
- 19 44-9, 49-11, 54-9, 144-17, 158-4, 171-6,
- 20 172-15, 181-5, 200-18
- 21 testify 42-18
- 22 testifying 6-25, 117-9
- 23 testimony 11-5, 24-15, 27-1, 27-6, 28-6, 33-1,
- 24 36-12, 40-10, 51-7, 83-20, 84-22, 86-3,
- 25 86-9, 88-17, 119-18, 213-21

- 1 taking 18-19, 46-25, 140-24, 148-22, 178-23,
- 2 187-2, 195-20, 207-23, 213-14
- 3 talk 21-1, 26-2, 45-23, 70-5, 87-17, 88-22,
- 4 89-7, 90-9, 95-20, 107-19, 135-17,
- 5 140-15, 144-5, 158-21, 175-7, 181-20,
- 6 205-20, 210-13, 219-22
- 7 talked 36-12, 44-18, 45-23, 81-2, 93-20,
- 8 152-18, 152-20, 161-11, 176-10, 184-19,
- 9 215-3
- 10 talking 20-15, 24-13, 53-21, 72-8, 77-19, 79-17,
- 11 80-6, 85-24, 87-19, 148-24, 151-8,
- 12 152-8, 157-3, 157-21, 160-1, 160-24,
- 13 163-24, 169-5, 169-17, 175-14, 176-16,
- 14 177-4, 182-8
- 15 talks 18-6, 148-17, 148-18, 148-19, 154-12,
- 16 160-15
- 17 Tamiami 8-20
- 18 tape 126-10, 195-12
- 19 target 143-22
- 20 tasteful 26-8
- 21 taxes 195-10, 195-24
- 22 taxpayer 195-9
- 23 taxpayers' 195-15, 196-2
- 24 technical 190-23
- 25 Ted 30-16, 30-25

- 1 text 98-7
- 2 thank 14-24, 16-10, 27-7, 28-7, 29-23, 29-24,
- 3 30-7, 32-11, 32-20, 37-25, 38-1, 38-9,
- 4 43-7, 53-13, 54-4, 54-5, 59-9, 60-7,
- 5 62-9, 66-8, 90-25, 96-7, 101-8, 102-3,
- 6 105-19, 110-12, 110-17, 110-23, 111-2,
- 7 116-16, 116-17, 116-23, 126-12, 141-13,
- 8 141-14, 145-4, 155-11, 157-25, 161-7,
- 9 162-2, 173-11, 175-1, 177-9, 177-15,
- 10 180-4, 180-23, 181-1, 187-24, 192-8,
- 11 195-4, 196-8, 197-12, 197-13, 199-23,
- 12 199-25, 214-7, 214-8, 214-10, 222-12
- 13 Thanks 30-6, 54-7, 73-5, 124-19, 187-25
- 14 theirs 40-16
- 15 theoretically 167-4
- 16 theory 208-21
- 17 there's 8-12, 11-5, 13-3, 13-11, 13-14, 14-20,
- 18 16-12, 17-24, 21-23, 21-24, 35-13,
- 19 42-24, 45-9, 47-8, 51-5, 55-23, 61-17,
- 20 61-23, 63-8, 64-11, 65-2, 69-8, 71-20,
- 21 71-21, 71-22, 73-11, 73-14, 76-25, 85-7,
- 22 85-12, 86-20, 92-19, 94-25, 99-11,
- 23 104-11, 108-10, 114-6, 128-13, 131-5,
- 24 133-7, 145-21, 154-9, 159-21, 159-22,
- 25 159-24, 160-19, 162-4, 165-3, 165-20,

1	165-22, 168-20, 178-11, 182-4, 187-22,
2	191-14, 205-13, 206-9, 207-5, 207-13,
3	210-15, 214-20, 216-17, 217-8, 220-23
4	thereby 42-16
5	therefore 18-1, 49-6, 123-7
6	therein 145-23
7	Thereupon 144-14, 158-1, 172-12, 181-2, 200-15
8	they'll 26-18
9	they're 19-1, 19-5, 25-8, 25-10, 25-15, 26-4,
10	35-24, 38-21, 40-25, 55-4, 65-14, 67-12,
11	68-4, 76-17, 77-18, 85-24, 88-5, 97-22,
12	97-25, 98-4, 100-9, 104-3, 107-13,
13	115-2, 115-18, 127-19, 130-24, 141-18,
14	145-9, 149-18, 152-8, 153-23, 155-9,
15	161-4, 165-23, 188-8, 188-9, 188-13,
16	188-21, 192-23, 194-3, 194-16, 199-8,
17	211-18, 219-15, 219-22, 221-19
18	they've 75-12, 188-20, 220-21
19	think 9-19, 10-5, 11-20, 12-5, 12-7, 13-20,
20	14-8, 14-9, 15-14, 15-25, 18-11, 19-4,
21	20-22, 20-23, 21-15, 22-7, 22-20, 23-18,
22	25-7, 25-16, 26-12, 29-5, 38-18, 40-17,
23	43-8, 43-16, 43-17, 44-13, 47-10, 47-23,
24	54-11, 61-12, 62-10, 65-8, 70-11, 70-22,
25	77-14, 79-13, 80-1, 81-16, 83-20, 85-18,

