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TRANSCRIPTS FOR CASE #:

DCI 2005-00100

LEE COUNTY HEARING EXAMINER
PUBLIC HEARING

Case No. DCI2005-00100

Applicant: Bayshore Village Holdings Group, LLC, in reference to The Village Square on Bayshore

Transcript of proceedings before Diana Parker, Lee County Hearing Examiner, 1500 Monroe Street, Fort Myers, Florida, on May 18, 2006, commencing at 9:00 A.M.

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representing the Applicant

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representing Lee County

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THE HEARING EXAMINER: Good morning. I'm Diana Parker, Chief Hearing Examiner for Lee County. This is Thursday, May the 18th, Case Number DCI-2005-00100, Bayshore Village Holdings Group, in reference to The Village Square on Bayshore.

Before we start the hearing this morning, the County Attorney has a few comments to make.

MS. LEHNERT: Good morning. My name is Dawn Lehnert and I am an Assistant County Attorney, representing the Board of County Commissioners. I'm also here to assist the county staff, the applicant and the hearing examiner to ensure that the record in this case is complete.

If you would like to participate at today's hearing or obtain a copy of the hearing examiner's recommendation, we ask that you please fill out a white form on the small table located at the front of the room. Once you have completed the form, please leave it next to the hearing examiner.

At the conclusion of staff's presentation, the hearing examiner will open the floor for public participation. It is at that time you will have an opportunity to address the hearing examiner.

All public comment will be heard from the podium at the front of the room.

When you step up to this podium, please state your name and address for the record. If you reside or own property in the area, please explain to the hearing examiner where you live in relation to the property, the subject property.

This is a rezoning hearing and it is not a final action on this matter. The hearing examiner's recommendation will be considered by the Board of County Commissioners at a final public hearing a few weeks after the recommendation is issued.

If you would like to have your thoughts considered in this matter, you will need to speak here today. If you wish to speak at the hearing before the Board of County Commissioners, you must speak here today.

At this time I would like to introduce the applicant's representatives and staff members working on this case. Tony Palermo to my right is the county's zoning planner. The court reporter. Diana Parker is the hearing examiner and Matt Uhle is the applicant's representative. Thank you.

THE HEARING EXAMINER: Okay. Folks, in addition to the comments that the county attorney has just made, let me do advise you we have only water in this room. Please do not bring in sodas or coffee. You

will be stopped at the door if my secretaries see you coming in with those drinks. Please do not bring those in here. Water only.

I need to swear in all persons who will be speaking at this morning's hearing. If you are an attorney and testifying to facts, you need to be sworn in as well. So if you intend to speak in today's hearing, please raise your right hand.

(Present witnesses sworn.)

Now, as the county attorney has indicated, the applicant will make their presentation first, bringing up whatever witnesses they need to call to make me understand fully what they're asking for. After the applicant has made their presentation, staff will then make a presentation explaining their reasoning and their recommendation of approval with conditions of this request. After staff and applicant have made their presentations, then I'll open the floor for public comment. At that time, as the county attorney's indicated, you need to come up to the podium, state your name and address for the record and then make your comments. Please keep your comments germane to the issue at hand. It does me no good for you to tell me you don't like the current property owner, you didn't like the past property owner, you

don't like your neighbor but your neighbor likes the current property owner. Personalities, neighborhood disputes have no basis in my decision. I need to know what you feel will happen to your lives, your property and your community if this request is approved, all right? So please try to keep your comments germane to those particular issues because those are the only things that I can address.

And as the county attorney has indicated, my recommendation will be issued, it will go to the Board of County Commissioners. You will receive a copy of my recommendation. You will also receive notice of the hearing in front of the Board of County Commissioners which occurs on a Monday morning at 9:30. All right. You will be given the opportunity to speak at the board hearing only if you speak here. You must speak here in order to be able to tell the board if you think my recommendation is wrong. Okay. Do I have any questions on procedures from anybody?

Yes, sir.

UNIDENTIFIED SPEAKER: Are there any time limits to each speaker?

THE HEARING EXAMINER: No, sir. As long as the information that you're giving me is relevant to the issues at hand, there is no time limit. Now, in front

of the Board of County Commissioners you will be limited. It's either three or five minutes.

MS. LEHNERT: Three.

THE HEARING EXAMINER: Is it three? Okay, it's three minutes over there. But here, in order to fully explain your concerns, I don't put a time limit as long as your comments are relevant, okay. You can also ask questions, but the questions need to be relevant as well. I mean let's not get into pie in the sky and how much you're going to make out of this and that kind of thing because that has no bearing on my decision.

UNIDENTIFIED SPEAKER: To whom do we address those questions?

THE HEARING EXAMINER: You can address those questions to me and I will have the applicant or the staff respond to them as the appropriate person.

All right. Now, also, if the hearing runs over two hours we will be taking a short break so the court reporter can unwind and unfocus a little bit.

As I indicated, water only in this room. We do have a hearing that starts at one o'clock in this room, so we can run until one o'clock. If the hearing runs past one o'clock and we are not completed by one o'clock, we will have to continue the hearing to

another day because I have a full afternoon of hearings already, so we will have to continue it to another day. All right? Okay.

No other questions on procedures?

Yes, ma'am.

UNIDENTIFIED SPEAKER: Should we go fill the paper out now?

THE HEARING EXAMINER: Yeah, you can do that. In fact, if you would like to fill the paper out and then just hold onto it, you can just bring it to me as you come up to testify. If you need more pencils or pens, let me know.

Are we ready to start? All right.

Is the applicant ready to go forward?

MR. UHLE: Yes, ma'am.

MR. UHLE: For the record, Matt Uhle representing the applicant.

The hearing examiner should have received our 24-hour notice on this case yesterday.

THE HEARING EXAMINER: Uh-huh.

MR. UHLE: Indicates that there are five issues. Of those I believe three of them have probably been resolved. We'll have to see when staff gets up. But the ones that I suspect have not been resolved are the first and the last on the list.

In light of the public interest in this case and the fact that there are some issues with the staff, we will be making a fairly extensive presentation today. I will be beginning the presentation by giving you an overview of the property, the general location, the workings of the site plan and how it has evolved overtime. Following me, Jack Ruskai will be providing expert testimony on engineering issues relating to surface water management, utilities, to some extent the road standard condition, Condition 16, as well as talking about the cross section for the northernmost portion of the property which has been changed, as we'll explain, to be consistent, at least we think it's consistent with what the staff is recommending.

Following him Jim Keltner will be providing a brief bit of expert testimony on vegetation and protected species. Following him Rob Price will be addressing traffic. Mike Roeder will be providing testimony regarding the Lee Plan. And I will conclude the presentation by walking through the staff recommendation and addressing points where we either do or don't agree with the staff and why.

THE HEARING EXAMINER: Okay.

MR. UHLE: To begin with, the overview, of course, the subject property is roughly an 8.75-acre

parcel located at the northeast corner of the Wells Road/Bayshore Road intersection.

The property is vacant. As you can see from the FLUCCS map that Jim has already put up on the board here, it's all four level, it's all one big pine flatwood. It's zoned AG-2 and it's in the General Interchange Land Use Category. And that last fact is a matter of the utmost importance to this case because, as the hearing examiner's undoubtedly aware, a general interchange mandates that this property be used for commercial purposes and the list of uses that are discussed in that policy are quite intense. So this isn't a question of whether we want to do residential as opposed to commercial. This is not a mixed-use category. It's an exclusively commercial category and we are doing precisely in this case what the Lee Plan directs us to do.

With regard to the nature of the neighborhood, first of all, if you look at the parcels to the east there are a number of vacant parcels immediately to the east. They show up best on the staff aerial over here. You will see that one of the parcels has a boundary in red. That is a vacated commercial planned development. The other parcels that are vacant I believe are zoned Ag. And then there are commercial

uses at the corner of Nalle Road and Bayshore Road.

To the north of the subject property we have a piece of acreage that's used for single-family residential purposes. To the west of the property we have Wells Road which is classified by the county as a local road, and then other vacant property.

Now, one thing that I will note right up front, the existing Leetana access to Bayshore Road is located at this point here. There are apparently ongoing discussions between a developer and other parties to the effect that this access should be changed and the road should be extended to Wells Road. We are not a party to those discussions. We're in no way involved. We have no control over them.

THE HEARING EXAMINER: When you said the developer, you're talking about the developer of a project north of Bayshore that's accessed by Leetana?

MR. UHLE: Yes.

THE HEARING EXAMINER: Okay.

MR. UHLE: But what we have done is, in light of the possibility this project might be built and that realignment might take place, you will see when I go through the master concept plan we provided a note which requires us to attempt to coordinate with those efforts and align our southernmost access point with

that if in fact it happens. Other than that the property to the west obviously is vacant.

The property to the south, obviously we immediately abut Bayshore Road which is two lanes at this location. We're just to the east of the terminus of the four-lane section. And I will tell you that the 2030 plan does not show any attempt to widen the road at this particular area.

Then to the south of that you have property that on the staff aerial correctly shows up as an RPD. In reality, that's the River Run property which was acquired by the county in the 2020 program and so in the real world that's a preserve area but it shows up on the map as an RPD.

THE HEARING EXAMINER: Okay.

MR. UHLE: In reviewing the site plan, it's a relatively self-explanatory plan but I will walk you through it anyway. We show three access points. The first access point is shown on Bayshore Road at this location here. It's pushed as far to the east on the site as possible. That access point is obviously subject to permitting from FDOT, so there's a staff condition which addresses that and we don't have a problem with that. But I will tell you, and Mr. Price will discuss this in his testimony, that we have in

fact worked with FDOT and tried to come up with the best location for it. The indication from FDOT is that this is the best location for it. We also anticipate that there will be probably commercial uses to our east, so we tried to design this to create the possibility of interconnection for the benefit of those people.

There are two accesses on Wells Road. One of them is located between the two development areas. The northernmost access is intended to provide access purely for employee parking and for deliveries, and so as I'll explain as I talk about how the plan has evolved, one of the features of this is there will be no right turns permitted out of that access point. There's no reason for anybody to turn right and that will prevent traffic that doesn't need to be going north on Wells Road from doing so.

THE HEARING EXAMINER: So they will only be allowed to turn left.

MR. UHLE: Yes.

UNIDENTIFIED SPEAKER: Can you speak up a little? We're having a hard time hearing.

THE HEARING EXAMINER: Matt, can you get the microphone. Thank you.

MR. UHLE: I'll just speak from here. I assume

that the hearing examiner can see the master concept plan.

THE HEARING EXAMINER: Can you all hear?

Matt, pull the thing up. That microphone is very unidirectional.

MR. UHLE: The southernmost development area which is identified as Area A is intended to be out parcels. There is not a lot of detail shown on the plan. That's largely due to the fact that when you develop property and you don't specifically have end users, which is usually the case in commercial projects of this size, you never know exactly how much acreage everybody is going to need for their parcels. And if we showed a precise line, any attempt to deviate from that line might trigger a demand for an amendment, even possibly a public hearing amendment. We don't want to do that. So the way that we handled that on the application was to indicate that there would be a minimum of two and a maximum of three out parcels. That provides the county with the assurance of -- that this isn't going to turn into one of those Wal-Mart on Coconut Road situations where there really aren't any out parcels, but on the other hand, it gives you some idea of how many there will be.

Subsequent to that my client has actually told me

today that there clearly will be two out parcels rather than three. So if the hearing examiner wants to limit that to two out parcels, we have no objection to it. The out parcels obviously have their own schedule of uses which is tailored to out parcel type uses as you would expect.

Area B to the north of that is intended to be a multitenant facility. That's where the bulk of the square footage on this project will be. Again, we have provided a relatively large building envelope. You will see from our renderings that we have a reasonably clear idea of what we want, where we want the building actually to go with the parking in front. But again, if you show building footprints and you start moving them around, that can trigger the need for amendments. We don't want to do that, so that's why we have approached the issue in that way.

We have provided specific information about setbacks on the plan. There is a minimum 70-foot setback to the eastern property line from the building envelope and a minimum 150-foot setback from the northern property line.

Moving on to the north, there is an area that's shown as water management area in sort of the northeast corner of the property.

There is an area that's intended to go behind the multitenant building which will be used for delivery areas and also has some covered parking in it. To explain that a little bit, the covered parking is designed to be an amenity for the tenants, for the people who actually work there, the owners and so on.

We ran into an issue about the covered parking in that the Land Development Code has some relatively new language which says that, quote, unquote, buildings have to be a minimum of 20 feet from preserve areas. There's a question as to whether covered parking had to meet that particular standard. Zoning staff felt obviously pretty strongly that it did have to meet that standard. We didn't want to argue about it and so I indicated in a memo to the county that we would agree that the covered parking would only take place in the area that's sort of a diagonal from northwest to southeast on the eastern part of that area.

The staff has proposed a condition that says that we can't have any covered parking less than 20 feet from preserve areas and we're not objecting to that, so effectively that ratifies the concession that we've already made.

The area immediately to the north of that is indigenous preserve area. The section for the

northern property has changed a number of times in an effort to accommodate both the staff and the concerns of the neighbor to the north. And so we have a sketch that we attached to our 24-hour notice that reflects the current proposal. I'm not going to get into that in any detail. That's something that Jack Ruskai will deal with, but we are dealing with issues involving surface water management, indigenous preservation, gopher tortoises, buffering and so on. This area serves a variety of purposes and it's my belief that what we proposed here is consistent with what the staff wants us to do.

Let me go on now to give you an idea of how this plan has evolved over time because I think that's an important consideration here. I would say that there really have been three stages to the planning of this particular project. To begin with, we have always known that our one direct interface with residential uses was to the north, and because the quality of the pine flatwoods on this site is relatively uniform, it only made sense to provide the indigenous area on the northern part of the property so as to separate our use from the one residential use. So that has always been a feature of the plan. We've always made an effort to accommodate those concerns.

During the sufficiency process the neighbors to the north wrote a letter to Fred Drovdlic, who was the planner on the case at that time. He relayed those concerns to us. We had a meeting with him. As a result of that meeting we made a number of changes to the plan to further address staff and the neighbor's concerns. One of them was to provide the extraordinary setbacks that we're providing for the northernmost building. That's the 150 feet from the northern property line and the 70 feet from the eastern property line. But, of course, staff's primary concern with compatibility was pushing those uses away from any residential use and we agreed with that.

A second change had to do with water management. We understood that there was concern from the neighbor to the north about what was going to happen to surface water flowing off this property, and so somewhat unusually we provided on our plans some information about how that water management would be handled.

A third item was this is the point at which we agreed to the no right turns out on the northern access point in order to avoid putting traffic on the residential portion of Wells Road. We also identified on the plan and in our schedule of uses where in

general terms we expected the outdoor seating to take place. We don't have detailed plans of these areas, but we did in the case of the northernmost building indicate that it would go south of the building. We committed to that and so any outdoor seating has the building as a buffer as well as all the space and the wall and the vegetation and so on.

Finally, we made a number of concessions regarding our list of uses. The original list of uses that we provided was reasonably extensive and included a number of uses that are consistent with the general interchange but which some members of the Board of County Commissioners and some members of the public have found obnoxious at times. I think it was Mr. Drovdlic's expectation that we would only ask to put limits on those uses. In fact, we took them out of the plan altogether and so the hearing examiner will see that we are not proposing such uses as fast food restaurants, convenience stores, car washes, automobile service stations. That was a major concession on our part. We removed other uses as well, but those were the major ones at the time.

So all those things were done prior to the application being found sufficient.

Subsequent to the findings of sufficiency and

within, I would say, the last month we have also done a number of other things to try to satisfy the staff and the community that what we're doing is compatible with the area. One of these is to come up with a rendering of the multitenant building, which I put up on the wall. That rendering indicates that we're perfectly satisfied to commit to an architectural scheme that is old Florida. That's this right here. It's our opinion that the design of that building is quite attractive and we thought it would be received favorably by the residents. Subsequent to that I understand that some of the residents don't like this building, they think it's too elaborate. I would simply say that architecture is negotiable. If the hearing examiner and the Board of County Commissioners think that building is too elaborate, then we're certainly happy to live with that decision and work with everybody to come up with a more acceptable building. But bottom line is, this isn't a Mediterranean building, it's not overwhelmingly scaled. It's designed to be consistent with the character of the area.

We have also provided a new section, a cross section for the northern portion of the property which moves the water management facilities from the

northern property line down to the area around the berm and wall. That was in response to a concern expressed by the neighbor. And again, Mr. Ruskai will explain that further.

We are agreeing to the staff's request that additional uses from our schedule of uses be removed. We won't be contesting any of those uses. That's another concession on our part.

We're agreeing to the staff proposal which was prompted by the neighbor that the wall be extended to the eastern property line. Exactly how that will be done, we want some flexibility about whether that should be done as a straight line as opposed to along a diagonal. I don't think the staff has a problem with that, but we do agree that that wall can be provided and so on.

So the fact of the matter is that through this process we have been extremely responsive to the concerns expressed by the neighbors and by the staff.

I'm aware that there was a meeting earlier this week of some of the neighbors in the area and they may have other concerns. From what I know of what their concerns are, I think we're probably prepared to address some of them today but I'm not going to speak to those until I've actually heard their testimony. I

don't think that would be appropriate, but we will address those when they come up and I think we will be prepared to satisfy them on some of those.

So that's how the case has evolved. I think when you have heard all the testimony you will conclude that this request is consistent with the character of the area.

One other thing I will point out that I think is important is that no deviations are being requested in this case, which is very unusual. It means that we will be complying with all county regulations. That should provide everybody else with an additional layer of comfort.

We will be hearing technical testimony and planning testimony from Mr. Roeder about the Lee Plan and we hope when you have heard all the testimony you will find that we have addressed all the reasonable concerns and that our project is consistent and should be approved.

If you have any questions of me I'll be happy to answer them.

THE HEARING EXAMINER: Questions of this witness by the county? County staff?

MR. PALERMO: Yeah. Just want to hold on. I don't know if this is too early, but for the record,

Tony Palermo for Lee County Zoning.

It's your intention to add this exhibit that you also have on the wall to the master concept plan, be part of the approval?

MR. UHLE: Yes.

MR. PALERMO: And I just wanted to place on the record that Mr. Fred Drovdlic worked for this zoning division and now he's happily employed for the private sector and he's an excellent planner, but the description that Mr. Uhle gave you was quite accurate. That's all.

THE HEARING EXAMINER: Kim, did you have something?

MS. TREBATOSKI: I just had one question and I don't -- if you're not the one to answer it, tell me who is later. Earlier when you were talking about the out parcels, the master concept plan just states open space requirement provided at 30 percent. And the question is, are you planning on having the 30 percent on each out parcel or meeting 30 percent overall with the minimum of ten percent on each out parcel?

MR. UHLE: I think I would prefer Mr. Ruskai respond to that.

THE HEARING EXAMINER: County attorney?

MS. LEHNERT: No.

MR. PALERMO: One last thing. During your presentation, during the presentation of the applicant is there any intent to bring up the issue regarding the bridle trail which was a recent thing that's come to my attention?

MR. UHLE: That's one of the concerns we've heard from some of the residents. And again, we expect to address that, but I want to hear the testimony before we actually respond to it. We know there are also some -- have been some concerns expressed in the private domain about our amount of square footage and some other things. But again, I'm not going to get up here and start negotiating against myself without hearing what they have to say.

MR. PALERMO: All right.

THE HEARING EXAMINER: Matt, just do me one favor. Show me where the general interchange land use category ends as far as this property is concerned. Does it encompass the entire property?

MR. UHLE: Yes, it does.

THE HEARING EXAMINER: Does it go all the way out to Nalle Road?

MR. UHLE: No. It terminates at our eastern property line as far as I can tell.

THE HEARING EXAMINER: So does it go on the south

side too of Bayshore or is it just only on the north side? Because the south side you said is that preserve for River Run and then there clearly are some residential units.

MR. UHLE: The line is slightly different. The line is right about here.

THE HEARING EXAMINER: Oh, I see. Okay.

MR. UHLE: It extends like this and then goes like this. I know, because I have an application in the process for this property here.

MS. TREBATOSKI: The preserve is here. This isn't preserve.

