



Transcripts for Case #

DCI2005-00055

LEE COUNTY HEARING EXAMINER MEETING

RE: DCI2005-00055

IN RE: Athyrio Development Associates, LLC in
ref. to Diplomat Property RPD/CPD

VOLUME I

Transcript of Proceedings

Before Diana Parker, Lee County Chief Hearing
Examiner, held at the Hearing Examiner's Hearing
Room, 1500 Monroe Street, Fort Myers, Florida, on
January 12, 2006.

PRESENT:

Tony Palermo, Senior Planner
Donna Marie Collins, Assistant County Attorney
Kim Trebatoski, Environmental Sciences
Neale Montgomery, Attorney for the Applicant

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1 HEARING EXAMINER: Good afternoon. I'm Diana
2 Parker, Chief Hearing Examiner for Lee County. This is
3 Thursday, January 12th, Case No. DCI2005-00055, Athyrio --
4 how do you pronounce that?

5 MR. JIM KINSEY: Athyrio.

6 HEARING EXAMINER: Athyrio. I do real good with
7 Smith and Jones.

8 Athyrio Development Associates in reference to
9 Diplomat Property RPD/CPD.

10 Before we get started, the County Attorney has a
11 few comments to make about the process.

12 MS. COLLINS: Good afternoon everyone.

13 My name is Donna Marie Collins. I'm an Assistant
14 County Attorney. I represent the Board of County
15 Commissioners. I'm here today to assist the Hearing
16 Examiner, staff and the applicant to ensure that the
17 record is complete.

18 If you'd like to participate in this afternoon's
19 hearing, we ask that you fill out a white form that's
20 located on this brown table over here. It will ask you
21 basic information regarding your name, address and phone
22 number. This will ensure that you will receive a copy of
23 the Hearing Examiner's recommendation after the proceeding
24 today, and you'll also be notified of the final Board
25 hearing on this case when it ultimately goes before the

1 Board of County Commissioners for a final decision.

2 At the conclusion of staff's presentation --
3 first we'll hear from the applicant and then County staff
4 will make a presentation. The Hearing Examiner will open
5 up the floor for public participation. It is at that time
6 that it's appropriate for you to come to the podium, ask
7 any questions you may have of staff or the applicant and
8 to state your concerns regarding this application to the
9 Hearing Examiner.

10 Prior to that time, it is not appropriate for you
11 to ask questions, raise your hand or speak out. However,
12 at public participation time, you can come up here and
13 your time will not be limited. You can speak as long as
14 you'd like about any number of issues pertaining to this
15 application this afternoon.

16 As I mentioned earlier, the Hearing Examiner's
17 recommendation in this case is not the final disposition
18 on the matter. It will be scheduled before the Board of
19 County Commissioners.

20 However, the record for that case is created
21 here, and at the Board hearing you will not be able to
22 introduce additional testimony or new evidence that wasn't
23 already discussed in this form here below.

24 If you'd like an opportunity to speak before the
25 Board of County Commissioners, you must participate today

1 before the Hearing Examiner so that you will be made a
2 party of record.

3 I'd like to take a moment and introduce you to
4 the folks sitting around the table here. Directly to my
5 right is Tony Palermo and Kim Trebatoski. They are the
6 County planners that were assigned to evaluate the request
7 this afternoon. They have prepared a Staff Report that is
8 now in the record and has already been reviewed by the
9 Hearing Examiner. Some of you may have a copy of that
10 report. We have the court reporter and Hearing Examiner,
11 her name is Diana Parker. You may refer to her as Madam
12 Hearing Examiner. We have Neale Montgomery and Jon
13 Hagan, they are the applicant's representatives. They
14 will be presenting the request on behalf of the
15 applicant.

16 And unless there's any questions regarding
17 procedure, I'm going to take my seat at this time and
18 allow the Hearing Examiner to start the hearing.

19 Thank you.

20 HEARING EXAMINER: All right. Folks, let me do
21 make a couple of extra statements here. If this hearing
22 runs longer than two hours, we will be stopping to take a
23 break. The court reporter cannot unfocus while we are
24 taking the testimony and whatnot, she must remain focused,
25 give her a chance to relax a little bit, stretch, give

1 everybody else a chance to get out of those hard chairs
2 because they are not comfortable after a while I know.

3 All I ask is that if you do leave the room and
4 come back in, please only bring water in this room. No
5 Coke, no sodas. No sodas, no coffee. Okay. Water only
6 in this room.

7 Now, when you come up to make your comments at
8 the end of the proceeding, please keep your comments
9 germane to the issue at hand.

10 It doesn't make any difference to me. I have no
11 authority over neighborhood disputes, whether you like or
12 dislike the developer, whether you like or dislike the old
13 property owner or the new property owner. My concern is
14 what you feel is going to happen to you, your property or
15 your community if this request is approved as staff has
16 recommended.

17 Okay. That's what I need to know. Those are the
18 things I can address. Neighborhood disputes and personal
19 likes and dislikes, those are not within my authority to
20 address.

21 All right. So we will start the hearing. If
22 anyone is going to testify here today, you need to be
23 sworn in. If you're an attorney and testifying to facts,
24 you need to be sworn in as well. So at this point in time
25 if you are testifying in this hearing this afternoon,

1 please raise your right hand.

2 (The witnesses were sworn.)

3 HEARING EXAMINER: All right. Now, if I have not
4 sworn you in and you feel the burning desire to speak
5 after hearing staff and applicant's presentation, let me
6 know when you come up to the podium, okay, because I can
7 swear you in at that time. So I do need to have your
8 testimony sworn for the record.

9 Okay. Applicant ready to go forward?

10 MS. MONTGOMERY: Yes, ma'am.

11 HEARING EXAMINER: All right, let's do it.

12 MS. MONTGOMERY: We going to take one of our
13 witnesses out of order, Mr. Treesh. He has a meeting
14 upstairs at 3:00. He's already had an opportunity to talk
15 to some of the residents. We know they asked him
16 questions so he'll come back down, he'll be able to answer
17 some of those questions on the record if they still have
18 more questions.

19 Ted has testified here before. He has been
20 accepted as an expert in transportation planning in this
21 forum before. We'd ask that he be so accepted here today.

22 HEARING EXAMINER: Any objections from staff?

23 MR. PALERMO: No, ma'am.

24 HEARING EXAMINER: Do I have a transportation
25 planner here?

1 MR. PALERMO: Andy is probably watching this on
2 television.

3 HEARING EXAMINER: All right. No objections from
4 staff, then I'll accept him as an expert in transportation
5 planning.

6 Thereupon,

7 TED TREESH,
8 called as a witness by the Applicant, having been
9 previously duly sworn, was examined and testified as
10 follows:

11 MR. TREESH: Good afternoon.

12 For the record, Ted Treesh with Metro
13 Transportation Group. I thank you for allowing me to go
14 out of order. I have a meeting upstairs, but I will be
15 back for the public input portion of the hearing.

16 Since I am the first one, I am going to have to
17 explain a little bit just about the site. It's located at
18 the intersection of Diplomat Parkway and US 41. The
19 exhibits on the board indicate the site location of the
20 project.

21 My TAIS that was prepared for this application
22 analyzed the development to include 462 multi-family
23 dwelling units and 200,000 square feet of commercial uses.
24 I do notice in the Staff Report that it says 468
25 multi-family dwelling units, and I would submit that the

1 difference between 462 and 468 isn't going to change any
2 of the conclusions that are contained in the Traffic
3 Impact Analysis.

4 And just for the benefit of the public, having
5 spoken to them out in the hallway prior to the hearing,
6 I'll go into a little more detailed explanation of my
7 analysis than I normally would do in this forum. But Lee
8 County requires us to take an examination of the
9 surrounding roadways that are going to be impacted by this
10 project and determine what, if any, improvements need to
11 be done and how those roadways will be operating in the
12 future when this project is anticipated to be developed.

13 There are certain criteria outlines in
14 administrative codes that are adopted by Lee County that
15 set forth the criteria for us to follow in terms of our
16 Traffic Impact Studies.

17 This isn't the only shot at the apple, so to
18 speak. There will be another traffic study done at the
19 time of the Local Development Order when the application
20 is made to actually construct something on this project,
21 on this property. And at that time, again another
22 detailed traffic study will be done looking at more
23 specific issues surrounding the property.

24 The zoning traffic study that was prepared is
25 more of a global analysis. We take kind of a step back

1 and take a bigger picture, look at the surrounding
2 roadways and their level of service and how they're
3 operating today and how they're going to be operating --
4 projected to be operating at the time this project is
5 developed.

6 So what we did is we generated trips based on the
7 Master Concept Plan that was provided to us by Banks
8 Engineering for those uses that I outlined below,
9 distributed those trips to the surrounding roadway system
10 and then completed our analysis. And what that analysis
11 showed was that there is adequate capacity on the roadways
12 that would be primarily serving this site, and that being
13 Diplomat Parkway and US 41.

14 I would note that Diplomat Parkway is currently
15 maintained by the City of Cape Coral, so that is a City of
16 Cape Coral roadway. US 41 is maintained by the Florida
17 Department of Transportation. So there are no Lee County
18 maintained roadways in the immediate vicinity of this
19 project.

20 Access to the project is shown -- I'll go to the
21 board to refer to the Master Concept Plan -- is shown in
22 three locations. Here in this location to the east, one
23 serving just only the southern portion in the center and
24 then an access on the western end serving both the north
25 and south parcels, and this eastern access would also

1 serve both the north and the south parcels. Diplomat
2 bisects the project.

3 Jon will get into the uses -- Jon Hagan from
4 Banks will get into the uses on the Master Concept Plan so
5 I won't go into that testimony right now.

6 If we look at the intersection of Diplomat and US
7 41, right now that intersection is currently unsignalized
8 and again US 41 is under the jurisdiction of the Florida
9 Department of Transportation so any future improvements or
10 signalization at that intersection would have to be
11 approved by the Florida Department of Transportation and
12 as has been noted in the traffic study and again at the
13 time of Local Development Order, the intersection will be
14 examined to determine if and indeed warrants will be met
15 for a traffic signal and there is the potential that this
16 project could pay a proportionate share of that
17 improvement.

18 The City of Cape Coral did provide in the PDP
19 application for the Antrada (ph) project that they also
20 pay a proportionate share of improvements, of future
21 signalization of that intersection and the Antrada project
22 is located I believe to our north of this site along US
23 41.

24 So with that, that really concludes the majority
25 of my testimony. I'll mention again, I'll be here to

1 address any questions raised by the public, but the
2 conclusions again are that the roadway links serving this
3 project meet the level of service standard as identified
4 in the Lee Plan specifically, and also as summarized in
5 Mr. Rentz's memo that I believe is part of the Staff
6 Report of January 6th from Lee County Development
7 Services, Diplomat Parkway will operate at level service
8 B, both with or without the project in 2010 and US 41
9 currently operates at level service B and will operate at
10 level service C in 2010 with the project which is again
11 within the adopted level of service standards as approved
12 by Lee County.

13 That really summarizes my comments at this
14 point. I'd be more than happy to answer any questions.

15 MS. MONTGOMERY: I have a couple, but let me ask
16 the Hearing Examiner a question. In the Staff Report that
17 I got, Mr. Rentz's comments hadn't come in yet and they
18 were pending, so I didn't know if you got those.

19 HEARING EXAMINER: I did not. They were not
20 forwarded to me so I have not seen those.

21 MS. MONTGOMERY: I'll give you my copy.

22 HEARING EXAMINER: Okay. Thank you.

23 MS. MONTGOMERY: Those were the comments that Mr.
24 Treesh just read.

25 Mr. Treesh, your TIS is included as Attachment I

1 to the Staff report; is that correct?

2 MR. TREESH: Yes.

3 MS. MONTGOMERY: How many access points into the
4 commercial are there? I know you went through them. I
5 just want to make sure I'm correct.

6 HEARING EXAMINER: Commercial on both sides or
7 commercial on the south?

8 MS. MONTGOMERY: Commercial on the north.

9 HEARING EXAMINER: On the north, all right.

10 MR. TREESH: Based on the Master Concept Plan
11 here, there are two access drives to the commercial on the
12 north side.

13 MS. MONTGOMERY: So individual businesses would
14 not have their own access onto Diplomat?

15 MR. TREESH: That's correct. This Master Concept
16 Plan would locate those driveway locations, and there's no
17 other driveway locations shown.

18 MS. MONTGOMERY: Okay. I don't have any other
19 questions.

20 HEARING EXAMINER: Okay. Questions of this
21 witness by staff?

22 MR. PALERMO: No.

23 HEARING EXAMINER: County Attorney.

24 MS. COLLINS: No questions of this witness.

25 HEARING EXAMINER: Okay. All right. I don't

1 have any either, Ted, thank you.

2 MR. TREESH: Okay. Thank you.

3 HEARING EXAMINER: So you can make your meeting
4 now.

5 MS. MONTGOMERY: Our next witness is Jon Hagan.
6 Jon has testified here before. He's been accepted as an
7 expert in planning and zoning, and we would ask that he be
8 so accepted here today.

9 HEARING EXAMINER: Any objections from staff?

10 MR. PALERMO: No.

11 HEARING EXAMINER: All right, accepted.

12 Thereupon,

13 JON HAGAN,
14 called as a witness by the Applicant, having been
15 previously duly sworn, was examined and testified as
16 follows:

17 MR. HAGAN: Good afternoon.

18 For the record, my name is Jon Hagan. I'm the
19 director of planning with Banks Engineering. I have been
20 sworn.

21 I'd like to start off with an overview of what
22 we're proposing here. The exhibit I have up here right
23 now is the Master Concept Plan that we have done for this
24 development. As Mr. Treesh has stated, we're on the --
25 at the intersection of US 41 and Diplomat Parkway.

1 There are two components of this development.
2 There's a residential component as well as a commercial
3 component.

4 On the portion north of Diplomat Parkway, the
5 residential component is up here with the commercial
6 component along Diplomat.

7 South of Diplomat we have a commercial component
8 at the corner as well as a residential component to the
9 south here.

10 The current zoning of the property is
11 agricultural, AG-2. We're requesting a zoning of
12 Residential Planned Development and Commercial Planned
13 Development for the areas that I just pointed out.

14 Referring back to this exhibit I have up here,
15 which is a zoning map of the surrounding area, you can see
16 our property is currently zoned agricultural or AG-2.

17 As you can see, just south of us is Merchant's
18 Crossing, which is a DRI. I believe it's one of the very
19 few DRIs in this area. I believe this was approved for
20 555,000 square feet of commercial uses.

21 To the north and along 41 you can see there is
22 some other commercial zoning districts, C1-A, and then
23 also some MH-2 to the north and west of us which is mobile
24 home building district.

25 Next I'd like to get into a discussion on Lee

1 Plan policies and objectives and tell you my opinion of
2 how we feel this development is in compliance with the Lee
3 County Comprehensive Plan.

4 The first policy I'd like to point out, and
5 referring to the last exhibit I have up here, which is the
6 future land use map, you can see the brown. All the brown
7 is the central urban land use category which we are in.
8 There's a little pink on there which is industrial
9 development land use category according to the Lee County
10 Comprehensive Plan.

11 I think it's important to know that as it states
12 in the central urban, when you read about that in the
13 Comprehensive Plan, it says this is the part of the county
14 that is already most heavily settled and which has or
15 will have the greatest range in highest levels of urban
16 services such as water, sewer, roads and schools.

17 The density range in the central urban land use
18 category has a range from four dwelling units an acre to
19 ten dwelling units with a maximum of 15 dwelling units per
20 acre with bonus density.

21 We are currently requesting 9.5 dwelling units an
22 acre, which is within the allowable density ranges of
23 central urban land use category.

24 Referring back to the aerial that I have on the
25 board here, as you can see -- as I stated we have

1 Merchant's Crossing to the south and as you can see, this
2 area of North Fort Myers is a very developed area. You
3 can see the mobile homes up here on Littleton Road as well
4 as adjacent tire site. There's commercial development to
5 the north of us as well as the Merchant's Crossing that as
6 I said was the DRI. And then down south on 41 there's
7 obviously a lot of commercial development down in that
8 area.

9 You also have some residential across the street
10 which is across US 41 which is a main arterial
11 right-of-way in Lee County.

12 And I think this aerial gives a good look at this
13 property because as you can see this is infill property.
14 And with it being infill property, we feel that higher
15 densities are appropriate here because we're close to
16 shopping, we're close to schools, we're close to
17 employment. Being infill property, which is an objective
18 of smart growth is to develop infill property, we feel
19 that the higher density of 9.5 dwelling units an acre is
20 appropriate here. And that was Policy 1.1.3 which is the
21 central urban land use category.

22 Next I'd like to talk about Objective 2.1. There
23 is existing residential and commercial development in this
24 area, and the proposed development is promoting a
25 contiguous and compact growth patterns. As I just stated,

1 we look at this as infill development. I think that's
2 really important to look at this property as infill
3 development because that is smart growth and we're
4 containing urban sprawl. We're close to shopping. We're
5 close to employment. We're close to schools.

6 We're also providing a commercial portion within
7 our development which also creates the residential portion
8 to be close to shopping and employment as well.

9 Also, there are adequate public facilities in
10 place of services development.

11 Policy 2.2.1, as you can tell from the Master
12 Concept Plan, which is my exhibit, Master Concept Plan, we
13 have direct access onto Diplomat Parkway. We have the
14 Commercial Parcel 4 which is south of Diplomat which has a
15 connection onto Diplomat here that also connects into
16 Merchant's Crossing to the south of us.

17 The residential portion south of Diplomat Parkway
18 also connects into Diplomat, and then the north
19 development just has two access connections onto Diplomat,
20 the one servicing the residential as well as the
21 commercial component. And Diplomat connects into US 41,
22 which is the main arterial right-of-way in Lee County.

23 We will connect into existing water and sewer
24 services. There will be protection provided by Lee
25 County Sheriff's Office and North Fort Myers Fire

1 District.

2 We are in close proximity to schools such as
3 Tropic Isles Elementary, Diplomat Middle School and North
4 Fort Myers High School. I believe we're all within about
5 five, five-and-a-half miles of all those schools.

6 As I said, this is infill development which is
7 promoting smart growth and containing urban sprawl.

8 Policy 4.1.1, the design of this development is
9 well integrated and functional. We are providing open
10 space buffering and native indigenous preserve. Once
11 again referring to the Master Concept Plan, the
12 cross-hatched area in the southern portion of the
13 development indicates where our native indigenous preserve
14 is.

15 Right-of-ways are in place to service the
16 development and utilities are in place to service the
17 development.

18 And the proposed development will encourage
19 pedestrian activity. The people living in the residential
20 portion will definitely use the commercial portion.
21 They'll be able to ride their bikes there or walk there
22 and different items like that.

23 Policy 5.1.2, there are no physical constraints
24 or hazards that exist. Therefore, the density and design
25 do not need to be adjusted accordingly. The requested

1 density is appropriate for this location because it is
2 infill development.

3 Policy 5.1.4, I think this is a very important
4 policy for this development, and I'd like to read that
5 one. That states "During the rezoning process, direct
6 high-density residential developments to locations that
7 are near employment and shopping centers; are close to
8 parks and schools; and are accessible to mass transit and
9 bicycle facilities."

10 This development is close to schools and
11 shopping, mass transit and employment. We'll also be
12 creating some employment with the commercial aspect of
13 this development. So, therefore, in this policy it says
14 "direct high-density residential development." We're at
15 9.5 dwelling units per acre which is at the upper end of
16 the central urban land use category but not including the
17 bonus density which goes up to 15 dwelling units an acre.
18 We feel this is appropriate at this location because it is
19 infill development which promotes smart growth.

20 Policy 5.1.5, we are requesting a Planned
21 Development, a Commercial Planned Development, Residential
22 Planned Development. Proposed uses will not be
23 destructive to the surrounding properties.

24 As I stated, to the south of our development is a
25 very intense DRI which is known as Merchant's Crossing, I

1 believe it was approved for 555,000 square feet of
2 commercial development. We're providing a nice native
3 indigenous buffer through here to protect the residential
4 aspect of our development. And, obviously, a commercial
5 parcel adjacent to commercial development is compatible.

6 To the north along Diplomat Parkway, the Master
7 Concept Plan shows three commercial parcels. We have
8 Commercial Parcel 1, Commercial Parcel 2 and Commercial
9 Parcel 3, and then north of those commercial parcels is
10 the residential portion of the development.

11 Referring to the aerial here, to our north we
12 have a mobile home park as well as to the west there's a
13 mobile home park on the north portion of our development.

14 And then to the east of us is a vacant strip of
15 land which is currently zoned AG-2, which is right here on
16 the future land use map right in here (indicating). No,
17 I'm sorry, the zoning map which is right here
18 (indicating).

19 This is currently zoned AG-2, but definitely in
20 the future this will eventually, we feel, be zoned some
21 kind of commercial development there.

22 And when you look at destructive or --
23 destructive kind of uses against existing developments,
24 you look at different things like light. We're not going
25 to have any light trespass. The Land Development Code

1 ensures that there's not going to be any light trespass
2 off of our property.

3 We also look at noise. The intent and the
4 schedule of uses -- the intent is for this Commercial
5 Parcel 1 and Commercial Parcel 2, as well as a portion of
6 Commercial Parcel 3 is going to be developed with
7 non-intense, non-retail uses. And you also look at --
8 you're looking at something that is not going to be open
9 till ten or eleven o'clock at night. It's going to be a
10 non-intense, non-retail use.

11 And then you also look at where we've located the
12 amenity center, which is in the center of our development,
13 far away from any of the surrounding residential
14 developments.

15 Another aspect we look at is traffic. All our
16 traffic is going to be brought out onto Diplomat Parkway.
17 Currently, if you look to the two mobile home parks to the
18 north and west of us, they don't have access on to
19 Diplomat Parkway. Their access is up here on Littleton
20 Road.

21 So we're not proposing any kind of
22 interconnections or anything like that. We're not going
23 to try and put traffic into their developments. All our
24 traffic is coming on to Diplomat Parkway and we have
25 limited our access points on to Diplomat Parkway.

1 There's also some conditions in the Staff Report
2 regarding buffers. We are providing those buffers and we
3 feel that with the buffers and with non-destructive uses
4 to the existing adjacent properties, we feel that we are
5 compatible with a density of 9.5 dwelling units per acre.

6 Policy 139.9.5, adequate buffers are being
7 provided adjacent to the existing residential
8 neighborhoods. This development will improve the area's
9 character. Intense commercial uses are limited to Parcels
10 3 and 4.

11 As I say, referring to the Master Concept Plan
12 again, really the intense commercial uses are going to be
13 on Parcel 4, which is at the corner, as well as a portion
14 of Parcel 3, the easterly portion of Parcel 3 which is
15 towards the corner of the intersection of US 41 and
16 Diplomat where we're proposing less intense commercial,
17 non-retail type uses on Parcel 1, 2 and a portion of
18 Parcel 3.

19 Standard 11.1, the development will connect into
20 an existing public water system provided by Lee County
21 utilities.

22 Standard 11.2, the development will connect into
23 an existing sewer system provided by North Fort Myers
24 utilities.

25 Standard 11.3, an existing road network is in

1 place and will operate at an acceptable level of service.

2 Standard 11.4, we're providing buffering, open
3 space and a native indigenous preserve.

4 Policy 24.1.1, this development will have
5 adequate on-site parking and has access to an existing
6 road system which is Diplomat Parkway which connects into
7 US 41.

8 Policy 6.1.2, as stated in the Staff Report,
9 Commercial Parcel 4 meets site location standards which is
10 south of Diplomat, it meets site location standards to
11 have retail uses because it has a connection into Diplomat
12 as well as into the Merchant's Crossing which has access
13 on to US 41.

14 The Staff Report also mentioned about Parcel 3
15 not having a connection on to US 41, so they were going to
16 limit no retail uses there, but we would suggest that
17 if -- a condition be provided that if access can be
18 obtained to US 41 that the retail uses may be developed on
19 that portion, because that, too, would meet site location
20 standards.

21 Policy 6.1.3 and 6.1.5, the commercial parcels
22 have limited access points on to Diplomat Parkway and will
23 provide interconnectivity. As you can see on the
24 commercial north of Diplomat three parcels, two
25 connections. By only showing these two connections, not

1 only are there connection separation requirements in the
2 Land Development Code, but we're just showing the two
3 connections and then it will provide interconnectivity
4 through these parcels.

5 Also, the west parcel or west access between
6 Commercial Parcels 1 and 2 also provides access to the
7 residential portion, so it will provide access to the
8 residential portion as well as the commercial portions of
9 the development. We did this in order to limit the number
10 of accesses on Diplomat Parkway.

11 And as you can see, the Commercial Parcel 4 only
12 has one access on to Diplomat Parkway which lines up with
13 the one across the street and then it also connects down
14 into Merchant's Crossing.

15 The commercial portion of this development will
16 provide pedestrian and bicycle interconnectivity as well
17 as residents of the Residential Planned Development will
18 be able to walk to the commercial areas.

19 Commercial Parcels 1, 2 and a portion of 3, in
20 Policy 6.1.4, those parcels will contain less intense,
21 non-retail uses. Intense uses will be limited to a
22 portion of Parcel 3 and Parcel 4. And adequate buffering
23 in the less intense uses on certain commercial parcels
24 make it compatible with the surrounding development.

25 Policy 6.1.6, the Land Development Code requires

1 architectural standards for commercial development, and
2 any buildings in the commercial parcels will be subject to
3 those standards.

4 HEARING EXAMINER: Jon, slow down a little bit.
5 You're getting faster and faster and poor Bert is over
6 here doing like this (indicating).

7 MR. HAGAN: I apologize. I'm not as fast as
8 Tony, though, am I?

9 HEARING EXAMINER: I don't know. I haven't heard
10 Tony go real fast.

11 MR. HAGAN: Policy 6.1.6 --

12 HEARING EXAMINER: That's better.

13 MR. HAGAN: Now you're going to make me
14 self-conscious.

15 As I stated, the Land Development Code requires
16 architectural standards for commercial development. Any
17 buildings in the commercial parcels will be subject to
18 those standards.

19 Commercial Parcels 1, 2 and 3, I'd like to talk
20 about those three a little bit.

21 On Commercial Parcels 1, 2 and 3, which referring
22 to the Master Concept Plan, these are the parcels north of
23 Diplomat Parkway, we're providing right-of-way buffers
24 alone US 41, as well as along Diplomat Parkway. We're
25 also providing buffers on the north portion of the

1 property as well as the west portion of the property.
2 These commercial parcels will also have to contain open
3 space.

4 And the same goes for Commercial Parcel 4, a
5 buffer will be planted along US 41, as well as Diplomat
6 Parkway. Open space will be provided as well as a large
7 native indigenous preserve which is provided in the parcel
8 of the development.

9 Next I'd like to get into Policy 6.1.7 which we
10 have some disagreement on with staff. In the Staff
11 Report, and I'll get into the Staff Report here in a
12 little bit, but the Staff Report is suggesting, referring
13 back to the Master Concept Plan, that Parcel 1, Parcel 2
14 and two acres of Parcel 3, the westerly two acres of
15 Parcel 3, not be rezoned to Commercial Planned Development
16 but be rezoned to Residential Planned Development.

17 And we are in disagreement with that. And it
18 seems that the Staff Report talks about Policy 6.1.7,
19 which I'll read into the record. The policy states,
20 "Prohibit commercial developments from locating in such a
21 way as to open new areas to premature, scattered, or strip
22 development; but permit commercial development to infill
23 on small parcels in areas where existing commercial
24 development would make a residential use clearly
25 unreasonable."