1	97-9, 98-17, 102-25, 142-25, 152-7,
2	154-2, 179-24, 187-11, 192-16
3	thought 48-14, 77-25, 89-2, 95-6, 96-19, 123-2,
4	132-9, 132-25, 133-2, 133-3, 133-4,
5	133-18, 135-10, 149-2, 149-24, 150-8,
6	163-25, 168-17, 170-24, 177-11, 199-7,
7	202-4, 213-11, 220-13
8	thoughts 206-8
9	thousand 14-16, 15-10, 15-14
10	three 9-4, 12-14, 12-22, 18-14, 18-16, 21-24,
11	35-23, 47-3, 47-14, 52-21, 55-2, 57-24,
12	61-22, 64-4, 64-6, 64-18, 66-16, 66-17,
13	67-22, 74-25, 83-2, 90-22, 97-20, 118-5,
14	123-18, 124-15, 187-1, 191-11, 191-13
15	Three-b 135-8
16	Three-d 135-7
17	three-dimensional 156-5, 156-22
18	three-page 201-6
19	threshold 155-2
20	throughout 145-7, 146-1, 175-11
21	Thursday 16-6, 76-2, 81-23, 126-21, 127-10,
22	129-23, 217-11, 217-12
23	ties 130-7
24	tight 52-3
25	time 6-9, 6-15, 6-21, 9-22, 21-13, 24-13,

1	87-16, 87-18, 89-4, 90-1, 96-1, 96-13,
2	96-18, 97-9, 97-22, 97-24, 98-18, 101-2,
3	102-23, 103-4, 103-8, 104-2, 104-10,
4	104-20, 104-23, 108-5, 109-15, 113-17,
5	114-18, 115-1, 115-16, 115-18, 115-21,
6	115-23, 116-22, 117-7, 119-15, 121-25,
7	122-1, 122-2, 123-21, 127-15, 127-19,
8	127-25, 128-6, 128-9, 129-1, 129-17,
9	130-15, 132-11, 132-16, 133-16, 135-24,
10	136-2, 136-11, 136-15, 137-20, 140-3,
11	140-6, 141-10, 143-19, 145-15, 149-17,
12	152-3, 153-21, 155-21, 157-5, 167-1,
13	167-16, 168-20, 170-1, 171-25, 172-19,
14	174-21, 176-23, 177-19, 180-9, 183-8,
15	183-20, 188-9, 197-7, 199-11, 200-5,
16	203-13, 203-24, 203-25, 204-20, 207-17,
17	211-9, 212-11, 213-13, 213-16, 213-25,
18	215-1, 215-20, 215-21, 216-23, 219-3,
19	220-14, 221-20
20	thinking 128-16, 128-17
21	third 50-12, 66-18, 173-17
22	Thirdly 112-4, 121-14
23	Thirteen 125-7
24	Thirty-five 150-10
25	though 43-15, 52-21, 67-12, 80-9, 87-6, 95-16,

1	52-14, 52-23, 72-14, 78-2, 81-7, 83-1,
2	86-23, 88-8, 95-24, 102-16, 104-10,
3	107-4, 108-8, 108-24, 116-21, 121-14,
4	124-16, 130-11, 132-11, 133-23, 141-16,
5	146-16, 146-23, 157-4, 164-6, 171-5,
6	179-12, 182-19, 183-22, 184-1, 187-8,
7	187-16, 192-18, 194-1, 194-17, 195-3,
8	197-1, 198-21, 201-5, 202-7, 206-24,
9	210-9, 211-7, 212-9, 213-9, 213-19,
10	213-22, 214-11, 214-12, 214-17, 214-20,
11	216-8, 217-18, 218-18, 220-14
12	timed 201-4
13	times 20-5, 42-4, 44-5, 69-4, 73-3, 197-23
14	today 5-25, 6-6, 6-20, 6-24, 9-16, 9-17,
15	17-20, 49-18, 50-5, 84-24, 110-22,
16	111-3, 113-12, 121-7, 142-23, 144-9,
17	144-23, 146-2, 153-8, 153-21, 172-20,
18	172-21, 172-25, 173-21, 175-18, 176-20,
19	204-6, 209-15
20	together 33-25, 67-23, 108-4, 133-24, 188-6,
21	211-11, 217-16
22	told 24-25, 45-15, 59-14, 81-16, 95-6,
23	134-25, 138-16, 142-19, 193-3
24	Tom 145-13
25	took 212-24