THE HEARING EXAMINER: So the whole thing up there is not preserve, just the part that actually is south of your property. So clearly the interchange designation then was extended out past Wells Road to make use of that, both those corners on Wells Road.

MR. UHLE: Yes. I have no idea when that took place or what the rationale was, but it is a matter of fact that it includes all of our property.

THE HEARING EXAMINER: All right. Good. Thank you. I may have some other questions a little later after we hear some of the public testimony and whatnot, some things that were brought up in a couple of letters in the file, but I'll wait and let them

bring up whatever issues they have and we'll go through it at that time. Thank you.

Your next witness is?

MR. UHLE: Mr. Ruskai.

MR. RUSKAI: Good morning. My name is Jack Ruskai, JRI Engineering, engineering consultants for the project.

MR. UHLE: Before you start, Mr. Ruskai's previously been qualified as an expert in civil engineering and site design and we would ask that he be so accepted.

THE HEARING EXAMINER: Okay. Mr. Ruskai, are you a professional engineer?

MR. RUSKAI: Yes, I am.

THE HEARING EXAMINER: So you are registered. All right. And you have -- your testimony today is on?

MR. RUSKAI: General civil engineering characteristics of the site, storm water management, utilities.

THE HEARING EXAMINER: Okay. Any objections to Mr. Ruskai being accepted as an expert in those areas?

MS. TREBATOSKI: No.

THE HEARING EXAMINER: Okay. Accepted.

MR. RUSKAI: Thank you. Okay. Starting with

utilities, there's a quite large Lee County water main that extends up Bayshore from the west, crosses I-75. It's on the north side of the property and then it crosses Bayshore at our property line, goes to the south side of Bayshore and then continues to the east. So we have access to good water supply. There is, as we speak today, there is no sewer system in effect in this area. However, there is a new force main that's just been constructed that is stubbed out, stubbed out just around the bend over here and it goes to the -- across I-75 back down to Bayshore, goes down Bayshore towards where the Oak Creek development is going in, turns to the north, goes all the way up to the Del Prado Extension and crosses Slater Road and goes all along Del Prado Extension all the way to the wastewater treatment plant that North Fort Myers Utilities has to the Del Prado Extension.

THE HEARING EXAMINER: So you all can connect into that?

MR. RUSKAI: And we're going to connect into that and that should be fully operational just within a few weeks from now. In fact, we'll be extending that force main from the point I showed you where it ends on across the frontage of our property to our eastern property line more than likely.

Before we get into the drainage I'll take on that question that Kim raised. I'm glad she raised it because we have had arguments in the past over that interpretation. The open space, what she said, the latter thing she said which was the 30 percent overall for the site, plus ten percent for each of the out parcels.

THE HEARING EXAMINER: Okay. So it's 30 percent overall for the site but it's ten percent specifically of each out parcel will be open space. Okay. All right.

MS. TREBATOSKI: If I could, just so it's all together, Kim Trebatoski for the record. The reason why I asked that is because the code allows for that but the master concept doesn't state that, so it needs to be a condition of approval or my staff will hold them to 30 percent open space on each out parcel.

THE HEARING EXAMINER: On everything. Okay. All right.

MR. UHLE: Thank you for bringing that up.

MR. RUSKAI: Yeah. Okay. On drainage, it's overallwise storm water management is just a conventional drainage system. Nothing unusual. We'll have dry detention which lends itself nicely to water quality treatment and nutrient uptakes. And these

systems will normally be dry during most of the year and will be grassed areas and well maintained and mowed.

What's important now - and I'm going to slide over to the board, if I could again - is that this plan here that you have in your record, the date, is what we're changing along the north line, so what you're seeing in here is not the correct thing. But originally we were going to incorporate the entire indigenous preserve area as part of the water management system, so our water management berm would have extended around the property line like this. Since we are having a berm here and the general flow from the properties to the north was to the south and to the west, we were going to construct a very, very shallow intercept swale on the north side of the berm just to take any water that may come down and up to the berm and then send it back out to Wells Road so it won't obstruct the flow.

In working with the comments that everybody's had in that, both staff and the neighborhood, what we have decided to do is we're going to eliminate all that stuff that we proposed along the top here. We're going to take the berm out, no intercept swale. And we were also going to have a landscape buffer along

the berm, which we don't need because this preserve here will count as buffer area. And we're going to -- in other words, this 75 feet will now start from the northern property line. So from the north property line back there will be no activity at all, nothing. Everything will stay as is in a natural condition. The only thing we might have to do is go in -- the county requirement to be to remove any exotics that are in there. And according to what our environmentalist told us, there's not very many. There may be a few pepper trees here and there that might have to come out.

THE HEARING EXAMINER: Let me make sure I understand what you're saying here. Now, on the current plan you got the 15-foot wide buffer and then you have this 75-foot wide preserve area. Are you eliminating that 15 feet and just instead of having 90 feet total overall you're now only going to have 75?

MR. RUSKAI: We're still going to have the 75 foot of indigenous but it's going to slide to the north property line.

THE HEARING EXAMINER: So it's moving up?

MR. RUSKAI: Yeah, and the 15 is coming --

THE HEARING EXAMINER: So you're just going to flip flop the two.

MR. RUSKAI: Yes. We'll have the berm and a small intercept swale again but it will be on the south side of the preserve. So nothing will happen from the north property line to 75 feet back.

THE HEARING EXAMINER: Now, are you all planning on putting up any kind of chain link fencing or anything along that order on your perimeter?

MR. RUSKAI: Well, there's going to be a wall.

THE HEARING EXAMINER: I understand the wall. And that's going to be, that's going to be for, you know, sound attenuation and visibility and whatnot. But my question was is there going to be any kind of security fencing on the north and east boundaries of the property? Has that been even considered?

MR. RUSKAI: We haven't addressed anything like that. I would say probably not. I mean it's not common that I know of to do that since the properties also to the east are zoned commercial.

THE HEARING EXAMINER: Because, well, that brings up my next question. If you don't have something, you know, delineating your specific boundary when you all are, you know, maintaining the preserve, how are your people going to know how far out to go, they don't get on the neighbor's property or the neighbors don't get on your property mowing? Is there going to be some

kind of boundary?

MR. RUSKAI: Along here?

THE HEARING EXAMINER: On the north side. I don't care about the east side.

MR. RUSKAI: On here?

THE HEARING EXAMINER: Yeah.

MR. RUSKAI: Like I said, there's a -- you know, there's survey markers along there. You can tell where that property line is. The only time I ever see us needing to go in there or the applicant, the owners, is to initially remove the exotics and then from time to time --

THE HEARING EXAMINER: Go in and pull out any new ones, yeah.

MR. RUSKAI: Per county requirements.

THE HEARING EXAMINER: Kim.

MS. TREBATOSKI: Sorry to keep interpreting, but to keep the record together. Kim Trebatoski. If you would like to condition that they have to put preserve signs every 50, a hundred feet, something like that, that would help them and the neighbors know where they each --

MR. RUSKAI: Along the north property line?

THE HEARING EXAMINER: Yeah, yeah.

MS. TREBATOSKI: It's just a small sign.

THE HEARING EXAMINER: Just a small. Okay, okay. Because I mean my concern is, after having done a rezoning on -- actually it's over by the Laurel Road and whatnot. You know, they have a lot of little four-wheelers that run through any area that's not, you know, fenced off or whatnot, and if this is going to be set up as a preserve, the last thing you want is to suddenly find yourself with a four-wheeler track right in the middle of it because it happens to be somebody's path or it's easier now to go this way than some other way. That was the only concern that I had. Okay.

MR. RUSKAI: And with that I think that's all I have.

MR. UHLE: Jack, can you please talk about the wall and how it's going to be constructed? That's part of the graphic up there.

MR. RUSKAI: Okay. Well, we have the indigenous preserve untouched from the north property line back, small intercept swale, small water management berm, our perimeter swale inside our berm and then we'll have this wall probably along the berm line here. The wall will be an eight-foot high buffer wall. There was some comment when this wall was going to be right up against the preserve that footers and things like

that would be too close, so Kim suggested a setback there. But since we have now freed up some space in there, that 15 feet additional actually, that shouldn't be a problem. But the wall was anticipated to be more of columns that would be sort of jack and pile kind of things into the ground without footers and just have these every ten feet or so, these vertical columns that would be hammered into the ground and then there's these panels that go along and slide in between so there wouldn't be the footer problem.

MR. UHLE: So that minimizes any potential impact on the indigenous?

MR. RUSKAI: Right.

MR. UHLE: I don't have any other questions.

THE HEARING EXAMINER: All right. Questions of this witness by county staff? Kim, any questions?

MS. TREBATOSKI: No.

THE HEARING EXAMINER: County attorney, none?

MS. LEHNERT: No, ma'am.

THE HEARING EXAMINER: Thank you.

MR. RUSKAI: Thank you.

MR. UHLE: The next witness is Mr. Keltner.

MR. KELTON: Good morning. I'm Jim Keltner with Boylan Environmental Consultants.

that would be too close, so Kim suggested a setback there. But since we have now freed up some space in there, that 15 feet additional actually, that shouldn't be a problem. But the wall was anticipated to be more of columns that would be sort of jack and pile kind of things into the ground without footers and just have these every ten feet or so, these vertical columns that would be hammered into the ground and then there's these panels that go along and slide in between so there wouldn't be the footer problem.

MR. UHLE: So that minimizes any potential impact on the indigenous?

MR. RUSKAI: Right.

MR. UHLE: I don't have any other questions.

THE HEARING EXAMINER: All right. Questions of this witness by county staff? Kim, any questions?

MS. TREBATOSKI: No.

THE HEARING EXAMINER: County attorney, none?

MS. LEHNERT: No, ma'am.

THE HEARING EXAMINER: Thank you.

MR. RUSKAI: Thank you.

MR. UHLE: The next witness is Mr. Keltner.

MR. KELTNER: Good morning. I'm Jim Keltner with Boylan Environmental Consultants.

MR. UHLE: He has previously been qualified as an expert in environmental sciences and we would ask that he be so accepted.

THE HEARING EXAMINER: Any objections from staff?

MS. TREBATOSKI: No.

THE HEARING EXAMINER: All right, accepted.

MR. KELTNER: As we kind of see, the whole site is basically a pine/palmetto uplands. We conducted a species survey back in July 2005 and at that point in time we found three inactive burrows. What we'll probably be doing, what we will be doing is we will conduct another species survey typically within 30 days prior to development order and then if we find any gopher tortoises we would obtain appropriate permit from the game commission and then we would move them up there into the indigenous preserve. And that's very brief and unless you have any other questions --

THE HEARING EXAMINER: Okay. Questions, Matt?

MS. TREBATOSKI: Just one quick question.

Jim, when you did the site check did you see any signs of four-wheeler impact on this site?

MR. KELTNER: There was one trail, you can kind of see it right in here. Other than that, most of the site is pretty consistent pine/palmetto.

MS. TREBATOSKI: No other questions.

THE HEARING EXAMINER: All right. Anything from the county attorney?

MS. LEHNERT: No, ma'am.

THE HEARING EXAMINER: I don't have any either.

MR. UHLE: Next witness is Mr. Price.

MR. PRICE: For the record, my name is Robert Price. I'm with TR Transportation Consultants formerly Metro Transportation Group. I have testified in this forum previously and been accepted as an expert in transportation and I would like --

MR. UHLE: Ask that he be so accepted again.

THE HEARING EXAMINER: Any objections from staff?

MR. PALERMO: No.

THE HEARING EXAMINER: All right, accepted.

MR. PRICE: We performed the TIS for the Village Square site. As Matt explained earlier, we're showing three driveways for this property. Two of them are to Wells Road. We have restricted the outbound right turns in the north driveway. The southern driveway will be full, a full access to Wells. But we still don't see too much traffic traveling to the north because there's -- it's not very densely populated.

We met with FDOT preliminarily for the access that we are showing on the eastern property boundary

to Bayshore Road. Bayshore Road is currently a two-lane road at that location. As you can see from the aerial, it transitions down from four lanes to two lanes between Pritchett Parkway and Wells Road. There's no plans to widen Bayshore Road at this time and it's not even in the 2030 plan, so it's way out in the future if it ever happens.

THE HEARING EXAMINER: Is Bayshore widened any further? I mean is it four-laned anywhere else east beyond you all?

MR. PRICE: Not to the east.

THE HEARING EXAMINER: So it's just to the west then that it picks up being four-lane.

MR. PRICE: And they're currently actually constructing, doing four-laning west of I-75 from Slater Road all the way to I-75.

At our meetings with FDOT we definitely went into the meetings attempting to get a full access to Bayshore since it's only a two-lane road. Their feeling was that we needed to push that driveway as far to the east as possible. In addition to showing an interconnect to the potential CPDs on the eastern property boundary, we accommodated that on our site plan, and basically shoving the driveway as far to the east as we could gives us as much spacing as we can

possibly show between Wells Road and any potential Pritchett Parkway extension that would, you know, come to Wells Road, which I know Matt did a good job of explaining that earlier. Currently there's no plans, no development orders have been applied for that extension of Pritchett Parkway. So it's kind of difficult to address any future traffic at that location when it's not even in the county or state plans, so we haven't addressed that at this time. But when we come in for development order in the future there's a good chance we'll have to address it at that time.

Basically we used the traffic count report to determine the historical growth along Bayshore Road and all other roads in the vicinity of the project. Historical growth was used to grow the concurrency management traffic up to the 2010 build-out that we assume for the site. The project traffic was added to the 2010 background traffic in order to determine level of service conditions, especially along Bayshore Road. Based on our conclusions, Bayshore Road has shown to operate at level of service D after our project traffic is added to the road. Level of service D is well within the county standards, so we do not foresee any level of service issues as a result

of this project.

That basically is all. We'll have to address turn lanes and any intersection improvements at the development order stage when we know for sure how the site's going to develop. There's a pretty substantial list of uses and each one of those we'll address at the development order stage when they come in.

THE HEARING EXAMINER: Questions?

MR. UHLE: No questions.

THE HEARING EXAMINER: Questions by staff?

MR. PALERMO: Just one question. In your experience in the development order stage will sidewalks be required when they actually develop?

MR. PRICE: I believe that would be the case. Is that right, Matt?

MR. UHLE: He asked you the question.

MR. PRICE: I believe that we will have to put sidewalks along Bayshore Road. I'm not sure about Wells, but maybe something you should ask somebody else. I'm not sure.

MR. PALERMO: That's all right.

THE HEARING EXAMINER: Let me ask you a couple questions, Rob. Can you get your TIS?

MR. PRICE: Yes, ma'am.

EXAMINATION

BY THE HEARING EXAMINER:

Q. All right. Can you look at Figure 2, is the traffic distribution?

A. Uh-huh.

THE HEARING EXAMINER: Also if staff can make sure I get page 3 of your traffic report, because I got three pages of page 2 and no page 3 and it's not even -- I don't have one at all in my file.

MR. PALERMO: On the traffic impact statement?

THE HEARING EXAMINER: Uh-huh. I go from page triple 2s to page 4.

MS. LEHNERT: So do I.

THE HEARING EXAMINER: So it was a copy mistake somewhere.

BY THE HEARING EXAMINER:

Q. All right. Looking at the distribution, the project traffic distribution, I'm a little confused. Maybe I should say a lot confused. All right. On the bottom half on the south side of Bayshore you indicate 70 percent traffic between Wells Road and the interstate. Then you indicate 40 traffic on the other side of the interstate. In other words, it's gone past the interstate and it's still going west. You've got 25 percent headed south and 5 percent headed north. I'm assuming that's what it's supposed to be.

A. Yes.

Q. So that makes up the 70 percent total right there when it splits out. But I don't understand why there's only 20 percent going between Bayshore and Nalle Road and ten percent past Nalle Road. If this is going to be -- and I realize that this is an interchange area, but some of the uses that are proposed here are really sort of more local uses rather than some of your traveling, your traveling public type. Wouldn't there be more distribution from the surrounding neighborhood rather than more from the interstate and more from west of the interstate?

A. So you're concerned that we should have assigned more traffic to the east?

Q. I would think that would be where it would come from. If this is the first little shopping center on this roadway from State Road 31 west, it seems to me like anybody headed that direction going home is going to want to stop in here or is going to do some shopping in here more so than people on the west side of I-75.

A. We basically analyzed the greatest impact that we could show to Bayshore Road which would be the 80 percent to the west. Now, as you just stated, a lot of these people would be coming home, so they would be entering the site off of I-75 or off of Bayshore Road from the west and

come in and then they would leave and go to the east and that would be your pass-by traffic, and we did account for pass-by in our analysis as well. But we have no problem, you know, increasing the distribution to the east. The traffic is fairly low out there. But we tried to show 80 percent -- the traffic is low according to the county numbers. And there's plenty of capacity to the east along Bayshore Road. So I mean any drop in the traffic on Bayshore to the west between our site and I-75 would lessen our impact. So if you feel like we should show more traffic to the east, we have no problem with that.

Q. But it's not going to change the level of service on the roadway.

A. Not at all. It actually will improve it.

Q. Okay, okay. Because that was the only concern that I had was that it seemed like there was a lot -- I had not considered the people coming home from downtown coming out Bayshore or coming up 75 and then making the turn and going east onto Bayshore. I had not -- in the distribution here. I was thinking everybody going instead of coming. So I can see what you have done there. But as long as it doesn't make a difference in the level of service on the roadway, you know. I can understand what you have done with it then. It just didn't seem logical at the time.

THE HEARING EXAMINER: All right. Let me see if I have any other questions that I have written in this little fella.

No, that was the only one.

Staff?

MR. PALERMO: Tony Palermo for the record. Just want to turn the hearing examiner and the witness's attention to Attachment C is the traffic impact statement for Bayshore Village Market. I'm looking at, first there's an introduction on page 2. And at the bottom of the page it reads: "The intersection of Bayshore Road and Wells Road," and you turn the page and there's a project map, what you turn to. Then it says "currently allows full turning movements under signalized conditions."

THE HEARING EXAMINER: So that's your page 3, your Figure 1 is page 3.

MR. PRICE: Yes, exactly.

MR. PALERMO: Second was just a general question. And I apologize if this wasn't part of your analysis, but just in general just so I can have a picture of it, the traffic on I-75 around that exit, that would be cars in the thousands. Do you have any figures about how big or how small that is?

MR. PRICE: On Bayshore Road or on I-75?

MR. PALERMO: On I-75.

MR. PRICE: Typically we don't analyze I-75. Everyone knows it's a four-lane road and the state is attempting to widen the road. It's definitely in the thousands. I don't have those numbers. I can find them out if you would like.

MR. PALERMO: I appreciate it.

MR. UHLE: The next witness is Mr. Roeder.

Thereupon,

MIKE ROEDER,

having been previously duly sworn, testified as follows:

MR. ROEDER: Good morning, Madam Hearing Examiner. My name is Mike Roeder, director of planning at Knott Consoer and I have been accepted before as an expert in land use and zoning.

THE HEARING EXAMINER: Any objections from staff to Mr. Roeder being accepted as an expert in land use, planning and zoning?

MR. PALERMO: No, ma'am. Thank you.

THE HEARING EXAMINER: All right. Accepted.

MR. ROEDER: Thank you. I'm basically here to talk about the consistency with the Lee Plan and I think the staff has done a very good job of identifying all of the relevant objectives and policies.

This particular case is a little different in that we have the general Lee Plan policies and then there's the specific section in the Lee Plan devoted to the Bayshore Planning Community which is bounded by the river, Charlotte County, I-75 and State Road 31. I'm going to not go in the order that Tony identified them because I think they are more understandable in groups of policies. And I think the first and most important policies relate to the land use categories which Matt alluded to originally. Objective 1.3 is the interstate highway interchange areas in general and what they say is designated on the Future Land Use Map, specialized categories for land adjacent to the interchange, Interstate 75. It is important to make the maximum beneficial use of these critical access points and at the same time avoid irreconcilable conflicts between competing demands such as through traffic versus local traffic, conservation versus development. It goes on with all the potential conflicts. It says development in these areas must minimize adverse traffic impacts and provide appropriate buffers, visual amenities and safety measures. So that's the county's general identification of the interchange areas. And most importantly it says residential uses are only

permitted in these categories in accordance with Chapter 13, which is your lot of record provision. So you really have no choice but to provide commercial development on this land and the county is virtually obligated to approve some type of commercial development here under the comp plan.