1 This is not a new area. This is an existing
2 developed area that is surrounding our property.

3 As I stated, with the Merchant's Crossing to the
4 south of the us, we're continuing that commercial
5 component to the north on our Commercial Parcel 4 and then
6 as well as across the street along Diplomat Parkway which
7 is appropriate for commercial uses.

8 We feel that the commercial component is not
9 premature, scattered or strip development. Commercial
10 development is appropriate for the areas we are proposing
11 it in since it is along Diplomat Parkway.

12 It's also important to note, I talked about the
13 central urban land use category, and this is a very
14 intense land use category that not only allows commercial
15 development, but it allows residential development and
16 some light industrial development as long as you're in
17 compliance with some additional policies of the
18 Comprehensive Plan.

19 I'd also like to, back referring to the Master
20 Concept Plan, when our first plan came in -- as I stated,
21 all the native indigenous is located in the south of the
22 development here.

23 When our plan first came in, we were providing
24 some native indigenous preserve on the north property.
25 However, going through sufficiency with environmental

1 sciences, they preferred that we put all the native
2 indigenous on the south parcel because it would connect
3 into a nice preserve that's to the south of us, and they
4 would like to have it all down there to have one large
5 connected native indigenous area.

6 In doing that, it really limited our residential
7 tract on this southern -- the residential tract south of
8 Diplomat Parkway. So when you look at that residential
9 south of Diplomat Parkway, because -- commercial along
10 Diplomat is appropriate, it's a four lane -- it's an
11 existing four lane right-of-way. But having this
12 residential tract and having the site constraints that it
13 has, it just doesn't make sense to try and do a commercial
14 component here because we really can't connect it into
15 anything over here, whereas on the north pieces we're
16 connecting it all in to eliminate access points. So we
17 feel that commercial development is appropriate along
18 Diplomat Parkway.

19 I'd also like to point out that Parcels 1 and 2
20 are under separate ownership than Parcels 3 and 4.

21 Also, Parcels 1, 2 and a portion of 3 will be
22 developed with less intense, non-retail uses, so our
23 feeling with that is the more intense retail uses would be
24 up at the intersection of US 41 and Diplomat Parkway, and
25 then as you move back along Diplomat Parkway is when you

1 get into the non-retail uses and not as intense uses which
2 transitions nice into the multi-family development that
3 we're proposing here which then transitions nice into the
4 existing development that's surrounding us.

5 And in talking about the policy, I think it's
6 important to note, like I said, that applicant and staff
7 have some disagreement with this policy and them wanting
8 to turn portions of the commercial into residential, and
9 it's mostly in Parcel 1 and Parcel 2 and two acres of --
10 what's really two acres of Parcel 3.

11 Now, when I read this policy and in looking into
12 this policy, you obviously look at strip development and
13 say, well, what is the definition of strip development.

14 Obviously, the first places you go look is the
15 Land Development Code and the Comprehensive Plan. In the
16 definition sections of both these regulations, I did not
17 find a definition for strip development. Even searching
18 online, the codes online, Land Development Code and the
19 Comprehensive Plan, I never came up with anything on strip
20 development.

21 Naturally, next I looked into Webster's
22 Dictionary for strip development. I could not find a
23 definition for strip development in the Webster's
24 Dictionary. So with great technology that we have today,
25 I automatically go to the internet and see what I can find

1 there. And there was really not a lot out there that I
2 could find, but I did find one thing, about the only thing
3 I found, as a matter of fact. I'd like to hand this out.

4 HEARING EXAMINER: Okay. That's going to be
5 Applicant's Exhibit No. 5.

6 (Applicant's Exhibit No. 5 was marked for
7 identification.)

8 MR. HAGAN: Luckily, it's not a long document
9 that I have to read into the record for the next hour.

10 There's, basically, a website referenced at the
11 top of it and it had a definition, it says, "Strip
12 development. Place where each store has direct access to
13 the street." Not much to it really.

14 I think that with what we're proposing here, we
15 have a lot of frontage along Diplomat Parkway. We only
16 have two accesses. So when this site is developed, this
17 Commercial Parcel 1 is developed, it's not going to get
18 another access on to Diplomat, it's going to access
19 through the existing access we're showing on the Master
20 Concept Plan.

21 Same thing with Commercial Parcel 2 and
22 Commercial Parcel 3 is an access up towards US 41. So
23 naturally with just showing these two access points,
24 they're going to have to provide interconnectivity here so
25 not every building that gets built here is going to have

1 access on to Diplomat Parkway. And I think that even
2 after this hearing or they come in and pull a Development
3 Order for this, the Master Concept Plan is only showing
4 two accesses, it would be difficult for them to obtain
5 another access without going through this process again.
6 That's the stance I imagine the County would take on
7 that.

8 There's also -- naturally, the access points have
9 been minimized in the commercial development. We'll have
10 shared driveways and parking lot connections. So that --
11 the definition I found for strip development, "Place where
12 each store has direct access to the street," that's not
13 us. We have two access points that are going to be shared
14 throughout the commercial component of the development to
15 the north.

16 Also, the buildings -- the Land Development Code
17 has architectural standards which any buildings in the
18 commercial portion will be subject to. Buffers will be
19 provided along the right-of-ways as well as the north and
20 west side. Open space will be provided. And the Code
21 also has landscaping requirements such as building
22 perimeter plantings that are going to have to be adhered
23 to when these developments come in for a Development
24 Order.

25 There will be pedestrian and bicycle

1 interconnectivity, and strip development will not occur
2 here because there is limited access points -- or there
3 will be limited access points, aesthetically pleasing
4 buildings, open space, buffering and landscaping.

5 I think that when reading the Staff Report, that
6 policy in talking with strip development was naturally
7 talking about the commercial development to the north of
8 Diplomat Parkway. Parcel 4, it didn't seem that staff had
9 a problem with this, calling this strip development or
10 anything of that nature. But once again we only have one
11 access point. So whatever is going to be built here has
12 to access off this access point which connects down to the
13 south into Merchant's Crossing.

14 Commercial Parcel 4 will also be subject to the
15 architectural standards, open space, buffering and
16 landscaping.

17 So we feel that with this policy, residential
18 uses is unreasonable along Diplomat Parkway where the
19 staff is requesting that we bring this portion into
20 Residential Planned Development. We feel that commercial
21 uses are appropriate here.

22 We acknowledge that they will be less intense
23 commercial uses, the more intense commercial uses being at
24 the intersection with it moving back towards less intense
25 commercial uses.

1 As I stated, this is all one unified development.
2 With the site constraints to this residential portion to
3 the south and the lack of interconnectivity due to the
4 native indigenous preserve to Commercial Parcel 4, it's
5 just not reasonable to have the commercial component
6 there.

7 HEARING EXAMINER: Jon, can you tell me, since
8 you're addressing both of those at this point, how many of
9 the residential units are going in on the south side of
10 Diplomat?

11 MR. HAGAN: On the Master Concept Plan, the south
12 parcel has 50 with 418 to the north.

13 HEARING EXAMINER: All right. And is that all
14 multi-family, then, there are no single family in there?

15 MR. HAGAN: That is correct. At this time the
16 plan is for it to be multi-family built there.

17 HEARING EXAMINER: Okay. And the hotel is going
18 in where? Where have you planned for the hotel to go in?

19 MR. HAGAN: There's really no plan for the
20 commercial component right now. As I stated, Parcels 3
21 and 4 are under separate ownership and then Parcels 1 and
22 2 are under a different ownership. I don't believe, to my
23 knowledge at this time, there's any plans to develop this
24 commercial portion right away.

25 HEARING EXAMINER: Okay.

1 MR. HAGAN: I mean, my gut feeling is, you know,
2 as I stated, there's going to be less intense, non-retail
3 uses up here, and I would think that if we come in with a
4 hotel, that staff is going -- I would defer to them -- but
5 they would probably say that's a pretty intense use
6 because you have people coming and going. So with it
7 being put on the record that less intense uses are going
8 to be on the westerly portion of the Commercial Parcel 3
9 and Parcels 1 and 2, that it would have to go towards the
10 intersection of US 41 and Diplomat.

11 But, like I said, we included it in the schedule
12 of uses, there's no one waiting in line right now to put
13 a hotel in there that I'm aware of so it's just not that
14 far along yet.

15 HEARING EXAMINER: Okay.

16 MR. HAGAN: Next I'd like to get into the
17 deviations that we're requesting as part of this
18 development. And if you look on Page 11 of the Staff
19 Report it has the deviations.

20 The first deviation requests relief from Land
21 Development Code Section 10-285(a) which requires a
22 minimum access separation of 660 feet to permit an access
23 separation of 364 feet. That is in reference on the south
24 residential tract here. As you can see, we have two
25 access points. They do not meet the separation

1 requirements. The Code and the County likes for us to
2 provide two access points into residential developments.
3 Just in case something gets blocked off in one, they can
4 get into the other one. So that's why we have asked for
5 that deviation there. And staff has recommended approval
6 of that deviation which we are in agreement with.

7 Deviation 2 is from Land Development Code Section
8 10-296(k)(1), which requires dead-end streets to provide
9 cul-de-sacs. That deviation is on the south residential
10 portion as well as the north portion. Staff has
11 recommended approval of that deviation provided a
12 hammerhead turnaround be provided. We are in agreement
13 with that.

14 Deviation 3 is from Land Development Code,
15 Section 10-415(b)(1)(a), which requires large developments
16 provide 50 percent of their open space percentage
17 requirements through on-site preservation of existing
18 native vegetative communities. We're asking relief from
19 this to permit 0.45 acres of right-of-way to be vacated,
20 enhanced and preserved to count towards the preservation
21 requirement.

22 The reason for that is, as you can see on this
23 commercial portion, Parcel 4 here, this is actually the
24 right-of-way easement for the right-of-way. As you can
25 tell, we have some native indigenous in there.

1 When they built the right-of-way, and this is an
2 existing road that was built here, they didn't build it in
3 the easement. They built it over here. So this portion
4 of the right-of-way is not built within the easement that
5 it was supposed to. How that happened, I don't know.

6 That being as it is, we felt that it would be
7 better that we extinguish this easement and get it moved
8 to over here so that way you can provide a nice native
9 indigenous that connects all under this native indigenous
10 down here.

11 HEARING EXAMINER: All right. So you are
12 planning to execute some kind of a cross-access agreement
13 then for the existing location of that roadway?

14 MR. HAGAN: Yes. It's my understanding that that
15 right-of-way is owned by Lee County.

16 HEARING EXAMINER: That's interesting.

17 MR. HAGAN: So, I mean --

18 MS. MONTGOMERY: The real one or the --

19 MR. HAGAN: It's my understanding that this
20 easement is owned by Lee County, but that's not where the
21 road is. So in order to -- I mean, it's an existing built
22 right-of-way. So, yes, I mean, an easement is going to
23 have to be provided over this right-of-way. I'm imagining
24 it would be some kind of easement swap type thing, but I'm
25 not an attorney and I don't know.

1 HEARING EXAMINER: Okay. All right.

2 MR. HAGAN: But staff has recommended approval of
3 that deviation. We're in agreement with that with the
4 conditions.

5 Deviation 4 is from Land Development Code Section
6 10-415(b)(1)a. It requires large developments to provide
7 50 percent of their open space through on-site preserva-
8 tion of native indigenous vegetation to allow portions of
9 the preservation area to be disturbed and restored in
10 order to install a storm water management system.

11 Staff is supporting that. I'm not sure where the
12 pipe is going to go through -- or I guess with the
13 condition it would have to be a swale, but I'm not sure
14 where the system is going to go through there. But we
15 would -- staff is approving that with conditions and we're
16 in agreement with that and the conditions of approval.

17 The final and last deviation is Deviation 5 from
18 Land Development Code Section 34-2474(b)(6), which
19 requires recreation halls to be located at least 40 feet
20 from any residential dwelling unit to allow a 20-foot
21 minimum building separation. That is purely internal to
22 the development. Obviously, with the existing residential
23 that is in the area, a recreation hall is well beyond 40
24 feet from any of those residential uses.

25 We're requesting that deviation just interior to

1 the development for any buildings that would be built
2 around the recreation facility. Staff has recommended
3 approval of that and we are in agreement with that.

4 Next I'd like to go and get into the Staff Report
5 and go into some areas where we are in disagreement with
6 staff.

7 Starting on Page 2 of 24, under Section II,
8 Recommendation, Section A which is Conditions, starting
9 with Condition 1, as you read the third -- two paragraphs
10 and then the third one down, staff is recommending the
11 maximum number of dwelling units to 432 dwelling units.
12 We're requesting that it be recommended for approval for
13 468 dwelling units which is 9.5 dwelling units an acre.

14 We feel that this being infill development, smart
15 growth close to employment and shopping, schools, mass
16 transit, that it's appropriate for this location.
17 There's also urban services in place to service this
18 development.

19 The next paragraph, it talks about 8.0 dwelling
20 units per acre maximum. We're requesting 9.5 dwelling
21 units per acre.

22 This section also talks about the conversion of
23 Commercial Parcels 1 and 2 and a portion of Commercial
24 Parcel 3, in parentheses 2 acres to residential. We
25 disagree with that. We feel that development should be

1 approved as we have proposed.

2 The next paragraph down from that also deals with
3 the conversion of the Commercial Parcels 1, 2 and a
4 portion of 3.

5 And then below that it just talks about the site
6 location standards which we'd suggest that if the easterly
7 portion of Parcel 3 can obtain access to US 41, it too
8 would meet site location standards and have could have
9 retail uses. But I think it's also important to note that
10 we have put it on the record that the intense retail uses
11 are going to be up at the corner with a transition to less
12 intense, non-retail uses towards the back of the
13 development.

14 Under Condition 2.a, which is the schedule of
15 uses RPD, this also, including conversion of Commercial
16 Parcel 1, 2 and then a two acre portion of Parcel 3 to
17 residential, we're in disagreement with that. We feel
18 that those areas should remain or should be rezoned to
19 Commercial Planned Development.

20 Under that same condition under -- that was
21 schedule of uses RPD, under the same condition for
22 schedule of uses CPD, they've eliminated a number of uses
23 in there. The only one that we are -- or two uses that we
24 are in disagreement with are the convenience food and
25 beverage store with self-service fuel pumps. And getting

1 into the Staff Report, a little bit more into the Staff
2 Report, we are proposing that that be limited to this
3 Commercial Parcel 4.

4 Staff talked about a lot of saturation of
5 convenience stores in this area, and we feel that a
6 convenience store with fuel pumps will not go in this area
7 if there's saturation because the market is not there for
8 it to do it. But it's not known at this time -- they're
9 not going to come in there and put a convenience food and
10 beverage store with self-service fuel pumps if it's
11 saturated and it's not appropriate.

12 And then on Page 10 of 24, Condition No. 13, Item
13 A, deals again with the elimination of Commercial Parcels
14 1 and 2. We feel that Parcels 1 and 2 should remain zoned
15 Commercial Planned Development -- or should be rezoned
16 Commercial Planned Development.

17 Also, under Item B, the reduction of the western
18 portion of Commercial Parcel 3 from 7.3 acres to 5.0
19 acres, we're in disagreement with that. We feel that all
20 of Commercial Parcel 3 should be rezoned commercial.

21 Item C, we're in disagreement with this which is
22 the Residential Planned Development be increased from
23 48.86 acres as proposed to 54 acres, plus or minus.

24 And that also deals with the conversion of those
25 commercial parcels. We feel that the residential portion

1 should remain 48.86 acres.

2 Along with that, Item D deals with the Commercial
3 Planned Development be reduced in size from 16.27 acres as
4 proposed to 11.27 acres, plus or minus. We want to leave
5 the commercial that we're requesting at 16.27 acres.

6 On Condition 15, I may refer to Kim on this one,
7 but we had some discussions about this prior to the
8 hearing. I think that condition just needs a little bit
9 of tweaking, I'm not sure if we're there yet. But we just
10 want to make sure we're all on the same page with the
11 environmental sciences staff on that condition. We're not
12 in disagreement with it, I think it just needs to be
13 clarified and maybe some open space tables be provided.

14 On Page 14 of 24, about halfway down the page is
15 labeled 1. Commercial Strip Development - Policy 6.1.7. I
16 think I addressed this very clearly in my Lee Plan
17 narrative, this policy and how we are in compliance with
18 this policy and we're not providing strip development, and
19 this won't be developed as strip development.

20 We have limited access. We'll have to provide
21 landscaping, open space, as well as architectural
22 standards.

23 Under that is Item No. 2 which the Staff Report
24 talks about the schedule of uses. Once again, the only
25 schedule of use that we're requesting be left are uses

1 that we request be left in there as convenience store with
2 self-service fuel pumps. We would suggest that it be
3 limited to Commercial Parcel 4, which is adjacent to a
4 very large DRI of Merchant's Crossing, which was approved
5 for 555,000 square feet of commercial development.

6 By putting it on Commercial Parcel 4, which is up
7 at the corner of Diplomat and US 41, it will not have a
8 negative effect on any of the existing residential
9 communities.

10 On Page 15 of 24, under Item No. 4 there's a
11 discussion about density. As I stated before, and if you
12 look at this aerial that I put up on the board here with
13 our property highlighted, you can tell that it's a very
14 developed area. This is infill development which is smart
15 growth. We're close to shopping, schools, employment and
16 we'll also be providing shopping and employment in our
17 commercial aspect of our development.

18 So we feel that a density of 9.5 dwelling units
19 an acre is appropriate here with the buffers that are
20 being offered and also we're in the central urban land use
21 category which is an intense land use category that allows
22 commercial as well as residential use and limited light
23 industrial use.

24 Next there on that same page of 15 of 24, the
25 Staff Report goes into the Lee Plan considerations. I'm

1 not going to go through each one and discuss each
2 particular Lee Plan. When I gave my Lee Plan
3 presentation, it covered all the Lee Plan considerations
4 that were in here and how we are in compliance with the
5 Lee Plan with our development proposed for 468 dwelling
6 units with a commercial component of 200,000 square feet
7 of commercial development. And it's my opinion that we
8 are in compliance with the Lee Plan with this proposed
9 development.

10 The only thing I would like to point out is on
11 Page 17, in the very first paragraph, in the third
12 sentence down, staff indicates "It has the necessary
13 characteristics of urban infill." So staff is obviously
14 in agreement that this is infill development. We feel
15 it's infill development and the higher densities are
16 appropriate along with the commercial development.

17 On Page 20 of 24, it has the analysis of
18 commercial uses on US 41 and Diplomat Parkway, where staff
19 goes into their detail about the uses that are in the
20 surrounding areas relating this to the uses that they
21 eliminated from our schedule of uses. Like I said, the
22 only one we're in disagreement with is the convenience
23 food and beverage store. We feel that is an appropriate
24 use for Commercial Parcel 4, and if there is a saturation
25 of these in the market, then one is not going to be built

1 there. Just because we're asking for the use doesn't mean
2 they're going to go build it right now. They would have
3 to look at the area and deem if it was an appropriate area
4 and place to build that type of use.

5 On Page 21 of 24, we're talking about
6 neighborhood compatibility. It talks about the North Fort
7 Myers community. And about halfway down into that
8 discussion of the North Fort Myers community, which is
9 taken directly from the Lee Plan, it states -- I believe
10 it's seven sentences down -- in that sentence, it starts
11 out, "The US 41 corridor from Pondella Road north will
12 continue to attract new commercial development that will
13 serve the North Fort Myers community and other surrounding
14 communities." And then also, not the next sentence but
15 after that it says, "These areas are surrounded by
16 residential uses." So it's acknowledging that this is an
17 area that's going to be developed with commercial uses and
18 it also acknowledges that there's -- that this area is
19 going to be surrounded by residential uses.

20 On Pages 22 and 23 of the Staff Report, it talks
21 about the surrounding properties.

22 First it talks about to the north which is a
23 mobile home park. It also talks about to the west, which
24 is the Six Lakes Country Club. These are two existing
25 mobile home parks that were built, according to the Staff

1 Report and the property appraisals I've looked at, back in
2 the '70s. They've been in existence for a long time.

3 We feel that with the buffering that we're
4 providing, with open space that we're going to provide, we
5 are compatible with these uses. We're not going to be a
6 detrimental use adjacent to these uses.

7 To the south of our development is obviously
8 Diplomat. To the south we're providing a nice native
9 indigenous preserve which connects with an existing native
10 indigenous preserve and Merchant's Crossing area.

11 And, obviously, we feel the commercial compatible
12 and with a nice native indigenous preserve the residential
13 portion in the south is also compatible with Merchant's
14 Crossing.

15 Also on Page 23 of 24, under traffic issues, as
16 was stated by Mr. Treesh the surrounding road network can
17 operate at an acceptable level of service. And on the
18 last sentence of that it says, "Of note, there are no
19 access points, or cross-access points shown for Commercial
20 Parcel 1 and 2."

21 So referring back to the Master Concept Plan,
22 we're showing one access point on the Commercial Parcel 1
23 and 2, which obviously they're going to gain their
24 accesses off the shared access which goes into the
25 residential. There will also be cross access

1 interconnectivity to Commercial Parcel 3 from Commercial
2 Parcel 2.

3 Other than that, I think I've gone through the
4 Staff Report. As I stated, there are some items that we
5 are in disagreement with. I feel that we are in
6 compliance with the Lee County Comprehensive Plan as well
7 as the Land Development Code.

8 All of Parcels 1, 2 and 3 are appropriate for
9 commercial development. It won't be strip development.
10 Albeit I stated that the western portion of Commercial
11 Parcel 3 and Parcels 1 and 2 will be less intense,
12 non-retail type uses. This is infill development, which
13 is smart growth, containing urban sprawl. And with infill
14 development is where you need the higher densities as well
15 as where you're close to employment, shopping and
16 schools.

17 The convenience food and beverage store and
18 self-service fuel pumps is appropriate for Commercial
19 Parcel 4. The market will be the driving force here if
20 there is a saturation in the area.

21 And, finally, we are requesting an approval of
22 the rezoning to RPD, Residential Planned Development, and
23 Commercial Planned Development at 9.5 dwelling units per
24 acre with a total of 200,000 in commercial square footage
25 and that all of Parcels 1, 2 and 3 remain commercial.

1 Other than that, I have no more testimony at this
2 time unless you have any questions for me.

3 HEARING EXAMINER: Questions of your witness?

4 MS. MONTGOMERY: Thank you, ma'am.

5 Jon, let me kind of start off with the issue of
6 the density. Have you had occasion to look at the
7 definition of compatibility set forth in the Land
8 Development Code?

9 MR. HAGAN: Yes, I have looked at that before.

10 MS. MONTGOMERY: Just for the record, compatible
11 means, describing the relations between two land uses,
12 buildings or structures for zoning districts, the stapler
13 in those two things exhibit either a positive relationship
14 based on the similarity or reciprocity of characteristics
15 or a neutral relationship based on a relative lack of
16 conflict or on a failure to communicate negative or
17 harmful instances one to another. Obviously, this isn't a
18 mobile home development so it's not the same, doesn't have
19 the same characteristics of the adjacent residential; is
20 that true?

21 MR. HAGAN: That is correct.

22 MS. MONTGOMERY: So then you have to look at
23 either whether they are a neutral or a negative
24 relationship. When you think about negative impact, tell
25 me, what are the negative impacts that you as a planner

1 look at to determine compatibility?

2 MR. HAGAN: To me the negative impacts you look
3 at is things like noise, light, traffic, buffering, to
4 make sure there's adequate buffering adjacent to those
5 uses.

6 MS. MONTGOMERY: And I believe that you indicated
7 that Section 34-635 is the lighting standard provision of
8 the Land Development Code that would include having a
9 lighting impact?

10 MR. HAGAN: Yeah. I don't know the direct
11 section of the Code, but I know there is a section of the
12 Code that deals with lighting and they're not allowed to
13 have light trespass off your property. It's very strictly
14 enforced. You need lighting plans and other items like
15 that.

16 MS. MONTGOMERY: And is there anything about this
17 type of multi-family that would generate unusual noise?

18 MR. HAGAN: No. The only thing that would
19 generate, you know, some noise would be a recreation area
20 with kids swimming and whatnot, but that's been moved to
21 the center of the development so it's well away from any
22 of the surrounding developments.

23 MS. MONTGOMERY: And the roads, there's no
24 roadways immediately adjacent to that residential --

25 MR. HAGAN: That is correct. So you don't have

1 the traffic noise or anything of that nature.

2 MS. MONTGOMERY: And are these buildings four and
3 five stories such that you would have the steeple element?

4 MR. HAGAN: The height that we're requesting is
5 35 feet, which is the same height required -- or the same
6 height restriction in the MH-2 zoning district. The
7 height is not any higher than what's allowed in MH-2.

8 MS. MONTGOMERY: The same height you would have
9 in single-family district?

10 MR. HAGAN: The same as single family.

11 MS. MONTGOMERY: So then the only potential
12 impact would be visual?

13 MR. HAGAN: Correct.

14 MS. MONTGOMERY: And let me kind of just get into
15 Policy 5.1.5 for a minute. Would you agree that's kind of
16 like the Godfather condition on residential
17 compatibility?

18 MR. HAGAN: Yes, I would.

19 MS. MONTGOMERY: If I look at that policy, it
20 says, we're going to "Protect existing and future
21 residential areas from any encroachment of uses that are
22 potentially disruptive to the character and integrity of
23 the residential environment." Let me ask you, is there
24 anything about multi-family that we're requesting at this
25 density that you see as destructive?

1 MR. HAGAN: No, I do not.

2 MS. MONTGOMERY: Then it goes on to indicate that
3 if you're asking for a standard zoning district, it
4 shouldn't be approved if the buffer is not adequate to
5 make uses compatible. It suggests the way that you would
6 make uses that are different compatible is to look at the
7 buffer. And if you read the rest of that policy, it seems
8 to suggest the same thing, that the way to minimize or to
9 address differences is through a buffer.

10 In your professional opinion, do you think the
11 buffer in this case is adequate to provide that visual
12 separation?

13 MR. HAGAN: Yes, I do. I mean, staff has
14 included a condition on a buffer requirement that is 30
15 feet wide, so I do believe that is a sufficient buffer for
16 the adjacent uses.

17 MS. MONTGOMERY: So given the fact that we don't
18 have the normal things that you think of as negative,
19 usually when you have people disagree is when they have to
20 share or have traffic occur in the same place.

21 MR. HAGAN: Correct.

22 MS. MONTGOMERY: So, in your opinion, the fact
23 that there's a difference in density or a difference in
24 type of units is mitigated by the intervening buffer?

25 MR. HAGAN: I think it's mitigated by the buffer

1 as well as the different items that would be destructive
2 to adjacent uses such as light, traffic, noise.

3 MS. MONTGOMERY: Let me just kind of briefly talk
4 about Policy 135.1.9. That's in the housing section.
5 That particular policy indicates that the County is going
6 to ensure that there's a mix of residential types and
7 designs on a countywide basis and to allow for a wide
8 variety of residential types. Are there a lot of
9 locations in Lee County where you can have higher
10 densities?

11 MR. HAGAN: Yes, there are.

12 MS. MONTGOMERY: Do they have to be in central
13 urban or intensive pretty much to have higher densities?

14 MR. HAGAN: Yes. Those are the ones that allow
15 the higher densities.

16 MS. MONTGOMERY: And a lot of those areas are
17 already developed?

18 MR. HAGAN: A lot of them are developed areas and
19 existing areas where the services are there.

20 MS. MONTGOMERY: And if I'm going to provide for
21 higher densities, I need to also be compatible with the
22 policy I think that you referenced which I think was 5.1.4
23 that says I have to be close to shopping, I have to be
24 close to entertainment, I have to be close to an adequate
25 road network, I have to have adequate utilities. All

1 those things have to be there as well?