1	top	12-13, 16-11, 16-17, 17-3, 17-10, 17-12,
2		98-13, 98-15, 98-22, 107-3, 147-1,
3		167-5, 173-19
4	tortoise	33-7, 35-19, 35-22, 35-23, 36-3, 135-9
5	tortoises	20-16, 33-11, 36-7, 36-8, 36-21
6	total	10-21, 12-22, 46-11, 51-19, 102-14
7	totally	203-13
8	touch	212-25
9	touchy	197-17
10	toward	161-16
11	town	46-6, 51-14, 97-24, 98-9, 98-12, 98-16,
12		98-19, 98-25, 99-4, 99-9, 99-13, 103-20,
13		103-23, 103-24, 118-17, 203-20
14	toxic	27-24
15	Trace	112-24, 115-3, 115-13
16	track	48-6, 64-17, 174-15, 174-16, 176-22,
17		213-7
18	tracks	174-1, 174-14
19	tract	8-24, 9-1, 9-3, 12-24, 20-1, 22-19,
20		22-22, 46-5, 46-24, 47-6, 47-7, 56-16,
21		56-25, 57-6, 57-7, 57-21, 57-22, 57-24,
22		57-25, 58-2, 58-4, 58-6, 58-9, 58-16,
23		58-17, 59-5, 61-10, 69-6, 76-25, 77-2,
24		77-3, 78-7, 78-9, 79-1, 79-3, 79-7,
25		79-18, 79-23, 90-11, 90-13, 90-16, 92-9,

1	treatment	80-1
2	treats	59-16
3	Trebatoski	145-7
4	tree	112-4, 185-18, 185-22
5	Treecrest	28-15
6	trees	112-9, 112-14, 114-5, 116-5, 150-24
7	Treesh	30-14, 30-16, 30-20, 30-25, 43-16
8	tricolored	37-15
9	tried	68-15, 192-16
10	triple	90-13
11	try	7-25, 52-10, 77-17, 92-13, 146-12,
12		151-13, 152-10, 156-15, 158-23, 181-16,
13		212-15, 214-22, 216-14, 219-16
14	trying	51-23, 67-17, 72-19, 80-14, 81-8, 88-10,
15		93-2, 97-17, 103-4, 104-3, 106-21,
16		107-5, 107-14, 129-7, 133-11, 141-17,
17		151-10, 171-13, 171-15, 171-23, 179-23,
18		186-10, 188-6, 189-14, 193-5, 210-23,
19		213-7, 215-18
20	tunnels	20-4
21	turn	207-1
22	turns	10-6
23	twelve	82-23, 125-4
24	twice	97-3
25	two	11-23, 13-4, 20-4, 20-6, 21-23, 21-25,

1		92-13, 92-20, 94-10, 94-15, 94-18,
2		94-19, 123-15, 123-16, 130-6, 138-18,
3		138-19, 146-20, 147-1, 151-9, 159-5,
4		159-20, 159-24, 169-11
5	tracts	9-5, 10-10, 10-17, 11-2, 11-10, 12-10,
6		36-9, 47-15, 47-18, 47-19, 55-10, 55-11,
7		55-17, 56-23, 57-1, 57-8, 57-14, 57-15,
8		59-21, 61-1, 61-3, 61-7, 61-8, 61-10,
9		61-11, 61-19, 61-20, 61-21, 62-13,
10		64-18, 66-17, 71-8, 78-6, 78-8, 78-21,
11		78-23, 123-18, 149-18
12	trade-off	207-5
13	traffic	30-13, 31-2, 31-10, 32-2, 32-4, 32-7,
14		113-2, 113-15, 121-17, 212-23
15	trafficways	183-1, 183-3, 183-7, 183-10, 183-17,
16		189-11, 196-23
17	Trail	8-20
18	transcript	129-8, 217-4, 217-5, 218-18
19	transferable	206-21
20	transport	36-22
21	transportation	31-1, 43-20, 179-5
22	trash	112-9
23	traveling	94-8, 156-24
24	treat	98-24, 103-19, 162-17
25	treated	103-20, 162-18

1		24-5, 26-21, 28-23, 36-16, 36-18, 37-2,
2		46-14, 51-11, 52-21, 55-2, 55-5, 55-11,
3		55-16, 57-22, 59-16, 59-21, 61-1, 61-7,
4		61-8, 61-11, 62-13, 65-1, 66-17, 73-14,
5		73-16, 73-22, 84-22, 89-11, 90-21, 95-1,
6		95-12, 97-3, 97-6, 97-25, 98-5, 99-3,
7		99-4, 103-1, 104-2, 104-4, 105-6, 106-6,
8		106-7, 106-24, 113-18, 114-1, 116-20,
9		118-2, 118-7, 120-16, 122-13, 124-14,
10		134-17, 139-18, 146-21, 149-22, 158-22,
11		160-1, 160-3, 161-5, 161-19, 161-20,
12		167-7, 167-19, 169-5, 169-17, 171-2,
13		176-15, 176-17, 176-18, 177-5, 182-2,
14		183-5, 187-1, 190-3, 190-4, 194-10,
15		203-1, 203-2, 212-7, 212-14, 212-25,
16		214-13, 215-13, 215-17, 215-18, 215-19,
17		217-4, 217-18, 217-19, 217-21, 217-24,
18		218-7
19	Two-d	17-12
20	two-family	99-9, 203-20, 203-21
21	two-family-house	203-19
22	two-lane	183-4, 184-10, 188-12, 189-12, 189-16
23	two-page	101-11
24	two-story	47-21, 91-4, 165-20, 167-17, 168-25,
25		169-13, 203-18