Policy 1.3.2 then goes to the general interchange description which is what this is and it says the general interchange areas are intended primarily for land uses that serve the traveling public, service stations, hotel, motel, restaurants and gift shops. And at first blush if there's any criticism of this plan it's that it may be too neighborhood-oriented and not enough toward the traveling public. We don't have service stations. We don't have hotels and motels. And I think to reconcile that issue you need to go to the Bayshore plan, which is Policy 20 -- well, it's actually Goal 20, the Bayshore Community, and then Objective 20.1 and Policy 20.1.1. And I have to say that I was the consultant to the Bayshore Planning Community when this was developed and worked with that group to get this into the plan, so I'm very familiar with the background of it.

I think the most important and on point policy is Policy 20.1.1 which says that retail, commercial

activity will be limited to the interstate interchange designation at Bayshore and I-75, plus minor commercial uses at the intersections of Nalle Road and Bayshore, 31 and Bayshore, and 31 and Old Bayshore. And then it says nonretail commercial uses are permitted elsewhere consistent with the Lee Plan and Land Development Code.

Well, in reality what that did was just reiterated the county's Lee Plan restrictions on retail to certain designated intersections and tried to identify in advance where those could go. I think read in conjunction with Goal 20, actually Objective 20.1, which says the existing land use designations of the Lee Plan are appropriate to achieving the goals of the Bayshore Plan. What was being said there is the community was relatively satisfied with the existing plan and they were accepting it and endorsing it saying we don't want it to become more intense.

When you look at the interchange area and then the designated node at Nalle and Bayshore, which is right here -- and this building here is Lawhon's. That's probably the most historic commercial center for the Bayshore community; probably the locus of community activity. And you add that to this property to the west, and this is really the focal point of the

Bayshore community now. This will be their, quote, unquote, downtown where whatever activity is occurring should occur. And therefore when you look at the Goal 20 to protect the existing rural, residential, agricultural and equestrian-oriented activity, the limit that the applicant put on the uses and the commitment to the architectural design of the buildings and all of the efforts that have been made to buffer the northern residential neighbor I think is an almost ideal blending of what the county is saying we need to do with an interchange area and what the Bayshore community has tried to say we need to protect our rural character as much as possible.

The next set of policies are the compatibility and you have Policy 5.1.5, 139.5, 6.1.6 and 6.1.4, and they all talk about the same general idea, which is design the property to be compatible with the abutting uses and make sure you don't have any adverse impacts on your neighbors. And I think you have heard a lot of description now of this northern buffer which is a 75-foot indigenous preserve that will be untouched and then the berm and the wall and then an additional 75-foot setback to the building in addition to the setback to the east.

So I think to the maximum extent possible the

planners responded to that residential neighbor, even though from the staff report the residential neighbor is in the general interchange category and not in the urban -- outlying suburban. So in a sense, you know, they're in a more urban category themself, but we have provided extraordinary setbacks and buffers for that residential use.

Then there's a series of policies that deal with more technical and locational standards. And again, the staff and the engineer have described how this site plan will function. But Objective 21 relates to development location, 2.2.1, evaluating the adequacy of infrastructure and services, 4.1.1, importantly 11.1 and 11.2, which deal with water and sewer, and Policy 6.1.3. And I think you have heard that in all development requirements for infrastructure and services this site meets the standards. There's no question of the site location standards because it's in the interchange area and they are exempt from that. You would note, though, in Policy 20.1.1 where it says retail commercial activity will be limited to the interstate interchange designation at Bayshore and I-75, plus minor commercial uses which are, as you know, up to 30,000 square feet of retail. But the clear implication of that is that at the interchange

area more than minor commercial is contemplated because that's really the only place in Bayshore where you can have more than minor commercial activity.

I think the one area where we have a disagreement with staff in terms of a planning conclusion is the proposed conditions on the COP. The staff says that before any outdoor seating could be approved we'd have to go through a separate public hearing apparently on the premise that there's not enough detail here to approve it at this level. I would respectfully disagree with that conclusion. The obvious most impacted person is the property to the north. And as we said, you not only have the 75-foot indigenous buffer, the wall and berm of eight feet, a further 75-foot setback to the building, and then the site plan makes it clear that any outdoor seating would be on the south side of that building, so then the building provides an additional buffer. And the staff report says staff cannot support outdoor consumption on premises in proximity to a rural residential neighborhood. To me that's a new definition of proximity. I don't think it's close enough to raise compatibility issues. And any outdoor seating on the out parcel is even further removed from the residential area and less of a concern.

On top of that the staff is proposing limits to hours even on the indoor consumption of alcohol, which nine o'clock during the week and eleven o'clock on the weekends. Well, to the extent that serves the traveling public that's probably not realistic or equitable. And even though Bayshore is a rural community, I don't think they go to bed that early all the time. And I think if there is -- we're talking about maybe an Applebee's or something like that and I don't think people would want to see it close down that early for indoor consumption. That's really too restrictive and we don't see any point in that.

But the bottom line is we believe this is very consistent with the Lee Plan in general and more specifically it responds to the Bayshore plan to the extent the Bayshore plan addresses the interchange area and really about the best proposal I can imagine for this site in terms of what the community is looking for.

I would be happy to answer any questions.

MR. UHLE: No questions.

THE HEARING EXAMINER: Questions by staff of this witness?

MS. LEHNERT: No.

THE HEARING EXAMINER: Mike, let me ask you a

couple.

EXAMINATION

BY THE HEARING EXAMINER:

Q. Now, you guys have done a really nice little artist rendering up here of the multitenant building. Are we looking at a 30,000-square-foot or whatever anchor store? I mean are we looking at a Publix or, you know, I mean some kind of an anchor store in the way of a grocery store or a hardware store or something or is this going to be a whole bunch of little tiny --

A. My understanding is that the main plan is for a variety of smaller stores. The first level is about 45,000 square feet, as I understand. That second floor is about 18,000 square feet.

Q. So that is not decoration up there, that actually is a floor with --

A. Yes. There is a proposal for two stories, as you can see only partial two stories.

Q. So the top part might be offices or something?

A. Probably offices almost certainly and a variety of smaller shops. I don't know that they know exactly what the market will be and they need to respond, but it's really not laid out for a Publix or anything.

Q. Or a Walgreens or something along that order, a drugstore in the center there or something.

A. I mean they have asked for, I believe a drugstore is one of the possible uses. Yeah. And actually the limits on the size are probably way more than are needed. I know there's been some concern about the provision for drive-through facilities, and the only intent there was to allow for a bank to have a drive-through and possibly a drugstore. There is no fast food allowed, so there can't be any drive-through for fast food if there's no fast food allowed. And again, that's an example of trying to tailor this more to the community than to the traveling public.

Q. This drugstore limited to a maximum of 3,000 square feet, is that a typical CVS, Walgreens size drugstore or is that smaller?

MR. UHLE: No, that's intended to be a smaller facility.

THE HEARING EXAMINER: It's a smaller facility. So it's not going to have --

MR. ROEDER: In fact, yeah, there's two actually in here. One is Area A and one is Area B.

THE HEARING EXAMINER: That was Area B I was looking at.

MR. ROEDER: And the one in Area A is actually much larger than a drugstore would ever need.

THE HEARING EXAMINER: Staff needs to look at page 3 of 16, drugstore, under Area B. Limited to a

maximum of 30,000 square feet. I don't think that's what you intended to say there.

MR. PALERMO: How about limited to 3,000?

THE HEARING EXAMINER: That's 3,000 on the one on the next page.

MR. ROEDER: In Area A -- I think your typical Eckerd or CVS would be about 15,000.

THE HEARING EXAMINER: So it was still intended to be 3,000, Staff, instead of 30?

MR. PALERMO: Hold on a second. Area A, I have it limited to one and limited to a maximum of 30,000 square feet in Area A. That seems okay. And drugstore in Area B, I would do the same limitation, limit it to one, limit it to maximum square footage of 30,000 square feet.

THE HEARING EXAMINER: No, it's maximum 3,000 square feet.

MR. PALERMO: I know it says that.

MR. UHLE: That really is not an error. My recollection is when we had the meeting with Mr. Drovdlic that's when all of these limitations came to be. And the idea was that in the multitenant facility we weren't going to have anything like a major Walgreens or anything like that. We were talking about maybe some kind of a very small pharmacy to fit

in there. That's something that would fit in a multitenant facility. But as an out parcel use you might be talking about the more CVS type of use. So that's why there's a distinction between the square footage.

MR. PALERMO: I almost gave away the store. Sorry about that.

MR. ROEDER: I think 30,000 is way more than you would need for a stand-alone.

THE HEARING EXAMINER: Because my question then, and it may not be to you, maybe I need to be asking this to staff, but a drugstore at 30,000 square feet, I mean that's going to take an enormous parking lot.

MS. TREBATOSKI: It wouldn't fit.

MS. LEHNERT: It couldn't fit.

THE HEARING EXAMINER: I mean that was the only thought that I had when I saw that, you know, is 3,000 is quite small. All right.

MR. ROEDER: Typically not that large in this location.

THE HEARING EXAMINER: That would mean then if you had a 30,000-square-foot drugstore on an out parcel you wouldn't be having nothing else on the other out parcel because it would all be parking. You'd have one out parcel and it would all be

drugstore.

MR. UHLE: That's not permitted under the terms of the approval here since we're not allowed to move over to the other out parcel and we're committed to a minimum of two out parcels. So the bottom line is we're just trying to create some sort of limitation of some sort.

THE HEARING EXAMINER: County attorney has indicated that an administrative amendment could take care of the --

MS. LEHNERT: It potentially could get them in.

THE HEARING EXAMINER: Mike.

MR. ROEDER: I was going to say, I think the 30,000 is much greater than we would need for a drugstore and you could probably reduce that and it wouldn't be a problem.

THE HEARING EXAMINER: To 15? Staff have any objection?

MR. PALERMO: Not if the applicant's okay with it. I'm fine with it.

THE HEARING EXAMINER: Is that good for you, Matt, your client? Anybody shaking their head over there?

MR. UHLE: I'm not hearing any screams.

MR. ROEDER: My understanding is your typical

standard drugstore is about 15,000.

THE HEARING EXAMINER: Okay. Well, that makes me a little happier.

Okay. Do we know, Mike, the size, the actual size -- I thought I read in here somewhere where Parcel A is limited to a certain square footage and Parcel B is limited to the max. Do you recall that being broken down in that manner? I don't see it. I thought I had read it somewhere. I don't see it. Lot size.

MR. ROEDER: I don't recall either, but typically your out parcel uses are -- the biggest would be probably a drugstore in terms of square footage.

THE HEARING EXAMINER: Okay. So it's sort of 99,999 square feet and whatever you can put in the out parcels you put in the out parcels and everything else goes into the little shopping center.

MR. UHLE: I suspect after the public makes a presentation we'll be responding in a way that will address the breakdown.

THE HEARING EXAMINER: Okay.

MR. ROEDER: I think that's a real broad brush number right now.

THE HEARING EXAMINER: Let me look at two other things here. Now, we also have in the out parcel area

the farm equipment sales, feed and fertilizer, both of those limited to 30,000 square feet. Is that doable?

MR. ROEDER: I noticed that same thing. I only come on to this fairly recently and I thought that was somewhat big for the overall site.

THE HEARING EXAMINER: Now, this is 30,000 square feet of display area.

MR. ROEDER: Yeah.

THE HEARING EXAMINER: How much, how much acreage do you have to have, Mike, to have 30,000 square feet of display area and meet all the other requirements?

MR. ROEDER: You know, I really wouldn't be able to answer that quickly, but again, I don't think the owner's intent is to have one of the out parcels be a feed or fertilizer sale. It's kind of a laundry list of possibilities here.

THE HEARING EXAMINER: Then, you know, I'll just leave it at this point and, you know, I mean if you guys decide to come in, as long as it's not more than 30,000 you'll be okay, I reckon.

MR. ROEDER: I guess the idea was that is a more rural type of use in case somebody wants to do that.

MS. TREBATOSKI: For clarification, Madam Hearing Examiner, if either or those uses were to go in the 34-1532 of the 25-foot buffer and berms and all that

would go in, it would be really difficult to place it on either of those.

THE HEARING EXAMINER: Out parcels? Okay. On either one, A or B?

MS. TREBATOSKI: Well --

MR. PALERMO: We're saying no for B.

MS. TREBATOSKI: On the easternmost A, I just measured that out and that's 90,000 square feet, but then you're going to need to subtract out the accessway, so you're already under two acres in size. And if you go even further down you might be able to do it but not up to 30,000. It would be less than 30,000 square feet with the buffers.

THE HEARING EXAMINER: Then we'll just leave it at the 30 and if they decide to use it they'll just have to -- they can use up to that amount. Okay.

Let's see if I had any other things marked, Mike, for questions. I actually don't. Thank you.

Any other witnesses?

MR. UHLE: Before I do my closing, I would like to get Mr. Ruskai up and ask him one question I missed.

THE HEARING EXAMINER: Okay.

EXAMINATION

BY MR. UHLE:

Q. Jack, are you familiar with the concern that we've expressed about the county's Condition 16, the local road standards?

A. My interpretation of the local road standard is for a Category A road that we would make the accessway shown on the plan to Category A standards, which is a 24-foot width and a thicker pavement section that's in the development standards ordinance and that's all that applies to. It's not going to be a right-of-way or anything like that, but the road will, the thickness of the road will support commercial A traffic.

THE HEARING EXAMINER: And that's all of your access points or just the one off of Bayshore?

MR. RUSKAI: It's the main access road for that little --

THE HEARING EXAMINER: You'll have to --

MR. RUSKAI: Run through here and exit out here.

THE HEARING EXAMINER: Oh, I see. Okay. So it's the one that's going to separate Area B from Area A. It's going to be the spine road, essentially, connecting. Okay.

MR. RUSKAI: But it's not going to be a dedicated 40-foot frontage road kind of easement. It just applies to the pavement section itself.

BY MR. UHLE:

Q. If I can frame the question a little differently to make this more clear. If you can look at Condition 16 as written by the staff, can you please explain what our concern is about that condition as written?

A. It says the access area must be designated as a Category A local road per the Lee County Land Development Code to service the future subdivided lots. It's that road. And I'm missing what you're trying to get to.

Q. We have proposed a change to Condition 16. Can you please explain what, what the change is and why it's important? If I can help you out here, the Category A roads, are pavement width and pavement thickness the only standards for a Category A road in the Land Development Code?

A. Well, I think there's something in there for right-of-way width, but what we're talking about here is just the dimensions of the physical pavement which is 24 feet wide and the thicker pavement section. So the revised language should just address pavement width and thickness and not any right-of-way width. Am I still missing it?

Q. No, you're getting warm. What would be the implications to this project if we had to comply with the right-of-way widths?

A. Well, if we had a full right-of-way through there

then we'd have setbacks from the right-of-way line and an additional probably planting and buffers along that and all that and that just doesn't work.

THE HEARING EXAMINER: It cuts down on your development area?

MR. RUSKAI: Absolutely.

THE HEARING EXAMINER: And the use of the parcels. Okay.

MR. RUSKAI: We have no problem making the road thickness and strength to that standard to support traffic.

BY MR. UHLE:

Q. And would in your opinion, would it serve any purpose to require the road to meet all the standards for a Category A road?

A. It does not. It's just to support the truck traffic or pickup trucks or cars or whatever. It's just a general commercial standard for the thickness of the road.

Q. How does this particular accessway function? Is it really going to be a local road or is it just really in real world an access?

A. It's really just an access.

MR. UHLE: No further questions.

THE HEARING EXAMINER: Any questions of Mr. Ruskai from anyone based on what was just asked?

MS. TREBATOSKI: I have one question, if I may.

Are you planning on having parking lots or parking spaces back out onto the access road?

MR. RUSKAI: Yes.

THE HEARING EXAMINER: Do you need a deviation for that?

MS. LEHNERT: Yeah.

MS. TREBATOSKI: I think we may need to go get Mr. Blackburn.

MR. UHLE: If it's an accessway I don't believe we do. If it's a road, we clearly do.

THE HEARING EXAMINER: Then maybe there's --

MS. TREBATOSKI: The reason why I asked that question is just from my knowledge of development orders and the condition came from Mr. Blackburn and I think that I should get him to come in and explain.

THE HEARING EXAMINER: We'll need him to explain. Okay. We can wait until we do the staff's presentation.

MS. LEHNERT: Can I just ask one more question? It's the same thing that Kim is asking in probably a different way.

If you limit the access road to the pavement width only, the pavement width for the local road, you basically would have your access through the parking

lot aisles. Is that what you're contemplating? That would be the pavement width you're talking about?

MR. RUSKAI: Except that in our development of the site plan in looking at that rendering, that spine road will have --

MS. LEHNERT: Where is the spine road, just so I understand?

MR. RUSKAI: That's the accessway.

MS. LEHNERT: The accessway that goes over the service area and goes to this place that has nothing?

MR. RUSKAI: Right. Somehow it will snake through there and connect up.

MS. LEHNERT: Just make sure I know what the spine road was.

MR. RUSKAI: And it will have -- it's not going to be like a parking lot aisle with parking all along it, but there may be some spots where we might have to have some back-out parking onto it, but it will be sufficiently wide enough that -- and it's not going to function as a road. It's actually functioning as just access to the parking lots and to the out parcels. It's not a full-fledged frontage road that's going to be connected up for miles along the highway.

MS. LEHNERT: So the answer to my question is partially yes and partially no? I asked if the

accessway, the paved area was going to function as a parking lot aisle and I think you said half yes and half no.

MR. RUSKAI: It will function partially as a, as a parking lot aisle, yes.

MS. LEHNERT: I think we need Don Blackburn.

THE HEARING EXAMINER: Anything else, Matt, of this witness?

MR. UHLE: No.

THE HEARING EXAMINER: Folks, after Mr. Uhle finishes his statements here we will take a break because I know you guys must be getting tired sitting in those chairs back there. They're not as comfortable as my chair.

MR. UHLE: I'm just going to conclude by walking through the staff report and indicating what we agree with and what we don't.

THE HEARING EXAMINER: Can you all hear him?

UNIDENTIFIED SPEAKER: No.

THE HEARING EXAMINER: Matt, you need to speak up. There.

MR. UHLE: With regard to the schedule of uses, the staff has proposed a number of exclusions which are made quite clear in the staff report. As I indicated in my opening statement, we agreed to a

substantial number of reductions early on in the process, but we are also willing to agree to all of the staff limitations that are proposed in here and I think as the testimony goes on and in our rebuttal we may be willing to agree to additional square footage limitations.

I think, I think probably some of the limitations that have been put in here were put in here just by the staff and we weren't involved in some of these 30,000 square feet. I don't remember all those. So when we ask questions about 30,000-square-foot drugstores and that sort of thing, the hearing examiner needs to remember we haven't engineered this plan for particular uses, so in some cases what we're trying to do is just give a generalized limitation and we were just picking a number. It wasn't the basis of any detailed analysis. That's why, if the numbers seem excessively high, then that's the reason. And if the hearing examiner wants to cut them down, that's probably no big deal. Again, we can address that on rebuttal if necessary.

Conditions 3, 4, 5, 6, 7, 8 and 9 are all not a problem. Most of those are relatively boilerplate.

With regard to Condition 10, Mr. Roeder has already addressed this. There are basically two

objections. One of them is that we don't agree that the COP should be limited to indoor, and the reason for that is, as Mike testified, we think that there are plenty of safeguards built into this plan to address that. When you've got a 75-foot buffer with mature vegetation, you have an eight-foot wall and berm, you have another 75-foot setback and you have a building and then you get to the COP, we think on its face that's plenty of information to approve an outdoor COP. As he also indicated, the distance with the out parcels is even greater. So we don't really think it's necessary to go through another three-month process for a particular use. We think we have handled this in a satisfactory way. If the hearing examiner feels it's necessary to approve this subject to standard conditions involving outdoor entertainment, that's fine.