2 MR. HAGAN: That is correct. And that is the
3 correct policy, 5.1.4.

4 MS. MONTGOMERY: So when I look at having had the
5 right land use category, having had the right access and
6 the right infrastructure and being there's shopping and
7 entertainment, doesn't that significantly limit the
8 potential locations where I can have those higher
9 densities?

10 MR. HAGAN: That is true.

11 MS. MONTGOMERY: So if the County is going to
12 ensure that wide variety of housing types, isn't this an
13 appropriate location to look at for the higher density to
14 make sure we have that aspect provided?

15 MR. HAGAN: Yes, it is.

16 MS. MONTGOMERY: And I know that there has been
17 numerous articles; have you read about the fact that
18 there's a concern there's not enough available housing in
19 Lee County?

20 MR. HAGAN: Yes. In the paper there's been
21 several articles about that.

22 HEARING EXAMINER: Can I get a clarification on
23 that? Available housing? I mean, is there another
24 description?

25 MS. MONTGOMERY: Less than \$500,000.

1 HEARING EXAMINER: Available affordable housing
2 maybe?

3 MS. MONTGOMERY: Reasonable, yes.

4 HEARING EXAMINER: Okay. Reasonably priced, all
5 right, we'll go with that. Because there's a lot of
6 housing in Lee County.

7 MR. PALERMO: Madam Hearing Examiner.

8 HEARING EXAMINER: Yes.

9 MR. PALERMO: Would it be a problem if we took a
10 break right now because it's been a while?

11 HEARING EXAMINER: How much more have you got to
12 do?

13 MS. MONTGOMERY: We haven't even got into the
14 commercial yet so --

15 HEARING EXAMINER: Okay. Are you done with the
16 residential questions?

17 MS. MONTGOMERY: I had a few more. Why?

18 HEARING EXAMINER: I think we need a break.

19 MS. MONTGOMERY: I'll remember where I was.

20 MR. PALERMO: You were at affordable housing.

21 HEARING EXAMINER: You were at the affordable
22 housing.

23 Let's take a break here, folks. Be back here,
24 please, at 25 minutes of 4:00, all right? And let me do
25 tell you folks that if this little sucker runs past five

1 o'clock, it will be continued. All right? We can run
2 till about 5:30 or a few minutes of 6:00, but other than
3 that, at that point I start sliding out of my chair. So,
4 you know, it's been a long day.

5 All right. Be back here, please, at 25 minutes
6 of 4:00. Water only in this room.

7 (A recess was taken.)

8 Thereupon,

9 PAUL EZZO,
10 called as a witness by the Applicant, having been
11 previously duly sworn, was examined and testified as
12 follows:

13 MS. MONTGOMERY: Would you go ahead and state
14 your name and give your background?

15 MR. EZZO: Yes, ma'am. Paul Ezzo, E-z-z-o. I'm
16 with EW Consultants. We're an environmental consulting
17 firm. We are primarily located in Stuart, Florida. And
18 we have recently expanded our operations over to the lower
19 west coast of Florida.

20 My background is in environmental planning. I
21 spent three years with Martin County, Florida, as a
22 development review planner, environmental planner. I
23 spent seven years with the South Florida Water Management
24 District covering the lower west coast as well as what's
25 called the Treasure Coast region, upper east coast, and I

1 have spent five years now in the private sector consulting
2 industry.

3 MS. MONTGOMERY: And have you ever testified
4 either in court or an administrative proceeding before?

5 MR. EZZO: I have.

6 MS. MONTGOMERY: Have you been accepted as an
7 expert in environmental planning on those occasions?

8 MR. EZZO: I have.

9 MS. MONTGOMERY: We would ask that he be accepted
10 as an expert here in environmental planning.

11 HEARING EXAMINER: Okay. County have any
12 questions, voir dire, objections?

13 MS. COLLINS: Was this the consultant that
14 prepared the report for the staff for the applicant's
15 submittal?

16 MR. EZZO: No, ma'am, that was Caloosa Coast
17 Ecologists.

18 MS. TREBATOSKI: I'm really a little confused
19 right now because of that.

20 HEARING EXAMINER: Is he going to testify on that
21 report, Neale?

22 MS. MONTGOMERY: I know that there's some
23 environmental questions. Really what I wanted to be able
24 to do is be able to answer those questions.

25 MR. JOHN KINSEY: His firm bought the practice of

1 Caloosa Coast Consultants. They moved to Idaho. They
2 have reviewed the report and done their own investigation,
3 site investigation.

4 HEARING EXAMINER: State your name, sir, for the
5 record.

6 MR. KINSEY: John Kinsey.

7 HEARING EXAMINER: Okay. Mr. John Kinsey, and
8 what's your relationship with --

9 MR. JOHN KINSEY: I'm one of the owners.

10 MS. TREBATOSKI: I would accept him as an
11 environmental planner generally. I'm not sure familiarity
12 with Lee County.

13 HEARING EXAMINER: Ask him questions. I'll ask
14 him.

15 Paul, how many other surveys have you done for
16 the county, done for properties in the county?

17 MR. EZZO: I personally have not done any with
18 the county.

19 HEARING EXAMINER: Okay. So you're not --

20 MR. EZZO: I'm somewhat familiar with their
21 survey requirements as far as the 80 percent coverage
22 which is in excess of state and federal standards, and I
23 have done quite a few in 11 other counties surrounding
24 this region.

25 MS. TREBATOSKI: It's the survey aspects and

1 stuff. I'm more specifically Land Development Code
2 requirements, Lee Plan policies and such. I just am not
3 familiar with Mr. Ezzo. And a lot of times people are
4 being qualified as experts in our regulations.

5 MS. MONTGOMERY: I didn't ask him to be.

6 MS. TREBATOSKI: That's why I said clarification
7 as to environmental planner and with eco systems and that
8 such, but the specifics of our Code, I'm not as
9 comfortable with.

10 MR. EZZO: Obviously, with this project there's
11 been an awful lot of ground work done, starting, I believe
12 in summer of 2003 with surveys, environmental surveys,
13 continuing all the way through just this past month. And
14 in addition there has been quite a few meetings with
15 county staff that I have not attended. So the purchase of
16 the Caloosa Coast Ecologists was in September, and, of
17 course, October we were all kind of in a shambles for a
18 while.

19 HEARING EXAMINER: All right. But you have done
20 this type of survey before?

21 MR. EZZO: Yes.

22 HEARING EXAMINER: And you have been out on the
23 site?

24 MR. EZZO: Yes, ma'am.

25 HEARING EXAMINER: Using the previous survey

1 results and whatnot?

2 MR. EZZO: Yes, ma'am.

3 HEARING EXAMINER: Okay. So you did not see any
4 discrepancies or find any -- you know, I mean, suddenly
5 discover they were surveying the wrong site and, you know,
6 you found alligators and squirrels and --

7 MR. EZZO: No, ma'am. We did survey -- the site
8 has been surveyed correctly, and we did confirm the
9 findings.

10 HEARING EXAMINER: Okay.

11 MR. EZZO: For purposes of updating the study and
12 when we go back to the location, obviously those things
13 will have to be current when we go to the state permitting
14 process.

15 HEARING EXAMINER: Okay. All right. Any
16 objections then from staff?

17 MS. TREBATOSKI: No.

18 HEARING EXAMINER: County Attorney?

19 MS. COLLINS: No objection.

20 HEARING EXAMINER: All right. Accepted as an
21 environmental planner.

22 MR. EZZO: Thank you very much.

23 MS. MONTGOMERY: Paul, could you just go through
24 the characteristics of what you found on the site?

25 MR. EZZO: Yes. The site is a mixture of native

1 habitat which is pine flatwoods and some palmetto prairie
2 along with some scattered live oak, as well as some
3 impacted areas, and we discussed the entrance road to the
4 commercial development to the south. That is an impact
5 area. I believe Lee County Storm Water Management has
6 some retention areas on the south side of Diplomat Parkway
7 as well as the excavated pond in the northeast portion of
8 the property in the rectangular --

9 MS. MONTGOMERY: Can I get you to go over to the
10 aerial and point those things out so it will be more clear
11 for the audience?

12 MR. EZZO: Sure. In general, the palmetto
13 prairie is basically a pine flatwoods habitat but it does
14 not have the pine canopy. A lot of times that can be of
15 natural reasons, but most likely it's probably harvested
16 in the past, the pine trees were, so you're left with a
17 good mixture of native habitat although there was no pine
18 trees.

19 A lot of the large live oaks are near the canal
20 on the western side. Again, more pine flatwoods. A
21 habitat called dry prairie which is absent of both
22 palmetto and slash pine, more herbaceous plants. Upland
23 sandy area adjacent to a large willow wetland which is
24 somewhat impacted because willow is the dominant species
25 as well as cattail.

1 More pine flatwoods which is, I believe, where
2 the road was supposed to go, the existing road that
3 divides the southern parcels. More pine flatwoods in very
4 good condition on this side of the property. Pine
5 flatwoods again along the southern portion of the north
6 property. The excavated lake and again pine flatwoods and
7 some disturbed land along the edge of the lake probably
8 resulting from fill material deposition.

9 MS. MONTGOMERY: Could you, while you're there,
10 just kind of like go through the area that's attached for
11 preservation and tell us what kind of vegetation in the
12 areas that are being protected?

13 MR. EZZO: Yes. I'll go back to the aerials. As
14 what Jon said, you know, the desire of the staff was to
15 connect it with larger off-site preservation areas. So
16 that preservation area off site is here (indicating),
17 which is down in here. We have the large willow
18 wetlands. We have pine flatwoods connecting through that
19 dry prairie habitat. And then again pine flatwoods in
20 here (indicating). This is the commercial portion of the
21 upland preserve and this is the residential portion of the
22 upland preserve. And that was staff's desire to make a
23 more connected on-site and off-site habitat, which, of
24 course, makes perfect sense.

25 Now, again, the original -- like Jon said, the

1 original preserve was in this area, which is also good
2 habitat. There are some oaks up in there as well as the
3 palmetto prairie, but it is adjacent to the canal as well.
4 But staff, from what he said, wanted to move things around
5 a little bit.

6 MS. MONTGOMERY: Do you agree with the staff
7 position, are we in agreement on their --

8 MR. EZZO: Yes. It definitely makes sense to
9 cluster as much preserve as possible with adjacent
10 development, adjacent development preserves that are
11 already in place, yes, ma'am.

12 MS. MONTGOMERY: I don't have any other
13 questions.

14 HEARING EXAMINER: Okay. Kim, questions?

15 MS. TREBATOSKI: I have no questions.

16 HEARING EXAMINER: County Attorney, questions?

17 MS. COLLINS: No questions.

18 HEARING EXAMINER: All right. My understanding
19 is you guys are going to fill in that barrow pit? Okay.
20 Thank you. You're going to fill that little fellow in --

21 MS. MONTGOMERY: Yes.

22 HEARING EXAMINER: -- so you can develop the
23 site. What is this little piece over here between the
24 barrow pit and the roadway? There's a piece of vacant
25 property, I know it's not yours, but do you know whose it

1 is?

2 MS. MONTGOMERY: The one that's kind of like a
3 square in the upper left corner?

4 HEARING EXAMINER: No. The right side, over
5 there, yes. Is that -- I mean, it looks like it's been
6 partially cleared. Which one is the horse farm?

7 MS. TREBATOSKI: There's horses and pasture there
8 right now.

9 HEARING EXAMINER: Okay. Okay. And the other
10 thing, it looks like it's storage for the mobile home
11 park.

12 MS. MONTGOMERY: There's mobile home RV storage
13 there, too, if you look at it closely.

14 HEARING EXAMINER: Okay. That's what it looks
15 like from here. Okay. All right.

16 MR. JIM KINSEY: I can --

17 MS. MONTGOMERY: Jim Kinsey, for the record,
18 expert developer.

19 HEARING EXAMINER: Do I have to qualify you as an
20 expert developer?

21 MR. JIM KINSEY: No, please, don't.

22 That property was owned by a gentleman by the
23 name of John Hallin who is actually deceased, and Mr.
24 Hallin for quite sometime actually -- his family still
25 owns --

1 MR. HALLIN: I'm representing him.

2 MR. JIM KINSEY: Oh, you are? Okay. -- this
3 piece and actually this long strip over here, unless they
4 sold part of it, but he actually owned all the way from
5 Pine Island Road up to Littleton at one time, and it is,
6 as far as I know, currently under lease for livestock.
7 Unless that has changed recently.

8 HEARING EXAMINER: All right. I do have one
9 statement -- or one question of Paul if he can come back
10 up.

11 Now, I looked at the survey report, and I will
12 say that I did not get completely through it, but it
13 starts out on Page 1 of 10 and it's talking about the
14 methodology and it's talking about the survey and it says
15 14.92 acres project site. And it says at the top the
16 entire parcel is approximately 65.58 acres and includes an
17 additional 50.66 acres to be developed by an independent
18 contract purchaser as Diplomat Lakes mixed use
19 development. But from what I can see from -- and as I
20 said, I didn't get completely through the entire cotton
21 picking thing because I didn't have time, but it looks to
22 me like the only part that got surveyed was the commercial
23 parcels. Did the whole thing get surveyed?

24 MR. EZZO: Well, there should be graphics in
25 there with it to show the appropriate site.

1 HEARING EXAMINER: Maybe I didn't get the whole
2 report.

3 MS. TREBATOSKI: You may not have gotten those
4 aerials.

5 HEARING EXAMINER: See, this is all I got. This
6 is the part that -- referring to just the commercial areas
7 is all I got.

8 MS. TREBATOSKI: There were some additional
9 updates. You may not have gotten the entire --

10 MR. EZZO: There was some assemblage that was
11 done.

12 HEARING EXAMINER: Well, I didn't get it all
13 then, okay. Thank you.

14 MR. EZZO: There were two reports.

15 HEARING EXAMINER: I didn't get the other one. I
16 only got one.

17 MR. EZZO: We can certainly package those
18 together.

19 HEARING EXAMINER: I was wondering how we got all
20 these conclusions and whatnot for the whole site when we
21 only had 14 acres surveyed.

22 MS. MONTGOMERY: Just to clarify for the record,
23 the site of 65 acres, when you went out and redid the
24 survey, did you do the 14 or the 65?

25 MR. EZZO: Ma'am, I contacted Banks Engineering

1 and said could you please send me a survey of the exact
2 boundary so that I can overlay it on my mapping system so
3 I know I'm looking at the right site.

4 MS. MONTGOMERY: So you looked at all 65?

5 MR. EZZO: Yes, ma'am. It doesn't matter if
6 we're looking in Tallahassee or the Keys or here, we got
7 to know what we're looking at.

8 MS. MONTGOMERY: That's what he said he provided
9 was the entire 65 acres, so the Commissioners don't know
10 that.

11 MR. EZZO: With some thorns remaining in parts of
12 it, yes.

13 MS. MONTGOMERY: Thank you.

14 HEARING EXAMINER: All right. Thanks. I just
15 needed clarification there.

16 MS. MONTGOMERY: I would like to do one thing. I
17 do know that there's some questions that the residents
18 have about the environmental. I think before Kim and Paul
19 leave, and I would like him to clarify Condition 15.

20 MS. TREBATOSKI: I can testify to that. I can't
21 come back tomorrow.

22 HEARING EXAMINER: All right, Kim, let's go ahead
23 and take you out of turn then since you can't be here
24 tomorrow.

25 I see we have a changing of the guards.

1 MS. TREBATOSKI: I'm sorry about that, but I do
2 have -- it's not just field work, it's a pre-arranged
3 meeting with about ten other people.

4 HEARING EXAMINER: Okay. That's all right, I
5 understand.

6 MS. TREBATOSKI: I'm sorry about that.
7 Thereupon,

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

11 MS. TREBATOSKI: For the record, I'm Kim
12 Trebatoski, Principal Environmental Planner, with the
13 Division of Environmental Sciences. And I guess I have to
14 be tendered as an expert in Lee County Land Development
15 Code and Lee Plan and environmental issues really,
16 environmental planning in southwest Florida.

17 HEARING EXAMINER: Okay. Any objections from the
18 applicant?

19 MS. MONTGOMERY: None.

20 HEARING EXAMINER: None, okay.

21 MR. PALERMO: We have no objections either.

22 MS. TREBATOSKI: Not today, right, Tony? Maybe
23 next time.

24 Okay. First what I'll do is address Condition 15
25 on Page 10 which --

1 HEARING EXAMINER: Okay. Before you do that, can
2 you state for the record if you agree with the applicant's
3 consultant's conclusions regarding the survey, that survey
4 on the property?

5 MS. TREBATOSKI: Agree with their conclusions of
6 what they found?

7 HEARING EXAMINER: Yes.

8 MS. TREBATOSKI: Yes, I verified that.

9 HEARING EXAMINER: Now we can go to Condition 15.

10 MS. TREBATOSKI: Yes. I was going to do the open
11 space first and go back to species and preservation.

12 HEARING EXAMINER: Okay.

13 MS. TREBATOSKI: Condition 15, the intent was
14 that the Master Concept Plan provides an open space table.
15 Sometimes in Planned Development, the Land Development
16 Code allows you to meet the open space and preservation on
17 a project as a whole and a parcel can go down to 10
18 percent open space.

19 The way that the open space table is on this
20 Master Concept Plan is it just has 30 percent for
21 residential -- 30 percent for commercial and 40 percent
22 residential. So what I was trying to confirm in here,
23 that the commercial component of this planned development
24 will have 30 percent open space overall and that the
25 residential component will have 40 percent common open

1 space. Open space from the commercial component is not
2 being moved onto the residential component that sometimes
3 occurs.

4 This may need to be rewritten to get this clear.
5 That way, especially since the indigenous preservation is
6 provided in the project as a whole and the commercial
7 amount of open space, indigenous open space isn't entirely
8 the commercial component. But I have some language that I
9 had started scribbling to change it, and I'll read into
10 the record and then we may need to do some further
11 tweaking.

12 To change Condition 15 to say prior to local
13 Development Order approval, the landscape plans must
14 demonstrate that the commercial component of the project
15 is providing a minimum of 30 percent open space within the
16 commercial area designated on the Master Concept Plan.
17 And a minimum of 40 percent common open space is provided
18 within the residential area. Each individual parcel or
19 tract must provide a minimum 10 percent open space. The
20 indigenous preservation requirement is being met on the
21 overall project as depicted on the Master Concept Plan.

22 HEARING EXAMINER: All right. Now, when you say
23 each individual tract, are you talking residential tract
24 or commercial and residential tract, each one must have 10
25 percent?

1 MS. TREBATOSKI: The reason why I said parcel and
2 tract is on the Master Concept Plan it says commercial
3 parcel and then it says residential tract.

4 HEARING EXAMINER: Oh, I see.

5 MS. TREBATOSKI: So this residential tract would
6 have to have a minimum of 10. The residential tracts
7 really probably won't have any issues. It's going to be
8 on the Development Order when they bring in the
9 Development Order to subdivide this that each parcel --
10 with staff's recommendation it would be the one parcel on
11 the north side would need to have a minimum of ten percent
12 open space and the commercial parcel down here would have
13 to have a minimum of 10 percent. But between the two of
14 them, they have to have 30 percent which is a little
15 different than some planned developments. Some planned
16 developments really intend to divide the commercial down
17 to 10 percent open space, so --

18 HEARING EXAMINER: Okay.

19 MS. TREBATOSKI: But I was trying to confirm so
20 that when it comes in for Development Order, my
21 Development Order reviewers know what they're looking
22 for.

23 HEARING EXAMINER: You understand what she's
24 doing, Neale?

25 MS. MONTGOMERY: I do. And Kim pointed out that

1 it would help if our open space table more accurately
2 reflected that so we're going to have to leave the record
3 open anyway unless Jon can get it done by tomorrow to
4 adjust the open space table to reflect what Kim just said.

5 MS. TREBATOSKI: Along with that, I would just
6 like to note on the record that if the Hearing Examiner
7 does conclude that staff's limitations on the commercial
8 acreage are appropriate, then the open space table needs
9 to be revised because there's going to be larger
10 residential which require more open space and there would
11 have to be an increase of about a quarter of an acre in
12 the indigenous preserve.

13 HEARING EXAMINER: Okay. All right. I have some
14 questions, Jon, don't go modifying the Master Concept
15 Plan, that open space table and stuff, because I have some
16 questions on some of the things that I'm not sure they're
17 on the Master Concept Plan, but I have some questions
18 about setbacks and stuff, so to keep from having to redo
19 this three or four times, let's first talk about it
20 tomorrow and then we can leave the record open for you to
21 make your adjustments.

22 MR. HAGAN: Okay.

23 MS. TREBATOSKI: Then one other clarification
24 that I have and Tony will address this, on Page 10 up
25 under Condition 13, I think there's a typo in the acreage.

1 HEARING EXAMINER: For which one?

2 MS. TREBATOSKI: For the commercial, the D,
3 because the overall project acreage I believe is 65.13
4 acres and if there's 54 acres of residential, then that
5 would leave 11.13 acres of commercial instead of 11.27.

6 HEARING EXAMINER: Okay.

7 MS. TREBATOSKI: That is a scrivener's error. I
8 just want that double checked when the final numbers come
9 through.

10 HEARING EXAMINER: Okay.

11 MS. TREBATOSKI: Okay. Regarding the evolution
12 of where the indigenous preservation was provided on this
13 project, it's a challenge when you're balancing the
14 protection of species and plant communities and protection
15 of the existing residents in the area, and I want the
16 residents that are here to understand why we recommended
17 that, the preservation being moved to the western property
18 instead of where it was originally proposed, which would
19 have provided a larger setback to the existing residents.
20 And the main reason for that was the presence of the
21 gopher tortoises on this property and if the preserve
22 would have been located up in the north portion, it would
23 have resulted in being totally surrounded by development
24 and really --

25 HEARING EXAMINER: Hemmed them in.

1 MS. TREBATOSKI: Entrapping those tortoises where
2 with the Merchant's Crossing DRI, not only do you have a
3 preserve area but we have the water management area which
4 includes a filter marsh system and the lake, but also the
5 canal or ditch that was through here was modified and
6 naturalized into more of a creek system with plantings and
7 such so you end up connecting where the gopher tortoises
8 will be moved here into a larger system that allows for
9 some additional foraging opportunities for them.

10 We did check because the canal system ditch with
11 some drainage system was able to be more naturalized and
12 brought up to date in the Merchant's Crossing. We did ask
13 if the portion to the north was within this project's
14 boundaries because we would have looked at doing a similar
15 cross section but it's not.

16 HEARING EXAMINER: What is this little fellow
17 right over here?

18 MS. TREBATOSKI: Which little fellow?

19 HEARING EXAMINER: Straight through. See where
20 the purple line is and it goes around that tract down,
21 down, down, the developed area, right there to the west
22 now, to the other west.

23 MS. TREBATOSKI: There?

24 HEARING EXAMINER: Thank you.

25 MS. TREBATOSKI: That looks like some sort of --

1 that may possibly be a detention system.

2 HEARING EXAMINER: What's the development down
3 here?

4 MS. TREBATOSKI: You're getting into Cape Coral.

5 HEARING EXAMINER: Oh, that's Cape Coral, okay.

6 MS. TREBATOSKI: I think that's Cape Coral.

7 HEARING EXAMINER: I didn't know if that was part
8 of the --

9 MS. TREBATOSKI: Part of Merchant's Crossing?
10 No, that's not part of Merchant's Crossing. I'm not sure
11 what it is. Somewhere along here you have the entrance
12 to -- I'm not sure where the boundaries are. Merchant's
13 Crossing is here.

14 HEARING EXAMINER: Okay. It's down below that?

15 MS. TREBATOSKI: Merchant's Crossing is in this
16 vicinity. Yes, this isn't Merchant's Crossing.

17 HEARING EXAMINER: Okay. Good. Thank you.

18 MS. TREBATOSKI: What it is, I'm sorry, I can't
19 tell you offhand right now. So we evaluated
20 interconnecting the systems, and also we do encourage the
21 preservation of the associate systems and this will
22 preserve uplands and wetlands.

23 I would note that the area adjacent to this
24 wetland, there is some palm oaks, but there's also some
25 classic hammock area. And so you're ending up preserving

1 a diversity of habitat for wildlife in the area and
2 providing a larger area for the gopher tortoises to
3 actually sustain themselves better.

4 And along with the indigenous there were some
5 deviation requests, and Deviation 3 I debated whether to
6 say that that was really a necessary deviation or not
7 because the area where the existing easement is is
8 existing indigenous I think. What they are getting at was
9 that you can't have indigenous in an easement, and so I
10 decided we can clarify that, it wasn't that clear easement
11 that they're restoring, it's the existing indigenous, it's
12 just that the easement needs to go away.

13 HEARING EXAMINER: Okay.

14 MS. TREBATOSKI: And Deviation 4, this is a
15 similar situation to what we had on the Lake McGregor RPD
16 project, and that is that the drainage system is where the
17 outfall will be designed to is adjacent to the preserve
18 and in order for them to outfall from their project into
19 the system that is there, they need to be able to go
20 through the preserve and then just the same as Lake
21 McGregor RPD, instead of doing a hardened structure that
22 you dig up and then cover over and if you would ever have
23 any maintenance of that, you would have to dig it back up,
24 that it's better to have a naturalized outfall that's
25 indigenous to that, you go in initially disturbing a

1 portion of the preserve, but you avoid large trees and
2 stuff and then you actually end up planting it with native
3 vegetation and stuff so it's actually a naturalized
4 outfall and can compliment the preserve. And the only
5 time we allow that to happen is when that is -- the
6 outfall is supposed to go and it's there from systems that
7 the county has established years ago, so --

8 HEARING EXAMINER: There's not a problem then
9 with -- I mean, like most ditches after a while they start
10 filling up, are they going to have to keep digging this
11 little fellow out?

12 MS. TREBATOSKI: I'm sure there may be periodic
13 maintenance and stuff but right now in the Land
14 Development Code as of August 2005, they have to have an
15 indigenous management plan. In that management plan
16 they'll have to explain how they're going to maintain this
17 system that is in a manner that is consistent with
18 maintaining the preserve.

19 HEARING EXAMINER: Okay. Okay.

20 MS. TREBATOSKI: So that's where those come
21 from.

22 I will -- the gopher tortoises were found on the
23 site. Lee County doesn't allow the entombment of them so
24 they all will be relocated to the preserve. ES staff went
25 on site to verify that there aren't any eagles nested on

1 the property or other species of concern.

2 We did -- Mr. Palermo did receive photographs of
3 a large wildcat on the property that one of the neighbors
4 believed to be a --

5 HEARING EXAMINER: Can I see that?

6 MS. TREBATOSKI: I'll give this to you. They
7 believe it to be a panther. I'll give you a copy of this
8 as well. That the tail is too short for it to be a
9 panther. It's a pretty good sized bobcat.

10 HEARING EXAMINER: All right. Somebody needs to
11 show me where this little guy -- oh, there he is.

12 MS. TREBATOSKI: He's right here. The bottom one
13 is harder to see but you see its tail is about at its
14 thigh and you'll see that bobcat's at thigh level and
15 panthers' tails hit the ground.

16 HEARING EXAMINER: Okay. He blends in real well
17 with his surroundings.

18 MS. TREBATOSKI: So I'll leave that with you and
19 I can leave these here if the public wants to look at them
20 at all.