1	tying	185-24
2	type	13-10, 26-5, 37-8, 51-14, 83-21, 90-6,
3		91-6, 91-10, 91-13, 91-19, 91-21, 92-10,
4		92-13, 92-14, 92-18, 92-22, 92-25, 93-8,
5		93-9, 99-12, 116-1, 116-4, 116-5, 116-8,
6		138-2, 138-4, 138-8, 138-15, 165-2,
7		166-10, 166-22, 166-25, 168-4, 168-7,
8		168-9, 169-24, 169-25, 184-4, 188-13,
9		188-25, 190-5, 203-15, 203-19
10	types	8-6, 40-16, 154-24
11	typical	11-21, 13-5, 13-20, 22-3, 81-1, 203-18
12	typo	82-7
13	typographical	138-8
14		
15	ugly	63-9
16	Uh-huh	103-13, 186-15
17	ultimately	51-22, 178-6
18	unavoidable	8-1
19	unbuffered	114-13
20	unclear	103-10, 129-1
21	uncomfortable	171-8
22	uncommon	219-13
23	uncontroverted	209-15
24	under	10-9, 10-13, 11-1, 11-3, 11-10, 11-18,
25		12-16, 13-11, 13-22, 13-25, 14-2, 14-21,

1		119-22, 120-6, 121-14, 122-17, 122-20,
2		123-12, 131-13, 133-14, 134-21, 135-15,
3		138-7, 139-2, 160-8, 165-23, 206-25,
4		210-5
5	understood	34-25, 96-2, 100-23, 115-6, 115-18,
6		131-11
7	unfair	207-17, 213-13
8	unfortunately	19-18, 176-7
9	unhappy	15-22
10	Unidentified	17-5, 105-11, 105-19, 110-2, 170-3
11	unique	14-5
12	unit	98-22, 100-10, 100-16, 100-19, 100-20,
13		103-8, 103-16, 103-24, 177-4
14	units	8-5, 8-6, 8-7, 10-13, 10-22, 11-24,
15		45-19, 46-9, 46-14, 47-3, 47-4, 47-6,
16		47-13, 47-14, 98-1, 98-4, 98-12, 98-15,
17		100-9, 100-20, 102-14, 102-25, 104-2,
18		104-4, 119-21, 120-7, 120-8, 120-11,
19		120-12, 120-17, 120-18, 146-6, 146-7,
20		146-9, 147-1, 147-3, 148-18, 151-4,
21		151-18, 153-22, 155-1, 157-9, 159-15,
22		159-16, 159-24, 160-1, 160-4, 165-1,
23		170-20, 170-22, 170-23, 170-24, 171-1,
24		171-9, 175-9, 175-16, 176-12, 176-13,
25		176-16, 176-17, 176-18, 176-24, 177-2,

1		15-19, 18-3, 19-14, 20-3, 20-7, 20-16,
2		21-3, 22-8, 22-15, 23-2, 23-25, 36-15,
3		45-14, 47-3, 48-13, 54-12, 55-13, 76-4,
4		77-10, 85-1, 91-3, 95-12, 118-9, 118-17,
5		118-20, 118-25, 119-19, 122-2, 123-8,
6		126-6, 129-11, 129-15, 130-6, 135-18,
7		141-5, 174-16, 207-16, 209-18
8	underdrains	85-25, 88-13, 142-11, 142-14, 142-16
9	underline	217-1
10	underlines	98-7
11	underpasses	33-7
12	understand	10-9, 19-10, 19-15, 24-21, 26-4, 33-13,
13		39-10, 39-11, 39-25, 40-10, 58-24,
14		59-20, 66-7, 79-8, 79-10, 80-2, 80-16,
15		86-9, 87-6, 94-2, 100-24, 104-13,
16		109-14, 114-19, 115-14, 115-24, 117-17,
17		119-25, 120-14, 123-22, 123-25, 126-6,
18		127-18, 128-2, 128-25, 129-11, 129-15,
19		130-6, 131-25, 137-21, 138-14, 139-16,
20		140-10, 140-13, 141-17, 149-8, 154-17,
21		157-2, 170-7, 198-22, 206-18, 215-6,
22		219-17
23	understanding	11-19, 12-3, 17-17, 19-22, 20-15, 46-18,
24		60-10, 67-9, 71-10, 71-19, 87-13, 89-4,
25		89-17, 96-22, 117-19, 118-9, 118-18,