We strongly object to the hours of operation that were proposed for indoor consumption. The nine o'clock limitation during the week in particular is really -- it makes having any kind of a major restaurant not feasible. There isn't a restaurant in the world that serves alcohol that I know that's going to stop serving it at nine o'clock, so -- and this is indoor, it's not outdoor. So we think that that maybe

is not acceptable.

We do not have a problem with Condition 10-C. We do not have a problem with Condition 10-D.

Condition 10-E I think probably isn't a problem in the sense that we have the 150-foot setback and there's probably about 30 feet to the house, but I just don't want to get into the question of whether we're 190 feet away as opposed to 210 or something like that. Again, we think that there's enough detail in the plan with these setbacks and buffers and so on that the additional requirement of the 200 feet is not necessary.

And, of course, we object to F because that's another restatement of how we have to go back through the public hearing process.

With regard to Condition 11, I don't think we have an objection to this except that we did ask that where it talked about the eight-foot wall that we had to be able to do an eight-foot combination berm and wall because that's really the plan. When I indicated that we needed a clarification, what I meant by that was there's a diagram attached to the staff report which shows the wall running like this and we want the ability -- we don't know if we want to do this or not. We're willing to have the wall extend to the property

line but we may want to have it go like this rather than that.

THE HEARING EXAMINER: So you want the flexibility to curve the wall so that it follows along the --

MR. UHLE: The covered parking.

THE HEARING EXAMINER: -- the covered parking area.

MR. UHLE: Yes.

THE HEARING EXAMINER: That's interesting.

All right. Has the county, county environmental looked at that as far as effect on -- that's the dry retention area. Will that have an effect on the dry retention?

Kim, do you know?

MS. TREBATOSKI: For the record, Kim Trebatoski.

They would have to design it in a manner that their dry retention area will still be usable, but it's not uncommon for the walls to follow the paved area of the site instead of running through green area. It actually may be more hindersome to put it through this way.

THE HEARING EXAMINER: I see. So staff has no objection, then, to the southeast swing on that part of the wall berm?

MS. TREBATOSKI: Environmental Sciences staff does not.

THE HEARING EXAMINER: Okay.

MS. TREBATOSKI: It's a good idea.

THE HEARING EXAMINER: All right, Matt. Does that work then for you?

MR. UHLE: Yes. I don't think there's anything literally read that prohibits us from doing it either way in the staff's condition. We just wanted to make it clear that that's what the intent was.

With regard to Condition 10, as I indicated -- or 12, as I indicated in my opening, we don't want to argue about that, so we accept the condition. And that effectively means the covered parking is only permitted where the covered parking abuts the retention area as opposed to the preserve.

Condition 13 we have agreed to.

With regard to Condition 14, we have asked for a couple of changes in the last sentence. One of them reflects the fact that when the first survey of the property was done, the three gopher tortoise burrows that were found were inactive. When the resurvey is done it's possible that you will find that there aren't any gopher tortoises there, so we don't want to commit to doing -- using this property as a gopher

tortoise preserve unless there are gopher tortoises there, so that's the reason for the first clause in our version of that sentence.

And then where the staff language talks about preserve may not be utilized as a dry detention area, there is language in the Land Development Code that permits that to be used as a dry detention area under certain findings. And the language that I have written that talks about unless it can be clearly demonstrated that the effects of the construction and operation of the surface water management system will not cause death or harm to the protected indigenous plant community, that language tracks what's in the Land Development Code, so to my knowledge there's no objection from DES to that, although they can speak for themselves.

With regard to Condition 15, Condition 15 was written before, obviously, we changed the section to the north and was the inspiration for the change, so what I have just proposed here, unless somebody has a problem with it, is to indicate that our sketch of the north section would be included as part of the master concept plan. The development would have to be consistent with that.

I think that addresses all the language within

the staff version of Condition 15. If not, they can.

Condition 16 Jack has just addressed and I don't need to go over anymore.

Condition 17, the access to State Road 78, that's simply a reflection of the fact that the county doesn't have jurisdiction over State Road 78. It's not an indication that we can't get an access point there. We have no objection to the statement because it's legally accurate.

With regard to 18, that's the condition that basically requires us to build this building consistent with the rendering but also consistent with the county regulations to the extent that there might be some conflict.

Again, if there's any public outcry about this rendering, then you may have to take that into consideration, but as it stands now, that's our position.

With those changes, we would ask you to approve the staff recommendation. We agree with the staff's conclusions as to the Lee Plan consistency of this project.

Thank you.

THE HEARING EXAMINER: Okay. Folks, let's take a ten-minute break. Be back here at ten minutes of

11:00, please.

As I indicated to you, water only in this room.

I think staff's presentation will be much shorter than the applicant's has been, so we'll try to get everybody's testimony in before one o'clock today.

Ten minutes, please. Back here at ten minutes of eleven. Water only.

(Whereupon, the proceedings were recessed.)

THE HEARING EXAMINER: Anything else from the applicant before we start --

MR. UHLE: No, ma'am.

THE HEARING EXAMINER: -- on staff?

Staff, hang on two seconds. I'm going to stop this and start the next tape because we have 29 counts.

All right. Staff's going to make their presentation.

MR. PALERMO: Are you ready?

THE HEARING EXAMINER: Uh-huh.

MR. PALERMO: Good morning, Madam Hearing Examiner. My name is Tony Palermo. I'm a senior planner for the Lee County Zoning Division.

First thing I would like to do is just as a -- Don Blackburn is here from development services and I would like him to address Condition Number 16 because

there is a difference between what the staff report had put in there, which is a recommendation from Mr. Blackburn, and there was an adjustment or change that Mr. Uhle had proposed and I wanted Mr. Blackburn to address that one issue and then I promise I'll get into my presentation.

THE HEARING EXAMINER: Okay.

Don, raise your right hand.

Thereupon,

DON BLACKBURN,

a witness, produced by the Staff, having been first duly sworn, was examined and testified as follows:

THE HEARING EXAMINER: State your name and your position with the county.

MR. BLACKBURN: My name is Don Blackburn and I'm a manager for Lee County Development Services.

THE HEARING EXAMINER: County attorney want to ask this witness questions? I don't think he's used to testifying in this proceeding.

MS. LEHNERT: I don't really want to ask the questions, Don. Because he knows what the issue is.

EXAMINATION

BY MS. LEHNERT:

Q. Condition 16 in the staff report was presented, I think it was the development services condition, and it

reads --

A. That was my condition.

Q. And the applicant has proposed in paragraph numbered 5 in the memorandum from Matt Uhle dated May 16 a revision to that. Earlier in the testimony, I'm not -- I think you're aware of this, but earlier in their testimony the applicant indicated that they were going to limit the out parcels on this project to a maximum of two as opposed to the maximum of three that was indicated there on the plan when you had originally reviewed it. So basically what we want to know is whether or not Condition 16 remains required if the two lots are -- if they only -- if they commit to two out parcel lots or -- and if it is, whether or not the limitation to the pavement width is appropriate.

A. The reason I had the condition was because the master concept plan does say maximum three. A third lot on the plan, if one was drawn on there, would then need to have access to a road that meets the minimum standard. There's -- it looks like two lots shown there now even though they're not labeled, but one has access onto Wells and one onto Bayshore. If it is going to remain two lots like the plan shows and the three-lot maximum is removed, then there would be no need for the condition.

THE HEARING EXAMINER: Okay. So in other words,

what I'm hearing you say is if they're going to have three out parcels on Development Area A, then you need to -- the roadway needs to be constructed in accordance with the Category A local road under the Land Development Code, but if it's, if it's kept to two out parcels, there is no such requirement because each out parcel then will have some, not direct access, but some more or less direct access to a roadway, where that third parcel would have access only to the spine road,

MR. BLACKBURN: Well, they would have direct access, one with direct access to Wells and one to Bayshore, which is what the code requires.

THE HEARING EXAMINER: Okay. The applicant have any comments? Do you understand the --

MR. UHLE: Yes. And what he's saying is consistent with our position. We agree that we'll only have two.

THE HEARING EXAMINER: So if we limit the out parcels, then, to two, then Condition Number 16 can be deleted entirely?

MR. BLACKBURN: Yes.

THE HEARING EXAMINER: Any objections to the -- restricting the out parcels to two and deleting Condition 16?

MR. UHLE: No.

THE HEARING EXAMINER: All right. That works for me.

MS. LEHNERT: Thanks, Don.

MR. BLACKBURN: Thank you.

THE HEARING EXAMINER: Any questions of this witness, Matt?

MR. UHLE: No.

THE HEARING EXAMINER: Thank you, Don.

Tony.

MR. PALERMO: Just continuing, again Tony Palermo for the record.

Before I open the presentation, just let me make a confession. I committed the cardinal sin in the Bayshore community. There is a dirt road on the southern portion of the property. It is not a footpath, it is a bridle path, and I just wanted to make that clear on the record.

THE HEARING EXAMINER: Did we say it was a footpath in here?

MR. PALERMO: In the staff report in a couple of instances I've mentioned footpath pretty casually, but the history of the property is it has been used as a bridle path.

THE HEARING EXAMINER: And that's off the

Bayshore right-of-way?

Oh, that's the little -- oh, I see. Okay. That's not an ATV path, then.

MR. PALERMO: And I'll provide you with a photograph of that.

First thing I need to do just real quick is I would like to be recognized as an expert in planning and zoning and land use. Been recognized by the hearing examiner before and my resume and credentials are on file.

THE HEARING EXAMINER: Any objections from the applicant?

MR. UHLE: No objection.

THE HEARING EXAMINER: Accepted.

MR. PALERMO: Second thing I'll do is I will just say on the record that we did not receive many phone calls or e-mails, but we did receive some letters and e-mails and communication from interested property owners in the Bayshore community as well as activists in the Bayshore community. There is a letter from the Musho family that is part of the record and that you have as part of your staff report.

We have sent the staff report to that surrounding property owner and other Bayshore community activists and we've tried to do a good job in keeping the public

informed of the process.

The objective of this presentation is really threefold. I want to do three things today. Number one, I'm just going to introduce just a few small exhibits into the record. Number two, I'm going to clarify the points of the staff report which you have. It is dated May 1st, 2006. And I'll also give you some conclusions and recommendations from the staff report. I'll also do a little bit of rebuttal, basically, on the consumption on premises issue. I really won't get too much into it, but I did want to make a few points on that issue.

Here we go. The number one thing I'll do is put some exhibits on the record. I believe the hearing examiner has a copy of this, that large photograph there. That's photos taken by staff. Also attached to that you will see an e-mail from Laura Alvarez of the Concerned Citizens of Bayshore as an e-mail to me, and I also have two things regarding the bridle path issue just to put on the record in case this comes up as an issue.

Number one is Condition Number 29 on Orange River Estates. It's really the only planned development that I know of that contains a condition saying you must put in a bridle path. And the second and longer

exhibit is from a project called Stonybrook North, a planned development in the Bayshore community also known as Heritage Creek, and it also has a condition regarding enhanced sidewalks running on Pritchett Parkway and I wanted to put that on the record again just in case that comes up.

First thing I'll do is I'll just put a few essential facts on the record, and they are from the staff report. Mr. Uhle's team put some of this on the record, but let me just -- if you will indulge me, I'll just put a few things.

Number one, this is an 8.75-acre zoned property. It's zoned agricultural and they are planning -- and they are proposing to rezone it to a commercial planned development. It's a proposal for 99,999 square feet of office, medical and/or retail. The maximum height they are proposing is two stories and 35 feet.

This project will connect to public water and sewer and there are letters on the record showing both capacity and availability of water and sewer.

It is accurate to say it is in the General Interchange Future Land Use Category. There are no agricultural uses on the site. There are no agricultural exemptions. There are no deviations

being requested by the applicant.

And, again, there is nothing on the site except for a path which I called a footpath but which is actually a bridle path, and apparently it's used quite frequently by the public. Otherwise, it is vacant.

The property is on Bayshore Road, which is an arterial road with two lanes, and Wells Road, which is a local road, again two lanes. And it is approximately 1,500 feet east from the I-75 interchange.

Staff recommends approval of the planned development with conditions, and these conditions ensure three things: Number one, consistency with the Lee Plan; number two, compatibility with the surrounding neighborhood; and, number three, concurrency issues are all going to be addressed.

Madam Hearing Examiner, when looking at this planned development, staff really had two primary concerns. The first primary concern is that it would be accurate to characterize this plan as not having a whole lot of detail regarding footprints, regarding where exactly buildings will go. It has some detail in regard to buffering and separation, but you can't tell from this master concept plan where exactly parking and other details go.

The second issue which we're concerned about is to the north. You will find a predominance of single family uses. It is a very rural community in the Bayshore community.

The conditions I think adequately address the three issues and address my two concerns. I won't go into all the conditions, but let me just highlight a few of them.

If you go to page 2 of the staff report, the first thing I'll note is that the master concept plan, the latest one is the March 21st master concept plan, not the March 3rd master concept plan. And I have a copy of it right here. But your Attachment B of your staff report, that is the March 21st master concept plan.

You will see the master concept plan has a general Area A to the south and Area B to the north. We have done an adequate job in terms of looking very carefully at the schedule of uses. There will be no boat sales in Area A. There will be no boat sales in Area B. In Area B, the northernmost property, the list of uses shows no farm equipment; it shows no feed and fertilizer sales. We have also eliminated from the schedule of uses social services Group 3, which are group home sorts of uses.

Mr. Uhle said -- Mr. Roeder said quite accurately that the deleterious uses have largely been removed or not even proposed. No fast food is proposed for this property, no self-service fuel pumps, no convenience stores, no open storage, no vehicle sales and no water or sewer treatment plants, and that was in essential, in essential services. So the list of uses are a combination of retail and office uses, which we think are appropriate.

Condition Number 10 is the condition regarding consumption on premises. We are permitting consumption on premises indoors within a restaurant, and any outdoor consumption on premises would require a public hearing. I'll get a little more into that at the end of the presentation.

Condition Number 11 we talked about a little bit, extending the wall to the east. And again the principle is just to have the wall protect the integrity of the properties to the north as well as the buffers and preserve.

Condition 12 Mr. Uhle's agreed to regarding the covered parking. It must be a minimum 20 feet away from the preserves. That's a good idea and we think that's consistent with the Land Development Code.

Condition Number 18 requires this development

when they get to the development order stage to be consistent with the elevations that they have provided. They look like an old Florida sort of development. So there's Condition 18 in there.

There is no bridle path condition, but that is in general a good idea and bridle paths are consistent with the Bayshore community. How it would be done, that's the question, and that's why I provided a couple of examples of how past projects have tried to deal with the issue. But, again, it's not part of the recommendation.

Second part of the presentation is asking the question is this consistent with the Lee Plan. Again, I won't belabor this, but this is consistent with the General Interchange Future Land Use Category which encourages uses to serve the traveling public. And again there is a broad set of uses recommended.

It is consistent with Policy 1.3.2 and Objective 1.3, and you will find those on page 10 of the staff report. It has conditions consistent with Policy 5.1.5, which is to protect the residential uses from harm. It is consistent with Policy 6.1.2. That is regarding the site location standards. Again, those location standards are not applicable in the interstate interchange area. And it's also consistent

with Goal 20 on Page 13, which is to protect the rural, residential, agricultural and equestrian-oriented community of Bayshore. And, again, as conditioned, I would believe this application is consistent with the Lee Plan.

Third issue is compatibility. This property is entirely within the Bayshore planning community, which is a rural residential area with large lots. There technically is no public meeting required with the Bayshore community with the applicant, but they are always encouraged and again we have tried to communicate with the Bayshore community and make sure everyone is aware of the process.

Page 13 of the staff report says, and I quote, "The continued support for the infrastructure necessary for the owners and breeders of horses." That's in the staff report. Bayshore is also about, on Page 14, "A wholesome family atmosphere is desired as well as the protection of existing agricultural and equestrian activities."

Just to give you a little bit of context about where we are. To the north is residential uses very close by on Wells Road. The applicant has talked about providing a buffer, providing berms, providing walls and providing really 150 feet of separation from

the building to the property line. To the south is Bayshore Road, to the east is vacant property and to the west is Wells Road. And also to the west, that's where Stonybrook North is, that development would go, and that's where its zoning is. Stonybrook North does require an eight-foot bike path or two five-foot sidewalks on Pritchett Parkway running from Bayshore way down south to Rich Road to the north. And I have given you a copy of that.

In terms of the third issue, let me briefly go into that. The third issue is concurrency. There is sewer from North Fort Myers Utilities, there is water from Lee County Utilities, and there are letters of availability from both of those utilities. As far as roads are concerned, development services shows level of service C on Bayshore Road, which will fall to level of service D with the project. There is road capacity per the Land Development Code.

Again, Bayshore Road is a state road, as it says on page 15 of the staff report. I think -- page 15 of the staff report, I think it says it is a county road. It is a state road. There should be a correction there. It is a two-lane arterial road. No improvements are on the horizon according to the Lee County Department of Transportation. And according to

Land Development Code a sidewalk will be required on Bayshore Road and Wells Road, a local county-maintained road, because we are talking about commercial uses. And, again, that's in the land development report.

As far as environmental issues are concerned, Kim Trebatoski reviewed this project. She has provided conditions for buffers, preserves and species and can discuss these issues in her presentation.

Let me go into a little bit about the really one issue left, which is consumption on premises.

As proposed, Mr. Uhle would delete Paragraph B, which was regarding the hours, and which sort of begs the question whether they are proposing alternate hours or any hours whatsoever for the indoor consumption on premises.

The second thing they objected to was the Condition 10-E, which was requiring 200 feet of separation from the consumption on premises -- let me rephrase that. It was 200 feet from any dwelling unit under separate ownership. And the third objection they had was regarding outdoor seating, whether -- if there's a proposal for outdoor seating, should the developer provide the necessary detail and should they have to go through a public hearing. And I think

their position is no, they should not have to go through a public hearing for that specific use.

Let me address consumption on premises and I'll make some general comments about consumption on premises and I'll make some specific comments regarding how it would impact this property.

Consumption on premises, just in general, if I were talking about any piece of property, I think really disturbs the quiet, residential ambience of the neighborhood, and that's why we usually propose a series of conditions and why we look at this particular use carefully.

The analysis should look at really the five senses, which are: Can you hear it, can you see it, can you smell it, can you taste it and can you feel it? And consumption on premises, I think it's obvious, is something that affects your hearing, it affects you visually and it affects the smell of the neighborhood.

Number one, in terms of noise, consumption on premises is often associated with loud music, with a loud party and I think does have a serious effect on the surrounding neighborhood's quiet enjoyment of their property, so I think it affects how you hear.

Second, the second issue I will bring up is that

consumption on premises is often associated with nuisance, especially outdoors. Again, I think it brings up issues of crime, of security, and it is in general a nuisance to residential uses.

The third impact I would bring up just in general for consumption on premises is whether it has a visual impact on not just the neighboring property, but the travelers on Bayshore Road, the travelers on Wells Road and the residents who would have to live on Wells Road near this particular use. I think it has a visual impact on the character of the community.

The fourth impact that consumption on premises could have is smell, and anyone who has visited an establishment where there's lots of consumption on premises knows that there can be some unpleasant smells associated with it. Just to be frank, there's the smell of alcohol; there's a smell of vomit; there's a smell of urine. Again, that could affect any property.

And the fifth point I would bring up, just generically the consumption on premises, is its impact on family values. This is a pretty conservative community, this is a pretty conservative part of the community, and I think it does have an effect on the values of community and that's why there are rules in

the Land Development Code regarding whether these uses should be near parks or they should be near schools or they should be near residences or whether they should be nears schools -- or churches.

Let me get to the specifics of this property.

We are concerned about outdoor consumption on premises because, number one, to the north is a single family use which is very near this property. And I appreciate any buffering you can do, but I don't think there's -- that any buffering renders this use invisible, renders it unable to be heard and renders it with any mysterious cloak of protection.

The second concern I have is that there just isn't enough detail. In fact, there is no detail about what this consumption on premises will look like or how it will impact the community. We have no discussion of how many seats will be there, we have no discussion of how much square footage is there. And we're not saying do away with the use. We're saying it has to go through the proper public hearing process in order for us to evaluate it.