21 But we did verify that. And, you know, then the
22 question arises, well, why don't you protect the bobcat.
23 And the answer to that, we have authority to address
24 listed species. Bobcat is not a listed species. But
25 fortunately in Lee County, and this does not occur in all

1 counties in the state, but in Lee County we do have the
2 indigenous preservation requirements so we are preserving
3 habitat to try and at least afford opportunities for
4 animals to have safe places to hide or pass through. In
5 this case I don't think they're going to stick around in
6 this area that long, but they may reside even in the pine
7 flatwoods and this preserve is an area that would allow
8 the bobcat to have cover and forage and opportunities to
9 be in that area but it was not a panther.

10 HEARING EXAMINER: Okay. Okay.

11 MS. TREBATOSKI: That's really the long and short
12 of what I have to say today, and I appreciate you letting
13 me go out of order due to conflicts tomorrow.

14 HEARING EXAMINER: All right. Any questions of
15 this witness?

16 MS. MONTGOMERY: No.

17 HEARING EXAMINER: Any questions by staff, County
18 Attorney?

19 MR. FREDYMA: Did you give the photo an exhibit
20 number?

21 HEARING EXAMINER: Yes. The bobcat photos are
22 Staff Exhibit 2 and the panther description and article
23 are Staff Exhibit 3.

24 MR. FREDYMA: Thank you.

25 (Staff Exhibits Nos. 2 and 3 were marked for

1 identification.)

2 HEARING EXAMINER: Okay. All right. No
3 questions of Kim?

4 MR. PALERMO: No, not at this time.

5 HEARING EXAMINER: All right. Thank you, Kim.

6 Okay. At this time let's go ahead and take
7 public. All right, folks, we're going to have to bring
8 this case back tomorrow afternoon at 2:30 to finish up
9 applicant's and staff's presentations. We're not going to
10 get them done today. So what I want to do now is open the
11 floor up for public comment. Anybody that wants to
12 testify in the hearing I will give you the opportunity,
13 specifically, if you have environmental questions, because
14 neither one of -- well, county environmentalist is not
15 going to be here tomorrow, all right, so if you have
16 environmental questions that you need to ask, you'd like
17 answers for, now is your opportunity. And if you just
18 want to speak on the record because you don't want to come
19 back tomorrow, that's fine, you know, we'll go ahead and
20 take your testimony now.

21 I have a whole bunch of little forms here so I'll
22 just call the roll. Eric Hallin.

23 MR. HALLIN: Hallin, yes.

24 HEARING EXAMINER: Okay. Do you want to speak?

25 MR. HALLIN: No, I don't. I just wanted to get

1 on the record.

2 HEARING EXAMINER: Okay. All right. Ronald
3 Jenkins.

4 MR. FREDYMA: Madam Hearing Examiner, John
5 Fredyma, Assistant County Attorney. Just making sure that
6 this gentleman understands that getting on the record in
7 the way that he did will not allow him to speak.

8 HEARING EXAMINER: I'll explain it to him.

9 MR. FREDYMA: Thank you.

10 HEARING EXAMINER: Mr. Jenkins, you wish to
11 speak?

12 MR. JENKINS: Yes.

13 HEARING EXAMINER: All right, come on up, please.
14 Now, if I didn't swear you in, please tell me.

15 MR. JENKINS: Yes, you did swear me in.

16 HEARING EXAMINER: Okay.

17 Thereupon,

18 RONALD JENKINS,
19 called as a witness, having been previously duly sworn,
20 was examined and testified as follows:

21 MR. JENKINS: My name is Ronald Jenkins. I'm a
22 resident of Six Lakes Country Club adjoining the project.
23 Ours is a community of resident-owned homes. For many
24 people it will be their last home. We certainly are not
25 against development, but we wish that it be done in a way

1 to maintain our quality of life.

2 We realize that as any community comes in,
3 whether it's another mobile home park or any type of
4 development, that we and they also will be impacted by
5 noise, traffic, construction, possible water, sewage
6 matters.

7 The environmentalist stated that there are some
8 oaks along the western edge of property which, of course,
9 is our edge. I understand many times developers go in and
10 they rake the land, clear it 100 percent and then go back
11 later and plant.

12 I would implore them to please leave as much
13 natural vegetation in the 30 foot proposed buffer zone
14 between our property and their development.

15 I would also ask that they take into
16 consideration possibly the placement of a berm up to eight
17 foot tall, an earthen berm, put vegetation, landscaping
18 materials on that.

19 Certainly hope that they honor the staff's
20 recommendation of the increase in the number of canopy
21 trees that will provide not only beauty to look at but
22 also insulation between the neighborhoods.

23 Also, I think that you will find the future
24 housing purchasers of the new developer may not want to
25 look at a mobile home park as much as the mobile home park

1 does not wish to look at 35 foot tall buildings.

2 That's all I have.

3 HEARING EXAMINER: Okay, sir, thank you very
4 much.

5 Jim Toth. Is that Toth or Toth?

6 MR. TOTH: Toth.

7 HEARING EXAMINER: Toth, okay.

8 Thereupon,

9 JIM TOTH,

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

12 MR. TOTH: Thank you, Madam Hearing Examiner.

13 My name is Jim Toth. I'm a resident of Six Lakes
14 Country Club. My wife and I have lived there for 20
15 years. We love the area.

16 I have gone over the Staff Report which Tony was
17 kind enough to share with me a week or so ago, and that is
18 my framework. A lot of the comments that I have stem from
19 that information. What has gone on before or since then,
20 I simply don't have much access to other than something
21 that's called a Traffic Impact Survey which absolutely
22 numbed my mind.

23 At any rate, dealing with the information I have
24 gotten, there are basically four areas that we have a
25 concern with. Let me address the first.

1 HEARING EXAMINER: When you say "we," are you
2 speaking for you and your wife?

3 MR. TOTH: And I have been authorized by several
4 other people, president of our board, vice-president of
5 our board and our general manager.

6 HEARING EXAMINER: Okay.

7 MR. TOTH: We have had a meeting in advance of
8 this get together, and we have gone over this mutually and
9 they have asked me to represent them since they have a
10 board meeting themselves today and are unable to be here.

11 HEARING EXAMINER: Okay. So you're representing
12 the Board of Directors as well as personal comments and
13 whatnot?

14 MR. TOTH: I think that's fair to say, yes.

15 HEARING EXAMINER: All right.

16 MR. TOTH: All right. My concern, number one,
17 has to do with the buffering and there are a couple of
18 developments that we learned of today that set me back a
19 little bit. Based upon the Staff Report we were very
20 content with the way the thing seemed to be going.

21 HEARING EXAMINER: Okay.

22 MR. TOTH: The Staff Report indicates that -- let
23 me just indicate what my concern is. This is the area
24 that we're concerned with buffering (indicating). This is
25 Six Lakes (indicating), this is the new development

1 (indicating), this is another mobile home park
2 (indicating). This is the area that's impacted
3 (indicating).

4 And in that area, the Staff Report says that they
5 recommend a 30-foot buffer which is to extend from the
6 eastern -- I'm sorry, the western boundary line of the
7 developed property back 30 feet. We would certainly
8 support the staff recommendation. And as our other
9 speaker, Mr. Jenkins, just said, we would certainly
10 encourage the developer to introduce a berm with visual
11 and noise impact benefits that would be derived from it.

12 The trees and the shrubbery that the developer is
13 -- or at least the Staff Report suggests would be nice
14 but, again, as the other speaker suggested, we would
15 certainly encourage leaving the natural growth in there to
16 the maximum extent possible.

17 The people that live along that area have for
18 years looked at that as a nature preserve. Now, they're
19 suddenly going to find themselves faced with an entirely
20 different scene and that brings me to one of the comments
21 brought up by the environmental lady here.

22 The removal of the plan to allow that area to
23 remain as a nature preserve, I don't know what you'd call
24 it, but leave it as an open undeveloped area. That is now
25 apparently being moved down to the south. If there's any

1 way at all possible to change that, we would certainly
2 encourage it. The neighbors who live on that side have
3 over the years witnessed a great deal of wildlife,
4 including the bobcats that we just talked about, the
5 birds, the alligators, the otters and a wide variety of
6 wildlife, that apparently now is going to be effectively
7 removed from the area.

8 On a worst case basis, we would like to see the
9 buffering recommended by staff with the introduction of a
10 berm and to the extent possible leaving the natural growth
11 there.

12 Next, number two, now this brings me to that
13 mind-numbing document, traffic. I spent hours trying to
14 figure out what it meant and I still haven't the foggiest,
15 but it did help me go to sleep.

16 HEARING EXAMINER: Thank you. He's catching the
17 comment, okay.

18 MR. TOTH: At any rate, the concern of the
19 traffic consultant who spoke earlier addressed obviously
20 the traffic impact on 41 and on Diplomat. Our concern
21 extends to areas which may be considered secondary from
22 the standpoint of the traffic consultant, that has to do
23 with the road to the west of our property and to the north
24 of our property. Let me indicate what I'm talking about.

25 HEARING EXAMINER: Please.

1 MR. TOTH: We have Littleton Road up here and
2 then over in this area is a Corbett Road (indicating). In
3 this area between us and Corbett Road there is a school.

4 HEARING EXAMINER: Oh, okay.

5 MR. TOTH: And it is that school which gives us
6 some concern, not obviously the existence of it, but the
7 potential impact on the traffic pattern which may result
8 from the introduction of families in the planned developed
9 area.

10 HEARING EXAMINER: Oh, I see. So you're
11 concerned that any families living there are going to be
12 coming out and going up to Corbett and then going north to
13 the school to drop the children off and the reverse,
14 picking them up and coming back --

15 MR. TOTH: Yes.

16 HEARING EXAMINER: -- so it's going to increase
17 traffic on Littleton.

18 MR. TOTH: Which is a concern to us because it is
19 only a two-lane road. Traffic coming into our community
20 from the east has got to make a left turn in order to get
21 into the community. There is no left-turn lane at the
22 present time. The road is already very busy. With the
23 introduction of the school and the school bus traffic,
24 that added an additional burden. Now we have all of the
25 development up in the north Cape with all of the truck

1 traffic going east and west on Littleton. That's a
2 pretty good heavy burden.

3 HEARING EXAMINER: Your main access, then, is on
4 Littleton, you don't have an access onto -- I guess you
5 don't have an access onto Diplomat, do you?

6 MR. TOTH: No, ma'am.

7 HEARING EXAMINER: Do you have one on Corbett?

8 MR. TOTH: No, ma'am. We have one, two, three
9 accesses.

10 HEARING EXAMINER: Oh, I see, okay. You have
11 three out onto Littleton?

12 MR. TOTH: Yes. Two of them are basically for
13 residential access. The other is for access to our
14 maintenance area.

15 HEARING EXAMINER: Okay.

16 MR. TOTH: But it can be used in an emergency.
17 Basically two residential uses.

18 HEARING EXAMINER: Okay.

19 MS. MONTGOMERY: Is that the school next to you?

20 MR. TOTH: Yes. Immediately to our west. Yes,
21 right in here (indicating), that's the school.

22 HEARING EXAMINER: Okay. Oh, I see. Okay.

23 MR. TOTH: Our concern, obviously, is that if the
24 traffic gets any heavier than it already is, we can
25 anticipate some messy traffic problems getting in and out

1 of our community.

2 The next item on my shopping list here has to do
3 with utilities. As Mr. Jenkins pointed out, we are a
4 resident owned community which means that we own
5 everything inside the fence, including the utility
6 systems. We own our own water distribution system. We
7 don't produce the water, we buy it in bulk from Lee County
8 utilities. They deliver it to the main meter located at
9 the northeastern corner of our park. From that point on
10 it is our responsibility to deliver it to the residents
11 and to bill them for it.

12 Similarly, in the case of our sewer system, we
13 own the entire sewer collection system and we are
14 responsible for delivering it outside our fence to North
15 Fort Myers Utility.

16 Now, the concern obviously is what will be the
17 potential or what might be the potential impact on these
18 services resulting from the development.

19 The biggest concern that I personally have is
20 that our sewer system was built -- or designed and built
21 in 1992. We have two lift stations. One is a secondary
22 which delivers sewage from the western side of the park to
23 the main lift station which is located near the eastern
24 side of the park. That main lift station then delivers
25 the sewage to the force main located outside the fence.

1 Since it was designed in 1992, of course, much
2 development has taken place. The school went in. There
3 are other communities, all of which have come on line,
4 thereby increasing, as I understand it, I'm not a sewer
5 man but I'm listening to what they're telling me, they say
6 that that has increased the pressure inside the force main
7 which means that our system must produce even more
8 pressure to get our poopie back into their force main.
9 Technical term.

10 MS. TREBATOSKI: That's a first.

11 HEARING EXAMINER: Okay. So, in other words,
12 what you're concerned about then is that when these folks
13 come on and they're on the septic system or the sewer
14 system, then it's going to even increase the requirement
15 for you all, more power, more power, more power?

16 MR. TOTH: That's a big concern which may result
17 in a need for a purchase and installed bigger pump.

18 HEARING EXAMINER: A new system, okay.

19 MR. TOTH: Maybe more than that, I don't know.

20 HEARING EXAMINER: Interesting. I would not have
21 thought of that. You learn something every day.

22 MR. TOTH: We would hope that that would be taken
23 into consideration at an appropriate time. As I
24 understand it right now, we're talking about rezoning,
25 we're not talking about the actual development, and it may

1 be that this is an item that would be more appropriate at
2 the development phase. But I wanted to make sure it was
3 on the record because it is a concern to us. We are
4 working on it currently trying to figure out what we want
5 to do, and another element moving very close over the
6 horizon, we'd certainly like to include it in our
7 thoughts.

8 HEARING EXAMINER: Okay. Okay.

9 MR. TOTH: Okay. I guess the final item on my
10 hit list here, I think that's already been covered, the
11 police, fire and emergency medical services, I believe Jon
12 has covered that in his commentary, and I believe staff
13 has also covered it in their commentary, that they believe
14 the existing facilities are either currently adequate or
15 will be made so as the development takes place. Am I
16 correct in my understanding?

17 MR. PALERMO: Yes.

18 MR. TOTH: That's not something that we need to
19 concern ourselves with.

20 HEARING EXAMINER: No.

21 MR. TOTH: I have spoken with Terry Flavy (ph),
22 North Fort Myers Fire Commissioner, and he has assured me
23 that at the present time the protection that we have with
24 the water system is probably okay. It's not probably, it
25 is okay. But should we get additional requirements or

1 load on that line, I just want to be prepared that it's
2 not something that we're going to have to struggle with.

3 HEARING EXAMINER: You shouldn't have to. I
4 mean, they can design those cotton-picking systems so
5 there's some kind of a loop system, or whatever, that
6 supposedly doesn't take it away from folks downstream.
7 But, I mean, as you said, I'm not one of them either, so I
8 just have to rely on what they tell me.

9 MR. TOTH: The only thing that we do know, that
10 is the water pressure in our community is quite low.
11 There are portions of the community, southwestern portion,
12 people there sometimes have a little difficulty taking a
13 shower. We're already struggling with low water pressure,
14 and I don't know what this might do to it. At any rate, I
15 wanted to put that on the record as well.

16 And with that, I think I can go about my
17 business. Thank you very much for the opportunity to
18 speak.

19 MS. MONTGOMERY: Can I ask you a couple of
20 questions before you go?

21 MR. TOTH: Surely.

22 MS. MONTGOMERY: I just want to make sure, since
23 we talked about the utilities, where do you connect, where
24 does your -- do you connect into Littleton?

25 MR. TOTH: Sewer system? You're talking about

1 the utilities? The water line comes down on the north
2 side of Littleton and then our main meter is located right
3 at this point here. So we get bulk delivery of the water
4 at that point. From that point on it's all ours.

5 Sewer system, again the main line comes down on
6 the north side of Littleton, cuts across Littleton, goes
7 underneath and then ties into a point right around this
8 point, and then goes into our main lift station. So the
9 force main that I talked about is located right in this
10 point. I don't know what some of these other systems are
11 going to tie in. Whether they'll affect this or something
12 else. It's only a concern that I'm not sure about. And I
13 want to make sure that we at least get the message on the
14 record.

15 HEARING EXAMINER: Where's the actual treatment
16 plant?

17 MR. TOTH: Over here (indicating).

18 HEARING EXAMINER: It's on that side?

19 MR. TOTH: Yes. It's North Fort Myers Utilities.

20 HEARING EXAMINER: Oh, okay, I know where that
21 is.

22 MR. TOTH: We used to have our own package plant,
23 but in '92 we had a little bit of a row with it,
24 environmental folks, and they won. At any rate, we --

25 MS. MONTGOMERY: They usually do.

1 MR. TOTH: Pardon?

2 MS. MONTGOMERY: They usually do.

3 Let me ask you another question. Is there a 50
4 foot drainage easement between your property and this
5 property?

6 MR. TOTH: Yes. That's the DOT drainage canal
7 that runs from the other side of -- goes north of
8 Littleton and it goes south of Diplomat. But the entire
9 boundary in between Serendipity and us and the planned
10 development is separated by this 50-foot easement.

11 MS. MONTGOMERY: Is there actually a ditch in
12 that easement? Is the ditch actually in the easement?

13 MR. TOTH: Yes.

14 MS. MONTGOMERY: Okay.

15 MR. TOTH: We have deeded half of that ditch in
16 an easement to the DOT. I believe Serendipity probably
17 did the same on their side.

18 MS. MONTGOMERY: Okay. I don't have any other
19 questions.

20 HEARING EXAMINER: Anything from staff of this
21 witness?

22 MR. PALERMO: No.

23 HEARING EXAMINER: Thank you, Mr. Toth.

24 MR. TOTH: Thank you.

25 HEARING EXAMINER: Okay. Let's see. Michael

1 Dessart.

2 UNIDENTIFIED SPEAKER: They had to leave.

3 HEARING EXAMINER: Oh, okay. Well, you might
4 want to tell them if they want to come and speak tomorrow,
5 we're going to be doing this again --

6 UNIDENTIFIED SPEAKER: Four of them had to leave.

7 HEARING EXAMINER: -- at 2:30 tomorrow, so if
8 they want to come back to speak tomorrow, if they don't
9 have anything better to do.

10 UNIDENTIFIED SPEAKER: There's one gentleman
11 still here.

12 HEARING EXAMINER: Okay. I've got Herbert
13 Gartner.

14 UNIDENTIFIED SPEAKER: He's gone.

15 HEARING EXAMINER: All right. Terry Overse (ph).

16 UNIDENTIFIED SPEAKER: He's gone.

17 HEARING EXAMINER: Anthony De Rico. All right,
18 that's you. Okay.

19 Thereupon,

20 ANTHONY DE RICO,

21 Called as a witness, having been previously duly sworn,
22 was examined and testified as follows:

23 MR. DE RICO: Thank you very much for having the
24 opportunity to speak.

25 I just have a couple of questions based on what I

1 have been hearing today. I'm a resident of Six Lakes
2 also, which is adjacent to the property which is being
3 developed.

4 Just a couple of things. I've heard about the
5 density of the number of buildings that are going to be in
6 the site, but I haven't heard anything about the density
7 of the number of people that are going to be living in
8 that site. And comparing that to the density of number of
9 people living per acre around us, is that going to be more
10 intensely used than the present mobile home parks?

11 MS. MONTGOMERY: The answer to that is, I think
12 when you look at how we look at density, we look at the
13 number of units or buildings per acre. The county has an
14 average which they assume is the number of people per
15 building, but obviously we have no way of knowing.

16 MR. DE RICO: Because I noticed here that they
17 had eight plexes, six plexes and four plexes, but they
18 don't indicate how many of these are actually going to be
19 installed. These could be all eight plexes in here for
20 all I know; is that correct?

21 MS. MONTGOMERY: Yes. Is that your question, how
22 many --

23 MR. DE RICO: Right. So if they're all eight
24 plexes, then you're going to have a greater number of
25 people in the per acre than, for example, Six Lakes which

1 are all single family?

2 MS. MONTGOMERY: No. The number of units per
3 acre is going to be set, regardless of what kind of
4 building it is, it will be a set number of units per acre.

5 MR. DE RICO: But number of people per acre.

6 MS. MONTGOMERY: The number of people per acre is
7 an assumed --

8 MR. DE RICO: Okay.

9 HEARING EXAMINER: Normally, for purposes of
10 number of people, I think the county uses a 2.3 or 2.6
11 persons per unit, okay. But you have to assume that
12 that's good for a two bedroom or a one bedroom. But for a
13 three bedroom it may be more than that. So that's the
14 average that they use. All right. But what the
15 applicant's attorney is trying to tell you is that if it
16 says an eight plex and you see an eight plex, you know,
17 you're only allowed to have "X" number of units per acre,
18 so it doesn't matter how many eight plexes you have, you
19 can only still have "X" number of units per acre, so you
20 can't exceed that number.

21 MR. DE RICO: You just can't put all eight plexes
22 in and say --

23 HEARING EXAMINER: Yeah. I mean, you can't dump
24 them all --

25 MR. DE RICO: I'm looking at the plan here, and

1 it looks like each one of these are a building site, but
2 it doesn't indicate if there's an eight plex here, then
3 that means that the site will be maybe expanded bigger?

4 MS. TREBATOSKI: The density is on the gross
5 acreage.

6 HEARING EXAMINER: Yeah. It's not on per piece.
7 You can't say, okay, this is an acre, you get an eight
8 plex, this is an acre, you get an eight plex.

9 MR. DE RICO: You can put less eight plexes per
10 acre than you can put single family per acre?

11 MS. MONTGOMERY: No. In theory, yes, but --

12 HEARING EXAMINER: There's a lot of things
13 involved in that. You've got your setbacks. You know, I
14 mean, if you have an eight plex, you've got everybody
15 crammed right together, maybe one on top of each other,
16 where in a single family you've got your setback between
17 each one of those houses. So that's going to have an
18 effect on how much actual overall space on the ground
19 you're actually using, you know. So we're a little
20 confused by what you're looking at.

21 MR. DE RICO: Okay. What I'm saying, let's
22 simplify it. I would not like to see the land uses exceed
23 what's around it as far as number of people per acre.

24 HEARING EXAMINER: Okay. So if you're got six
25 units per acre in yours and figuring it 2.3 people per

1 unit, that's 15 people essentially, or whatever, so you
2 don't want more than 15 people per acre is what you're
3 saying?

4 MR. DE RICO: That would be if anything goes
5 above that, then I think that might be looked at as
6 negative impact to the area.

7 HEARING EXAMINER: I see what you're saying.

8 MR. DE RICO: Another thing I'm concerned about,
9 I looked at this plan here, is that you have all these
10 people living in this, it looks like a walled-in area, but
11 there's only one way to get in and out. Now, what happens
12 if there's a fire here or something and somebody back here
13 needs an ambulance because of some illness, acute illness?

14 HEARING EXAMINER: Are you looking at the Master
15 Concept Plan, sir?

16 MR. DE RICO: Yes. This looks like the updated
17 one. I'm just concerned about down here, you have two
18 entrances, which makes sense, but up here you only have
19 one which I'm concerned about because you have people
20 living way back here. And if for some reason, whether
21 traffic congestion or something, you're trying to get
22 emergency vehicles back there, expedite the matter, it
23 might be inhibited in some way due to a car accident or
24 fire or some other incident on the roadway.

25 HEARING EXAMINER: So you think it would be a

1 good idea for them to have another access point into this
2 development, maybe where one of the other -- maybe where
3 the main access point is, have it carry right on through?

4 MR. DE RICO: I would think that would make sense
5 in terms of life safety issues that might occur.

6 I mean, you're having a significant number of
7 people living back there in that area. I would just want
8 to raise that as a concern.

9 HEARING EXAMINER: Okay.

10 MR. DE RICO: It certainly doesn't impact Six
11 Lakes in any way, but it does impact the people who are
12 living next to it.

13 HEARING EXAMINER: Okay. All right. Safety of
14 the residents, okay.

15 MR. DE RICO: Thank you very much for your time
16 and I appreciate it.

17 HEARING EXAMINER: Thank you, sir.

18 Mr. Toth, do you have something else you want to
19 add to the record, sir?

20 MR. TOTH: I apologize.

21 HEARING EXAMINER: That's all right.

22 MR. TOTH: I had so much fun before I got carried
23 away. There was one other item that staff had
24 recommended but the developer seems to take exception to
25 which impacts that, and that is the northern commercial

1 area. We're talking about Parcels 1, 2 and that part of
2 No. 3 that staff has suggested be left either open or
3 left for residential purposes, and, of course, we were
4 quite happy with that recommendation but now apparently
5 the developer has chosen to say that he doesn't like that
6 and I guess I can understand. But for what it's worth, we
7 would prefer to stay with the Staff Report at least as
8 much as we could possibly get for obvious reasons.

9 HEARING EXAMINER: Okay.

10 MR. TOTH: Okay?

11 HEARING EXAMINER: Okay.

12 MR. TOTH: Thank you very much.

13 HEARING EXAMINER: Thank you, sir.

14 All right. Now, Mr. Hallin, I need to explain to
15 you something, if I can find your little thingie here.
16 You said that you were here just to sort of get on the
17 record. Here you are.

18 MR. HALLIN: I understand. Perhaps I should
19 speak.

20 HEARING EXAMINER: Yes. I was going to say, if
21 you don't speak here, even though your name will go in as
22 having attended, but if you don't like my recommendation
23 to the Board of County Commissioners, you can't tell them
24 you don't like it. You're stuck, you know. So state your
25 name, please.

1 MR. HALLIN: My name is Eric Hallin.

2 THE COURT: Were you sworn in?

3 MR. HALLIN: No, I'm not.

4 Thereupon,

5 ERIC HALLIN,

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

8 HEARING EXAMINER: All right. Eric Hallin.

9 MR. HALLIN: Some of my concerns here are those
10 mentioned of perhaps another intersection, if I could
11 point at the map here, where they come up here and they
12 contact this road here (indicating). I was wondering if
13 they were thinking about putting in another entrance to
14 traffic at that point, and because we have a long stretch
15 of property, I'm concerned about the number of access
16 points that are going to be allowed along the way here.
17 We've spent a lot of time talking about how they've been
18 trying to keep the limited -- and I'm trying to see how
19 this is all going to fit together in the future and see
20 what plans -- my biggest concern is the plans that we're
21 talking about today seem to be just for this project, but
22 because of such a large area that's going to be developed,
23 what the county would like to create in the long range as
24 the big picture of what's going on here rather than just
25 short range planning here, what we have in the way of long

1 range planning.

2 MS. MONTGOMERY: Let me just answer that
3 question, I think. Ted Treesh may be able to answer it
4 better, but US 41 is a state road.

5 MR. HALLIN: Pardon?

6 MS. MONTGOMERY: US 41 is a state road and the
7 state regulates the connections to US 41 and they have
8 criteria about what that spacing has to be.

9 MR. HALLIN: Yes, that's what I'm concerned
10 about.

11 MS. MONTGOMERY: We don't show any connection
12 there. If we're going to have access to 41, it would have
13 to be through someone else's property to an access point
14 that DOT permits. So you'll find when you go to develop
15 your property they'll restrict access for you. They'll
16 tell you how many you're going to get.

17 MR. HALLIN: Weren't you making reference to the
18 fact that you wanted some way to have access or egress at
19 that end of the property?

20 MS. MONTGOMERY: We wanted to be able to do
21 commercial on Parcel 3, retail commercial if access to US
22 41 was secured.

23 HEARING EXAMINER: But what she's saying is that
24 her property in that area is so narrow that the feds or
25 the state of Florida will not give them access, it's too

1 short. They're going to have to come up like maybe
2 through your property when you start developing your
3 property, you know, buy a cross easement across your
4 property and get out at your access point, you know, and
5 that's the whole point, that the state will tell you where
6 you can have an access point. It's got to meet their
7 specifications and their property right there at that end
8 is just too small.