1		177-5, 177-7, 201-11, 201-23, 204-12,
2		213-12, 213-22
3	Unity	188-1
4	unless	18-8, 18-16, 20-8, 43-17, 53-4, 60-21,
5		65-21
6	unlucky	143-22
7	unnecessarily	107-18
8	unpersuasive	203-13
9	unquote	205-23
10	unrelated	62-24
11	unresolved	32-4, 37-18, 219-14
12	unspecified	12-23
13	unsupported	205-11
14	until	5-16, 5-22, 20-23, 27-1, 46-3, 70-12,
15		81-2, 93-10, 105-24, 109-9, 115-16,
16		126-8, 170-21, 176-9, 187-3, 199-12,
17		205-5, 211-22, 212-13, 213-9, 218-12,
18		218-18
19	unusual	19-12
20	update	91-24, 92-3, 221-4
21	updated	91-25, 183-2, 183-3
22	updates	92-5
23	upland	20-1, 20-11, 35-5, 35-7, 36-16
24	upon	111-15, 141-3, 163-11, 168-16, 209-4,
25		210-6, 214-25, 220-15

1	upper	22-9
2	upset	108-18
3	upstairs	173-17
4	use	7-19, 7-22, 8-4, 8-11, 8-23, 11-7, 11-9,
5		11-14, 12-8, 13-10, 14-3, 14-6, 15-2,
6		15-6, 22-23, 26-5, 26-11, 28-4, 44-4,
7		47-12, 48-15, 50-18, 54-14, 54-25, 55-3,
8		57-3, 59-19, 62-4, 63-19, 64-3, 64-23,
9		74-5, 75-13, 81-22, 83-4, 113-13,
10		114-12, 115-20, 117-12, 117-13, 118-3,
11		118-10, 118-18, 118-24, 122-4, 122-17,
12		124-14, 126-7, 127-17, 127-25, 128-13,
13		138-20, 144-22, 147-2, 154-25, 159-13,
14		167-25, 168-1, 197-3, 199-2, 199-17,
15		199-18, 199-19, 202-11, 202-15, 207-20,
16		208-18, 218-4
17	used	40-9, 88-3, 88-4, 112-21, 126-10, 147-3
18	useful	111-9
19	user	29-4
20	uses	8-10, 10-9, 10-12, 11-3, 12-21, 13-1,
21		14-20, 15-5, 17-18, 45-14, 45-16, 48-11,
22		55-6, 55-7, 55-9, 55-12, 64-19, 67-10,
23		67-17, 68-5, 76-13, 78-5, 78-20, 78-21,
24		78-25, 79-2, 79-24, 80-2, 81-19, 81-21,
25		123-5, 129-19, 129-21, 130-8, 149-9,

1	verification	221-24
2	verified	111-15
3	verify	40-19, 40-21
4	version	215-14, 215-15
5	versions	215-13
6	versus	121-15, 159-4, 159-5, 159-21, 164-17,
7		165-1, 210-8
8	very	8-19, 10-13, 11-2, 11-5, 11-9, 12-13,
9		16-11, 23-25, 24-18, 26-4, 28-7, 29-24,
10		31-7, 35-16, 50-18, 51-20, 62-22, 70-8,
11		85-24, 88-5, 88-16, 104-25, 107-25,
12		109-24, 111-1, 111-2, 111-25, 114-6,
13		135-17, 143-14, 149-23, 151-12, 156-15,
14		160-22, 167-13, 167-14, 187-14, 192-20,
15		200-7, 201-15, 201-20, 207-3, 213-9,
16		215-23, 219-25
17	vibrations	111-21
18	vigorously	209-6
19	Village	184-12, 198-4, 198-18
20	Villages	49-22, 50-3, 50-7
21	Vines	8-22, 22-13, 24-16, 39-18, 40-12, 40-14,
22		40-19, 41-4, 42-15, 47-17, 47-20, 55-8,
23		90-14, 91-7, 93-1, 105-13, 110-18,
24		111-22, 112-17, 112-25, 113-25, 120-3,
25		120-16, 121-7, 121-13, 122-6, 149-6,

1		149-11, 149-17, 149-19, 150-2, 151-23,
2		154-24, 167-22, 196-21, 221-16
3	using	106-24, 117-21, 121-17, 207-19
4	usual	201-24
5	usually	56-3, 208-13
6	utilities	39-2
7	utterly	207-24
8		
9	Vacant	202-13, 202-14
10	vacuum	218-24
11	vague	152-9
12	validity	32-1
13	value	178-15, 179-8, 193-22, 193-24, 195-1,
14		208-7, 208-20, 209-6
15	valued	207-14
16	valuing	208-17
17	variance	65-8
18	various	8-5, 25-17, 33-16, 34-2, 71-3, 161-12,
19		161-13
20	vegetated	203-15
21	vegetation	37-9, 41-14, 44-23, 152-15, 152-16,
22		152-23
23	vehicle	25-24, 99-1
24	vehicles	23-3, 102-12, 102-13
25	verbatim	19-21