The third issue is that it is in the Bayshore community and I think there are specific policies in the plan and there are specific descriptions of the Bayshore community which make, which make staff take a

special look at this community and really look out for the interest of the rural integrity of the neighborhood. And, again, they should go through the public hearing process with the necessary detail.

The fourth specific thing about this property is that it is near I-75. An outdoor consumption on premises use with a restaurant with a large size will attract people from miles around. There's thousands and thousands of people on I-75 using that road and it could be a very detrimental thing for the community.

The fifth point I bring up is that because it's on I-75 I think having late hours, I think having unlimited outdoor consumption on premises does create an issue of safety regarding outdoor consumption on premises. It raises the issue of drunk driving and whether this is something that we want to promote on I-75 with outdoor consumption on premises. And, again, we're okay with indoor consumption on premises.

And the sixth factor really is the equestrian factor. Is outdoor consumption on premises really compatible with the equestrian uses that we know are in the neighborhood and will continue to be in the neighborhood?

And, again, you can hear it, you can see it and you can smell it, and for these reasons that's why we

bring up this issue of consumption on premises.

I think the policies to support us are in the staff report and I won't go through them, but they're Policy 5.1.5 to protect residential uses, Policy 139 regarding character, Policy 6.1.4 regarding compatibility, and especially Goal 20, which is the Bayshore community.

In conclusion, we can recommend approval of this application with conditions. As conditioned there will be no environmental -- adverse environmental impacts; there is an adequate road network; there's urban services available; and the mix of uses are appropriate.

In closing, this application as conditioned is consistent with the Lee Plan, it's compatible with the surrounding neighborhood and I think it addresses all concurrency issues. And I'll just stop there and answer any questions you have.

THE HEARING EXAMINER: Questions? I'm sorry. Questions by staff of this witness?

MS. LEHNERT: No.

THE HEARING EXAMINER: Kim?

MS. TREBATOSKI: I have one question.

EXAMINATION

BY MS. TREBATOSKI:

Q. Tony, the outdoor consumption on premises, would that be a conflicting use with the -- some of the proposed uses such as day care center, place of worship or schools that are requested by the applicant and approved?

A. Yes. Those are in the schedule of uses and there's a potential conflict and that's why we would like the necessary level of detail to even discuss outdoor consumption on premises.

Q. One other question regarding that. I'm not sure if I clearly heard it or not in your testimony. The master concept plan as proposed, do we know for sure that there wouldn't be any outdoor consumption on premise area for -- be on the backside of a building facing the indigenous area or that it would --

A. The conditions as proposed by staff say that the outdoor consumption on premises or the consumption on premises would have to be south of the building, so you would have to have, working from the north, preserve, building, and then consumption on premises and then parking outside the building.

THE HEARING EXAMINER: All right. But that's the indoor consumption, right?

MR. PALERMO: Correct.

THE HEARING EXAMINER: Because you're not recommending approval of outdoor. So you are actually

recommending that the location of any lounge or bar or alcoholic consumption area will be only on the south side of whatever restaurant is being proposed?

MR. PALERMO: Correct. If I had the necessary detail to look at all that, that's what I would evaluate and that's what I would be for.

MS. TREBATOSKI: No further questions.

THE HEARING EXAMINER: County attorney, questions of this witness?

MS. LEHNERT: No, ma'am.

THE HEARING EXAMINER: Questions by the applicant?

EXAMINATION

BY MR. UHLE:

Q. Tony, are you familiar with any large Lee County restaurants that serve alcohol but stop serving it at nine o'clock at night?

A. I haven't drank alcohol for about ten years, so it would be hard for me to answer that question, but in general, restaurants have hours going until midnight or something like that. And that raises the question is that appropriate on this property, is that appropriate this close to I-75 to promote, say, an Applebee's, a Hooter's or whatever restaurant you have having drinking hours going 11:00, midnight, 2:00, 3:00 in the morning.

Q. Well, if it makes you feel any better, I haven't consumed alcohol in 47 years.

A. Thank you for sharing.

Q. Having said that, would you not have -- let me ask you this as a planner. I mean have you done any cases in Lee County where COPs were limited to nine clock hours?

A. I don't have any in memory, but I have been using generic hours of 11:00 and midnight and hours like that, but there probably are cases out there where hours were limited to 9:00 p.m., 10:00 p.m. Probably not my cases, but -- that's my answer.

Q. So the answer is that you're not aware of any personally where it was cut off at nine o'clock?

A. Correct.

Q. Would you say that it would be more customary to cut it off around 11:00 or 12:00?

A. It would be more customary if this were in an entirely different location. I have done cases where it's in Fort Myers Beach where it's just generally accepted that there will be consumption on premises till late hours.

Q. When I ask the question in terms of customary, I'm talking about on a countywide basis, I'm not talking about specific to this parcel.

In general, to your knowledge, is it more

customary to limit COP to eleven or twelve o'clock as opposed to nine o'clock?

A. That is more common, and your word is more customary, that they have late night hours.

MR. UHLE: No further questions.

THE HEARING EXAMINER: All right. Tony, don't sit down. I have several questions now.

Going to page 4 of 16, the Area B schedule of uses, you've got restaurant here, Group 1, 2 and 3. Then you say no fast food and you say no freestanding restaurants in Area B. So the freestanding that you're talking about is not a restaurant that would be part of the multitenant building, but one that would be sitting out in the middle of the parking lot?

MR. PALERMO: Yeah. My expectation would be on Area B you would have a multitenant building which would have restaurants.

THE HEARING EXAMINER: All right. Following through with that concept, was there a particular reason why staff chose not to allow fast food as one of the multitenants or as part of the multitenant and restricted to one of the storefronts, essentially, in the building?

MR. PALERMO: Yeah. There is a certain discomfort for allowing fast food restaurants this

close to a residential property, but you're correct, I was more thinking about the stand-alone McDonald's fast food restaurant. If within that plaza they had, say, a Subway or some other restaurant within a plaza setting, that wouldn't be a terrible problem with me. Definitely not fast food and definitely not the drive-through sorts of restaurants.

THE HEARING EXAMINER: Okay. All right. But the fast food and your sub shops or something along this order, you know, Taco Bell, something, that would actually be more in keeping with the intent of the interchange land use designation, would it not?

MR. PALERMO: That would be appropriate in the interchange land use category. I would just be reluctant to go plopping it in there because the applicant did not propose fast food as one of their uses.

THE HEARING EXAMINER: Okay. All right. Because I know we've discussed this in other cases in which the fast food has been limited to the multitenant building and not into -- not to a stand-alone, which I think in this case would work pretty well, but it's up to the applicant if they want to request that at this point.

The next one -- question that I have -- let me

see if I can find it. I have got everything written on top of everything.

Oh, the bridle path. Now, you gave me conditions for the bridle path, all right, and you indicated to me on the aerial photograph up there, actually the FLUCCS map, I guess -- no, it was the aerial photograph, that shows the little area where the horses have been walking, the people have been using as a bridle path across the south portion of the site but well away from the right-of-way.

If the -- if you are proposing that the applicants provide a bridle path, where are they going to provide it?

MR. PALERMO: I haven't gotten down to that level of detail, but I have provided you with two examples of cases that did require a bridle path. But a bridle path is not in my conditions and I have not crafted a condition requiring a bridle path, but wanted to hear from the public and I also wanted to hear from the applicant regarding that particular issue. But my recommendation is unchanged, but I wanted to give you the flexibility to think about that issue and just say generally that if the developer provides a bridle path, that's a good idea and that's consistent with Bayshore, but I have nothing to mandate it.

THE HEARING EXAMINER: All right. Because I'm concerned about, you know, if you recognize the location now, those folks have got to cross that access point, the entry off of Bayshore. They're going to have to walk across. The horse has got to walk across that driveway there. That concerns me.

And this may not be the proper question to ask you, maybe I need to ask Kim, but would the county accept a bridle path through the indigenous preserve?

MR. PALERMO: Ask her that one.

THE HEARING EXAMINER: Kim?

MS. TREBATOSKI: For the record, Kim Trebatoski.

Well, there would be a different department that would be handling any trails, but if there are gopher tortoises found on the property, a bridle path is inconsistent with preservation for the tortoises and any path that would be wider than five foot in width would need to be subtracted out of the preserve and additional preserve would need to be provided.

THE HEARING EXAMINER: So because in some open space or in some projects with open space and preserve areas the county allows your passive recreational uses, so a bridle path would not necessarily be considered a passive recreational use, then? Is that what I'm hearing?

MS. TREBATOSKI: I mean there's a number of faults with bridle paths. First of all, the five-foot width that I was talking about, that's what we limit trails to. Secondly, with horses you have the matter of their fecal matter which can be detrimental to preserve areas. And the burrows of tortoises can be detrimental to the horses and the horses can be detrimental to tortoises if they --

THE HEARING EXAMINER: Step on them. I don't think the horse is going to step on a burrow if they can see it.

MS. TREBATOSKI: I just know from conversations with people, and we are trying to work with people who are doing pastureland, that they don't want the tortoises and their burrows anywhere near the horses.

THE HEARING EXAMINER: Well, the only problem that I have, and I know you have given me a couple of samples of conditions or whatnot about a bridle path, but my only concern and question is looking at the proposed plan of development where this could safely be put on this property, on this property.

MR. PALERMO: Don't have an answer for that.

THE HEARING EXAMINER: And I would think if staff is recommending that a bridle path be constructed that they should have some idea and concept of where they

would like to see it done for protection of the horses, the riders and the drivers.

MS. LEHNERT: I think Tony indicated that it's not in the staff's recommendation.

THE HEARING EXAMINER: You are not recommending a bridle path?

MR. PALERMO: I don't have a condition to recommend one.

THE HEARING EXAMINER: Okay, then --

MR. PALERMO: A sidewalk will be required, and if there are enhancements to that that the developer wants to do, we should consider them.

THE HEARING EXAMINER: So the purpose then of Condition Number 29 on the Orange River Estates which dedicated an eight-foot-wide strip along the southern boundary of the property fronting on Homestead Road to Lee County to serve as a bridle path, that was not intended as a condition for the hearing examiner to pick up and put in this?

MR. PALERMO: Correct. Just food for thought just in case it comes up.

MS. TREBATOSKI: If I may, Madam Hearing Examiner, both of those projects are strictly residential, so there is a different traffic interaction --

THE HEARING EXAMINER: With the horses than a commercial one? Yeah. Okay. All right.

Okay. I don't think I have any -- wait. Before I say that, let me flip through here and make sure I didn't write something down somewhere else I wanted to ask.

I think that is all for me.

Anything -- any follow-up from staff or applicant of this witness?

MR. UHLE: No, ma'am.

THE HEARING EXAMINER: Thank you, Tony.

Kim, you're making a presentation?

MS. TREBATOSKI: Very brief. Just some clarification.

MS. TREBATOSKI: For the record, I'm Kim Trebatoski, principal environmental planner for the Division of Environmental Sciences, and I have been tendered as an expert in environmental matters before and would like to be deemed so today.

THE HEARING EXAMINER: Any objection?

MR. UHLE: No objection.

MS. TREBATOSKI: I have to do it, Matt. Everybody else got tendered.

I just have three comments on this.

Mr. Ruskai had indicated that the preserve area

will remain as is except for the removal of invasive exotic vegetation. That is in part correct. The issue that may come up is that if gopher tortoises are found on the property, the pine flatwoods on the northern part of the property is very thick in palmetto and there may need to be some vegetative management to open up some areas, either trimming palmetto down or mowing mosaic patterns through to allow for more herbaceous ground cover for foraging for tortoises. And the other issue is there may be need over time to do some trimming of palmetto just to maintain the ecosystem. But it will serve as a buffer and it won't be an open vista between the property to the north and the commercial property, but there may be some slight alterations in order to manage the preserve and the related species utilizing the preserve.

The applicant has indicated that there are inactive gopher tortoise burrows on the property and Environmental Sciences staff also saw ones that did not show any recent activity. However, inactive burrows can be utilized and juvenile tortoises can be found in inactive burrows as well as abandoned burrows, and in this area the tortoises also venture around, so seasonally they may be on this property and

seasonally elsewhere and that is why Environmental Sciences staff requires all active and inactive burrows within the area to be cleared, to be excavated and tortoises relocated.

Condition 14, regarding the preserve area and if it can be used for water management area or not, it is correct that the Land Development Code allows the applicant to demonstrate how if it's used for dry detention that it won't be detrimental to the plant community. I would only request that at the end of the sentence, last sentence in Matt Uhle's revised condition that we add on, "for any listed species," because they need to also demonstrate that the use of it as dry detention would not impact any listed species and in this case most likely gopher tortoises. If a certain volume of water is held in the area for any length of time, that could be detrimental to tortoises. But there are ways to demonstrate how areas can be utilized. If it's a low volume of water that's being held for a very short period of time, it actually can be beneficial to certain types of plant communities.

THE HEARING EXAMINER: You have no objections, then, to the replacement of your -- the last sentence of Paragraph 14 with the paragraph that -- in Mr.

Uhle's memo with the addition of the words, "or any listed species," at the end of that paragraph?

MS. TREBATOSKI: Yeah.

MS. LEHNERT: Wait a minute.

THE HEARING EXAMINER: You know where we're at?

MS. LEHNERT: Yeah. I lost the period. Thank you.

THE HEARING EXAMINER: Matt, do you have any objections to the insertion of that language?

MR. UHLE: No.

THE HEARING EXAMINER: Okay.

MS. TREBATOSKI: We also do not have, the ES staff does not have any objection to Point Number 2 in Matt Uhle's memo that adding, "or wall and berm combination". That's pretty typical of how areas are put in.

Just a little bit further answer on your question regarding if the wall could run at a diagonal, how that would be, and depending on how they plant their storm water, dry detention area it actually could be beneficial to any tortoises to have the wall right adjacent to the pavement and be able to forage in the dry detention area, so there are some positive reasons for that.

Otherwise, I don't have any additional comments.

It is pine flatwoods. I was actually quite surprised that I didn't find any active burrows because there are some areas that are open in there that would be wonderful foraging habitat for tortoises.

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

County attorney?

MS. LEHNERT: No, ma'am.

THE HEARING EXAMINER: Applicant?

EXAMINATION

BY MR. UHLE:

Q. Kim, just to get this clear on the record, with regard to our proposed revised northern cross section, do you have any objection to that or to the language that we proposed that implements that section?

A. No, because it's my understanding that that will become part of the master concept plan and the type of wall where it's pile footers and sections is what is being committed to, then being closer to the preserve is okay. It's when you have to trench the footer the entire length that it becomes problematic. And the type of wall that's being proposed now, we have actually had some developers zigzag through some preserves when there's been an issue of a need for a wall, and in this case they're actually providing it outside the preserve. But the footer concern

is impact on roots of trees and that's why this is the preferred type of wall adjacent to a preserve.

MR. UHLE: I have no further questions.

THE HEARING EXAMINER: Thank you.

All right. Any other staff witnesses?

Okay, folks, at this point in time I'm going to open the floor up for public comment. I need you to come up one at a time, please, to the podium. If you would, bring me your white form as you come up, introduce yourself. If you have not been sworn in, please let me know. I will swear you in. But bring your white form, introduce yourself and your address, please, for the record.

MR. MUSHO: My name is Michael Musho. I live at 17350 Wells Road.

Before I begin, I would like to thank Mr. Fred Drovdlic and more recently Mr. Tony Palermo for their accessibility and insight into this rezoning process. While we may not agree on some of the aspects of this case, it's been very pleasant and professional throughout this process. I would also like to thank Miss Kim Trebatoski with the Division of Environmental Services for being just as cordial and receptive.

My home and 600 feet of my property is directly adjacent to the north property line of the proposed

project. My home and family will be probably the most affected.

I had mixed emotions about the project for some time now and reading the staff report gave me a better insight to help me come to a more solid conclusion. The staff report gave me three major areas of concern and disagreement: One, buffer; two, the traffic impact; and, three, the project's compatibility with the community.

Now, my understanding -- one of my concerns was the berm and swale on the north side of the preserve. I understand that has been resolved; is that correct?

MS. TREBATOSKI: Yes.

MR. MUSHO: Thank you.

The Lee Plan Policy 139.9.5 states that the new development adjacent to areas of established residential neighborhoods must be compatible or improve the area's existing character.

The 75-foot preserve is good and appreciated, but we also need to be watchful of the rural character of the community. A project this size is required to have a preserve. I believe it is 1.3 acres. And that has been allowed -- actually, 1.5 acres with the credit for keeping the preserve in one location.

If we are truly to protect the residential and

rural integrity of the neighborhood to the north, the natural preserve should be extended and a bridle path be provided on the far south side of the buffer for the horses that now use the dirt bridle trail on the south side of the property.

Extended buffer would also better facilitate the gopher turtles management on the property. And the gopher turtle burrows are now occupied on the property, as I took videos of it yesterday. They are -- apparently they do leave for a period of time and return.

The increase of the buffer would also tie in with the Bayshore community plan compatibility issues. That is of great importance to the community.

Number two, the traffic impact. I would like to bring your attention to the traffic impact statement, Attachment C of the staff report. The traffic impact statement that was submitted by the applicant has substantial omissions that were not factored and making the report unreliable. An important omission is the planned Pritchett Parkway extension that is to tie into Wells Road. As a result, the traffic impact of the Heritage Creek, otherwise known as Stonybrook, a U.S. Homes community with 1,275 planned dwellings on Pritchett Parkway, which was already approved by the

Lee County Commissioners, is not included in the applicant's traffic impact study. This U.S. Homes community will be using the Wells Road intersection as Pritchett Parkway is realigned to Wells Road.

According to the traffic impact statement for this U.S. Homes community titled Heritage Creek Development, Table 2, there will be 12,095 total daily two-way trips generated by the development located on Pritchett Parkway.

I would like to submit into the record a copy of the traffic impact statement that is titled Exhibit A, traffic impact statement for the Heritage Creek, a U.S. Homes community. Study was done by Metro Transportation, same people that did the study for this project.

THE HEARING EXAMINER: Any objections from staff or applicant?

MR. UHLE: No.

THE HEARING EXAMINER: All right. I'll take that, then.

Thank you, sir.

MR. MUSHO: The traffic impact of this U.S. Home community must be considered along with the applicant's development, since they will both use the same Wells Road and Bayshore intersection. That is

inevitable. U.S. Homes will be built as it has been approved, or there may be some changes.

The Pritchett Road that now comes out to Wells Road does not facilitate a safe left-hand turn, mainly because there's a median here. There's traffic coming up onto I-75 on ramp. In order for someone to make a left-hand turn, they have to wait for a long period of time to make a left-hand turn. This would back traffic up with the load that it will be generated by the U.S. Homes development. That is why that is being as an option for them to channel this into Wells Road. They cannot put a traffic light here. It is too close to the interchange. And I don't know of any plans to put a traffic light here at this time.

THE HEARING EXAMINER: There is not a traffic light at Nalle Road, is there, Mr. Musho?

MR. MUSHO: I pointed at Wells Road. There is one here, yes.

THE HEARING EXAMINER: There is one there? Okay.

UNIDENTIFIED SPEAKERS: (Inaudible.)

THE HEARING EXAMINER: All right, folks, folks, folks, folks, folks, folks.

MR. MUSHO: There's a flashing light. It's not a traffic light, a functioning traffic light.

THE HEARING EXAMINER: I didn't recall even a

flashing light being there, but thank you.

MR. MUSHO: I would also like to bring your attention to Condition 7 of the zoning staff which was discussed here earlier. Condition 7, access to State Road 78 is not guaranteed and is subject to Florida Department of Transportation approval.

THE HEARING EXAMINER: That's 17? Number 17?

MR. MUSHO: Correct. I believe Condition 16 was omitted earlier.

THE HEARING EXAMINER: Uh-huh.

MR. MUSHO: This would mean that if FDOT does not grant the applicant Bayshore access to Area A, then all traffic to this large project would have to use Wells Road, a two-lane residential roadway, that all traffic from the Pritchett Parkway extension, the Wells Road neighborhood traffic and the traffic generated by this hundred thousand square foot shopping center with no Bayshore access would all merge to a local residential roadway that is Wells Road.