9 MR. HALLIN: Okay. Are these Staff Reports
10 available to us, the public?

11 HEARING EXAMINER: Yes, sir.

12 MR. HALLIN: How could I get a ahold of one? I'm
13 coming in at this late and I'm trying to catch up here.

14 HEARING EXAMINER: You want to get --

15 MR. PALERMO: I can get you one.

16 HEARING EXAMINER: Do you own that piece of
17 property, sir, to the -- right there where the horses are?

18 MR. HALLIN: Yes.

19 HEARING EXAMINER: You do own that, okay.

20 MR. HALLIN: And the opposite side of the road,
21 too.

22 HEARING EXAMINER: Okay. So do you at this time
23 have or are you considering any plans for future rezoning?

24 MR. HALLIN: My father died and left it to us in
25 an estate change, but next year we're probably going to

1 have that back on the market again.

2 HEARING EXAMINER: Okay. Did you hear that,
3 Neale? Did your client hear that, Neale?

4 MS. MONTGOMERY: I think my client obviously was
5 paying attention.

6 HEARING EXAMINER: Okay.

7 MR. HALLIN: So perhaps I'll just try to speak to
8 him tomorrow and see where this goes.

9 HEARING EXAMINER: Okay. That will be fine.
10 Tony can get you a copy of the Staff Report and you can
11 read it and then you'll -- you'll have a little more
12 information then, because some of this stuff has been --

13 MR. HALLIN: To keep involved in this planning
14 here, what is going to be required of me to keep -- to get
15 the reports that you're preparing and so forth?

16 HEARING EXAMINER: All right. Now, what will
17 happen is once I make my decision and type up my
18 recommendation to the Board of County Commissioners and
19 forward it to them, as long as I have a white form from
20 you, whether you spoke or not, you will automatically get
21 a copy of my recommendation to the Board of County
22 Commissioners. And then at some point in time after that,
23 the Zoning Department over here will send you notice of
24 when it's been scheduled in front of the Board and give
25 you the opportunity then to come in and speak to the Board

1 if you think I made a mistake.

2 MR. HALLIN: Okay. Very good, thank you.

3 HEARING EXAMINER: Okay. Thank you, sir.

4 MS. TREBATOSKI: Could I make a couple of -- even
5 though they're public record, could I make a couple of
6 comments regarding some of their comments for the record?

7 HEARING EXAMINER: Certainly.

8 MS. TREBATOSKI: Since I can't be here tomorrow.

9 HEARING EXAMINER: Yes.

10 MS. TREBATOSKI: Thank you.

11 For the record, Kim Trebatoski, Principal
12 Environmental Planner, Lee County.

13 The first thing that I'd like to note is they did
14 mention a number of large oaks along the property. I'm
15 not convinced that it's on this property that might
16 actually be within the drainage easement. I don't know
17 for sure if their survey stakes out there, so it might be
18 on this property, but it might be within the drainage
19 easement, it's right along that area.

20 But, secondly, there's a little bit of a conflict
21 in their request. They're requesting they retain the
22 native vegetation but requesting an eight-foot berm. You
23 can't do both. That was my note to Jon. And with an
24 eight-foot berm, three to one slope is what we need for
25 planting, it's a minimum, and that's with peaking with no

1 planting area on top is a minimum of 48 foot width of area
2 to get that 3 to one if I did that right. If I did my
3 multiplication right.

4 So I just wanted make those points that -- and I
5 don't know, perhaps the applicant knows if those oaks are
6 on their property or not, but they may be in the easement
7 which could come down at any time. So those were the
8 things I really wanted to note for the conflict in the
9 request.

10 HEARING EXAMINER: Okay.

11 Paul, can you come back up?

12 Thereupon,

13 PAUL EZZO,

14 resumed the stand and testified further:

15 HEARING EXAMINER: When you did the survey and
16 stuff out there, did you recall the oaks that these folks
17 are talking about, we're talking about the mature ones?

18 MR. EZZO: Yes, ma'am. Again, my name is Paul
19 Ezzo for the record.

20 HEARING EXAMINER: Are they on the subject
21 property or are they adjacent to it? Are they between the
22 two properties here, do you know?

23 MR. EZZO: Can I say yes to both questions? It
24 is probably you have some that are within the easement and
25 according to a survey that's in front of me that was

1 prepared probably a year ago, there are several called
2 heritage oaks and heritage pines either right up against
3 the property line or right inside. So it's fairly close.

4 HEARING EXAMINER: All right. Let me ask Kim
5 this. All right, Kim, does the Land Development Code
6 require them to preserve those if they are right inside
7 the property line since there is a buffer requirement? Is
8 this going to be a requirement that they do it or is that
9 only for preserve area?

10 MS. TREBATOSKI: They are not required to
11 preserve any additional heritage trees because they met
12 their indigenous requirement. The heritage tree
13 requirement comes into play when you don't have enough
14 indigenous and then you have to look at your heritage
15 trees, too.

16 Regarding the buffer requirement, the developer
17 could opt to retain the existing trees and they would get
18 a five to one credit for the buffer trees. So they could
19 opt to retain the trees to meet the buffer requirement
20 but --

21 HEARING EXAMINER: And still have the width on
22 the buffer but not the plantings, same number of
23 plantings?

24 MS. TREBATOSKI: No. They could reduce the
25 number of plantings per hundred linear feet by retaining

1 the existing trees and then just adding the shrubs that
2 are required in the buffer. And with those 30 foot width
3 and then you have buildings, I don't know what the
4 building setbacks are --

5 HEARING EXAMINER: Well, the building setbacks
6 right now are 20 feet, and they're going to have to be
7 changed.

8 MS. MONTGOMERY: You can't have a 20 feet from
9 the --

10 MS. TREBATOSKI: My point was that the 30 foot
11 width of the trees on the eastern part of that 30 foot
12 width, it's not going to be able to be retained because
13 the buildings are going to be there and it wouldn't work.

14 HEARING EXAMINER: Build the buildings around the
15 trees.

16 MS. TREBATOSKI: But it's a large oak tree, you
17 can have, you know, a 90 foot spread, 45 feet on either
18 side, so it's something that needs to be worked out on
19 site and sometimes developers wait until they survey it in
20 and work with us if it takes removal permit time, so
21 it's --

22 HEARING EXAMINER: I need to do a site visit out
23 there. But if there are some mature trees out there, I
24 hate to see those just taken down indiscriminately. So
25 just a word to the applicant on this that --

1 MS. MONTGOMERY: And I understand what you're
2 saying and I knew that would be your sentiments, but I do
3 agree with Kim, if they're on the western boundary, I
4 think they can be incorporated. If they're on the eastern
5 boundary, that becomes more problematic.

6 HEARING EXAMINER: Okay.

7 MS. MONTGOMERY: And that's in the best interest
8 of people because it's one less tree you have to plant,
9 buy a plant for me.

10 MS. TREBATOSKI: If you want the ultimate
11 developer to critically look at that, I would recommend
12 that you add a follow-up sentence to the buffer conditions
13 that effort must be made to retain the existing trees
14 within that preserve.

15 HEARING EXAMINER: Okay.

16 MS. TREBATOSKI: Because, otherwise, right now we
17 know who potentially could be the developer but that could
18 change.

19 HEARING EXAMINER: And that's the thing. I mean,
20 that was where I was going with that is that I may end up
21 adding a condition that asks you to use all reasonable
22 efforts to retain as many of those mature trees along that
23 west boundary as possible. And, I mean, I understand, you
24 know, like Kim said, if you've got a 90 foot spread on
25 this tree, you know, I mean, short of giving away your

1 building or not building a building there, you know, I
2 mean, then you have to make some sacrifice somewhere. But
3 there should be -- there could be some, I won't say should
4 be, but there could be some that could be easily retained.

5 MS. MONTGOMERY: And I'm talking about the
6 eight-foot berm. If you're going to put an eight-foot
7 berm in, there's not going to be any vegetation left.

8 HEARING EXAMINER: No. An eight-foot berm is
9 very difficult. If I were even looking or considering a
10 berm requirement, it would be something in the order of
11 three feet with a wall.

12 MS. MONTGOMERY: And that's is what I was
13 thinking.

14 HEARING EXAMINER: Yes. Okay. If I were
15 considering a berm requirement at all, it would be
16 something three feet with a wall. An eight-foot berm, you
17 might as well -- I mean, some of those mines have the 10
18 and 12 foot berms and they're enormous.

19 MS. TREBATOSKI: If you're considering a wall,
20 you have to relay that with the preservation.

21 HEARING EXAMINER: We had that one where we
22 had -- the wall had -- it was a fence, I think we ended
23 up with or something, and it had to go like this around
24 the existing --

25 MS. TREBATOSKI: And just another note with the

1 final building layout, you may end up being able to retain
2 some of the trees that are on the west -- the east side of
3 the 30 foot, depending on where the buildings lay out.
4 But my staff is going to work with developers when it's
5 coming down to that on site and tweaking it around on
6 site. But I do think it's important to clarify that in
7 any conditions so that whoever the ultimate developer and
8 then also the reviewers that are present here would be
9 alerted to asking for that; otherwise, we don't have the
10 purview to ask for it.

11 HEARING EXAMINER: All right. Well, that would
12 be, you know, one of the things that I would be thinking
13 about as far as, you know, a condition or adding
14 something to that and not wanting to be totally
15 unreasonable and saying you will take care of all of
16 those. You will retain them and fertilize them and make
17 them look pretty and all that stuff, you know. I know
18 that staff will do their best.

19 MS. MONTGOMERY: I have utmost confidence in
20 that.

21 HEARING EXAMINER: All right. It's ten minutes
22 of 5:00 -- I'm sorry, County Attorney.

23 MR. FREDYMA: Could I offer just a couple of
24 comments and questions?

25 HEARING EXAMINER: Sure.

1 MR. FREDYMA: Thank you.

2 John Fredyma, Assistant County Attorney.

3 I apologize. I'm sitting in for Donna Marie
4 Collins at this point.

5 Some of the issues may have been covered and I
6 just wanted to raise three just in the event that they
7 weren't.

8 HEARING EXAMINER: Okay.

9 MR. FREDYMA: One, based on a couple of the
10 questions that were raised this afternoon with respect to
11 the adequacy of the water supply and waste water
12 treatment, it's not just a DO issue, it actually is a
13 zoning issue as it relates to public health, safety and
14 welfare.

15 MS. MONTGOMERY: And, John, that's a good
16 question. But seeing that our engineer walked out and
17 will come back tomorrow so we'll have to deal with that
18 but let me just say we're not connecting to the line on
19 Littleton. We're connecting off the line on 41.

20 MR. FREDYMA: Regardless, you're still going to
21 be connecting to the same system.

22 MS. MONTGOMERY: But it's my understanding
23 there's adequate capacity.

24 MR. FREDYMA: And if that's on the record, then
25 that's fine.

1 MS. MONTGOMERY: It's not yet because he left and
2 he'll be back tomorrow.

3 MR. FREDYMA: Then he can address that tomorrow.
4 I just wanted to raise the question or the issue, as I
5 said, just because I wasn't sure whether it would get
6 taken care of or not. I'll also pass this along to Ms.
7 Collins.

8 As I said, those are -- adequacy of water supply
9 and waste water treatment, the availability of that, they
10 are relevant issues again not just at the time of DO but
11 at the time of zoning. Comp Plan Policy 2.1 is where you
12 find that.

13 MS. MONTGOMERY: I think it's Standard 11 and I
14 think both the staff and the applicant agree that we have
15 met that.

16 HEARING EXAMINER: Standard 11, yes.

17 MR. FREDYMA: It's also in the Comp Plan.

18 HEARING EXAMINER: It's part of your timing.

19 MR. FREDYMA: Correct. The second question, I
20 guess, was a question about a second access into the
21 northerly residential component. Typically, there's a
22 deviation requested, and I don't know whether that was
23 omitted or missed or whether that was something that just
24 hasn't come up yet and is going to be reflected in the
25 presentations as it moves forward.

1 HEARING EXAMINER: That's something that Jon
2 needs to discuss then because I just automatically assumed
3 because there were two access points to the north property
4 that that met the requirement. But after this gentleman
5 brought that question up, we'll need to discuss that with
6 Jon tomorrow.

7 MR. FREDYMA: It doesn't appear that the second
8 access point or additional access goes into the
9 residential component.

10 HEARING EXAMINER: It doesn't.

11 MR. FREDYMA: So that would certainly be
12 something that we want to look at.

13 And the third item that I'd leave you with was
14 the question about access onto US 41. I'm assuming from
15 the configuration that's drawn, that access is not being
16 contemplated because there's nothing really shown on
17 Commercial Parcel 3 that would suggest that there's any
18 configuration that would allow for that to occur at this
19 point.

20 One of the things you're required to provide on
21 the Master Concept Plan is the typical flow of the traffic
22 and the configuration of the parcels, and since there's
23 nothing shown at that end, I would assume, always a bad
24 thing to do I know, but, nevertheless, that access is not
25 being contemplated, again understanding that the state

1 would have to agree to provide it, but it would certainly
2 be relevant in terms of the zoning at this point.

3 HEARING EXAMINER: I think that's what Neale
4 said, that they can't get it through their parcel, they
5 have to go through somebody else's parcel to get it. They
6 can't get it there.

7 MS. MONTGOMERY: You wouldn't be able to get a
8 connection, you know, it's just not possible under the
9 rules to connect to 41.

10 MR. FREDYMA: I don't know whether a right in or
11 anything else even like that, I don't know.

12 HEARING EXAMINER: See, I'd be concerned about
13 that for the right-turn lane.

14 MR. FREDYMA: I understand that.

15 HEARING EXAMINER: You know, the conflict with
16 the right-turn lane and stuff.

17 MR. FREDYMA: I mean, as you go out Daniels
18 Parkway, if you turn too soon, you can end up in the Citgo
19 station instead of Metro --

20 HEARING EXAMINER: Uh-huh.

21 MR. FREDYMA: So they do exist.

22 MS. MONTGOMERY: We both make that right turn,
23 we're very familiar with it.

24 MR. FREDYMA: I figured you might be. Those are
25 the only comments that I had. Thank you.

1 HEARING EXAMINER: All right. Why don't we then
2 just continue this until 2:30 tomorrow afternoon right
3 here. Just leave your stuff here and I'd take my wallet
4 though.

5 (The hearing was adjourned to reconvene at 2:30
6 p.m., Friday, January 13, 2006.)

1 STATE OF FLORIDA)

2 COUNTY OF LEE)

3

4 I, Roberta June Bishop, Registered Professional
5 Reporter, do certify that I was authorized to and did
6 stenographically report the foregoing proceedings, and
7 that the typewritten transcript, consisting of pages
8 numbered 1 through 116, is a true record.

9 Dated this 6th day of February, 2006.

10

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Roberta June Bishop
Roberta June Bishop, RPR

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LEE COUNTY HEARING EXAMINER MEETING

RE: DCI2005-00055

IN RE: Athyrio Development Associates, LLC in
ref. to Diplomat Property RPD/CPD

VOLUME II

Transcript of Proceedings

Before Diana Parker, Lee County Chief Hearing
Examiner, held at the Hearing Examiner's Hearing
Room, 1500 Monroe Street, Fort Myers, Florida, on
January 13, 2006.

PRESENT:

Tony Palermo, Senior Planner
Donna Marie Collins, Assistant County Attorney
Neale Montgomery, Attorney for the Applicant

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1 HEARING EXAMINER: Let me introduce the case.
2 This is Friday, January the 13th, Case No. DCI2005-00055.
3 This is Diplomat Property RPD/CPD, continued hearing.
4 Applicant is still doing their witnesses. So let's go
5 ahead and get started, Neale.

6 MS. MONTGOMERY: David is an engineer. He has
7 testified here before. He has been accepted as an expert
8 in civil engineering.

9 HEARING EXAMINER: Are you a PE, David?

10 MR. UNDERHILL: Yes, I am.

11 HEARING EXAMINER: Okay.

12 MS. COLLINS: What's his last name?

13 MR. UNDERHILL: Underhill, Dave Underhill.

14 MS. COLLINS: Okay. Thank you. I apologize.

15 MR. UNDERHILL: With Banks Engineering.

16 HEARING EXAMINER: Okay. All right. And his
17 testimony is going to be about what, Neale?

18 MS. MONTGOMERY: Water, sewer, drainage.

19 HEARING EXAMINER: All right, civil engineering.

20 MS. MONTGOMERY: Normal type development things.

21 HEARING EXAMINER: All right. Any objections
22 from staff to him being accepted as an expert in civil
23 engineering as it applies to surface water management
24 systems and other utility systems?

25 MR. PALERMO: No objection.

1 HEARING EXAMINER: County Attorney?

2 MS. COLLINS: No objection.

3 HEARING EXAMINER: All right, accepted.

4 Thereupon,

5 DAVID UNDERHILL,

6 called as a witness by the Applicant, having been
7 previously duly sworn, was examined and testified as
8 follows:

9 MS. MONTGOMERY: The residents have expressed
10 concern that development of this site would somehow impact
11 their flows or capacities or costs. Could you address,
12 first of all, where will this site connect to the system?
13 Is there capacity in the system and will we have an effect
14 on that? I guess that's three questions.

15 MR. UNDERHILL: Yes, I did listen to the
16 testimony. Mainly they were concerned with their utility
17 issues, water and sewer. The project would connect to
18 both potable water main located within the right-of-way of
19 US 41, would extend those facilities to serve the project,
20 and also there's a sewer force main also in the 41 right-
21 of-way.

22 MS. MONTGOMERY: Is there sufficient capacity in
23 the North Fort Myers Utility system to serve this project?

24 MR. UNDERHILL: Yes.

25 MS. MONTGOMERY: Will the development of this

1 project adversely impact the internal utility system of
2 the Six Lakes' folks?

3 MR. UNDERHILL: The project -- the development
4 of the project will not be allowed to impact the
5 surrounding facilities. The normal procedure would be
6 that during the Development Order process, and through the
7 utility permitting, you would provide specific hydraulic
8 calculations to address the impacts on the regional
9 system, and those would look at all the surrounding, both
10 water and sewer facilities and you would have to verify
11 that you don't, in fact, negatively impact any of those
12 facilities.

13 MS. MONTGOMERY: Okay. Let me switch topics
14 a minute. Did your firm do the survey for this
15 property?

16 MR. UNDERHILL: Yes, we did.

17 HEARING EXAMINER: Which survey?

18 MR. UNDERHILL: The boundary survey.

19 HEARING EXAMINER: Okay. Thank you. I didn't
20 know if we were talking something else. All right.

21 MS. MONTGOMERY: Does your survey reflect that
22 there's a 50-foot easement for drainage in between this
23 property and the Six Lakes property to the west?

24 MR. UNDERHILL: Yes.

25 MS. MONTGOMERY: And is that actively used for

1 drainage purposes?

2 MR. UNDERHILL: Yes. It's the outfall for the
3 region. I think it's Yellow Fever Creek if I'm not
4 mistaken.

5 HEARING EXAMINER: That's a nice name. Really
6 inspires confidence, doesn't it?

7 MS. MONTGOMERY: Just for the record, can you
8 kind of just show the Hearing Examiner when this site is
9 developed how the outfall for this project will work?

10 MR. UNDERHILL: The project from a drainage
11 standpoint, the northern and southern portions of the
12 property will be separated. Typically, Lee County
13 wouldn't want a private developer to construct a private
14 storm water pipe within the County's right-of-way, so --

15 HEARING EXAMINER: Okay.

16 MR. UNDERHILL: -- so the northern parcel will
17 have its own outfall system and it will outfall directly
18 into the creek, and the same holds true for the southern
19 parcel. The canal crosses Diplomat and continues to the
20 south.

21 HEARING EXAMINER: Okay. So they'll both be
22 dumping into the canal but on their respective pieces of
23 property, on their own sides of the street?

24 MR. UNDERHILL: Yes.

25 HEARING EXAMINER: Okay.

1 MS. MONTGOMERY: Is that conveyance sufficient to
2 handle the flow from the site?

3 MR. UNDERHILL: Yes. It's, in fact, been
4 designed to handle the outfall for the region.

5 MS. MONTGOMERY: And I'm assuming in its natural
6 state that's where the site discharges normally?

7 MR. UNDERHILL: Yes. In the current state, that
8 would be the natural place it would discharge, you know,
9 with 41 and Diplomat being kind of some manmade dikes.
10 There are some culverts under Diplomat that would allow
11 the parcel to go to the south, but it really is naturally
12 going to get into that canal at this point.

13 MS. MONTGOMERY: I don't have any other
14 questions.

15 HEARING EXAMINER: Questions by staff of this
16 witness?

17 MR. PALERMO: No, thank you.

18 HEARING EXAMINER: All right. I have a couple so
19 don't go anywhere. All right.

20 The Pomona Mobile Home Park, I think that is the
21 one that is to the north, it also dumps into this canal;
22 is that correct, to the west of the canal; do you know?

23 MR. UNDERHILL: I believe it does. In our review
24 and design of the water management facilities for the
25 project, there's also an existing ditch along the north of

1 the property that will remain, so there's a chance that
2 they could out fall there. But our proposal is not to
3 reduce that ditch in size so it's not to affect either the
4 parcel to -- the existing vacant parcels to the northeast
5 or the parcel directly to the north.

6 HEARING EXAMINER: All right. Now, the same
7 thing with this long narrow parcel over here. Is there a
8 drainage ditch along US 41 or do they also naturally drain
9 across your property and into that canal? Do you have any
10 idea?

11 MR. UNDERHILL: There's probably some limited
12 ditches on 41, but, again, there is that ditch along the
13 north side that may be utilized and that will remain for
14 outfall for adjacent properties.

15 HEARING EXAMINER: Okay. So there's no swale or
16 anything along either side of Diplomat or along both sides
17 of Diplomat that also lead to that canal that might be
18 picking up some of the water?

19 MR. UNDERHILL: There are no swales along
20 Diplomat. When the County constructed Diplomat, what they
21 have is -- there's a couple of pipes, there's two or three
22 pipes that are just right below ground with a little bit
23 of stump riprap at the end that would allow the sheet flow
24 to cross the street, but, I mean, it's an upland
25 community. There's no pronounced ditches or wetland

1 features or anything that is draining the region.

2 HEARING EXAMINER: Okay. Thank you.

3 You know, I do have one other question, I'm
4 sorry. Can you come back up? Where does the flow now
5 from that ditch go? Where does it end up? In
6 Caloosahatchee?

7 MR. UNDERHILL: Yes, it goes out to the river.

8 HEARING EXAMINER: So it goes south all the way
9 down?

10 MR. UNDERHILL: Yes.

11 HEARING EXAMINER: That is south, okay. Okay.
12 Thank you.

13 MR. UNDERHILL: Thank you.

14 MS. MONTGOMERY: At this time we will recall
15 Jon.

16 Jon was under oath, is still under oath,
17 correct?

18 MR. HAGAN: That is correct, yes.

19 Thereupon,

20 JON HAGAN,
21 was recalled as a witness by the Applicant, having been
22 previously duly sworn, was examined and testified as
23 follows:

24 MS. MONTGOMERY: Jon, do you have your Staff
25 Report with you?

1 MR. HAGAN: Yes, I do.

2 MS. MONTGOMERY: I would like, if you would, to
3 flip with me to Page 14. Now, before I ask you a question
4 about that, can I get you to come over here to the map a
5 second. I see on the top map there, the zoning map,
6 something that's yellow, and I see in the bottom map
7 something that's pink immediately to the west of this
8 property along Diplomat. Can you tell me what it is I'm
9 seeing?

10 MR. HAGAN: The yellow -- this was taken off the
11 property appraiser's GIS system. The yellow indicates
12 that this is the city of Cape Coral, where the city of
13 Cape Coral starts. This being the Lee County future land
14 use map, the pink is the land use category that Lee County
15 has on the property, which is industrial development. But
16 the city of Cape Coral also has obviously their own zoning
17 codes as well as the Comprehensive Plan. And this area in
18 here (indicating) is in the industrial land use category
19 and it's zoned C-3 which is a commercial thoroughfare
20 district.

21 HEARING EXAMINER: And that's under city of Cape
22 Coral or under Lee County?

23 MR. HAGAN: That's in the city of Cape Coral.
24 That's the zoning that's showing on that property for the
25 city of Cape Coral.

1 HEARING EXAMINER: Okay.

2 MS. MONTGOMERY: So then what we have is the CPD
3 to the south of us has a small piece that touches on
4 Diplomat it looks like from that map and then it goes to
5 the industrial area?

6 MR. HAGAN: Yes. On the zoning map, referring to
7 the zoning map, the CPD comes up here to Diplomat and then
8 Diplomat continues and curves down here which is where it
9 enters into the city of Cape Coral.

10 HEARING EXAMINER: Is that CPD, is that
11 Merchant's Crossing? Is that still part of Merchant's
12 Crossing?

13 MR. HAGAN: I believe so, yes.

14 MS. MONTGOMERY: That being the case, without
15 some changes, Jon, would you expect there to be commercial
16 development to the west or would you expect it to turn
17 into an industrial area?

18 MR. HAGAN: With Diplomat being a four-lane
19 arterial right-of-way through there, I would expect that
20 it would be developed with commercial development.

21 MS. MONTGOMERY: Would you expect industrial uses
22 as well?

23 MR. HAGAN: With the industrial land use
24 category, I think you would have to be in compliance with
25 the land use as well as the commercial zoning.

1 MS. MONTGOMERY: Are you familiar at all with
2 Cape Coral?

3 MR. HAGAN: Somewhat but not too terribly. I
4 have done one case over there.

5 MS. MONTGOMERY: My only question is, does Cape
6 Coral, due to the way it's developed and platted, have
7 many opportunities for commercial industrial uses?

8 MR. HAGAN: Say that again. I'm sorry.

9 MS. MONTGOMERY: Due to the way that Cape Coral
10 is developed with the platted lots, does it have a limited
11 opportunity for commercial industrial uses?

12 MR. HAGAN: Yes. I mean, Cape Coral is always
13 talking about wanting more commercial uses in their
14 community because of the platted lots that were done back
15 in the '70s, I believe.

16 MS. MONTGOMERY: If you would, now we're on Page
17 14 under Item No. 1, Commercial Strip Development, and it
18 talks about part of Policy 6.1.7. It talks about the
19 first part of that policy which says that it has to
20 prohibit commercial development from locating in a way
21 that opens new areas to premature, scattered or strip
22 development. Due to what you said about commercial/
23 industrial being to the west, a small piece of Merchant's
24 Crossing to the west and to the south, is this a new area
25 or is this an infill area?

1 MR. HAGAN: I would say that it's an infill area.

2 MS. MONTGOMERY: And if I read the rest of Policy
3 6.1.7, right after it says you shouldn't open new areas,
4 isn't there a but?

5 MR. HAGAN: Yes, there is.

6 MS. MONTGOMERY: What's after the but?

7 MR. HAGAN: It says, but for commercial
8 development to infill on small parcels in areas where
9 existing commercial development would make a residential
10 use clearly unreasonable.

11 MS. MONTGOMERY: In your opinion, is this an
12 infill location?

13 MR. HAGAN: Yes, it is.

14 MS. MONTGOMERY: In fact, I believe when I was
15 reading the Staff Report that even the staff acknowledged
16 that this is an infill location.

17 MR. HAGAN: Yes, they did on Page 17 of 24 in the
18 first paragraph.

19 MS. MONTGOMERY: Will you read that for us?

20 MR. HAGAN: It's in the third sentence down it
21 says, "It has the necessary characteristics of urban
22 infill."

23 MS. MONTGOMERY: And do you agree with that
24 finding by the staff?

25 MR. HAGAN: Yes, I do.

1 MS. MONTGOMERY: I don't know if you know, long
2 range, do you expect that Diplomat some day will be a
3 six-lane facility?