1		149-9, 159-3, 159-6, 159-14, 159-21,
2		161-12, 161-13, 161-16, 164-25, 167-4,
3		170-6, 170-10, 175-15, 175-17, 175-24,
4		176-15, 204-15
5	Vintage	112-24, 115-3, 115-13
6	virtue	178-12
7	visibility	102-17, 202-8
8	visual	36-25
9	visualize	151-10, 155-3
10		
11	wait	5-15, 5-22, 70-12, 73-12, 134-5, 162-24
12	waits	212-13
13	Walgreens	78-4, 78-18, 78-22
14	walk	35-16, 114-13, 117-7, 181-17, 184-5,
15		184-6
16	wall	116-4, 166-12, 166-15, 166-21, 167-5,
17		184-22, 203-16
18	Walter	176-19
19	wandering	145-12
20	want	6-9, 6-10, 14-15, 14-17, 15-3, 23-10,
21		25-21, 26-23, 26-25, 27-2, 27-9, 27-21,
22		28-23, 33-19, 38-17, 40-19, 43-3, 47-2,
23		58-15, 70-19, 74-22, 78-11, 78-15,
24		78-16, 78-17, 79-5, 79-11, 80-7, 80-10,
25		81-9, 82-8, 88-22, 90-7, 91-15, 100-4,

1	100-16, 100-18, 102-1, 104-14, 104-25,
2	105-17, 105-21, 107-18, 108-17, 112-11,
3	127-2, 128-18, 132-2, 140-11, 140-16,
4	156-24, 157-2, 159-1, 160-21, 169-6,
5	169-18, 169-20, 172-18, 172-20, 174-10,
6	174-11, 182-16, 183-23, 185-1, 185-22,
7	186-1, 189-3, 197-14, 199-17, 200-12,
8	203-1, 207-25, 208-15, 209-17, 210-10,
9	211-18, 212-17, 213-2, 215-5, 216-18,
10	216-21, 217-5, 217-15, 219-19, 220-1
11 wanted	18-25, 80-14, 96-2, 105-3, 111-17,
12	146-25, 147-3, 172-23, 174-22, 175-7,
13	177-25, 178-4, 190-25, 200-23, 206-24,
14	213-12
15 wants	44-25, 70-8, 186-17, 215-25
16 water	37-10, 40-4, 40-6, 40-21, 52-5, 95-22,
17	111-14, 142-15, 142-17, 154-10, 174-18,
18	180-12, 190-18
19 way	5-7, 6-5, 9-23, 11-19, 20-25, 26-23,
20	29-20, 30-13, 31-15, 32-1, 36-10, 41-12,
21	42-20, 51-5, 61-17, 61-25, 64-11, 65-15,
22	68-10, 79-4, 85-12, 89-20, 94-16, 99-13,
23	100-23, 100-25, 102-24, 102-25, 103-11,
24	104-16, 116-2, 116-3, 116-9, 119-12,
25	128-10, 140-4, 148-10, 148-23, 149-12,

1	82-19, 85-24, 87-19, 93-7, 95-20, 96-20,
2	105-12, 105-24, 106-21, 108-7, 110-19,
3	111-25, 112-1, 113-25, 114-5, 115-9,
4	117-3, 125-16, 127-22, 129-6, 129-10,
5	134-6, 136-16, 137-6, 140-13, 142-3,
6	151-7, 157-3, 157-21, 160-1, 162-14,
7	163-24, 169-5, 169-16, 172-24, 175-13,
8	176-16, 177-4, 177-16, 177-20, 178-24,
9	179-11, 181-12, 184-10, 185-23, 186-2,
10	187-6, 187-7, 189-3, 189-5, 195-6,
11	196-7, 200-4, 203-14, 203-21, 203-22,
12	205-15, 206-12, 207-24, 208-3, 209-5,
13	210-13, 210-24, 211-6, 214-6, 219-21
14 Wednesday	211-12, 214-14, 214-15
15 week	211-22, 218-16
16 week's	218-15
17 weekends	81-3
18 weeks	110-25, 217-4, 217-18, 217-19, 217-21,
19	217-24, 218-7
20 weight	61-17
21 weird	189-23
22 welcome	28-8, 29-25, 54-6, 105-18, 111-4
23 welfare	157-16, 178-9
24 well	8-19, 14-9, 16-23, 19-8, 19-10, 20-17,
25	35-8, 36-1, 36-4, 36-25, 37-4, 37-7,