I submit to you that this is not responsible management of growth and will have a sizable adverse effect and impact on the road safety and the local residential community. This alone should be enough to deny this application as it is now or greatly reduce

the size of the project.

Number three, neighborhood compatibility. I honestly believe that the essence, the spirit of the Bayshore community plan is being largely ignored or overlooked here. The zoning staff mentioned their concern in the staff report that the master concept plan has little detail regarding building placement, parking and other features. And the applicants reply is that showing such detail is not necessary due to General Interchange Future Land Use Category. This argument by the applicant is a demonstration of disregard for our Bayshore community planning district. Maintaining the integrity of rural areas and communities is a critical element of the Lee Plan. The residents of the Bayshore have legitimate concerns about maintaining the rural integrity of our community. The applicant has not met with anyone from the Bayshore community, and I realize that is not required of them, but it would have been nice and civil to show some interest in meeting with the community representative regarding a project of this size.

This is a project to the scale of the Daniels Crossway that is on the corner of Six Mile Cypress and Daniels with the Publix shopping center. I believe

that is 116,000 square feet. We just don't see that kind of development in Bayshore. The two-story height of Area B, the 100,000 square foot size and intensity of this project are without comparison anywhere in the Bayshore community.

The impact on Wells Road and the residential neighborhood north of the project will be immense. The size and the intensity being proposed will without a doubt have a detrimental impact on our community by changing the community's character.

I must note that we don't want a so-called downtown Bayshore in Bayshore. We didn't move out to Bayshore to have a downtown. Downtown can stay where downtown is.

This project must now be approved as a 99,999 square foot development, but Area A should be eliminated and Area B shifted further south to allow a compatible buffer to the residential neighborhood to the north. The project should be reduced in size to a minor commercial development with 30,000 square foot of retail use for which it would better qualify.

Thank you.

THE HEARING EXAMINER: Thank you, sir.

Next speaker.

MS. MUSHO: Good morning, Madam Hearing Examiner.

THE HEARING EXAMINER: Now, you're going to need to pull the microphone up because you're a little taller and you speak softer.

MS. MUSHO: My name is Lisa Musho and I live at 17350 Wells Road and our property adjoins 600 feet along the border of this property. And I, too, feel that the way that this project is presented that it is far too intensive at this level to be compatible with our surrounding neighborhood and with the rural Bayshore planning community, a plan that states the community wants to maintain low residential densities and minimal commercial activities.

It's noted that nowhere in the Bayshore area is there any commercial project of this size, magnitude, intensity, and that just because some restrictions, which are much appreciated, have been placed on the property doesn't just suddenly make it compatible at this level.

Furthermore, the applicant argues that just because this project would be located in an interchange area that it should be developed commercially at this magnitude. Again, this argument ignores both the existing rural setting that is already there, the homes of the people that are already living there and the overall intention of the

Bayshore community plan, which states that the rural, residential, agricultural and equestrian-oriented character with minimal commercial activities should be protected.

A 99,999-square-foot commercial project represents an encroachment of uses. It's potentially destructive to the character of our residential environment and as such at this level it's not compatible.

The next topic that I wanted to comment on was we wanted to ask that you do not allow consumption on the premises. We don't want liquor to be available on the property which is so close to our home and where our children are playing. We are also concerned about the transient clientele coming off of I-75. It's going to be more likely to come to establishments that are offering liquor. Liquor consumption on this site is not compatible with our family-oriented neighborhood and it would draw a different, unwanted crowd of clientele to our area.

Again, much appreciated on the limitations, but in all honesty we really can't limit the negative effects that were described by Tony earlier just because the consumption is inside. People move around, people hang out, people walk around, people

are drinking. They wander around. Not to mention the responsibility of coming out, going a very short distance and, boom, you're on 75. We do not want this located so close to our home.

It's also noted that the staff -- in the staff report regarding consumption that this use is to be at least 200 feet away from any dwelling under separate ownership, but the applicant's master concept plan shows a setback of only 150 feet, which is not far enough.

The next topic is I am also troubled by the broad and the varied schedule of uses that's being applied for on this property, and the reason for that is because I can't possibly know all the types of businesses that will be allowed under these categories and how they could adversely affect my home. For example, the schedule of uses for Area B includes drive-throughs. I know we talked about that earlier. Just for the record, we do not want drive-throughs next to our home. I'm also concerned about being next door to a business that's going to be open 24 hours a day. I don't want to be hearing noise all night long, with bright lights and traffic moving in and out of the property all hours of the night. I can, in my own experience, I can look at it and see, I can tell

certain ones are unacceptable such as nightclubs, kennels with barking dogs outside 24 hours a day and night and auto parts with machinery being used, but I'm sure that contained in these remaining categories are many uses that will still be intrusive to my home next door. I ask the county to use their expertise in knowing what these categories are and to ask themselves if they personally would want to live directly next door to that particular use. If the answer is no, then I would ask that you eliminate that category.

We also ask that you do not allow a height of two stories on this project. It's way too intensive and intrusive and it's not in keeping with any other commercial developments in this area.

Lastly, as I mentioned earlier, we are also concerned about the noise and lights that are going to be generated by this project. We live in a community that is quiet and dark at night and we do not want noise and lights emanating from this project onto our property. And I don't -- I would like to know how this concern would be addressed.

Thank you.

THE HEARING EXAMINER: Okay. Thank you.

Anybody else wish to speak?

Thank you, sir.

MR. SHEPARD: Good morning. My name is Dave Shepard. I live at 7730 Rich Road in North Fort Myers. I'm a board member of the Bayshore Concerned Citizens, a nonprofit group of Bayshore residents. I'm here to speak on theirs and my behalf.

We're aware this is a prime commercial spot and most certainly will be developed as such. However, there's several items that we cannot support: First and foremost, the square footage; and most disturbing, the two-story design of the proposed building. You can't drive anywhere the whole length of Bayshore and find a two-story commercial building. No interchange in Fort Myers has a two-story commercial building. Doesn't matter what you build it like, rural, plantation style or whatever. This is even being -- why this is being considered is even beyond belief.

Through the whole application project here it's called, it is called consistent with the Lee Plan. And Mr. Roeder here did assist on the Lee Plan here for us some time ago, Policy 20.1.1. Retail commercial activity shall be limited to the interstate interchange designation at Bayshore and I-75, plus commercial uses at the intersections of Nalle Road and Bayshore, State Road 31 and Bayshore, State Road 31

and Old Bayshore.

Now, this is written right in here. I don't know. Should I introduce it?

THE HEARING EXAMINER: No, you don't need to. It's part of the Lee Plan. It's a document that I have.

MR. SHEPARD: Actually, this is an addendum that was written underneath it.

There is no obvious village center or commercial core in Bayshore and this plan does not attempt to create one. The intersection of Bayshore Road and Nalle probably comes closest with Lawhon's and the fire station in close proximity. There are other commercial establishments scattered in various locations. The existing Lee Plan already restricts retail commercial to intersections of a defined significance. The proposed policy further restricts these potential retail locations by specifying certain intersections where retail commercial will be permitted. Since under the Lee Plan minor commercial is defined to be up to 30,000 square feet of floor area, this policy should allow more than adequate commercial opportunities in the future.

Now, obviously the plan here is for 999,000 plus square foot. That's obviously not well within the

30,000 that this plan actually calls for. Three times as much. How can the square footage be tripled and still come under the heading of minor commercial development?

Page 14 of the study talks to the significant impact this project will have on this area. Certainly that's quite an understatement. It most certainly will set an undesirable precedent, a hundred thousand square feet, a two-story building. These are totally unacceptable standards. No to the two stories and certainly no to the square footage.

The other concern we have obviously is the traffic flow that this project will affect. I find it surprising your own traffic person said minimal traffic flow there. He obviously has not spent any time driving in that area during the commuting hours morning and evening. It is nearly impossible to make a left turn there now with no further development at all, so obviously there needs to be improvements.

We know that this is going to be a commercial property and it's viable and we don't want to restrict the property owner from his rights of developing this as a commercial entity. Certainly we know it's commercial. But the mere size and sheer volume of this project is -- incompatible is even a slight word

to use.

The entrance that they propose here is on an exclusively residential entrance road. It's all residential. There's no commercial activity back in there at all. And will DOT approve of a direct Bayshore entrance? Maybe, maybe not. That certainly will have an adverse effect on traffic flow. Left turns and right turns into this project without major road improvements on Bayshore itself will virtually bring traffic to a standstill.

Having read that complicated traffic survey - and I appreciate having a copy of it - and realizing the difficulty in understanding the figures, there's several things that do come to mind. The first thing, on the study here, they have what they call a study period and they dictate it. It's .25 hours in the morning, .25 hours in the evening, 15 minutes. They have their finger on the pulse of traffic on Bayshore by observing and counting for 15 minutes? I don't see how that's possible.

It also stated in there that there is zero percent heavy vehicles in the study. Zero percent, it says. Anyone who travels Bayshore knows the great volume of heavy vehicles, especially dump trucks. It's their expressway. They use this road as a major

artery to reach North Fort Myers, the interstate and all that area. And, again, you're not going to restrict that. If you take State Road 31 out, 31 to Bayshore, 31 has all the gravel pits and everything out there. They have to use Bayshore to access this area. And, again, without any turn lanes, you know, left turn lanes, right turn lanes or even traffic lights there, it's an impossible intersection now.

There are concerns, obviously, all valid, that exist with this project and we feel as it is proposed it is unacceptable and certainly not compatible with our vision of North Fort Myers Bayshore community. We request less square footage, much less; no two-story buildings; no consumption of alcohol; a much needed bridle path; intersection improvements such as a right and left turn lanes; and a wider buffer for long-established residents. We respectfully request this project be rejected as it is now proposed.

Thank you.

THE HEARING EXAMINER: Thank you, sir.

Anyone else?

Yes, sir. Do you have your white form, sir?

Thank you.

MR. SIZEMORE: Hi. My name is Perry Sizemore and I'm a resident on Wells Road, 18100.

And I'm for just about anything we can get up there as far as shops and stuff because we have nothing, but I do believe that there will be a lot of traffic issues on Wells Road, getting in and out. It's tough right now during rush in the mornings and evenings. It's hard to get on and off Wells Road. And I just think there needs to be some changes to Wells Road if they're going to use Wells Road as an entrance to this project. That's my main concern. Like I said, it's too much right now without adding a lot more traffic, but I'm sure there's ways to make it safe. But as I know, maybe there's something in there for that. Anybody? To get in and out, extra turn lane into the project?

THE HEARING EXAMINER: I think the staff report indicated and I think the TIS indicated that turn lanes, that kind of thing will be determined at the development order time because then they will actually look at where everything is and what it is and what the amount of traffic is going to be generated and how long the turn lane's going to be and this kind of stuff, so those are things that are typically, you know, taken care of after the project has gone through the zoning, when they come up with the actual site plan and whatnot.

MR. SIZEMORE: That will be good. That's my only question.

THE HEARING EXAMINER: Now, let me ask you a question before you sit down.

Across the top -- or actually across the middle of these public participation forms is a designation for, against or general interest. You did not check any one of the three and I need to know where to put you.

MR. SIZEMORE: I'm for like shops and stuff in our area because we have nothing but Lawhon's store, one store, and we need -- but I'm not for it if it's going to be -- I live on Wells Road, which that is one of the entrances, and if it's not going to, you know, if it's not going to get stuff done on Wells Road to turn into there, then I'm not for it, so I'm sort of --

THE HEARING EXAMINER: So let's put you down for general interest. Will that work for you?

MR. SIZEMORE: That will work.

THE HEARING EXAMINER: You're kind of for and against, so we'll do general.

MR. SIZEMORE: I'm for the shopping and all that, but --

THE HEARING EXAMINER: Not for the impacts?

MR. SIZEMORE: That's it.

THE HEARING EXAMINER: Okay.

MR. SIZEMORE: Thank you.

THE HEARING EXAMINER: Anyone else?

MS. RODD: My name is Barbara Rodd. I live at 11500 Bayshore Road. I'm at the east end of Bayshore.

And I'm just not going to take much time, but just wanted to tell you some of my concerns.

Bayshore at the east end is a busy area and I'm concerned of the traffic that is going to increase on that area. This is going to be our so-called downtown. Where are these people going to come from to support it? Palm Beach Boulevard, State Road -- I mean State Road 31, plus I-75.

And when there are things at the civic center I cannot get out of my driveway. If I want to make a left-hand turn, forget it. I have to go right down to Highway 31, over to Palm Beach and then get on the interstate at that point.

The noise that we get from the civic center, we can hear it at our house. And I know if a development like this goes that close to Wells, people, especially if there is alcohol consumption, will hear noises until all hours of the night. I live quite a ways from where the rodeos are held. We hear that until

one o'clock in the morning and it is disturbing when you're trying to get some sleep at one o'clock in the morning and hear the noise of the fair or rodeos going on.

The traffic down by where Lawhon's is -- they need a stoplight at Wells if they're going to do this project because every time I try to turn to go back home from Lawhon's I take my life in -- my life is endangered. There's been many times I've almost been hit by other cars.

And I also do not care for alcohol being on the premises that close to an interstate. I worry about the increase in crime that will happen in our area. We're not like most residential areas where our houses are next to one another and people will see if there's unusual activity going on. We have, you know, one-acre, five-acre lots. And, you know, people, they start drinking, they go down the road, they get into trouble, and I kind of worry about the safety of the people living out in that area.

Also, drugstores. We don't need a drugstore in that area. There's one going in by Slater Road, I believe, and there's one at the new Publix on Palm Beach Boulevard. I don't believe we need the traffic 24 hours a day of a drugstore.

And basically that's all that I have. I am concerned about the traffic. I do like to see some growth in the area, but we need to keep it small like our community is. I feel very fortunate to live in a community like that. I'm a farm girl from Minnesota, and everybody who comes out says this is a wonderful area. I don't want to spoil it.

Thank you.

THE HEARING EXAMINER: Thank you, ma'am.

MS. SYLVESTER: My name is Ann Sylvester. I live at 18238 Sandy Pines Circle. It's at the end of Wells Road, so I'm a concerned citizen of the Bayshore community.

I realize there will be building in our area as a result of progress, but we would like to keep the rural integrity of this community.

The Lee County Zoning Division Staff Report on Page 14 states the need for neighborhood compatibility as described in the Lee Plan. They speak to the boundaries of the Bayshore area that is predominantly rural, with homes ranging in various price ranges along with limited infrastructure and commercial uses. It also states by and large the residents of Bayshore want to see this land use pattern maintained.

Our vision of the future is supporting

infrastructure that reflects the rural environment, the protection of our resources, the maintenance of the wholesome family values and the safeguard of existing agriculture and, of course, our equestrian activities.

This report recognizes that the integrity of the rural areas and communities are critical elements of the Lee Plan. They acknowledge the Bayshore residents' concerns of maintaining the rural integrity and encourage the applicant to meet with the Bayshore planning committee. I support this idea. If we are going to be neighbors, we need to work together for betterment of our community.

The Lee County zoning staff report concludes the commercial development will have a significant impact on the rural community, especially to those of us who live north on Wells Road. They also state that the applicant has proposed a reasonable schedule of uses. However, I feel further restrictions need to be placed on the applicant and this development plan.

First of all, we don't need a two-story building of a hundred thousand square feet, commercial slash retail space, on this corner, particularly. A two-story building is not in keeping with the rural land use pattern that exists. A one-story building is

more realistic for this area.

In regards to Area A on the plan, it appears to be very vague, and what will be put in this area and how many parcels this will be divided into is vague, although that's been somewhat cleared up today to be two.

I do not want to see things that will bring additional transient traffic off the highway down into our neighborhood such as any type of club, anything that would allow alcohol consumption, drive-throughs, fast food, drugstores, food stores, gas stations, convenience stories or retailers who have a temporary need.

It would better serve our community and maintain the rural integrity if the applicant were to explore building an appropriate square footage one-story structure known as the Bayshore Village Market Square and encompass the lands on Areas A and B and not have any separate out parcels.

I'm also concerned about the traffic on Wells and Bayshore Road that is going to be impacted as a result of this proposed development. Currently Wells Road is a small, rural road maintained by the county. Bayshore Road shows ever increasing traffic, especially seen in the dramatic increase in the number

of dump trucks that come off of Highway 31 with full loads of fill and return many times a day to reload, with additional traffic complications which will occur for our neighborhood from the traffic leaving this Bayshore Village Market Square if and when they turn onto Wells Road, then they want to turn onto Bayshore Road. I feel that this will cause additional complications for that area in particular.

How will the traffic be handled with this proposed entrance on Wells Road and the eventuality of Pritchett Road flowing into Wells Road? On the plans I see two entrances on Wells Road and one entrance on Bayshore Road pending approval by the Florida DOT. According to Don Blackburn, Development Services manager, he states in Attachment I that access to State Road 78 is not guaranteed and is subject to the Florida DOT approval. So what is the plan if the Bayshore entrance road is not approved? Does Wells Road become the sole entryway?

Attachment C, the traffic impact statement for Bayshore Village Market Square, on page 11 states that currently there already exists a significant delay with the southbound approach from Wells Road turning left onto eastbound Bayshore Road. I can personally verify this. The past two evenings I attempted to

make a left-hand turn onto Bayshore Road from Wells Road. One night it was at 6:10 p.m. and the other evening it was at 6:50 p.m. Both times I experienced significant delays due to the eastbound traffic on Bayshore Road.

Now add the Bayshore Village Market Square traffic and the eventual redirection of Pritchett Road onto Wells Road. That corner has potential for greater delays and a large number of accidents.

If you are not aware, currently when traveling on the easterly direction of Bayshore Road you have the I-75 exit ramp blending into this easterly flow of traffic as well as the road narrows down to one lane in each direction prior to Wells Road. This can already prove to be very dangerous and a very congested area. With the addition of the Bayshore Village Market Square, this can only cause further congestion.

According to Attachment G from the Department of Community Development, Robert Rentz, development review engineer, states the traffic report for this project was based on the growth derived from a 2004 traffic count report. This memorandum states the proposed project will generate 435 new net trips in the peak hour. It does not appear that this takes

into account the additional cars that will eventually flow from Pritchett Road as a result of the U.S. Homes development, so therefore I think this count is low. But, regardless, the 435 new trips in the peak hours for the corner of Bayshore and Wells Road is significant and needs further review.

In conclusion, I just want you all to understand Wells Road and the Sandy Pines Circle are a very family-oriented neighborhood. Every day you see kids riding bikes, scooters, skateboards, knowing they are relatively safe due to limited traffic. Adults are out walking for exercise and enjoying their neighborhood. Others are out with their horses, using equestrian trails that surround us.

I realize progress is inevitable, but we must find a way to move forward, provide for our safety and preserve the rural life that we have all moved to this area for.

That's all I have.

THE HEARING EXAMINER: Thank you, ma'am.

MS. ALVAREZ: Hello. My name is Laura Alvarez. I have been a resident at 1800 Lynn Road in North Fort Myers for -- well, since 1975. I'm also president of Concerned Citizens of Bayshore Community.

I have a few comments to read from other

residents that were unable to make this hearing.

I realize that this is the first hearing for this particular development, but every hearing that we've ever had about Bayshore developments have always been during work hours, so residents have a hard time getting here.

UNIDENTIFIED SPEAKER: I can't hear.

MS. ALVAREZ: I'm sorry.

I'll start with the letters from the other residents.

To whom it may concern. I would like to introduce myself. I am Patrick Walsh. I live at 18129 Sandy Pines Circle, at the end of Wells Road in North Fort Myers, Florida.

I would like to have the following concerns heard in front of the county hearing examiner representative.

Number one, traffic. The increased number of vehicles coming into Wells Road from Bayshore and the proposed Pritchett Parkway extension will put an exorbitant amount of vehicles at an intersection that is already difficult to negotiate. Making a right onto Bayshore is tough, but try to go left, especially in the a.m. You have a real challenge on your hands.

Number two, I am concerned about the proposed

elevation of the structures. There simply are no two-story buildings in the area and the drawing reminds me of the Keys, not rural Florida, namely, the Bayshore community where I chose to move to raise a family. I could have moved anywhere in the country -- excuse me, county, but I chose the Bayshore community.