4 MR. HAGAN: I can only imagine with the growth in
5 this county, it being four lane now, that it eventually
6 may go to six lanes. That it's a main arterial
7 right-of-way, so that connects into 41 which obviously is
8 the main arterial right-of-way in Lee County.

9 MS. MONTGOMERY: And as cars turn onto Diplomat,
10 I'm assuming they begin to accelerate; is that correct?

11 MR. HAGAN: That is correct.

12 MS. MONTGOMERY: Which that produces noise?

13 MR. HAGAN: The acceleration of cars, yes, it
14 would.

15 MS. MONTGOMERY: Given the fact that it's two
16 arterial roadways, is that a location where you would
17 recommend residential on the accelerating side of the
18 road?

19 MR. HAGAN: No, I would not.

20 MS. MONTGOMERY: And why wouldn't you?

21 MR. HAGAN: Just because of the noise, the
22 traffic noise. There's going to be headlights from the
23 cars at night and different items like that. And also
24 most residential places don't really want to be on an
25 arterial right-of-way. They tend to like to be off the

1 arterial right-of-ways.

2 MS. MONTGOMERY: And are offices and other non-
3 retail commercial good buffers to arterial roadway noise?

4 MR. HAGAN: Yes, they are.

5 MS. MONTGOMERY: Let me ask you a question. I
6 started to ask this yesterday and we kind of got stopped.
7 But have property costs gone up in Lee County in the last
8 two years?

9 MR. HAGAN: Yes, they have.

10 MS. MONTGOMERY: Have fill costs gone up
11 significantly in the last two years?

12 MR. HAGAN: Yes, they have.

13 MS. MONTGOMERY: Have construction costs gone up
14 significantly in the last two years?

15 MR. HAGAN: Yes, they have.

16 MS. MONTGOMERY: Has the amount of regulation in
17 Lee County diminished to offset those?

18 MR. HAGAN: The amount of regulation in Lee
19 County?

20 MS. MONTGOMERY: Yes.

21 MR. HAGAN: I'm not sure I understand.

22 MS. MONTGOMERY: Well, for example, have we
23 dropped the amount of open spaces required to kind of
24 offset --

25 MR. HAGAN: No, the regulations have not changed.

1 MS. MONTGOMERY: So for residential, we have to
2 set aside 40 percent for open space?

3 MR. HAGAN: That is correct.

4 MS. MONTGOMERY: You have to put in roads, that
5 takes up space?

6 MR. HAGAN: Correct.

7 MS. MONTGOMERY: You have to put in water
8 management, that takes up space?

9 MR. HAGAN: Correct.

10 MS. MONTGOMERY: So how much of the site is
11 actually left to be developed?

12 MR. HAGAN: You mean on a percentage wise, I'm
13 not sure what that percent is offhand as far as the
14 percent of land left to be developed. Dave Underhill, the
15 engineer, might be able to give you an answer on that.

16 MS. MONTGOMERY: So when you look at those, all
17 those factors, does density matter?

18 MR. HAGAN: Yes, it does.

19 MS. MONTGOMERY: Can you tell me how?

20 MR. HAGAN: Well, with the density and especially
21 in an infill parcel like this, which is a good place for
22 the higher density but you also are able to build more
23 units in there which helps bring down some of your costs,
24 some of the costs of the housing that you're selling in
25 there.

1 MS. MONTGOMERY: And let me ask another
2 question. At the intersection of two arterials, does that
3 affect what kind of product you can sell?

4 MR. HAGAN: Yes, it does.

5 MS. MONTGOMERY: What kind of product do you
6 typically have at a major arterial?

7 MR. HAGAN: Typically, you'll have a multi-family
8 development or a townhome-type development in an area like
9 that.

10 MS. MONTGOMERY: Are all those reasons additional
11 reasons why the requested density is appropriate here?

12 MR. HAGAN: Yes, it is.

13 MS. MONTGOMERY: Back to Page 17, you read for us
14 that very important finding that we agree with that the
15 site has all the necessary characteristics of urban
16 infill. The preceding sentence says, "The subject
17 property is located in close proximity to existing
18 residential developments, parks, schools and commercial
19 shopping." Are those the same points that you made
20 yesterday, that those are important factors that you have
21 to find in order to have higher densities?

22 MR. HAGAN: That is correct.

23 MS. MONTGOMERY: And so you agree with the staff
24 on that, too?

25 MR. HAGAN: I agree with the staff because those

1 also go with infill development, having those items close
2 to you.

3 MS. MONTGOMERY: And if you look on that same
4 page under Policy 5.1.2, the staff makes the finding, that
5 second line, there are no obvious physical constraints
6 that require density reduction. Do you see that line?

7 MR. HAGAN: Yes, I do.

8 MS. MONTGOMERY: Having heard the testimony of
9 the environmental consultants and the engineer, do you
10 agree with that finding?

11 MR. HAGAN: Yes, I do.

12 MS. MONTGOMERY: And then if you look under
13 Policy 5.1.4, again I think that you and staff agree with
14 that finding that the proposed high density development is
15 near shopping, close to parks and in proximity to schools
16 and social services?

17 MR. HAGAN: Yes, I do.

18 MS. MONTGOMERY: And so it meets that policy?

19 MR. HAGAN: That is correct.

20 MS. MONTGOMERY: Let's talk about commercial a
21 little bit. Can you show me on that site plan what would
22 happen to the site plan if you had to change it in a
23 manner the staff is requesting?

24 MR. HAGAN: As far as what changes would be -- I
25 mean, the staff is requesting that this Commercial Parcel

1 1 and 2 and then I believe two acres of Commercial Parcel
2 3 be changed to residential, so that means that obviously
3 there could be no commercial development in this area.
4 Now, of course, site planning and, you know, what you want
5 to do with that is difficult because that would be
6 relatively large, you would have about three -- about five
7 acres along there that would have to be residential, and
8 it would be difficult to get units in there because of it
9 being so close to the road. Those are all premium lots.

10 MS. MONTGOMERY: Well, let me ask you a
11 question. Would you then be taking those two parcels and
12 then subjecting those residents to the traffic coming in
13 the entryway and to the Diplomat traffic?

14 MR. HAGAN: Yes. You would subject them,
15 obviously, to the Diplomat arterial right-of-way which is
16 four lane, and as you pointed out, as you would come up
17 41, typically you accelerate versus on the south side of
18 Diplomat you're slowing down to either make your turn into
19 the shopping center or onto 41.

20 The other thing you would subject them to is you
21 would obviously have the commercial here as well, so there
22 would be a lot of negative influences for a relatively
23 large area.

24 MS. MONTGOMERY: One of the concerns the staff
25 raised about the commercial being there is that the site

1 plan doesn't show any access to those commercial sites.
2 Is there access off the main entryway into those
3 commercial parcels?

4 MR. HAGAN: I mean, the Master Concept Plan does
5 not show where the access points are. Obviously, they
6 would have to be far enough back to provide safe and
7 sufficient flow of vehicles in there.

8 MS. MONTGOMERY: So even though we don't see
9 those gray arrows, there's really arrows there?

10 MR. HAGAN: Yes. I mean, they're not on the
11 Master Concept Plan. It was probably an oversight on our
12 part, but, you know, put some arrows in here showing the
13 access is going to be off this main road versus Diplomat
14 Parkway.

15 MS. MONTGOMERY: And if you look at the other
16 commercial entrance into the site, can you show me that
17 one?

18 MR. HAGAN: This one right here (indicating).

19 MS. MONTGOMERY: It doesn't show an arrow that
20 connects it over to the western entrance, but would you
21 envision it being consistent with the county Land
22 Development Code that there be an interconnection?

23 MR. HAGAN: Correct. I mean, I believe I did
24 testify to that yesterday, that this would all be
25 interconnected with only the two entrances onto Diplomat

1 Parkway.

2 MS. MONTGOMERY: When you were doing your
3 research, did you find any articles by any chance about
4 strip commercial or did you do any reading?

5 MR. HAGAN: I did find one article on strip
6 commercial development.

7 MS. MONTGOMERY: And did it identify what the
8 evils are of strip commercial development?

9 MR. HAGAN: Yes, it did.

10 MS. MONTGOMERY: Can you tell me what those evils
11 are?

12 MR. HAGAN: Yes, if I can grab my articles.

13 MS. MONTGOMERY: You can have mine. Can you tell
14 me what the evils are that we're trying to prevent?

15 MR. HAGAN: Consumes -- and this is according to
16 the article that I found online. It consumes open space,
17 depletes natural resources, impedes pedestrian and
18 non-motorized traffic, grows outward from the limits of
19 existing development.

20 MS. MONTGOMERY: And what are the things you can
21 do to address the evils?

22 MR. HAGAN: The things that this article
23 suggests, which I agree with, and a lot of these are in
24 the Land Development Code, is architectural standards,
25 providing open space.

1 MS. MONTGOMERY: Well, stop right there because I
2 think one of the things that the staff suggested they
3 agree with that, that the problem, strip developments are
4 ugly. They didn't use the word ugly but something similar
5 to that. Well, they said not attractive. Not
6 attractive. If you look at Page 19, the second paragraph,
7 it says, "Strip development is not attractive and bad for
8 traffic circulation." So I think that you and the staff
9 agree that one of the ills of strip development is that
10 it's ugly.

11 MR. HAGAN: Correct.

12 MS. MONTGOMERY: So how -- what's your position
13 as to why this isn't going to be ugly?

14 MR. HAGAN: Well, Chapter 10 of the Lee County
15 Land Development Code has architectural standards that
16 must be adhered to at the time of building, so there's
17 some pretty -- I think they're very good standards, and, I
18 mean, you can see more of the new development in Lee
19 County is looking very nice and does not have flat roofs
20 and flat buildings.

21 MS. MONTGOMERY: And if you needed to, could you
22 further say that the architecture would be compatible
23 because you wouldn't have incompatible --

24 MR. HAGAN: Yes, typically, I believe, too,
25 there's a requirement in the Code that in a Commercial

1 Planned Development, the architectural style must be
2 consistent throughout the planned development.

3 MS. MONTGOMERY: Okay. Let me, before you go
4 back, let me ask you, the other bad thing is it's bad for
5 traffic circulation. I think even if you read all the
6 Comp Plan policies, you know, the goal of getting rid of
7 strip commercial development, to limit access points, to
8 encourage, you know, use of frontage roads and things like
9 that, does this site address those traffic circulation
10 ills?

11 MR. HAGAN: Yes, they do.

12 MS. MONTGOMERY: Tell me how.

13 MR. HAGAN: By having limited access points onto
14 Diplomat Parkway. There are obviously connection
15 separation requirements on arterial right-of-ways which
16 are 660 feet.

17 We could have certainly gotten more accesses or
18 additional accesses in here and met those requirements,
19 but instead we chose to just have the two accesses and
20 provide that interconnectivity throughout the commercial
21 development.

22 MS. MONTGOMERY: So when you look at the nineteen
23 hundred feet that the staff pointed out that we have, in
24 your opinion is nineteen hundred feet, the two access
25 points, good access management?

1 MR. HAGAN: Yes, it is.

2 MS. MONTGOMERY: Okay. The signage, is
3 proliferation of signage one of the other ugly things that
4 we're trying to prevent?

5 MR. HAGAN: Yes, it is.

6 MS. MONTGOMERY: Do you agree with that as being
7 one of the ills?

8 MR. HAGAN: Yes. I mean, when you have strip
9 development, you have smaller parcels that tend to have a
10 lot of signs right in a row.

11 MS. MONTGOMERY: And is one of the cures for
12 strip development cluster development?

13 MR. HAGAN: Yes.

14 MS. MONTGOMERY: In your opinion, is this
15 clustering commercial at the construction of two
16 arterials?

17 MR. HAGAN: Yes, it is.

18 MS. MONTGOMERY: Okay. What other evils are
19 there that can be caused?

20 MR. HAGAN: Well, the article talks about open
21 space.

22 MS. MONTGOMERY: But we have to provide
23 certain open space?

24 MR. HAGAN: That is correct.

25 MR. PALERMO: Can I get a sense of what the

1 article is? It's interesting.

2 MS. COLLINS: We haven't heard it yet.

3 HEARING EXAMINER: Is there a title?

4 MR. HAGAN: Yes. It's called Controlling Strip
5 Development by Ron A. Moldoffaitp, M-o-l-d-o-f-f-a-i-t-p.

6 HEARING EXAMINER: And you found that online
7 where?

8 MR. HAGAN: Google.

9 HEARING EXAMINER: That's not exactly what I
10 meant but --

11 MR. HAGAN: I mean, I went under strip
12 development and actually a lot of -- this was one of the
13 few articles that came up and it came up a lot. I'd be
14 happy to make a copy of it.

15 MS. COLLINS: Has it been published in some
16 planning periodical that we can refer to?

17 MR. HAGAN: I believe it has. I don't have that
18 information off the top of my head right now.

19 HEARING EXAMINER: All right. Are you guys going
20 to object then to the content of this?

21 MR. PALERMO: Until we can find the title and the
22 publication. I don't have an objection otherwise. But I
23 do want to know what the title is and what the publication
24 is.

25 HEARING EXAMINER: Okay. All right.

1 MR. PALERMO: And who the author is.

2 MR. HAGAN: I don't know the publication but
3 obviously the title and the author is on here.

4 MR. PALERMO: That's going to be problematic if
5 we can't figure out what the publication was.

6 MR. HAGAN: I take that back. Planning
7 Commissioners Journal No. 53, Winter 2004.

8 MR. PALERMO: Okay.

9 HEARING EXAMINER: Okay.

10 MS. MONTGOMERY: Any other evils we haven't
11 talked about, addressing any evils of strip commercial?

12 MR. HAGAN: I mean, the main evils are the
13 architecture, the access point, planning, buffers,
14 signage.

15 MS. MONTGOMERY: Okay.

16 MR. HAGAN: Those are the main points that are
17 brought up in this article.

18 MS. MONTGOMERY: Let me ask you a question. If
19 I'm on Diplomat Parkway, how far do I have to go till I
20 find another gas station?

21 MR. HAGAN: I believe on Diplomat Parkway, you
22 would have to go left, and I believe it's about, I don't
23 know, probably three or four miles down. I forget -- it's
24 at that intersection of Del Prado and Diplomat.

25 MS. MONTGOMERY: So if the closest gas station on

1 Diplomat is at Del Prado, do you see that as a saturation?

2 MR. HAGAN: No, I do not.

3 MS. MONTGOMERY: And why isn't that a reasonable
4 use here from a planning standpoint?

5 MR. HAGAN: For a gas station?

6 MS. MONTGOMERY: Yes.

7 MR. HAGAN: On this Parcel 4, because, I mean,
8 people traveling east on Del Prado -- or on Diplomat, I
9 mean, there's obviously limited gas stations along there,
10 so it would be nice to have one that is already on the cut
11 here to come in and have a gas station on the corner of
12 two major arterials.

13 MS. MONTGOMERY: And we've already talked about
14 the fact that there is limited commercial/industrial
15 opportunities in Cape Coral. If you look at the Lee Plan
16 under the site location standards, isn't there also some
17 indication that there's limitations on available sites for
18 commercial in North Fort Myers, I think it's north of
19 Pondella?

20 MR. HAGAN: Correct.

21 MS. MONTGOMERY: Why is that? Why are there
22 limited opportunities in North Fort Myers?

23 MR. HAGAN: North Fort Myers is -- south of
24 Pondella is very developed as well as north of Pondella.
25 There's not a lot of -- I don't know if there's a lot

1 of -- I mean, obviously the more you travel north, the
2 more vacant land becomes. But up to Pondella and right
3 past Pondella is heavily developed areas.

4 MS. MONTGOMERY: North of here basically there's
5 just a series of a lot of older mobile home communities
6 developed all the way out to the road, aren't there?

7 MR. HAGAN: Yes. As you go north on US 41 there
8 is a lot of mobile home communities with golf courses and
9 then some residential developments such as Heron's Glen up
10 at the county line.

11 MS. MONTGOMERY: If I get off the interstate at
12 Tucker's Grade where it tells me that's where I go to get
13 off to go to Cape Coral, are there any gas stations on
14 Tucker's Grade?

15 MR. HAGAN: There's one gas station on the corner
16 of Tucker's Grade and US 41.

17 MS. MONTGOMERY: Is that that old really
18 disgusting, dilapidated Stuckey's that you wouldn't be
19 caught dead in without a gun?

20 MR. HAGAN: Yes, that is an old gas station.

21 MS. MONTGOMERY: Have you ever stopped there?

22 MR. HAGAN: My wife won't let me.

23 MS. MONTGOMERY: Coming down 41, in this
24 direction, where is the first place you -- how long do you
25 have to go before you find a gas station your wife would

1 let you stop at?

2 MR. HAGAN: It's several miles. I have driven it
3 numerous, hundred times, but it's several miles. I'm just
4 trying to think where the first one is. I know there's
5 the one on Littleton Road, but I really I don't know if
6 there's anything north of Littleton.

7 MS. MONTGOMERY: So given the direction that
8 people would be driving who would make the right turn into
9 this, the long stretch from Tucker's Grade down where
10 people getting off the interstate would be coming, and
11 it's at least a three or four mile stretch going east on
12 Diplomat to this site?

13 MR. HAGAN: That is correct.

14 MS. MONTGOMERY: And I think, would you agree
15 that today's traveling public typically doesn't make the
16 left-hand turn to go into the gas station, typically it's
17 the right in?

18 MR. HAGAN: Yes.

19 MS. MONTGOMERY: Given the direction the
20 traveling public goes, would you submit that there's over
21 saturation of gas stations, useable gas stations?

22 MR. HAGAN: Not in this area, I don't believe so.
23 And as I stated before, it's not -- the market really
24 drives the saturation of gas stations. So there's not a
25 whole lot, obviously there's not on this intersection.

1 The closest one, you know, on Diplomat three miles away.
2 There's not a whole lot north of there as well.

3 MS. MONTGOMERY: I don't have any other
4 questions.

5 HEARING EXAMINER: Questions by staff.

6 MR. PALERMO: I have a couple. Not much, just a
7 technical question.

8 Your request for a convenience store and gas
9 pumps, how many gas pumps are you going to be asking for?

10 MR. HAGAN: I believe -- I'm not sure what the
11 number would be, but I believe 16 is standard, 16 pumps
12 which would be a fueling station. But I'll just confirm
13 that with the client.

14 MR. PALERMO: Next question is, Neale was talking
15 about the affordable housing problem in Lee County. Would
16 you describe this project as being an affordable housing
17 project or will the price of the units be based on the
18 market price?

19 MR. HAGAN: I mean, I don't even know if there's
20 price points yet of the units, so it's difficult to answer
21 that question of what the price is going to be of the
22 units.

23 MR. PALERMO: But you don't anticipate it will be
24 subsidized or they will be getting help from the
25 government, they will be market driven, how they're built

1 and how they're paid for?

2 MR. HAGAN: Yes. I mean --

3 MR. PALERMO: In this application did you provide
4 us with any elevations or anything else about what the
5 buildings will look like?

6 MR. HAGAN: No, I did not.

7 MR. PALERMO: And, again, the signage, did you
8 provide us with any elevations or details about that?

9 MR. HAGAN: No.

10 MR. PALERMO: The County Commission has often
11 expressed its displeasure with what they call bubble
12 plans. Would you describe this as a detailed site plan? .

13 MR. HAGAN: No, it's not.

14 MR. PALERMO: It's not really a question, but
15 just clarification, on Page 17 of 24, Neale quoted the
16 Staff Report and said there are no obvious physical
17 constraints that require density reductions, and you said,
18 yes, I agree with that. The rest of the sentence is, and
19 I quote, "however, there are concerns about compatibility
20 with the surrounding neighborhood," and you probably
21 disagree with that?

22 MR. HAGAN: That's correct.

23 MR. PALERMO: That's all I have.

24 HEARING EXAMINER: County Attorney, questions?

25 MS. COLLINS: No questions.

1 HEARING EXAMINER: All right. Jon, I've got
2 several questions.

3 Now, I understand the questions that Neale was
4 asking you regarding the appropriateness of residential
5 uses on that north parcel on the two -- you guys have
6 these darn things labeled differently -- Parcel 1 and 2 or
7 is it Tract 1 and 2? The Commercial Parcels 1 and 2 and
8 the two acres. How is having commercial there -- I'm
9 sorry, not commercial -- how is having residential there,
10 ignoring the traffic, because you would have gone through
11 that quite clearly, how is that any different than having
12 the residential on the south side, I mean, considering the
13 fact that the residential on the south side is actually
14 north of a large DRI, commercial DRI?

15 MR. HAGAN: Correct. And I discussed some of
16 that yesterday as well. This is obviously one unified
17 development, that's why it came in under one application.

18 The appropriate uses along a four lane arterial
19 right-of-way are commercial uses. However, on the south
20 portion here once we had to move, because we had some of
21 the native indigenous up here, we had to move it down to
22 the south which really constrained the site. And with the
23 site constraints, I mean, it's just a small residential
24 tract here but it just didn't make sense to put commercial
25 here because we really couldn't get any kind of

1 interconnectivity into this commercial portion here. Now,
2 these obviously aren't going to be premium lots, but it's
3 a relatively small site with your premium lots overlooking
4 the preserve there.

5 HEARING EXAMINER: Do you foresee the property
6 then on the south being developed more with single family
7 or your two family attached type situations rather than
8 your multi-family three-story buildings because of the
9 preserve areas?

10 MR. HAGAN: Well, I think the intent -- I mean,
11 obviously, I'm not sure if they have a product type yet,
12 but I think it's going to be either multi-family or
13 townhome type product in there.

14 HEARING EXAMINER: Okay. All right. You might
15 as well go back to the -- on the parcel to the south, the
16 residential parcel to the south, you also have an
17 emergency access which then gives that property actually
18 two accesses if you want to call it that because you do
19 have the emergency access. Looking at the size of that
20 parcel and then looking at the size of the residential
21 parcel to the north, why is there not some type of
22 provision for an emergency access point for the much
23 larger residential development to the north?

24 MR. HAGAN: Honestly, an oversight. I mean,
25 because if we weren't going to provide it here, we would

1 have had to have asked for a deviation for it, so I
2 think -- I believe -- and Tony sent us an e-mail this
3 morning regarding that, about some conditions that he came
4 up with and some deviations that were necessary in order
5 to address that issue.

6 MS. MONTGOMERY: I think the other reason, too,
7 if I'm not mistaken, Jon, is that that site does have two
8 entrances so for the access you would have to be right at
9 where it turns into the residential portion.

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

11 MS. MONTGOMERY: If you block that entrance, they
12 could still come in the other entrance?

13 MR. HAGAN: With interconnectivity you could get
14 through here, that way, or vice versa.

15 (A discussion was had off the record.)

16 HEARING EXAMINER: All right. I have some
17 concerns about that, I'll be honest with you. Looking at
18 the size of that and knowing the number of units that
19 you're planning to put on that north parcel, having just
20 the one access point, I understand what you're saying
21 about it's two access points off of Diplomat, but there's
22 really one access point into this overall development up
23 there. And with 400 units, that's a lot of cars trying to
24 get out of one little tiny driveway.

25 MS. MONTGOMERY: Jon, if you were going to

1 interconnect, where would you put it?

2 MR. HAGAN: Are you talking about another --

3 HEARING EXAMINER: Another access point.

4 MR. HAGAN: And then another actual road, not a
5 stabilized emergency access?

6 HEARING EXAMINER: Yes.

7 MR. HAGAN: I mean, I would have to discuss that
8 because this Parcel 3 and 4 are under separate ownership
9 and then 1 and 2 on the residential portions is all under
10 one ownership as well as this residential down here. But
11 looking at that you have limited areas to where you could
12 put another access and still meet separation requirements
13 on Diplomat Parkway.

14 HEARING EXAMINER: Okay. But I don't mean on
15 Diplomat. I'm just talking about from the residential
16 parcel into the commercial parcel. Leave the two access
17 points onto Diplomat where they sit but provide some other
18 kind of access point to the residential. That's 418 homes
19 you've got in there, and you've got one point -- everybody
20 leaving at 7:30 in the morning to go to work, they're
21 going to be backed up clear around the block and then
22 some. It's really going to be a very bad situation for
23 people trying to get out. And in case of an emergency,
24 trying to evacuate, you'll never get out of there,
25 absolutely never get out of there.

1 So, yes, I'm real serious. I know that staff has
2 been very obliging to draft up a deviation request for
3 you, but I think that my recommendation to the Board in
4 this instance will be that some secondary, some second
5 access be provided into that parcel given the size, the
6 shape, the development configuration and the number of
7 units that are planned for that parcel.

8 MS. COLLINS: Just for clarification, you're
9 asking for a second access to the northern half?

10 HEARING EXAMINER: To the northern residential
11 parcel a second access, and not an emergency access, a
12 second access point.

13 MR. PALERMO: So they could get out to Diplomat?

14 HEARING EXAMINER: So they can get out to the
15 commercial parcel and then go to -- the interior spine
16 road through the commercial parcel and then out to
17 Diplomat. I don't want a separate access point onto
18 Diplomat. The two they've got are fine. But I'm just
19 real concerned about one access point over in the corner
20 with all this development. And your client has jumped up
21 twice now.

22 MR. JOHN KINSEY: I'm trying to understand
23 clearly what we're talking about here. Is this emergency
24 access or would it be normal access?

25 HEARING EXAMINER: I want normal access.

1 MR. JOHN KINSEY: So it would be a second
2 entrance; is that true?

3 HEARING EXAMINER: State your name.

4 MR. JOHN KINSEY: John Kinsey. I'm one of the
5 owners of Athyrio.

6 What you're asking for is a second access point
7 through property that we don't own to come to our
8 residential through the commercial that's owned by another
9 party.

10 HEARING EXAMINER: But, see, it's one project,
11 and so, I mean, you're bringing it in. I don't care who
12 owns it. I mean, that's going to be up to you to try to
13 work that out because you got into this with different
14 owners. But the fact is it's a unified development and
15 right now that plan, I have some serious concerns about
16 the accessibility of that north parcel given the amount of
17 development and the plan, the site plan that you've
18 provided.

19 MR. JOHN KINSEY: Well, if you have a two lane
20 entrance going in and two lane entrance going out, Jon and
21 Dave, correct me if I'm wrong, but I believe there are
22 other projects in Lee County that have a similar number of
23 units that have access similar to that.

24 HEARING EXAMINER: But some of them are accessing
25 on -- directly to the major road, okay. And some of them

1 are not this large, they don't have 418 homes, and that's
2 the number that is on the Master Concept Plan.

3 MR. JOHN KINSEY: But access onto a major road
4 with large numbers is actually more difficult because the
5 traffic is going faster. We don't have 418 homes
6 accessing -- yes, we do have from the north 418 but it's
7 not dumping out onto 41.

8 HEARING EXAMINER: No, it's not. But I'm
9 concerned about peak hour, getting out and getting back in
10 to that because you've got everybody wanting to go to work
11 between 7:30 and eight o'clock in the morning, and you've
12 got 418 homes there, and even assuming that only half of
13 them are actually working people and the other half are
14 retirees, that's still 200 people, 200 cars or more, some
15 families use two cars, trying to get out of the one little
16 access point in a half hour span. All right.

17 It's very difficult. So I'm just being very up
18 front with you. My recommendation to the Board of County
19 Commissioners will probably be that you will provide a
20 second access point somewhere along -- I don't care where
21 you do it. If you want to buy property from the property
22 owner to the east and run it through his, you know, fine,
23 but that's going to be my recommendation to the Board.