1	151-18, 165-6, 174-16, 175-21, 178-19,
2	187-9, 195-15, 196-1, 205-7, 208-6,
3	210-24, 212-4, 212-6, 212-7, 216-22,
4	221-14
5 ways	42-11
6 we'd	19-7, 94-18
7 we'll	5-9, 6-23, 7-25, 9-16, 9-21, 15-16,
8	19-8, 26-2, 26-19, 27-5, 41-18, 43-13,
9	43-22, 56-14, 69-18, 69-22, 70-4, 70-12,
10	75-21, 80-21, 81-11, 81-12, 82-4, 93-14,
11	104-8, 104-10, 105-16, 105-22, 109-20,
12	118-3, 118-18, 121-22, 130-5, 130-20,
13	133-21, 133-22, 134-5, 135-17, 141-9,
14	141-10, 141-25, 144-5, 144-6, 155-25,
15	157-8, 207-25, 208-13, 208-23, 209-17,
16	211-5, 212-14, 217-20, 218-24, 218-25,
17	219-1, 219-16, 219-23
18 we're	5-2, 6-24, 7-14, 7-15, 8-17, 9-16,
19	10-21, 12-25, 13-8, 13-9, 13-19, 14-13,
20	15-22, 17-16, 18-9, 20-15, 21-10, 23-8,
21	23-15, 26-24, 29-7, 29-18, 30-10, 42-19,
22	46-24, 48-18, 50-10, 51-8, 52-2, 52-7,
23	53-21, 54-22, 54-23, 60-14, 60-23,
24	63-15, 64-4, 69-14, 69-15, 70-1, 71-5,
25	71-22, 75-7, 76-21, 79-17, 80-6, 80-8,

1	38-7, 41-10, 42-3, 51-20, 60-6, 63-7,
2	68-4, 70-12, 73-9, 77-15, 80-21, 87-6,
3	87-16, 89-2, 93-14, 105-2, 107-24,
4	122-21, 132-20, 134-4, 144-24, 151-3,
5	154-17, 155-18, 158-14, 159-23, 162-16,
6	164-8, 164-15, 165-6, 165-22, 168-1,
7	173-22, 173-25, 176-10, 181-12, 181-17,
8	189-8, 191-18, 192-12, 193-3, 194-24,
9	197-16, 204-10, 206-5, 206-19, 207-4,
10	210-12, 213-16, 216-20, 217-14, 220-14,
11	222-7
12 west	10-16, 10-23, 35-10, 46-4, 46-8, 46-15,
13	47-7, 94-19, 188-1, 198-14
14 western	35-20, 51-20, 138-13
15 wet	20-12, 40-4
16 wetland	20-2, 35-5, 35-7, 37-2
17 wetlands	118-11, 118-12, 137-1
18 whatever	5-12, 38-18, 53-3, 55-9, 66-13, 67-14,
19	67-25, 87-3, 115-15, 121-8, 124-23,
20	156-25, 163-8, 168-12, 209-16, 210-16,
21	217-2, 219-4, 219-20, 221-3, 221-6,
22	222-6
23 whereby	147-12
24 Whereupon	7-6, 27-11, 28-11, 30-8, 30-16, 32-21,
25	34-13, 38-10, 44-8, 48-22, 49-10, 53-8,

1	78-19, 79-7, 79-9, 79-10, 80-9, 80-15,
2	81-8, 81-9, 83-20, 87-22, 93-4, 96-11,
3	98-8, 99-3, 100-6, 100-13, 102-8, 103-2,
4	104-6, 105-5, 105-17, 106-20, 111-4,
5	115-11, 116-8, 128-3, 128-22, 132-17,
6	136-4, 136-6, 139-7, 146-14, 148-24,
7	153-24, 157-11, 160-11, 160-24, 163-20,
8	165-9, 165-14, 167-20, 191-15, 193-8,
9	197-19, 198-10, 205-18, 209-11, 215-18,
10	217-16, 217-23, 219-17
11 yourselves	85-10, 116-22
12	
13 zero	118-14
14 zone	207-12
15 zoned	50-6, 50-21
16 zoning	7-19, 7-21, 8-2, 25-13, 44-4, 50-4,
17	50-21, 50-24, 51-18, 52-22, 53-11,
18	55-24, 57-12, 58-11, 63-7, 63-16, 71-25,
19	92-20, 178-3, 178-6, 181-8, 195-7
20	
21	
22	
23	
24	
25	