Number three. I have a concern about the building being constructed and having the majority of the units sit empty like they are at shops at the Veranda.

Are you familiar where the Veranda is?

THE HEARING EXAMINER: Uh-huh.

MS. ALVAREZ: Almost every shopping center constructed in the county has empty units in them.

Finally, I would like to see the Bayshore area remain as a tranquil, rural part of Lee County that does not become a cookie-cutter community that loses its old Florida charm.

Thank you for letting my concerns be aired.

Sincerely, Pat Walsh.

THE HEARING EXAMINER: Can you hang on two seconds? I'm going to -- I've got to stop the tape here for a second, get the other one started.

Okay. Thank you, ma'am.

MS. ALVAREZ: This is another letter from another

resident that could not attend.

MR. UHLE: Before she goes on, I would just like to note these letters are hearsay.

MS. LEHNERT: How many are there?

MS. ALVAREZ: This is only the second one. And how are they hearsay if they contact these people?

THE HEARING EXAMINER: It's all right, it's all right. It's a formal objection. It's okay.

How many letters do you have?

MS. ALVAREZ: Just one more.

THE HEARING EXAMINER: Just one more?

MS. LEHNERT: I'm good.

THE HEARING EXAMINER: Okay. The county attorney's fading fast here.

MS. ALVAREZ: It's really hard on these residents when these hearings are held during work hours. I really wanted to put their input in.

THE HEARING EXAMINER: Right, right. And I understand that.

MS. ALVAREZ: Okay. This letter -- let me find the person because I have to state it first. Richard and Katherine Queen, 18178 Sandy Pines Circle, North Fort Myers, Florida.

I think they do introduce themselves. I apologize.

We would have liked to have been at the hearing but we could not get off work. We, Richard B. Queen and Katherine B. Queen, reside at 18178 Sandy Pines Circle, North Fort Myers. Would like to comment on the proposed plans for the Village Square on Bayshore.

First let me assure you that we are not opposed to commercial development on Bayshore as long as it fits in with the existing rural community. We are opposed to this particular development. The architectural drawings are very nice, but that design belongs on Sanibel. This is not a design for a commercial development in the middle of a rural community.

The development should be limited to one story. First, it will decrease the amount of square footage that they can have on the property. For the size of the property, 99,000 square foot is too much. That is almost the amount of the square footage that is at Daniels Crossing, which is approximately 112,000, and there is no way that that size development will work in the size of the property that is at the corner of Bayshore and Wells Road.

Second, a two-story commercial development will be obtrusive to the residents that are already existing and border this proposed development. We

access both entering and exiting for the development should be -- excuse me. The access should be from Bayshore, not from Wells Road. Wells Road is a small road used for residential access. There will be massive traffic congestion at that corner.

The type of businesses that are allowed should be those that will not draw unwanted elements so close to a residential community. There are many children that live off Wells Road and they ride their bikes along Wells Road. Their safety should be the first concern.

The developers need to go back to the drawing board and redesign a development that works within a rural residential community.

Thank you for your time.

THE HEARING EXAMINER: And that was from Mr. and Mrs. Queen?

MS. ALVAREZ: That is correct.

THE HEARING EXAMINER: Okay.

MS. ALVAREZ: And that's all the letters I have from the community.

Because so many other residents have already presented the same concerns as mine and did such a wonderful job, I think I'll just touch on one or two things.

I have questions. Is that okay?

THE HEARING EXAMINER: That's fine.

MS. ALVAREZ: Okay. So I'll speak for myself now.

Please understand that while the needs of the nonresidents using the interstate need to be met at this general exchange for I-75, only the east side of I-75 falls within Bayshore community. We still have plenty of room to develop on the other side that is in the North Fort Myers community that doesn't have such a -- I don't think they even have a community plan yet, so it's not as restrictive as our side. So I'm concerned that we're trying to meet the needs of this intersection all on one piece of property, so we need to remember that there is other property to develop and those needs can be met.

Let's see. Most of what I wanted to say people have already said, so let me just ask the questions.

THE HEARING EXAMINER: You essentially agree with everything that's been said by the folks that spoke before you?

MS. ALVAREZ: Yes, very much so.

Oh, I did want to point out that the reference to the large community of U.S. Homes is still up in the air. They don't have their development order. And that makes it complicated for us as residents and the

developer to try to meet roads and have them match when we're not even sure that that development will be exactly as what they have planned, so it's difficult, and we understand that.

I would like to know if it's true that the current owner will not be the actual developer of this property, that it's actually being prepared for a sale. Is that true?

THE HEARING EXAMINER: Why don't you go ahead and ask the questions and then I'll have the applicant address everything at the end. That way we can keep all the responses at one time.

MS. ALVAREZ: Matt had mentioned that they addressed the water flow and that was an unusual thing to do. However, in Bayshore that is not unusual. We have very strange water flow that anyone developing there -- that's very common, that you have to take a very, very close look at that.

That actually wasn't a question. I apologize.

THE HEARING EXAMINER: That's okay.

MS. ALVAREZ: The sewer stub that was mentioned, it doesn't actually access the property yet, so when this development is built, who actually pays for that stub to come all the way to the property? Will it be the taxpayers or will it be the developer?

I was confused at what signs were mentioned for mowing. I didn't understand what signs -- people in Bayshore probably aren't going to mow anything that doesn't belong to them.

THE HEARING EXAMINER: My point was, though, if you don't have some kind of fence marking where your property ends and where your neighbor's property begins, after a while one of them can start moving, just being helpful and mowing over the line and mowing a little further over the line.

MS. ALVAREZ: Your residents up against this property have large pieces of property and I believe most of them have --

THE HEARING EXAMINER: Fences?

MS. ALVAREZ: -- livestock, so the fences are going to be there.

THE HEARING EXAMINER: All right.

MS. ALVAREZ: So I wasn't sure if the signs would be very rural-looking, depending on what they were.

I would like to know what the current zone for the property is directly east of this property. When we speak about a bridle path and trying to line up a bridle path, I want to make sure that if we -- I'm sure that we can be creative with this developer and come up with something, but then you've got to go one

more east before you get to the country store, which is the purpose of the path, so whatever that is zoned, I hope that we'll be able to take part in connecting that later, so I would like to know what that's zoned.

THE HEARING EXAMINER: My understanding is the little red box -- can you see the little red box? Okay, that's a vacated CPD. That means it was approved as a CPD, a commercial planned development, but because it didn't get its development orders and whatnot within the three-year time frame, the development plan has vacated. If they want to build it, now they've got to come back in and get it reapproved. But I think the piece around it is still zoned Ag.

MS. ALVAREZ: So we could work still and continue that bridle path. It's there now. It's just made by the residents. It's not really official.

By the way, it's abused by the ATVs. And if we're creative with the placement of shrubbery and trees, you can keep the ATVs out. Horses do not need a wide path.

I guess my final comment -- oh, you have an e-mail. I didn't realize my e-mail was submitted. So I went on to explain why that is a bridle path and how important it is.

THE HEARING EXAMINER: That's in the e-mail?

MS. ALVAREZ: Right.

THE HEARING EXAMINER: Okay. Good.

MS. ALVAREZ: I don't need to restate that.

THE HEARING EXAMINER: No, because I'll have it here, unless the applicant would like to hear the reasoning and the background for the location of the bridle path.

MS. LEHNERT: It was submitted as an exhibit.

THE HEARING EXAMINER: He has a copy?

MS. LEHNERT: Yes.

THE HEARING EXAMINER: Okay. All right. Good.

MS. ALVAREZ: My final question is about the -- something that Matt mentioned about restaurants.

I'm not sure where Matt eats, but I can't find anything open after 10, especially in North Fort Myers. And I know that everyone made a very, very valid point about the alcohol consumption, but I would just like to reiterate that having any alcohol consumption that close to I-75 is just very irresponsible.

THE HEARING EXAMINER: Okay.

MS. ALVAREZ: Now, do I wait here for the questions to be answered?

THE HEARING EXAMINER: No. What I'll do is take

everybody else's comments and questions and then the applicant will get together with his crew. We'll take a break. The applicant will get together with his crew, they'll answer all the questions. Then we'll come back and the applicant will then put on testimony answering the questions that have come in, and what they can't do, if staff can answer, they will chime in.

MS. ALVAREZ: Okay.

THE HEARING EXAMINER: So we'll get everybody's questions answered right at the very end. That way we don't get confused and I can keep it all together so when I have to read it again it makes sense.

MS. LEHNERT: Madam Hearing Examiner, the likelihood of making it through this case today is slim and none.

THE HEARING EXAMINER: We can go until 1:30. We can go until 1:30.

MS. LEHNERT: You're going to make me fall over in this room with no -- can I eat? I mean I'm already literally -- my brain is floating around.

THE HEARING EXAMINER: We're going to take a break as soon as we finish the public input and you can eat in my office.

MS. LEHNERT: Are you going to buy me the food?

THE HEARING EXAMINER: There's a machine down the hallway here.

All right. Thank you.

How many other folks do I have that wish to speak? One, two and three counting you. Okay, that's good.

UNIDENTIFIED SPEAKER: I'll be fast.

THE HEARING EXAMINER: We'll finish up with the speakers. And as Ms. Alvarez did, if everyone has already made your point, stole your thunder, whatnot, you don't have to try to take it back. You can just let me know that you agree. And if you have any special points you want to make, you can make those on the record and that will shorten the time up so that the county attorney doesn't slide out of her chair here.

State your name, please.

MS. FORD: My name is Cheryl Sterbens Ford. I live at 18210 Sandy Pines Circle, and mainly I'm just talking today in case I have something real important that I want to say at the next hearing, so I agree with what everybody from the Bayshore community has said. My husband and I are members of the Bayshore community and we, too, are very grateful to live in that area. We specifically picked it because of its

atmosphere.

Oh, by the way, Ann Sylvester -- for the attorney, Ann Sylvester is a respiratory therapist and if she faints she can do CPR.

THE HEARING EXAMINER: Mouth to mouth?

MS. FORD: My first concern, as has been mentioned, is for the Mushos as they look south from their home that they'll see a two-story building rather than the pine and the woodland that currently is there.

I'm not an expert witness. I'm not an expert on anything except being a mom and a grandmother and picking this magical place for our family to live, but I can -- I raised my hand and swore when we all swore in, that in the area that we live there are gopher tortoises; there are herons, rabbits, raccoons, eagles and squirrels. And that's part of the reason that we love the place. Within the last two years on no less than five occasions my grandsons and I, as we were driving down Wells Road -- the population density is low enough now and we know one another so that if there's a gopher tortoise crossing the road, we can actually stop our car and put on the flashers and the boys and I can get out and pick up the gopher tortoise and carry him across Wells Road. And if you pick them

up to move them, they pee all over you, so it's a very memorable experience.

There are gopher tortoises there, and they may have just left for the winter.

MS. TREBATOSKI: I wasn't questioning the presence of gopher tortoises.

MS. FORD: I know. I'm just saying I don't know what their habits are because I'm not an environmentalist, but maybe they do like the Yankees and they just like leave for the winter -- leave for the summer and come back for the winter, but they are there because we pick them up and move them.

One of our -- I'm trying to create a picture for those of you who don't live in the Bayshore community because you heard a lot of statistics, and I wish I had -- I wish I was more knowledgeable about the statistics and I had exhibits to submit to the Madam Examiner because I thought that sounded so smart. I wish I could do all that. But we have a daughter that lives off of Bayshore with two small children and we talk a lot on our cell phones, and even though my husband tells us not to, we talk sometimes when we're driving. But he threatens her life if she is on the cell phone when she exits 75 going north to go onto Bayshore because the people who were driving 70 miles

an hour and more as they exit that 143 exit off of Bayshore, and then the people who are driving east on Bayshore who are doing 50, because the speed limit there is 50 miles an hour, those two lanes merge into one lane, and for us to get off of 75 into the left-hand lane to turn onto Wells Road is like running a gauntlet. You just have to pray as you get off, Lord, help me to get into this lane without getting run over. So you don't need to be talking on a cell phone, attending to anything except getting to Wells Road. Just getting into that lane is an effort and then being able to turn onto Wells Road any time in the morning between 6:00 and 8:00 or any time in the evening between 4:00 and 7:00, we just have to sit there and wait.

I know nothing at all about traffic engineering. I don't know if there's room to put a traffic light, a flashing light or whatever between the off ramp to 75 and our entry onto Wells Road, but right now it is, it's really, it's difficult. I would even describe it as dangerous. I don't know how many accidents have been there, I have no record of fatalities, but I can just tell you on a daily basis just as a resident it's a very, very difficult access to get onto Wells Road as you're coming off of 75.

Is there anybody here from Seminole Campground?

Well, that's good. I just want to tell these people that are trying to put their little development here, the Village Square, somebody mentioned a fence, I think you asked about a security fence or something, the only blight in our entire community is as you turn onto Wells Road on both sides in the in the -- where the water is.

THE HEARING EXAMINER: The swale area, the ditch?

MS. FORD: The ditches. Before you get to Triplett, everything is covered with trash, garbage, seats. When we first moved there over seven years ago, I thought oh, this looks terrible, and I went out there and picked it up. You know, every week I would pick up all the trash and I thought that would be good exercise. There's no point.

There's lots and lots of transients. It is not a pretty sight back there. Somebody --

THE HEARING EXAMINER: I know where you're talking about.

MS. FORD: I think it's in the records that maybe something could be done about this because it is a sad state of affairs.

It's not going to be a secure area for the people in this. They're going to have to hire security

because that's not a good area at all. That's just a friendly note to the people who are investing in this.

We mentioned a couple of times the wholesome family atmosphere that has been used to describe our area and then somebody made the fatal mistake of referring to this new little village as downtown Bayshore and everybody's hackles went up. We don't want a downtown Bayshore, if I am allowed to say that.

Again, I would like to describe to you all what it's like to live in this area. Lawhon's has been there, the little general store that has been there for probably 25 years. What it's like to live in this community is if you lose your dog, if you want to sell a horse, if you want to buy a truck, if you want to buy bait, if you want to have biscuits and gravy for breakfast before you go to work, you go to Lawhon's. It's a general store. It's a community meeting place. It's small. They probably could have made a lot more money if they had made the store bigger. It has concrete floors. It smells like a meat market and we love it. That's why we're there, because it's a general store and a community place where we can meet.

Recently Mr. Lawhon's grandson had a fatal accident and died and Ann Sylvester administered CPR to him. When we wanted to find out without going --

all of us converging on the family home, we went to Lawhon's to find out the details of what had happened to him and when the funeral would be and what we could do to help. That's the kind of community we live in and that's the kind of community that we'd like to keep.

So I was just -- I just -- you know, I don't have any statistics. I'm just trying to paint a picture for you, what it's like there.

And so I'll make a list of the things that I am against, and that is that the building being more -- I, too, realize that, you know, development is inevitable, but if we can just work together and plan it.

I am against the two-story architecture. And I absolutely agree that 99,000 square feet is just -- I mean the whole reason that we took off work today and came is because we were just in shock that how could anybody put, you know, a 99,000-square-feet commercial facility on the corner of that road.

We absolutely don't want any consumption of alcohol. I'm not being funny. Some of the people who live in that area don't need more availability of alcohol. And as difficult as it is now to get on and off of Wells Road if you're stone cold sober and

focused attention, I can't imagine anybody leaving anywhere after having two beers and trying to get in and out of there without getting killed. So insurance for that area might be really a problem, too.

Also, it's very important to us to maintain the bridle path. It's important to the people in the community. Some -- Mr. Musho suggested that Area A be eliminated and Area B be shifted south, and I very much agree with that.

And I very much appreciate your time and listening to us and we really would like to work with you. We would just like to -- we would like changes to be made.

Thank you.

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

Okay. Mr. Ford, did you wish to speak?

MR. FORD: You knew my name.

THE HEARING EXAMINER: Well, I figured the two of you came in together, you were sitting right there close together. I was hoping you were together because otherwise start rumors here. I've done it before. I mean not intending to, of course, but, you know.

MR. FORD: I appreciate the camaraderie at this meeting.

MR. FORD: I have notes. I'm just going to do away with these and tell you my name is Larry Ford. I am a resident with that lady there at 18210 Sandy Pines Circle, which is about 5,000 feet north of the Bayshore intersection with Wells Road.

Seven years ago we moved out of downtown Dodge City and moved there so that we could find quiet and the ambience that was there, the trees, the families, the communities, and we were very grateful for that.

There has continually been difficulty with the traffic flow there. And since Bayshore has been under construction to make four lanes available to us from 41 all the way down to the interstate, it has even provided more of a difficulty.

But as I see it and what I wanted to address here today more than anything else was the safety because I'm sure my wife has addressed all of the remaining aspects of my grievances.

Like it has already been stated by those who have done their homework previous to my statements, and they have done a very good job of them, anyone who travels those roads knows that when you reach the two-lane section which begins immediately at Wells Road, you have reached the bottleneck that presents all the difficulties. Even remotely contemplating

putting a development at that corner without further improvement of our roads on Bayshore would be ludicrous at best because those places just don't provide good safety even now. Adding to the traffic load through businesses and whatever other parts are added to this will bring it to an even worse conclusion than we have today.

If we're using the template at Six Mile Cypress and Daniels Road as the size and scope of something that's going to be put there, I would like for us to take note here today that all the traffic lanes combined there amount to about 16 lanes in every direction. We have only two at Wells Road and two at Bayshore.

Please let's not do it like we have done previously and send this up as a recommendation for approval and find ourselves closing the gate after the cow has already gotten out of the barn proverbially.

THE HEARING EXAMINER: Thank you, sir.

MS. LEHNERT: She hasn't been sworn.

THE HEARING EXAMINER: Have you been sworn in?

MS. JACKOW: No.

THE HEARING EXAMINER: All right. Go to the podium and I'll swear you in.

(Ms. Jackow was placed under oath.)

THE HEARING EXAMINER: State your name, please.

MS. JACKOW: My name is Debbie Jackow. I live at 19450 Meredith Road in North Fort Myers, and I have lived out there for 30 years in the exact same spot.

I could talk on and on but I can't follow up all of my neighbors who did such a wonderful job, so I'm not even going to try. But being out there for as many years as I have, Bayshore Road is a disaster. It is so congested at the peak hours of the day. And they do have a lot of truck traffic, which is not addressed.

I am a medical professional. I work at a hospital. I need to get out when I need to get out in an emergency situation. I would not be able to with the traffic the way this is going to be.

If you go from Nalle Road, you have Nalle Road, you go up a little bit towards this project, there's a cement driveway that I guess was for this other CPD which never went in. Then if they get their entrance off of Bayshore Road you have another driveway. Then you have Wells Road. Then you still have, presently have Pritchett Parkway and you have I-75. Now, you have all of that in a half a mile distance on the same side of the road. And if Stonybrook gets put in at this 1,275, there's no way in the world you could have

this amount of traffic on Wells Road with this development, with Stonybrook and these people and their roads, that the way they are constructed now is just an impossibility.

I'm also against the alcohol consumption and the hours. Staying open later for alcohol consumption is even worse because we're the first exit in North Fort Myers coming off of I-75, and you don't want people getting looped over there and then going out on I-75 or on Bayshore, which is a dangerous road, and causing even more accidents than we already have.

Bayshore, if you have never been out there - and I have lived there for 30 years and have no plans to move - is a beautiful, rural, peaceful, quiet place that probably everybody in this county wished they could live in. And it's getting -- these type of communities are smaller and smaller because everybody considers it progress to build it up. I don't consider it progress to build it up. I consider progress to leave it as it is because it's one of the few communities that are left this way in addition to Alva and Buckingham, which is getting chipped away.

We have a right to have a rural community in this county. We have a right to have large animals. We have a right to have acreage. We have a right to all

these things that people look at us and they say oh, let's go up to Bayshore and let's chip away, let's develop, develop, develop. And, no, that is not progress to us. Progress to us is to let us live the lifestyle that we moved out there and bought our property out there and let us live the lifestyle that we want. That is not progress to develop it to us.