24 MR. JIM KINSEY: Jim Kinsey. I am one of the
25 owners of Athyrio.

1 Ms. Parker, am I understanding you correctly
2 that -- not that we can do this, but one of the solutions
3 I think you're saying you'd be comfortable with is if
4 we --

5 MS. MONTGOMERY: Jim, can you go over and show
6 them on the site plan -- take the microphone with you, if
7 you would.

8 MR. JIM KINSEY: Is if there were some provision,
9 for instance, this driveway, this driveway cut that's
10 shown on the plan east of our entrance, if there was some
11 way that somehow through the commercial development, maybe
12 not directly, would be connected to the residential
13 development, is that --

14 HEARING EXAMINER: That would be fine. If you
15 wanted to take that up and swing it over and catch it on
16 to the east road, the down swing on the east road there,
17 see what I'm talking about?

18 MR. JIM KINSEY: Right.

19 HEARING EXAMINER: I mean, that would be fine. I
20 don't want to say specifically this is where you have to
21 put it. All I'm saying is that, you know, that's a lot of
22 traffic with one little tiny access point to try to get
23 out of, and in case of an evacuation or anything else,
24 that's going to be an absolute double nightmare.

25 MR. JIM KINSEY: A second driveway cut for the

1 residential onto Diplomat?

2 HEARING EXAMINER: Yes.

3 MS. MONTGOMERY: Not necessarily Diplomat --

4 HEARING EXAMINER: Not onto Diplomat but through
5 the commercial parcel.

6 MS. MONTGOMERY: Wherever the access road is on
7 the commerical.

8 MR. JIM KINSEY: That's what I mean. That could
9 eventually get to that point.

10 HEARING EXAMINER: Right.

11 MR. JIM KINSEY: And is it acceptable that that
12 second access point is not a full right in, right out,
13 left in, left out?

14 HEARING EXAMINER: Okay. Now, I'm not talking
15 about on Diplomat. I'm not asking for another access
16 point onto Diplomat. Only from the residential onto your
17 internal street in the commercial.

18 MR. JIM KINSEY: Effectively though, within
19 things that I can deliver, the owner of the property that
20 is being burdened with the second access point, I can't --
21 I don't know for certain that I can get the access through
22 that other gentleman's property. He may simply say to me,
23 sorry, you're out of luck. At that point we're looking at
24 property that we own and control.

25 MS. MONTGOMERY: For example, if you look at the

1 western side, that north-south roadway in the residential,
2 that one going down into a access road on the commercial,
3 that would be fine, too.

4 HEARING EXAMINER: Okay. Now, where are we
5 talking about? Way over here on the other side?

6 MR. JIM KINSEY: Here's our entrance parcel
7 coming out. If we can't get this property, and it's find
8 to say it's one application but the reality of it is he
9 may say too bad.

10 If we within this frontage that we own, if we
11 can't get the access point over here, put the second
12 access somewhere, we'll have to work it out with staff as
13 far as the design of that, one of which preferably is the
14 full cut here where we have, but if we brought the second
15 one here and went into the frontage road along the front
16 of one or more of the commercial pieces so that there's a
17 second, and we'll put a second entrance here to where they
18 can go out and go that way for the people that are going
19 out to the school and are going out to work in Cape Coral
20 and then you have the full left out coming over this way.

21 HEARING EXAMINER: You'll have to work that with
22 staff because I'm seeing already, you know, additional
23 problems with separation and, you know, possibly other
24 transportation impacts that -- my biggest concern is
25 getting the people out of those houses and getting them in

1 some kind of a timely manner in the event the woods start
2 burning or something and they all have to evacuate
3 immediately, you know. I mean --

4 MS. MONTGOMERY: I think we understand your
5 concern and we hear what you're saying.

6 HEARING EXAMINER: So you guys would have to just
7 work it out. I don't want to tell you, yes, that this is
8 acceptable or that is because, you know, I'm not the
9 planner.

10 But I'm just seeing that there is going to be a
11 real bottleneck there and I'm real concerned about that.
12 That's the one thing I just -- I try to be up front during
13 the zoning process so when you get my recommendation to
14 the Board of County Commissioners, you're not totally
15 slammed.

16 MS. MONTGOMERY: We appreciate that.

17 HEARING EXAMINER: Okay. I think that's the only
18 other question that I had. Are they going for cake?

19 MR. PALERMO: They are going to negotiate.

20 MR. HALLIN: They're going for Maalox.

21 HEARING EXAMINER: Neale, any other witnesses?

22 MS. MONTGOMERY: Not at this time.

23 HEARING EXAMINER: Okay. You don't think that
24 Dave or Jim both want to come back and talk some more.

25 Okay. We'll give them rebuttal.

1 Staff ready?

2 MR. PALERMO: Yes. You want me to go?

3 HEARING EXAMINER: Yes.

4 MS. MONTGOMERY: I think that Jim heard you
5 better. I think they're having a conversation.

6 HEARING EXAMINER: I think he's probably more
7 familiar with the process. Is that his brother?

8 UNIDENTIFIED SPEAKER: Cousin.

9 (A discussion was had off the record.)

10 MR. PALERMO: Are you ready to go? I can take
11 care of this in a little bit of time but I do have a
12 presentation to give.

13 Thereupon,

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

17 MR. PALERMO: For the record, my name is Tony
18 Palermo, and I'm a Senior Planner with the Lee County
19 Department of Community Development.

20 First thing in order is to get myself recognized
21 as an expert in planning and zoning and land use. I have
22 been recognized before and the Hearing Examiner has my
23 resume.

24 HEARING EXAMINER: Okay. Any objections from
25 applicant?

1 MS. MONTGOMERY: No.

2 HEARING EXAMINER: Okay, accepted.

3 MR. PALERMO: Madam Hearing Examiner, we received
4 this application June 3rd, 2005. We received a little bit
5 of public input from some of the interested neighbors and
6 all the correspondence that I received on this case, you
7 have also received, and I have provided copies of the
8 Master Concept Plan, the Staff Report and other material
9 to officials at the City of Cape Coral, to people at Six
10 Lakes Country Club, to the Serendipity Mobile Home Park,
11 and to the Lee County School Board.

12 My presentation today will consist of three
13 parts. Number one, I'm going to introduce a few exhibits
14 into the record.

15 Number two, I'm going to do a few highlights
16 briefly from the Staff Report. You have a copy of that.

17 And, third, I'll just read into the record
18 staff's conclusions.

19 The first exhibit I'll get out of the way is we
20 have a January 2005 aerial photo, it's the green photo
21 over there. That's staff's aerial photo.

22 HEARING EXAMINER: That's Staff Exhibit 1. The
23 photos of the bobcat are Staff Exhibit 2. The description
24 of the panther are Staff Exhibit 3. And you have some
25 other things to give me?

1 (Staff Exhibit No. 1 was marked for
2 identification.)

3 MR. PALERMO: My first installment of exhibits,
4 and there's not many things to go through. One of the
5 exhibits you have, and I've given them to the applicant
6 and the County Attorney's office, are a series of
7 photographs and a little bit of the presentation I'm about
8 to give.

9 The second thing I have in there is a copy of the
10 comments and questions that were received from Six Lakes
11 Country Club.

12 And the last thing that I have given you and I've
13 given everyone else is a matter that you just brought up,
14 which was the need for at least a deviation from the Land
15 Development Code regarding that standard for more than one
16 entrance to a residential development, and I have provided
17 that in the form of Deviation 6.A and 6.B because the same
18 standard would apply to the residential portion to the
19 south and the residential portion to the north.

20 And I'll just leave it at that. And the
21 applicant can absorb that also. I don't even know if they
22 have any questions or issues with Deviation 6.A and 6.B.
23 Basically, my first try at addressing that very important
24 issue.

25 Let me go through just some of the essential

1 facts. I think Mr. Hagan did an excellent job during his
2 presentation and gave you some of the facts that are
3 relevant to this case.

4 Now, this is an application to rezone
5 approximately 65 acres in total from agricultural to
6 Residential Planned Development/Commercial Planned
7 Development to permit a maximum 468 dwelling units,
8 200,000 square feet of commercial floor area, 120 hotel
9 rooms with maximum building heights of three stories, 50
10 feet for the commercial elements and three stories, 35
11 feet for the residential elements.

12 Then, you have the December 23, 2005, Staff
13 Report. This property is in the central urban future land
14 use category. That central urban future land use category
15 allows a maximum of ten dwelling units per acre. That's
16 the maximum. The zoning is agricultural. However, there
17 are no agricultural uses on the property, nor are there
18 any agricultural exemptions.

19 Staff recommends approval of this project with
20 conditions. Staff recommends approval of five deviations
21 with conditions. And staff just introduced Deviation No.
22 6, which we will discuss in more detail and the Hearing
23 Examiner has expressed a strong conviction that there be a
24 second access for the residents to the north, which I
25 think is a good idea and I think is wise.

1 Just a little bit of housekeeping. Condition 5
2 should be reworded just a little bit. I don't want to
3 change the intent but I would change it as follows, and I
4 quote, since there are no agricultural uses on site. "No
5 agricultural uses exist on site and none are approved by
6 virtue of this rezoning." That's on Page 9 of our
7 recommendation or words to that effect.

8 The applicant has provided a very good Master
9 Concept Plan and a good application, but we do have four
10 substantive issues that we detailed in our Staff Report.
11 I won't bore you by going through the entire Staff Report,
12 but I will highlight those four issues and give you some
13 of my reaction to it.

14 Issue No. 1 is obviously commercial strip
15 development, and on Page 14 you'll find the whole of
16 Policy 6.1.7 which discourages commercial strip
17 development.

18 The applicant does propose a strip development
19 that is in dimension 1,900 feet in length and
20 approximately 200 to 240 feet in depth. It's rectangular
21 in shape. It has two access points and I would draw the
22 Hearing Examiner's attention to the shape of the proposed
23 commercial parcel and suggest that this would be
24 encouragement of commercial strip development. And we'd
25 suggest that commercial strip development is a bad thing.

1 I want to go through an exhibit that I prepared regarding
2 commercial strip development and some of the evils of
3 commercial strip development.

4 That can be summarized in four words: sprawl,
5 traffic, aesthetics and the last one being future land
6 development, and I have one more exhibit to give you.

7 With this exhibit it goes into a little bit of
8 detail about why our Lee Plan discourages strip
9 development and discourages urban sprawl which is a
10 primary goal of the Lee Plan which is to discourage urban
11 sprawl as defined in the Lee Plan as the uncontrolled,
12 premature or untimely expansion and spreading out of urban
13 level of density or intensity into outlying non-urban
14 areas.

15 Policy 6.1.7, and I quote, says, "prohibit
16 commercial developments from locating in such a way as to
17 open new areas to premature, scattered, or strip
18 development; but permit commercial development to infill
19 on small parcels in areas where existing commercial
20 development would make a residential use clearly
21 unreasonable."

22 Let's focus on that because the applicant has
23 taken some pains to stress that this is an infill project
24 and, therefore, we should approve the entire 1,900 foot
25 strip as is.

1 I'll draw your attention again to premature,
2 scattered or strip development. Just because this is an
3 infill development, and it is an infill development, we've
4 recommended approval of this infill development, but we
5 have recommended some major and significant changes to be
6 in compliance with Policy 6.1.7.

7 Mr. Hagan went through some effort to get a
8 definition of commercial strip development, and he is
9 right, you don't have much luck finding a really effective
10 definition of commercial strip development.

11 However, if you do look up the more common term,
12 strip mall, I found it kind of easy, again using Google,
13 to find six separate definitions of strip mall which is
14 really the type of development that we're trying to
15 avoid.

16 And let me get into a few of these. Definitions
17 of strip mall that I found on the web were "A shopping
18 center that usually has parking directly in front of
19 stores and does not have enclosed walkways linking the
20 stores," sort of to show the difference between a strip
21 mall, which you typically see in Florida, versus a large
22 shopping mall.

23 A lot of these definitions stress it's a one-
24 story shop. It has a lot of open parking.

25 The last definition I have is from the free

1 dictionary, "Strip mall. A mercantile establishment
2 consisting of a row of various stores and businesses and
3 restaurants along a road or busy street," like this one,
4 "usually opening on a parking lot."

5 Now, the next point I would make is that the
6 applicant described this area as infill. When you look at
7 US 41, you do see the qualities of infill development.
8 When you visit the site and drive down Diplomat Parkway, I
9 think you'll find a different story.

10 You have to drive for a considerable distance
11 before you find any civilization. I know the property in
12 Cape Coral is zoned C-3 and has an industrial future land
13 use, and I believe has a DRI designation but that hasn't
14 been utilized yet. But you drive down Diplomat Parkway,
15 there's a lot of nothing. There's a Hospice and three
16 miles away there's a gas station. So this is opening a
17 new area to a new strip development. The first 1,900 feet
18 of Diplomat Parkway would be a commercial strip. It's
19 just the shape of the property.

20 The applicant has been wise in having a
21 commercial element to the south and a residential element
22 to the south, that works out perfectly fine. But for
23 whatever reason, they have chosen to have -- to strip out
24 the entire commercial parcel on the northern side and
25 staff objects to that and there are reasons in the Lee

1 Plan to object to that.

2 And not to belabor that point, let me move on to
3 some other issues.

4 The second issue is what I titled tower and other
5 uses. And the applicant has sort of narrowed that down.
6 The only objection they have to us giving them the
7 commercial uses was convenience food and beverage store
8 with fuel pumps. Let me just focus on that and I have a
9 couple of exhibits to give you regarding that.

10 HEARING EXAMINER: Okay.

11 MR. PALERMO: Let me go through the first and
12 thicker one with the red outline on it. That is the
13 Commercial Planned Development, the DRI for Merchant's
14 Crossing. And if you'll look in that DRI, the red tab
15 that I pointed out, Page 6 of 12 of Merchant's Crossing
16 DRI, they permit an automobile service station with fuel
17 pumps, convenience food and beverage store at one location
18 only. To me that communicates very clearly the County
19 Commission's intent to limit the number of gas stations at
20 Merchant's Crossing to one.

21 Since that point, and that resolution is from
22 1990, the County Commission has made it abundantly clear
23 that they don't want any proliferation or an over
24 proliferation, an over saturation of convenience food and
25 beverage stores and gas pumps.

1 As such, staff, as it does with all these cases,
2 analyzed the number of gas stations, convenience food and
3 beverage stores on US 41 and on Diplomat, and that goes
4 into my next exhibit which is titled Commercial Uses On US
5 41, and that includes -- and we also have Diplomat also.

6 Just focusing on gas stations, staff found a
7 total of ten gas stations on both US 41 and Diplomat, one
8 being on Diplomat and nine being on US 41, driving five
9 miles both north and south of the subject property. And,
10 in fact, there are gas stations less than a mile from the
11 subject property.

12 There's a 7-Eleven and there's also a BP at
13 Littleton. There's a Mobil station only a half mile on
14 Pine Island Road. So I think it's more than fair to say
15 that there are a fair number of gas stations, convenience
16 stores with fuel pumps on US 41 in proximity to the
17 subject property.

18 I don't see how staff could recommend another gas
19 station at this particular location.

20 Issue No. 3, I won't belabor it because the
21 applicant has no problem with the enhanced buffering that
22 we've recommended for the subject property which helps
23 make the subject property -- this application more
24 consistent with the Lee Plan, more compatible with the
25 surrounding land uses.

1 We recommend an enhanced Type B buffer with more
2 trees and canopy trees. Those conditions are on 13.E.
3 And I'll make one correction on Page 10, Condition 13.E,
4 I believe I left out per 100 linear feet.

5 And Issue No. 4 is an important issue which is
6 density. One of the neighboring properties brought up a
7 really good issue which is what is the density surrounding
8 this property? How many people live at Six Lakes? How
9 many people live at Serendipity?

10 Staff went through an effort to find out what the
11 density was of those two developments. Those are two
12 mobile home developments, as you know, which were built in
13 the 1970s. Six Lakes Country Club, which has a golf
14 course, was designed at five units per acre. Serendipity
15 Mobile Home Park was developed at six units per acre.

16 This applicant is asking for near the top, 9 1/2
17 units per acre, and staff is supporting a pretty intense
18 development, eight units per acre, which, as we configured
19 it, is 54 acres of residential at a total of 432 dwelling
20 units. So a difference of 36 dwelling units.

21 The County Commission again has made it pretty
22 clear that they are not enthusiastic about the maximum
23 densities, in particular applications in a particular
24 area. And there are concerns about the rural integrity of
25 neighborhoods, the effects on maxing out the density on

1 schools, on water, on traffic. Traffic I just experienced
2 this morning. I was driving north on US 41 to the
3 Caloosahatchee River, and that road, I'm not a traffic
4 expert, was, in my opinion, failing. But that's just
5 opinion.

6 MS. MONTGOMERY: I'm going to have to object to
7 Mr. Palermo testifying --

8 MS. PALERMO: Which I just clearly said.

9 MS. MONTGOMERY: He's not an expert in traffic
10 planning or engineering.

11 HEARING EXAMINER: Okay.

12 MR. PALERMO: Let me also draw your attention to
13 Page 21 of the Staff Report. That's regarding the North
14 Fort Myers Planning Community. North Fort Myers, I think
15 many people regard as a rural area, as different from the
16 rest of the county. It's not Alva, it's not Buckingham,
17 but let's just quote what's in the Lee Plan. And it says
18 under North Fort Myers, under the Planning Community, and
19 I quote, "Most of the North Fort Myers community will
20 develop at residential densities less than what is allowed
21 by the Lee Plan Future Land Use Map. Furthermore, much of
22 this community is designated for low density development
23 of less than one unit per acre. This community will not
24 be one of the fastest growing areas, residentially, in Lee
25 County."

1 I think that accurately describes the character
2 of North Fort Myers. It's a little bit different than
3 some of the urban areas of Lee County, and that's why
4 we've reached the conclusion they shouldn't have the
5 maximum density of ten units or 9 1/2 units per acre and
6 our position is eight units is a much more fair assessment
7 for the situation.

8 A couple more points. The Lee Plan conclusions
9 you'll find on Page 15 through 20 of the Staff Report. We
10 make reference to Policy 5.1.5. We think that's
11 important. We make reference to Policy 6.1.7, that's
12 strip development, that's important. We also reference to
13 site location standards which are Policy 6.1.2. If you
14 don't have access to two roads, you don't meet site
15 location standards. And only one parcel, Parcel 4, meets
16 those site location standards.

17 You'll also find staff analysis of neighborhood
18 compatibility on Pages 21 through 23. The applicant very
19 accurately described what's surrounding this property. To
20 the north, Serendipity; to the south is Merchant's
21 Crossing; to the east are agricultural uses and US 41; and
22 to the west is Six Lakes Country Club; west of that is the
23 city of Cape Coral.

24 On traffic, let me just make a couple of points.
25 Diplomat is an arterial, US 41 is an arterial. I believe

1 I have given you a copy of development services comments.
2 If I haven't, I'll give it to you right now.

3 HEARING EXAMINER: I have it.

4 MR. PALERMO: From Bob Rentz?

5 HEARING EXAMINER: I'll take another one, but I
6 think I got one from somebody yesterday.

7 MR. PALERMO: Essentially, there is no level of
8 service issue but some of the residents did have some
9 concerns about traffic and how it would impact roads other
10 than Diplomat and US 41.

11 The only other point I'll make is that the Lee
12 County Land Development Code will require sidewalks on all
13 arterials, including Diplomat. US 41 already has a really
14 nice sidewalk on it, and it should connect to the one on
15 Diplomat where our Lee County Code already requires a
16 sidewalk.

17 Kim Trebatoski really handled the environmental
18 issues quite well. There is some preservation conditions.
19 She made some recommendations for Deviations 3 and 4. The
20 only other point I would make on that would be on Page 10
21 of the Staff Report, look at Condition 13.D. Kim made a
22 correction that the acreage 11.27 should be changed to
23 11.13. I think that's a more accurate description of what
24 we wanted to do with that condition.

25 In conclusion, let me just say that this

1 application is consistent with the Lee Plan. It is
2 consistent with the Land Development Code. Has limited
3 intensity and enhanced buffering, it is entirely
4 compatible with the surrounding area, including
5 residential mobile home neighborhoods.

6 It will not adversely affect the environmentally
7 critical areas or natural sources.

8 Approval of the request as conditioned will not
9 place an undue burden upon the existing or planned
10 transportation network.

11 Urban services, they are available. And proposed
12 mix of uses is appropriate again as conditioned.

13 That's all I have to deliver and I look forward
14 to Neale's cross-examination.

15 HEARING EXAMINER: Okay. Questions of your
16 witness?

17 MS. COLLINS: No questions.

18 HEARING EXAMINER: Okay. Questions, Neale?

19 MS. MONTGOMERY: I have a few. I don't know why
20 he assumed I would but -- look at the Staff Report, Page
21 9, Condition 4.J.

22 MR. PALERMO: Condition what?

23 MS. MONTGOMERY: 4.J. That one says that the
24 model homes will be valid up to five years which means we
25 don't know what year you might decide to stop with the --

1 so can we change that to for a period of five years?

2 MR. PALERMO: That would be just fine, five or
3 fewer years. That's a good correction.

4 MS. MONTGOMERY: Let me ask you a question about
5 Six Lakes. When you calculated the density of five units
6 an acre, I assume that included the golf course?

7 MR. PALERMO: That's right. I just took the
8 entire acreage of the property and divided it by the
9 number of units.

10 MS. MONTGOMERY: So the matter of cluster density
11 then is obviously higher than five units?

12 MR. PALERMO: Yes. If you leave out the golf
13 course, which is a major consideration, you would have
14 more density.

15 MS. MONTGOMERY: Let's talk about that North Fort
16 Myers -- I think it's from the vision section of the plan
17 you talked about on Page 21. That discussion includes
18 large portions of North Fort Myers which are in the rural
19 land use category, doesn't it?

20 MR. PALERMO: It includes all of North Fort
21 Myers, yes, that's an accurate statement to make. There
22 are lots of areas of North Fort Myers that have rural and
23 other future land use.

24 MS. MONTGOMERY: GR, open lands and those kinds
25 of categories?

1 MR. PALERMO: Yes.

2 MS. MONTGOMERY: And all of those categories are
3 not urban categories, right?

4 MR. PALERMO: That's correct.

5 MS. MONTGOMERY: This is one of the few areas
6 that's actually in an urban area?

7 MR. PALERMO: It's in an urban area, I'm not sure
8 it's one of the few areas. There's lots of urban property
9 in North Fort Myers.

10 MS. MONTGOMERY: But just essential urban, and
11 if I look at that map, it doesn't appear particularly
12 rural to me. I'd say this is an urbanized area, wouldn't
13 you?

14 MR. PALERMO: An urbanized area, and we've
15 recommended a high level of density, eight units per acre
16 and a lot of commercial development.

17 MS. MONTGOMERY: And if I look at that same
18 vision statement, about six or seven lines down, it
19 indicates that "The US 41 corridor from Pondella Road
20 north will continue to attract new commercial development
21 that will serve the North Fort Myers community and other
22 surrounding communities." So even the vision statement
23 sort of envisions that there's going to be more
24 intensive development along US 41; would you agree with
25 that?

1 MR. PALERMO: That's a fair statement to make.
2 And eight units per acre would be a pretty intense level
3 of density compared to existing densities in the
4 surrounding neighborhood.

5 MS. MONTGOMERY: And let me ask you a question.
6 Is compatibility defined anywhere as having the density be
7 the same or similar?

8 MR. PALERMO: That's a very good point. It does
9 not require that densities be identical all over the
10 county. There is some room for some play on a case-by-
11 case basis, but it does not require every place that has
12 one unit per acre to be next to one unit per acre next to
13 one unit per acre.

14 MS. MONTGOMERY: In addition you'll have
15 appropriate buffers in between?

16 MR. PALERMO: That's right.

17 MS. MONTGOMERY: And that's actually why you
18 recommended enhanced buffering in this location?

19 MR. PALERMO: Yes, ma'am. Because there's a
20 unique case where there's two mobile home parks, they were
21 built in the '70s, and they have kind of been enjoying
22 sort of a rural preserve to look at and having neighbors
23 that have multi-family dwelling units in a pretty high
24 density is a real change.

25 MS. MONTGOMERY: And I'm not imagining this, even

1 the recent problems with hurricanes, we wouldn't really
2 recommend doing the same type of mobile homes on this
3 property, would we?

4 MR. PALERMO: That's correct.

5 MS. MONTGOMERY: And in this instance, there is
6 both to the west and to the north are drainage areas that
7 separate this parcel from the adjacent parcels?

8 MR. PALERMO: Yes, that's correct.

9 MS. MONTGOMERY: So the 30-foot buffer that you
10 propose is in addition to the 50-foot drainage easement so
11 there is an 80 foot really area that's dedicated to open
12 space?

13 MR. PALERMO: Yes, ma'am.

14 MS. MONTGOMERY: Which provides fairly
15 significant separation?

16 MR. PALERMO: Nice buffer.

17 MS. MONTGOMERY: You expressed a concern about
18 the fact that the higher density would impact the rural
19 integrity of the neighborhood. What rural integrity were
20 we thinking here?

21 MR. PALERMO: I was specifically referring to the
22 rural integrity of all of North Fort Myers. I read their
23 vision statement into the record.

24 MS. MONTGOMERY: We weren't talking about the
25 rural integrity of the mobile home parks then?

1 MR. PALERMO: No. They're urban uses and they're
2 five and six units per acre.

3 MS. MONTGOMERY: You drive down US 41 regularly,
4 don't you?

5 MR. PALERMO: Yes. Yes, I do.

6 MS. MONTGOMERY: From Tucker's Grade going south
7 to this location, on your side of the road, how many gas
8 stations are there?

9 MR. PALERMO: I remember counting -- it's in my
10 exhibit, I remember three gas stations right on US 41.

11 MS. MONTGOMERY: From Tucker's Grade or from
12 Punta Gorda south?

13 MR. PALERMO: I only counted the gas stations --

14 MS. MONTGOMERY: On the driving side, not to make
15 the left over like into the old Stuckey's.

16 MR. PALERMO: Let's forget that one. I didn't go
17 in Charlotte County.

18 MS. MONTGOMERY: Have you ever stopped at that
19 one?

20 MR. PALERMO: Yes, I have.

21 MS. MONTGOMERY: Were you a little nervous?

22 MR. PALERMO: No.

23 MS. COLLINS: I've stopped there many times.

24 MR. PALERMO: But my wife isn't as cautious as
25 Jon's wife.

1 MS. MONTGOMERY: I think there's a 7-Eleven at
2 Littleton, I think that's the only one.

3 MR. PALERMO: Yes, there's a 7-Eleven and a BP
4 right next to it.

5 MS. MONTGOMERY: There's one BP on Del Prado, I
6 think?

7 MR. PALERMO: I'm talking about Littleton,
8 there's a 7-Eleven and a BP right next to it.

9 HEARING EXAMINER: There are two gas stations
10 there because when that was rezoned for that second one
11 right there on the corner, the little fellow came in that
12 owned the other one, not wanting --

13 MS. COLLINS: Not happy.

14 MS. MONTGOMERY: Let me ask you this question,
15 Tony. I have had you do a lot of the gas station maps and
16 analysis, and you typically are pretty thorough, you don't
17 always look at just what's there. You very often look at
18 what's there and what's true and you count what's proved
19 as what's there, true?

20 MR. PALERMO: Huh?

21 MS. MONTGOMERY: When you do your analysis --

22 MR. PALERMO: I've counted lots of gas stations
23 and had cases with you with gas stations, yes.

24 MS. MONTGOMERY: Yes, we have. And very often
25 when you do that, you will do circles and you'll look at

1 what actually exists but you'll go through zoning
2 approvals and identify those where there's been approval
3 for gas stations even though they might not be there?