1	54-8, 60-8, 63-21, 72-4, 73-20, 74-2,
2	84-10, 97-12, 102-4, 106-3, 106-17,
3	110-7, 116-24, 117-1, 121-2, 137-17,
4	143-6, 148-5, 158-19, 159-10, 161-25,
5	173-12, 182-12, 183-18, 189-9, 191-6,
6	222-13
7 wherever	14-15, 69-23, 75-16, 76-7
8 whether	13-4, 13-23, 13-24, 20-19, 23-17, 31-21,
9	33-14, 48-14, 54-12, 67-15, 69-10,
10	69-14, 70-6, 71-6, 71-9, 75-17, 76-8,
11	76-12, 81-21, 86-20, 93-3, 109-6,
12	114-15, 114-16, 124-14, 130-10, 131-6,
13	133-13, 138-4, 186-18, 209-2
14 whichever	25-2
15 while	21-4, 43-4, 141-25, 201-21
16 who's	218-15
17 whole	47-2, 51-7, 75-15, 93-5, 130-16, 160-25,
18	184-6, 216-18, 216-21, 216-24
19 wide	160-21, 160-22, 167-12, 169-24, 170-4,
20	189-22
21 wider	44-22
22 width	14-12, 118-21, 118-23, 118-25, 119-8
23 wife	100-3
24 wildlife	20-3, 20-6, 36-13, 36-14, 36-20, 36-22,
25	37-13

1	144-16, 158-3, 172-7, 172-14, 181-4,
2	197-18, 200-17
3 witnesses	7-6, 136-9
4 wonderful	87-10
5 wondering	85-9
6 wood	37-14
7 woods	114-5, 186-8
8 Word	215-22
9 wording	96-23, 215-17, 219-12
10 words	11-24, 12-8, 13-19, 14-19, 79-22, 93-6,
11	156-5, 171-13, 171-23, 198-7
12 work	6-24, 18-24, 19-1, 24-19, 29-7, 29-18,
13	33-10, 44-16, 51-5, 51-21, 52-9, 52-16,
14	53-1, 104-8, 104-9, 104-19, 112-6,
15	116-21, 120-20, 120-22, 132-12, 140-14,
16	140-16, 141-2, 148-11, 148-12, 152-8,
17	181-16, 194-6, 205-17, 207-15, 209-23,
18	210-17, 212-11, 215-5, 215-7, 217-15,
19	217-17, 218-13, 219-2, 219-11, 219-24
20 worked	36-13, 54-13, 54-17, 75-24, 119-12,
21	152-2, 207-3, 208-24, 213-6
22 working	19-17, 44-20, 126-12, 141-18, 163-20,
23	209-25, 214-9, 219-1
24 works	5-7
25 world	206-22

1 Williams	73-15, 75-6, 188-5, 188-16, 188-17
2 willing	21-8, 52-1, 86-12, 95-20, 207-15,
3	208-16, 208-19, 210-13, 210-15, 219-21
4 win	135-16
5 wind	42-4
6 winning	26-7
7 wins	144-8
8 wise	195-14, 197-8
9 wiser	196-1
10 wish	209-10, 220-21
11 withdraw	23-1
12 withdrawing	95-7
13 withdrawn	9-11, 9-14, 23-22, 95-14
14 withdrew	95-24, 201-8
15 within	8-4, 8-8, 12-22, 13-2, 14-3, 15-1, 15-2,
16	15-6, 16-1, 20-12, 22-13, 39-23, 40-6,
17	47-15, 51-19, 81-18, 90-14, 90-21,
18	113-19, 119-22, 120-7, 120-15, 121-13,
19	123-4, 127-18, 128-5, 128-11, 128-19,
20	129-18, 131-5, 131-10, 131-13, 131-18,
21	131-22, 132-17, 150-9, 150-10, 161-12,
22	161-15, 165-11, 167-19, 169-11, 179-15,
23	179-19, 187-13, 194-10, 202-20, 203-21,
24	204-10, 206-13, 206-14
25 witness	5-20, 44-3, 49-17, 105-7, 105-11,

1 worry	7-3
2 worst	83-3
3 write	209-11
4 writing	137-23
5 written	18-15, 28-17, 70-17, 89-20, 94-16,
6	103-12, 148-24, 214-1, 222-1, 222-11
7 wrong	15-8, 100-8, 101-19, 124-25, 150-11,
8	165-20, 218-5
9 wrote	111-5, 170-23, 206-20
10	
11 yard	170-13
12 year	50-12, 181-8, 181-23, 183-25, 203-25
13 years	51-5, 187-1, 192-14, 192-20, 194-5,
14	207-4
15 yellow	174-13
16 yesterday	101-10, 108-15, 109-9, 146-10, 201-3,
17	213-12, 214-2
18 yet	23-5, 41-21, 41-23, 95-18, 95-21, 108-7,
19	153-22, 212-9, 218-15
20 you'd	195-22
21 you're	6-11, 7-3, 17-10, 28-8, 29-25, 32-15,
22	51-6, 54-6, 58-2, 59-5, 61-20, 61-24,
23	61-25, 62-8, 64-25, 65-9, 65-17, 65-19,
24	65-20, 65-21, 67-1, 67-21, 70-7, 70-9,
25	70-15, 72-7, 72-13, 73-7, 75-5, 78-13,