I stopped numerous times -- after the tortoise story I thought I might add my little tortoise story. Numerous times I have stopped on Bayshore Road with a stick shift car and actually had to drive with it under my arm, with these tortoises, and I won't go into the peeing aspect, but they also have extraordinary nails, which I still have the scars from, and trying to drive a stick shift car and get these tortoises to safety. And I have done it numerous times. And there are -- there's an unbelievable wildlife community out there that we are trying to protect.

The alcohol consumption, that's a no. This definitely is against our community character. The noise, the lights, the traffic, the hundred thousand square foot building, no. Two-story, no.

I think that they should all be one development. You shouldn't have two in the front that we don't know

what the heck is going to go in there and then you put this in the back.

I think that the Mushos should have more of a buffer. If it was me, I would want 150 feet of preserve back there because you have to go according to what -- how much land all these people next to them have. I mean the 75 feet, that sounds like a lot to somebody who lives in town, but when you live out in the country, that's nothing. So if I were them, I would go for a 150-foot buffer alone because that 150 feet that's presently on that map also includes the service area for the trucks, which is going to be noisy, so 75 feet and a wall is not going to do much to reduce the area and the noise.

My last concern is the water. Now, I know that they have to do -- that has some stringent restrictions on how this water can run off, but you have to understand that how it presently goes, it goes into Popash Creek, which is impaired, which goes under Bayshore Road into the Caloosahatchee, which is impaired. So right now all these bodies of water around us are impaired, and this cannot also add to that impairment. This needs to be cleaned up according to, I don't know, the federal government, the state government. It has to be cleaned up. But

we cannot add any more pollution into these creeks. And this is -- right now this is the way that the water does flow.

So I would suggest that you reject this project as it is now proposed and I appreciate you listening to me.

Thank you.

THE HEARING EXAMINER: Thank you, ma'am.

Okay. Do I have anyone else from the public who wishes to speak who has not spoken?

All right. Now, folks, I will warn you that if you thought of something between -- in listening to some of the others, you need to bring it up now because once the applicant and staff respond to the questions and some of the issues that were raised, there will be no additional public input. All right? So anything that you want to say at that point then has to go -- Laura -- has to go to the board.

MS. ALVAREZ: I forgot something.

THE HEARING EXAMINER: Please state your name again for the record.

MS. ALVAREZ: Laura Alvarez, 1800 Lynn Road. Excuse me. 18900. I don't know where I live.

I forgot to mention that the sign, the very small zoning sign shoved back in the bushes was not up for

30 days. How long -- I couldn't remember how long it had to be up. It was not up for 30 days, so some of our residents were aware at the very last minute and that's why they couldn't make it, because they couldn't get time off work.

THE HEARING EXAMINER: I'll find out from staff and whatnot to do about that.

Thank you, ma'am.

Folks, let's take a ten-minute break, let the applicant get together with his experts and whatnot, get answers and responses to some of your questions and concerns and then we'll close the hearing. But we must be out of here by 1:30 because I'm already working into the one o'clock hearing time, and I can do that for half an hour and then we must be out.

Okay. Ten minutes, please, on the nose. One o'clock.

(Whereupon, the proceedings were recessed.)

THE HEARING EXAMINER: Last chance for anyone from the public to speak who has not spoken because I'm going to open it up then to the applicant and staff for responses to your questions and responses to any issues that you might have raised that they feel they need to discuss.

Okay. Matt?

MR. UHLE: I'm going to call two brief rebuttal witnesses and then I have a closing.

THE HEARING EXAMINER: Okay.

MR. UHLE: First rebuttal witness is Rob Price.

MR. PRICE: Robert Price for the record.

EXAMINATION

BY MR. UHLE:

Q. Rob, did you hear Mr. Shepard's testimony regarding the traffic impact statement and specifically his questions about the methodology that went into it?

A. Yeah, I sure did. He's referring to the intersection analysis that we performed.

Basically when you perform an intersection analysis you input the hourly volumes that you will experience at the intersection and then the program actually picks out the peak 15 minute and it does the calculation to determine the capacity based on the peak 15 minute. It's an accepted standard throughout the country. It's how you calculate capacity at intersections. It's based on the peak 15 minutes.

THE HEARING EXAMINER: Let me clarify something here. When you say when you -- are you talking about when you input? Where are you getting the numbers to input? Is that where you get the traffic count, from the county or from the state, whichever it happens to

be, or do you sit there and click it yourself?

MR. PRICE: Sometimes you do your own traffic count. Sometimes the organizations from the county can supply you with counts.

In this instance, since the future traffic is so unknown at this point with the U.S. Homes development and this development and Wells Road, we will be doing an extensive analysis. Since the gentleman did mention we did the traffic study for U.S. Homes as well, we will be doing an extensive analysis if and when that roadway ever does connect to Wells Road.

But, yes, you input hourly volumes, peak hour hourly volumes into the software. The software calculates capacity based on the peak 15 minutes.

THE HEARING EXAMINER: Okay.

BY MR. UHLE:

Q. Rob, there was also a question about heavy vehicles. Do you recall that? Please respond to it.

A. I do recall that, and we should have addressed the heavy vehicles. We probably should have put heavy vehicles in there, but in my professional opinion it wouldn't have changed the conclusions that we came up with at the intersection. And at the development order stage we can definitely address the heavy vehicle adjustment in the intersection analysis.

Q. Let's assume for purposes of argument that the interconnection is made between Leetana and Wells Road for the benefit of the U.S. Home project. In your opinion is Wells -- is the intersection of Wells Road and Bayshore under that circumstance likely to meet the warrants for a traffic signal?

A. I would say yes, it is likely to meet the warrants. However, it's much more difficult to get a traffic signal approved by FDOT, so FDOT actually physically has to see the traffic congestion on the roads before they will approve the construction of a traffic signal.

Q. If that permitting actually takes place, will U.S. Home be required to provide mitigation for the impacts of their project on Wells Road and on the Wells Road/Bayshore Road intersection?

A. Yes. They will have to address the impacts of not only their development, but the current traffic on Wells Road, this development and other developments if they were to permit that extension of Pritchett Parkway.

MR. UHLE: No further questions of this witness.

THE HEARING EXAMINER: Anything from staff or county attorney?

MS. LEHNERT: No, ma'am.

THE HEARING EXAMINER: Rob, thank you.

MR. UHLE: Next witness is Mike Roeder.

EXAMINATION

BY MR. UHLE:

Q. Mike, I just have one question for you. In your professional experience is it unusual to have restaurants with consumption on premises in I-75 interchanges?

A. It's not unusual. I would say that typically you find more fast food and casual restaurants, and that kind of goes to the tension and the conflict between the county's interchange designation and the Bayshore's vision and what they want. And that's why I believe that this type of restaurant that would have COP, which would be a higher scale restaurant, is responding to that. We're not going to have the fast food, traveling type of place. We're going to have a nicer place. And that kind of goes down to that -- my downtown reference, and I should have put that in quotes. It was in my mind. But the whole point of that is of all the places in Bayshore, this interchange and the area between that and Nalle Road is where 90 percent of the commercial activity for this whole area is going to occur, so you're going to see more development there, and that is the logic of the county plan and the Bayshore plan. And so to have a nicer restaurant with a COP would be very consistent with that concept.

Q. Is that use consistent with the general interchange category?

A. Yes, it is.

MR. UHLE: No further questions.

THE HEARING EXAMINER: Anything, staff?

MS. LEHNERT: No.

THE HEARING EXAMINER: County attorney?

Thank you, Mike.

MR. UHLE: Let me begin my closing by explaining what it is in light of the public input that we can agree to as concessions over and above what we have previously offered.

First of all, my client has agreed, and I would support this, although it's a dramatic change, that we will drop the request for outdoor COP by right. That's a major concession. It does not mean that we agree with the hours of operation that have been proposed for indoor consumption. That is still a problem.

UNIDENTIFIED SPEAKER: Audio, please.

THE HEARING EXAMINER: Okay. So you still want to have the longer hours for indoor consumption?

MR. UHLE: Yes. We will give up the outdoor consumption.

On a couple of the uses, the issue about the

drugstore that came up and the 30,000 square feet, the 30,000 square feet clearly is excessive. My client is willing to agree even in the out parcel areas that we can limit that to the 3,000 square feet that's identified for the multitenant building.

THE HEARING EXAMINER: Okay.

MR. UHLE: And with regard to the feed stores and the farm equipment and that sort of thing, we were -- in our discussions with Tony before, we were actually willing to give up those uses altogether. We didn't change our list at the time, but we did indicate that we would give up those uses. And so there were some questions about square footage and display areas and so on, and rather than deal with those, we're just going to agree to withdraw those particular uses completely from the schedule of uses.

We're also willing to reduce the square footage of the buildings. We're willing to reduce the size of the overall project to a maximum of 71,000 square feet. Of that, 8,000 square feet would be attributable to the out parcels and the remainder to the main building.

THE HEARING EXAMINER: So that would be, that would be 63,000, then, for the main, the main building and 8,000 for the out parcels?

MR. UHLE: If this is helpful, the client has indicated that of the main building that it's contemplated that 45,000 square feet would be attributable to the first floor and a maximum of 18,000 square feet on the second floor.

Let me begin my closing by bringing us back to the question of what does the Lee Plan contemplate for this property.

We've heard a lot of testimony from the residents that it's a rural area, that the Bayshore plan contemplates rural uses and so on and so on. And I'm not saying that that isn't true, but you have to understand that this property is in the general interchange category. It's not in any of the other categories that are found within the Bayshore plan. The general interchange category permits and in fact requires uses that are not contemplated generally throughout the Bayshore plan, and Policy 20.1.1 acknowledges that. Bottom line is that this property is an exception to the general rules in the Bayshore plan.

Now, as Mike has indicated, I think, to some extent, those policies have to be read in connection with the rest of the Bayshore plan, and that's the reason that we tried to provide architecture that's

consistent with the area, large buffers, limited uses and so on. But the fact of the matter is that this is a different parcel and it has to be looked at differently than the rest of the area.

Let's talk about traffic. I guess there are about three different ways to look at traffic. The way that Mr. Price analyzed the traffic was to assume that there was no interconnection with Pritchett Parkway because it doesn't exist, because it hasn't been permitted, because mitigation for it hasn't been identified, so it probably would have been irresponsible for him to assume that all that would be done and the county would have had a problem with it, but it means that that is out there so that that's something that needs to be considered, so there's sort of the status quo issue.

Then the residents have raised a question of whether the access on Bayshore will be permitted by FDOT or not; and then, of course, the question what happens with Pritchett Parkway.

Well, as the plan stands today, the analysis indicates that there are no level of service problems, and staff hasn't disputed that. And people can complain about traffic as much as they like, but the raw numbers don't support the conclusion that even

with this project, assuming that we don't have Pritchett Parkway and so on, there's no basis for a conclusion that there's a problem.

Now, let's assume that Pritchett Parkway does get interconnected. That does change things and there's no denying that that's the case. I think there is some irony in the fact that only becomes an issue if the U.S. Home project gets built. And as we know, the U.S. Home project is in litigation. And I suspect that some of the people complaining about this project probably are also members of the group who are fighting the U.S. Home project. But be that as it may, the U.S. Home project is not a done deal. We don't know if it will happen. We don't know if the interconnection will happen. We do know that if the interconnection happens that there will be substantial mitigation required of U.S. Home, and Rob has set out what that would be. And intuitively I suspect that that means that there will be a traffic light at the Wells Road/Bayshore Road intersection. And if that's the case, that would be a benefit to the residents. So, you know, there's some positive aspects to that. But, in any event, we don't have any control over that, but if it does happen, there will be mitigation.

Our project will also have to do its own

mitigation as a stand-alone. What that will be will depend on what happens at the development order stage, but that will have to be done. There's no question about it. It's just premature to work on it at this time.

With regards to the interconnection that we're providing to Bayshore Road, obviously we don't have an FDOT permit. It's too early in the process to be doing that. We have coordinated with them. We have no reason to believe we can't get that permit. And we have done it in such a way as to provide the possibility for a joint access, which is only responsible.

We're 600 feet from the intersection. Based on that, there just isn't any reason to believe that we won't get that permit. But even if we didn't, I guess the answer to the question what happens if we don't get it, the people to the east of us are going to have to have access and it's going to have to be on Bayshore Road, so even if we didn't get that access point, the likelihood is there would be an access point approved to the east of us and we would be able to tie in just as we're proposing to provide the access and give them access on their property. So one way or another, that access is going to happen.

With regard to the bridle path, the bridle path appears to be an existing use that is not within any kind of an easement. It's just there. People have been using it and the property owner apparently hasn't done anything to stop it or complain about it, but it's not any kind of legally authorized use as it exists today.

It's clear that the Bayshore plan does promote equestrian uses. My client is aware of that, has no objection to providing in some way for continuing access for horses through this property, but the hearing examiner has already noted some of the design problems with doing that. So basically our position on this is that we're willing to accept it, we don't object to it, but we're not going to plan it either. It's really between the people in the community who want this and the staff to try to figure out how they can make that work within the context of our project. We certainly don't plan to redesign the project to accommodate a use that isn't even authorized by an easement.

Concern has been raised about the size of this project. A complaint has been made that it is unprecedented. In a sense that's probably true. But that brings you back to the point that this is also

the only area in the Bayshore plan that's in the interchange, so that's what's contemplated by the plan. Nobody should be alarmed about that.

Having said that, we have agreed to reduce the size of the project by nearly 30 percent, so that should give some comfort to the residents.

It is also obviously a widespread concern about the two stories. The two stories and 35 feet is exactly the standard that you find basically everywhere in the county. Anybody who wants to build a house on Wells Road today has the right to build it to two stories and 35 feet. All we're asking is to do a project that's of the same maximum height as anybody else.

In addition I would point out that we have a buffer to our second story from not only in terms of distance, but the mature trees on the north side of the property provide substantial screening. I have to believe that those trees are about 35 feet tall. I don't know exactly how tall they are, but they're definitely mature trees and they're probably in that neighborhood.

The suggestion that we should be required to reduce the square footage of this project to 30,000 square feet is a problem, obviously. There is no

requirement in the Bayshore plan that this property be limited to a minor commercial development. That is simply not there. And if you were to do -- be limited to 30,000 square feet, that would mean slightly more than 3,000 square feet per acre, which would be an extremely low amount relative to other projects in the county, and that's not acceptable.

I would like to point out in response to the concerns expressed by the Musho family that there is correspondence that's attached to the staff report that lays out seven concerns and the hearing examiner will note that we have agreed to do five of the seven things that they asked us to do in that correspondence. And by eliminating the outdoor COP, I think we might have addressed the sixth one. So while we didn't meet with them as such, we were aware of their correspondence. One thing that I can tell you that Tony is very good at is making sure correspondence like that is filtered to the applicants, so we knew what their concerns were and we have been trying very hard in this process to address their issues. And the fact that we made all these changes to the north buffer and to this section and did the drainage and this, that and the other thing I think is very good evidence that not only were we

aware what was going on, but we tried very hard to accommodate their legitimate concerns.

A concern was expressed about having drive-throughs close to the northern property line. The only reason to have a drive-through on the north side would be in connection with the bank in the multitenant facility, which is a reasonable possibility. I don't think that that's an unreasonable request. Obviously we don't have any drive-throughs in connection with fast foods or a lot of the other uses that one might attach to a drive-through.

Concern has been expressed about nightclubs. Nightclubs are not permitted in our schedule of uses and were never requested.

Concern was expressed about noise and lights. Obviously the principal method of protecting the residents from noise is the buffer, the setback and the location of the building relative to most of the activity. We think that we provided a very substantial buffer and that that should be enough. With regard to lights, the hearing examiner is aware that the LDC has very substantial requirements relative to lights which do not permit us to have lights that spill over the property line, so that

would be addressed in the development order process.

With regard to the question of who will pay for the stub-out for the sewer, the answer is the developer will. The taxpayers do not pay for those kinds of things.

The argument was raised that it's common in North Fort Myers to consider surface water management in zoning plans. It's certainly more common in North Fort Myers than it is in some other places, but I wouldn't say that it's common. It happens on certain parcels that have flow ways. Nobody said that this property was a flow way, but we made a special effort to accommodate the flow from the north because that was one of the concerns expressed by the residents and so we did.

I think that addresses concerns that I heard that require responses. Obviously if the hearing examiner has follow-up questions we can have our experts answer them. But our bottom line is that we have made a lot of efforts to try to make this project compatible with the area, but it has to be recognized as a special case in light of its land use category. Money that was invested in this property was done so on the basis of the land use category. People need to be able to look at the Lee Plan and say this is an area that the

Lee Plan wants intense commercial uses in. They ought to be able to put them there.

THE HEARING EXAMINER: Matt, did I miss the statement -- I think Laura had asked if the owner was going to be the developer. Did I --

MR. HOUSTON: Well, we are intending to. Yes, we are the owner.

MS. LEHNERT: He's not sworn. We don't know who he is.

MR. UHLE: You need to come up here and answer.

MR. HOUSTON: My name is Maynard Houston. I live at 9250 Sedgefield in North Fort Myers. I'm a general manager, more or less the managing member of the LLC. I have two other partners in Maryland.

We intend to bring in a developer as a construction manager but not a developer in the terms that everybody knows a developer. We are not turning it over to a developer. We entered into this property with the sole intent and purpose of doing something for this community as an investment. My two investors from -- in Maryland are putting their interests as well as I probably will do into a family trust. And so we don't have any intention -- and it's always been talked about this flipping, and that's one word I will not listen to. We didn't do this on this intention.

As Matt said, it's considerable money in it right now.

THE HEARING EXAMINER: Okay. Thank you.

Now, let me ask you a question. Were you sworn in earlier?

MR. HOUSTON: No, I was not.

THE HEARING EXAMINER: Raise your right hand.

Do you solemnly swear or affirm that the sworn testimony you just gave was the truth?

MR. HOUSTON: Yes.

THE HEARING EXAMINER: That will do it.

MR. HOUSTON: Does that solve that?

THE HEARING EXAMINER: That solves it.

MR. HOUSTON: We're really committed. He has done a marvelous job. We asked Matt to do this and I really appreciate it and all the consultants.

We weren't able to meet with the community. That bothered me a great deal.

THE HEARING EXAMINER: You may still have a chance.

MR. HOUSTON: Well, I meant -- I have done that all my life and I want to be a part of that and make it a part. And it will not be something that will ever be -- I'm not proud of.

THE HEARING EXAMINER: You all know who to contact.

MR. UHLE: My last comment would be that in all the public input I only heard two complaints about the appearance of the rendering, so obviously this is up to the hearing examiner, but I personally don't think that's enough of a basis to tell us we should build some other building.

THE HEARING EXAMINER: I think it should go Mediterranean. Why not? Everything in the south is Mediterranean.

Staff have any comments they would like to make before we close the record?

MR. PALERMO: No, thank you. That's fine.

MS. LEHNERT: Thank you.

THE HEARING EXAMINER: All right. Folks, in case you're not aware, I do go out and do site visits. I will drive around the area. I will visit your homes. I will probably look at the property up there where the U.S. Home's project is going. I try to get a feel for the area before I make a recommendation to the Board of County Commissioners so that I can see what your concerns are and try to address them if at all possible.

Okay. I'm going to have this transcribed. Because of the length of the hearing, it will be transcribed. The decision in this case, my

recommendation in this case, because this is already toward the end of May, probably will not come out until sometime the end of June, the first part of July, which means it will not go before the Board of County Commissioners until sometime in August because they take the whole month of July off.

MS. LEHNERT: Or September. If it comes out the end of -- if it comes out the end of July or middle of July, it won't be until September. It's about six weeks.

THE HEARING EXAMINER: It may take four to six weeks after it comes out. It's according to how backed up they are. But look for something from me by the end of June, first couple weeks in July unless I get totally backed up. All right?

All right. Thank you all for coming.

This hearing is closed.

(The proceedings were concluded at 1:28 p.m.)

STATE OF FLORIDA)

COUNTY OF LEE)

I, Janet K. North, RPR, do certify that I was authorized to and did stenographically report the foregoing proceedings and that the typewritten transcript, consisting of pages numbered 1 through 179, is a true record.

Dated this 9th day of June, 2006.

Janet K. North

Janet K. North, RPR