4 MR. PALERMO: I think I've done that in previous
5 cases.

6 MS. MONTGOMERY: With me, you have done it.

7 MR. PALERMO: I know what I have done in this
8 case, and what I've done in this case is point out there's
9 ten gas stations in the five-mile radius between -- on US
10 41 and on Diplomat. Nine on US 41, one on Diplomat.

11 HEARING EXAMINER: That's existing, right?

12 MR. PALERMO: That's existing. I didn't get into
13 what's zoned, what's approved, what's coming, what's not
14 coming, abandoned gas stations. I mean, I could have
15 gotten really into it.

16 MS. MONTGOMERY: But in this instance, I think
17 you do agree that it's commercial and industrial approved
18 as you go down Diplomat?

19 MR. PALERMO: Yes. That's in the city of Cape
20 Coral. I'm not going to speak to what they're going to
21 approve or what they have approved already.

22 MS. MONTGOMERY: Right. But if it is zoned for
23 that and the Comp Plan says that you can do that, that's
24 an approved use that you would have to expect to be there?

25 MR. PALERMO: That is not in my hands, though.

1 MS. MONTGOMERY: I understand you don't have
2 jurisdiction over it, but we can look at that and rely on
3 those public documents, can't we?

4 MR. PALERMO: We can rely on them, but, yes,
5 there's nothing out there now and a reasonable person
6 would say in the future it will develop as it's zoned and
7 as future land use says it is.

8 MS. MONTGOMERY: That's a reasonable assumption?

9 MR. PALERMO: Reasonable, yes.

10 MS. MONTGOMERY: Okay. So we're in between CPD,
11 C-3 and industrial uses?

12 MR. PALERMO: It clearly says this is infill
13 development, but there's concerns about compatibility, and
14 there's other concerns that we may want to limit the
15 density, talk about strip development.

16 MS. MONTGOMERY: When you think of a strip mall,
17 a strip mall is typically all retail, right?

18 MR. PALERMO: It can be offices and retail, it
19 can be restaurants.

20 MS. MONTGOMERY: But predominantly retail?

21 MR. PALERMO: I don't think it's predominantly
22 retail. There's a lot of strip malls in Florida, a lot of
23 strip malls in southwest Florida. They have offices, they
24 have package stores, they have restaurants, they have
25 everything, they have it all.

1 MS. MONTGOMERY: And the two big reasons, though,
2 you talked about in your Staff Report are that they're
3 ugly, right?

4 MR. PALERMO: Right.

5 MS. MONTGOMERY: But the county has gone a long
6 ways to try to deal with ugliness by requiring consistent
7 architectural control within a planned development, hasn't
8 it?

9 MR. PALERMO: We have architectural standards,
10 but we also have Policy 6.1.7 which says to discourage
11 strip development, and this is a case where we can
12 discourage strip development.

13 MS. MONTGOMERY: I'm trying to understand the
14 evil, and the evil is that it's ugly, and the county
15 doesn't like ugly so they regulated it away by requiring
16 aesthetic standards?

17 MR. PALERMO: But they haven't thrown away that
18 policy because they adopted architectural standards.

19 MS. MONTGOMERY: I appreciate your position on
20 that. The county has adopted commercial standards to
21 address aesthetics, hasn't it?

22 MR. PALERMO: Yes, that's correct. That's what
23 they're for.

24 MS. MONTGOMERY: And if you look at a lot of the,
25 what I would typically think of as ugly strip commercial,

1 I think if you leave downtown and drive up 41, you get a
2 feeling for that, but what happens there is there's a lot
3 of access points, uncontrolled access?

4 MR. PALERMO: That's correct. Yes, there's strip
5 malls that have lots of access points and this doesn't
6 have a terrible amount of access points, it has two access
7 points.

8 MS. MONTGOMERY: Two access points in a 1,900
9 foot distance is limited access, would you agree?

10 MR. PALERMO: Yes, it's pretty limited, yes.

11 MS. MONTGOMERY: And so the two evils that you've
12 identified have been addressed through limiting access and
13 through your aesthetics requirement.

14 MR. PALERMO: Well, if you just limit it to those
15 two evils, that's -- but I believe there are other aspects
16 of strip development that the county wanted to discourage,
17 and I don't think just having the architectural standards
18 and just having two access points addresses everything.

19 MS. MONTGOMERY: But those are the only two evils
20 you identified in your Staff Report?

21 MR. PALERMO: There's lots of evil in the Staff
22 Report. I'm kidding.

23 MS. MONTGOMERY: You only addressed two in
24 regards to strip development.

25 MR. PALERMO: I believe I raised a lot of issues,

1 but if you want to limit it to two issues, that's fine.

2 MS. MONTGOMERY: Okay. Urban sprawl is typically
3 development that really can, on some occasions, be seen as
4 underutilizing areas and forcing development out into the
5 hinterlands; do you agree with that?

6 MR. PALERMO: I agree with that, but the
7 definition of urban sprawl is it's in the middle of
8 nowhere. There's several aspects of it that are in Rule
9 9(j)(5). I've given the Hearing Examiner a copy of that.
10 And one of those aspects is creating ribbon or strip
11 commercial or other developments. I'm not going to argue
12 this is sprawling development. This is infill
13 development.

14 MS. MONTGOMERY: And would you agree that every
15 time we reduce densities in the very urban areas, we have
16 pushed development a lot of time out into the hinterlands?

17 MR. PALERMO: When you arbitrarily reduce
18 density, yes, you create that situation.

19 MS. MONTGOMERY: And we're trying to combat
20 sprawl with this application by having higher density so
21 we don't have to force development into the hinterlands.

22 MR. PALERMO: It's a real leap to say that giving
23 you ten acres per acre prevents any sprawl anywhere else.
24 That's a gigantic leap.

25 MS. MONTGOMERY: I didn't say it prevented it

1 anywhere. I say I wish we could cure all the evils, but
2 we're doing our part to prevent that?

3 MR. PALERMO: Right.

4 MS. MONTGOMERY: I appreciate the definition that
5 you gave, but if I look at the Comp Plan, it says the
6 uncontrolled premature or untimely expansion of spreading
7 out of urban levels of density and intensity into outlying
8 non-urban areas. That's how it's defined in the Lee Plan?

9 MR. PALERMO: That's right.

10 MS. MONTGOMERY: We're not that, are we?

11 MR. PALERMO: No. You're not sprawl, you're
12 infill development.

13 MS. MONTGOMERY: And I think one of the evils you
14 pointed out about this commercial is a lack of buffers,
15 but I think you've done a very good job of ensuring that
16 there are adequate buffers in this case, haven't you?

17 MR. PALERMO: The buffer on Diplomat Parkway is
18 a standard Type D buffer, so it's not enhanced. We've
19 seen no elevations, we've seen no --

20 MS. MONTGOMERY: But a D, F buffer, those are the
21 toughest buffers that Lee County has, right?

22 MR. PALERMO: We see no elevations, we see no
23 control over signs, we've seen none of the elements that
24 would prevent strip development. We basically have a
25 bubble plan saying the commercial will go on this strip

1 that's shaped like a cigar. I'm sorry, you had a point
2 there.

3 MS. MONTGOMERY: You have no expectations that
4 this is not a viable location for commercial such that
5 this would be a dark center, do you?

6 MR. PALERMO: It would be a what center?

7 MS. MONTGOMERY: A dark center. Part of your
8 testimony was that buildings go dark and then that creates
9 blight. You don't have any indication or market analysis
10 that would indicate that this would be a dark center, do
11 you?

12 MR. PALERMO: Oh, a dark center being if it were
13 abandoned and --

14 MS. MONTGOMERY: Right.

15 MR. PALERMO: -- were blighted.

16 MS. MONTGOMERY: So dark.

17 MR. PALERMO: So dark, basically.

18 MS. MONTGOMERY: You raised the concern about
19 blight and I'm assuming the concern about blight is that
20 it would go dark?

21 MR. PALERMO: Hypothetically, that could happen
22 in the future.

23 MS. MONTGOMERY: But you don't have any --

24 MR. PALERMO: There are plenty of vacant shopping
25 malls in North Fort Myers and throughout Lee County that

1 are kind of testimony to that. There's vacant strip malls
2 in proximity to this location.

3 MS. MONTGOMERY: But you don't have any
4 indication that this is not a viable --

5 MR. PALERMO: No, of course not. I have not done
6 an expensive economic study to say this is going to
7 succeed or fail.

8 MS. MONTGOMERY: Okay. I don't have any other
9 questions.

10 HEARING EXAMINER: Anything, County Attorney?

11 MS. COLLINS: No.

12 HEARING EXAMINER: Let me ask a couple here
13 before you have a seat.

14 I understand both parties' positions and
15 whatnot. Looking at the site development regulations,
16 Pages 5, 6, and 7 for the RPD, the rear setback is set at
17 20 feet. We've got a 30-foot buffer on the west boundary,
18 you're recommending a 30-foot buffer on the west boundary
19 and across the top, so do we not have to change the
20 setback, the rear setback for all three of these single
21 family?

22 MR. PALERMO: Are you suggesting it should be 30
23 feet or 50 feet?

24 HEARING EXAMINER: 30. 50 feet would be nice,
25 but at least 30 feet. It says minimum setback. I would

1 think you'd need to put 30 feet in there instead of 20
2 because otherwise you're building a building inside the
3 buffer if it's set at 20 and you've got a 30-foot buffer,
4 and they have agreed to the 30 foot wide buffer.

5 MR. PALERMO: You're right. As the development
6 services look at that, they would have to put a setback
7 larger than 20 feet because there's a 30-foot buffer.

8 HEARING EXAMINER: Okay. So --

9 MR. PALERMO: 30 sounds reasonable.

10 HEARING EXAMINER: So we need at least a 30-foot
11 setback?

12 MS. COLLINS: Are you talking about the rear
13 setback?

14 HEARING EXAMINER: Rear setback.

15 MS. COLLINS: Am I looking in the right place?

16 HEARING EXAMINER: On Page 6.

17 MS. COLLINS: I guess my question --

18 HEARING EXAMINER: Single family -- Page 5,
19 single family, Page 6, duplex and the start of multi-
20 family goes over to Page 7.

21 MR. PALERMO: I'm sorry. But how would that work
22 internally because you could have a rear setback in the
23 middle of the property?

24 HEARING EXAMINER: Interesting question.

25 MS. COLLINS: Maybe there should be separate

1 setbacks for --

2 MS. MONTGOMERY: I have an answer I think.

3 HEARING EXAMINER: Okay, Neale.

4 MS. MONTGOMERY: I think the answer is you have a
5 buffer setback, in other words, the building, whatever the
6 building is, whether it's the rear or side, would have to
7 be X number of feet from the 30-foot buffer like five feet
8 or what -- David, do you have an answer to this?

9 HEARING EXAMINER: Off the top of your head
10 recommendation I think is what Neale is asking.

11 MR. UNDERHILL: Dave Underhill for the record. I
12 don't see that there's a big conflict if you have a
13 required buffer and you have a rear setback. I don't
14 really see a specific need to adjust it. It's pretty
15 clear from the Master Concept Plan that the buffer is
16 required and clearly your building couldn't be within the
17 buffer.

18 HEARING EXAMINER: Right. But I'm concerned
19 about getting over there and then going, oh, wait, this
20 says 20 feet, but that says 30 feet.

21 MS. MONTGOMERY: It's not going to happen.

22 HEARING EXAMINER: You don't think so?

23 MS. MONTGOMERY: No.

24 MR. PALERMO: They'll have to put the 30-foot
25 buffer in and when they look at the rear setback, it will

1 clearly show it will meet that because they are at least
2 30 feet away. My concern is internally they'll have to
3 show --

4 HEARING EXAMINER: I see what you're saying.

5 MS. COLLINS: But what about the perimeter
6 setback, doesn't that create a conflict if that only says
7 25?

8 HEARING EXAMINER: That says 20.

9 MS. COLLINS: I mean, in the middle of Page 6
10 I've got a perimeter setback or does that pertain only to
11 accessory uses?

12 HEARING EXAMINER: Where are you?

13 MS. COLLINS: Middle of Page 6.

14 HEARING EXAMINER: Yeah, that's accessory uses.

15 MR. PALERMO: But the perimeter setback, that
16 sort of covers everything that's not covered by the
17 enhanced buffer. You have buffer everywhere.

18 HEARING EXAMINER: Right. It's on the north and
19 the west.

20 MS. MONTGOMERY: And east.

21 HEARING EXAMINER: Is it on the east?

22 MS. MONTGOMERY: Yes. If you look at the --

23 MS. COLLINS: On the northeast.

24 MS. MONTGOMERY: He says he has it everywhere.

25 He's not kidding, he does. He doesn't have it on the

1 south, it's on the north.

2 HEARING EXAMINER: Oh, okay, I missed it on the
3 east then. I certainly did.

4 So it's not on the south but it's all the way
5 across the west, the north and the east boundary. All
6 right. So you guys are okay with leaving it at 20 feet?

7 MR. PALERMO: Yes.

8 HEARING EXAMINER: County Attorney?

9 MS. COLLINS: I don't know. Your way makes sense
10 to me.

11 HEARING EXAMINER: That's what I'm thinking, too,
12 but for all lots bordering the north, east and west
13 boundaries, minimum setback 30 feet. And then all
14 internal lots 20 feet.

15 MR. JIM KINSEY: All lots, the rear portion of
16 which contain the enhanced buffer, that's where the 30
17 feet lie.

18 HEARING EXAMINER: Okay. Because I would feel a
19 little better about it. I think it could be confusing if
20 they look at this -- if they don't look at everything
21 else, it could be just confusing.

22 MS. COLLINS: What condition refers to the 30-
23 foot buffer, is that 13?

24 MS. MONTGOMERY: Yeah, 13. What's the letter?

25 MR. PALERMO: E.

1 HEARING EXAMINER: So we can do 30 foot for all
2 lots containing enhanced buffer and 20 feet for all other
3 lots. That would make me a little easier on this.

4 Okay. Let me see if I've got anything written
5 down in here that I wanted to specifically ask you other
6 than that.

7 No, I don't. I don't. All my notes are taken
8 care of here. So thank you.

9 All right. We had the county's environmental
10 witness yesterday. Do we have any other county witnesses?

11 MR. PALERMO: No, I have no witnesses.

12 HEARING EXAMINER: Okay. All right, folks, let's
13 take a ten-minute break. Be back here at 4:15 for
14 rebuttal response by the applicant. Give everybody a
15 chance to stand up and stretch and whatever. Be back here
16 at 4:15 and we'll finish this up.

17 (A recess was taken.)

18 HEARING EXAMINER: All right. The staff have any
19 other evidence they want to put on the record before we
20 turn this over to the applicant for any rebuttal?

21 MR. PALERMO: Go ahead. We're done.

22 HEARING EXAMINER: All right. Applicant have any
23 rebuttal or response?

24 MS. MONTGOMERY: Yes, we would briefly like to
25 call Mr. Kinsey.

1 HEARING EXAMINER: Which one?

2 MS. MONTGOMERY: Jim.

3 HEARING EXAMINER: Thank you.

4 Thereupon,

5 JIM KINSEY,

6 called as a witness by the Applicant, having been
7 previously duly sworn, was examined and testified as
8 follows:

9 MS. MONTGOMERY: Let me ask you a couple of
10 questions. The Hearing Examiner asked Mr. Hagan about why
11 it is we don't have commercial on the south and how it is
12 you're dealing with residential on the south part of
13 Diplomat. Can you tell me what your thinking was.

14 MR. JIM KINSEY: Sure. For the record, Jim
15 Kinsey, part of the applicant team.

16 The issue on the south side of Diplomat is fairly
17 simple. I mean, we fully admit that when you -- whether
18 the units are up here on the street, I mean, this would be
19 more of an impact, or the fact that on the north side
20 units are abutting commercial, they'll be a little tougher
21 to sell for obvious reasons. So we felt like it was more
22 appropriate to put the units on this side, given some of
23 the site parameters that we have on the south side which,
24 you know, number one, a proximity to half a million square
25 foot regional shopping center, all the problems associated

1 with that.

2 But, additionally, since we moved the preserve
3 over here, which actually is good for us along the back
4 because we can create some good value with those units
5 facing the preserve, but you can see the site is somewhat
6 constrained. Again, you have this very large impact
7 here. We've got the preserve. We've got to get our units
8 sold in here. So it really would be impractical to try
9 to -- I mean, if we had more land, we'd love to create
10 more commercial, you know, presuming our feasibility
11 analysis said it was the highest and best use, I mean, you
12 certainly could do that. But you can tell by the piece of
13 property, it really is not practical to try to squeeze
14 more commercial in here, have a fairly small plot of
15 residential units on the preserve and then, like it or
16 not, there is going to be some cognitive distance, or
17 whatever the phrase is. The closer you get to the
18 regional shopping center, even though you are on a
19 preserve, there is the thought of being close to high
20 impact.

21 HEARING EXAMINER: All right. Let me ask you
22 this. I'm sorry, Neale.

23 All right. Looking at the commercial on the
24 north side, and I understand you guys got different owners
25 here, you know, I mean, but I'm having to look at the

1 design, looking at the commercial on the north side, why
2 couldn't you take those office type uses that you had
3 planned on Parcels 1 and 2 up there and move them down
4 here and do, you know, what do they call it, a campus type
5 setting for all of your office uses and keep all of your
6 commercial on the south and the far east, and then, you
7 know, just bring your residential on down to Diplomat up
8 there where Parcels 1 and 2, Commercial Parcels 1 and 2
9 are? Why would that not work?

10 MR. JIM KINSEY: I don't know that it necessarily
11 wouldn't work. I can't necessarily disagree with you.
12 The retail -- really, from this point forward, because
13 you've got circulation into Merchant's Crossing, you know,
14 you're facing intensive retail here, I mean, we would
15 envision the most intensive retail being here because of
16 the access and proximity to Merchant's Crossing.

17 The strip development I think that Mr. Palermo
18 was indicating, I would envision that, you know, possibly
19 extend somewhat westerly of this access point -- excuse
20 me, this would be the access point, but not far.

21 I had mentioned actually in our discussions, I
22 mean, Ms. Parker, if you would like some kind of an
23 assurance through a building design or whatnot -- you
24 know, we're not going to do a strip retail building here,
25 we'll do free-standing buildings of either office or light

1 retail. I mean, I, you know, as a developer, I really see
2 and envision that coming -- evolving that way as this
3 project is built out. And then if we do choose to do
4 strip development and more intensive retail, you know,
5 maybe limiting that to an agreed to point to the east.
6 You know, again that would break it up from an aesthetic
7 standpoint.

8 HEARING EXAMINER: Okay. All right.

9 MR. JIM KINSEY: Which I think was one of the
10 issues.

11 HEARING EXAMINER: Okay. Neale, any other
12 questions of him?

13 MS. MONTGOMERY: Just one other question in
14 regards, I know we've probably beat it to death, in
15 regards to gas stations. I know you deal with the
16 marketing aspect of it which really relates to how people
17 use gas stations. Do people use gas stations based on
18 where they are within a three-mile radius or do they use
19 them based on whether they're on their driving side?

20 MR. JIM KINSEY: Gas stations today, particularly
21 with the traffic volumes on the arterial highways where
22 gas stations are predominantly located, can be very, very
23 convenience oriented. Today they try to get at full-turn
24 intersections or in the past you always wanted to be at a
25 full-turn intersection but today with the volume so high

1 in south Florida on both coasts, they're really only
2 concerned with the volume in front of their store. I
3 shouldn't say only, but primarily the volumes in front of
4 their store that can make the easy right turn in, right
5 turn out.

6 In fact, I think if you look at some of the newer
7 developments now, you know, they're actually going off of
8 the full-turn intersections and getting -- the main
9 intersections and getting back where there's convenient
10 access. And a road such as 41, you know, I think the way
11 I would look at it as a driver and certainly as a buyer of
12 gas, as any of us would, you know, I'm not concerned about
13 trying to get to the other side of 41 to get gas because
14 it's not convenient to do that. So I think the way we
15 would look at this is the number of stations on our side
16 of the road which would be south for southbound traffic.

17 MS. MONTGOMERY: And westbound traffic?

18 MR. JIM KINSEY: Correct. On Diplomat.

19 MS. MONTGOMERY: Let me ask another question with
20 regards to where you have the commercial located. Is it
21 important whether or not you're on the going to work side
22 of the road or the going home side of the road? Does that
23 have any play in this?

24 MR. JIM KINSEY: Yes. Traditional commercial
25 development will tell you for most commercial services and

1 quite a bit of retail, you want to be on the going home
2 side of the road. You know, gas stations, quick service
3 restaurants, traditionally they like to be on the far
4 corner going home. And as I look at the -- analyze this
5 parcel for commercial development, you know, obviously
6 accepting the tie into Merchant's Crossing because that's
7 obviously a major generator for the south side at the
8 corner, but on the north side you want to be on the going
9 home side. And we see the going home -- the employment
10 center in Fort Myers, folks coming north on 41 and then
11 turning westerly on Diplomat, you know, are folks coming
12 into our development as well as traveling on to Cape
13 Coral, having the commercial on the north side makes it
14 very convenient to get in and out, very timely to buy
15 those things you need on your way home.

16 MS. MONTGOMERY: Okay. I don't have any other
17 questions.

18 HEARING EXAMINER: Staff?

19 MR. PALERMO: No.

20 HEARING EXAMINER: County Attorney?

21 MS. COLLINS: No.

22 HEARING EXAMINER: Okay, thank you.

23 Any other witnesses from the applicant?

24 MS. MONTGOMERY: No, ma'am.

25 HEARING EXAMINER: All right. Any statement at

1 all from staff?

2 MR. PALERMO: No.

3 HEARING EXAMINER: Okay. All right. With all
4 the things that we have discussed today --

5 MS. MONTGOMERY: I guess I have one thing. I
6 think we need to adjust the open space table.

7 HEARING EXAMINER: We need to leave the record
8 open, yes, we do.

9 All right. With everything that we've discussed
10 today, I don't have a particular problem with staff's
11 recommendation of approval. As I indicated, I will
12 probably recommend -- almost definitely will recommend to
13 the Board of County Commissioners that you all provide
14 some kind of second access into that north RPD parcel.
15 All right.

16 I need to do a site visit. I need to go back
17 over the entire record and look at the entire situation.

18 I need -- we need to leave the record open for
19 you to amend the open space table on the Master Concept
20 Plan I believe it is, isn't it, on the Master Concept
21 Plan.

22 Do you all want to also work together -- you
23 know, Jim offered a condition in response to staff's
24 concerns about a strip mall, to put -- make these
25 individual buildings and whatnot. Would staff want to

1 work with the applicant and try to come up with some kind
2 of condition language on that or would that even be
3 acceptable to staff?

4 MR. PALERMO: Language would be needed. Better
5 would be a Master Concept Plan that shows building
6 footprints, but I'm not sure we could work that out in the
7 near future.

8 HEARING EXAMINER: All right. Well, let me know
9 then how staff feels about the offer by the applicant to
10 have more free-standing buildings west of the access, the
11 first access point into the retail than one single
12 building with lots and lots of little stores. The staff
13 have a position on multiple buildings?

14 MR. PALERMO: Our recommendation was for the
15 Commercial Parcels 1 and 2 and part of 3 to be either
16 residential, open space or sort of an entrance feature.

17 HEARING EXAMINER: Right. And I understand that.

18 MR. PALERMO: And we're still sticking by that.

19 HEARING EXAMINER: So even if they were to offer
20 to make campus settings with individual buildings through
21 the two acres on Parcel 3 and the other Parcels 1 and 2,
22 staff would still prefer to see that a non-commercial
23 parcel?

24 MR. PALERMO: That's correct. Staff's position
25 is the same, but we would be willing to have the record

1 left open so they could put that on the record and make
2 that argument to the County Commission that their plan is
3 better.

4 HEARING EXAMINER: Okay. All right. We need to
5 leave the record open then for the --

6 MR. PALERMO: Does Kim have to provide you with
7 anything?

8 HEARING EXAMINER: I think the open space table
9 modification is coming from the applicant.

10 MS. MONTGOMERY: She'll have to review it.

11 HEARING EXAMINER: She'll have to review it so --

12 MR. PALERMO: I thought she was doing -- she's
13 not doing different language?

14 MS. MONTGOMERY: She did. She read it into the
15 record. I don't know if you wanted her to type it up and
16 give it to you or not.

17 HEARING EXAMINER: The court reporter has got
18 it. I got some of it. I didn't get all of it, but the
19 court reporter has got it, so I can rely on it from
20 there.

21 MR. PALERMO: But if Kim wants to write a memo or
22 write a condition, she's free to do that.

23 HEARING EXAMINER: Okay. I need to know what all
24 is being submitted so my secretaries can list it so we
25 don't have a lot of extraneous submittals.

1 MS. MONTGOMERY: You need Jim to tell you why
2 he's qualified to talk about what he just talked about?

3 I mean, I know you've known him a long time. I
4 didn't know if you wanted --

5 HEARING EXAMINER: No, I don't think we
6 necessarily need it on the record, his qualifications and
7 whatnot.

8 Do you all want to, in addition to amending the
9 open space table, do you want to proffer or offer any
10 language regarding the individual buildings or the --

11 MS. MONTGOMERY: Yeah, I do. I have that written
12 down. I'll go ahead and offer that condition. I think,
13 too, that it would be appropriate to show the arrows
14 because the question was raised about whether those
15 accesses to those parcels reflect those so I think --

16 HEARING EXAMINER: So I will give you the
17 opportunity to do that.

18 Now, what I need to do is find out, because staff
19 will need to review that recommended condition to give me
20 their thoughts on it, so I have, you know, both sides.

21 MS. MONTGOMERY: I understand.

22 HEARING EXAMINER: So is two weeks going to be
23 long enough for you all to get your stuff together and get
24 it to staff and then give staff a week to review it?

25 MS. MONTGOMERY: That sounds good.

1 MR. PALERMO: Two weeks from today?

2 HEARING EXAMINER: So the 27th for the stuff to
3 get to staff, for staff to review it, and then the
4 following week, which is God knows what.

5 MS. COLLINS: The 3rd.

6 HEARING EXAMINER: It's going to be like the 3rd.

7 MR. PALERMO: January 27th they give something --

8 HEARING EXAMINER: To you.

9 MR. PALERMO: February 3rd we submit something to
10 you.

11 HEARING EXAMINER: February 3rd you submit your
12 responses and whatnot to me along with whatever they
13 submitted to you.

14 MS. MONTGOMERY: And I think the staff has raised
15 and Jim has responded to the question of whether or not
16 there would be architectural controls. We would include
17 that in that condition.

18 HEARING EXAMINER: Okay.

19 MS. COLLINS: Elevations or standards?

20 MS. MONTGOMERY: Conditions.

21 MS. COLLINS: What's it going to be?

22 MR. JIM KINSEY: Standards.

23 HEARING EXAMINER: All right. Submit to staff
24 and then staff will respond by the 3rd of February.

25 All right. If nothing else, folks, we are done.

1
2 STATE OF FLORIDA)

3 COUNTY OF LEE)
4

5 I, Roberta June Bishop, Registered Professional
6 Reporter, do certify that I was authorized to and did
7 stenographically report the foregoing proceedings, and
8 that the typewritten transcript, consisting of pages
9 numbered 1 through 87, is a true record.

10 Dated this 6th day of February, 2006.

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12 Roberta June Bishop
13 Roberta June Bishop, RPR
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