



TRANSCRIPTS FOR

CASE #:

DCI 2004-00054

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LEE COUNTY
HEARING EXAMINER
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2 LEE COUNTY HEARING EXAMINER
3 HAWK'S HAVEN DEVELOPERS, L.L.C.
4 CASE NUMBER: DCI2004-00054
5

6 TRANSCRIPT OF PROCEEDINGS

7 Before Diana Parker, Chief Hearing Examiner,
8 at a hearing in the above-styled action,
9 held at the Lee County Hearing Examiner's
10 Office, Fort Myers, Florida, commencing on
11 June 15, 2005.
12

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14 APPEARANCES:

15 Matt Uhle, for the Applicant
16 Tony Palermo, Senior Planner, Lee County
17 Kim Trebatoski, Environmental Planner, Lee County
18 Andy Getch, Senior Engineer, Dept. of Transportation
19 Dawn Perry-Lehnert, Assistant County Attorney
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ORIGINAL

SCANNED 9/28/05 JKB

P R O C E E D I N G S

1
2 THE HEARING EXAMINER: Okay. Good morning. I'm
3 Diana Parker, Chief Hearing Examiner for Lee County.
4 This is Wednesday, June the 15th, Case Number
5 DCI2004-00054, Hawk's Haven Developers, in reference
6 to River Hall.

7 Now, I already have a whole bunch of white forms
8 up here, but if you have not completed a white form
9 and you intend to speak in this hearing, I need to
10 get one of the white forms. They're on the table
11 behind the exhibits over there, okay, so I need you
12 to fill the white form out and return it to me if you
13 intend to speak. If you do not wish to speak in this
14 hearing, but you wish to receive a copy of my
15 recommendation to the Board of County Commissioners,
16 I still need the white form. My secretaries do not
17 know that you are here if I don't have the white
18 form, okay?

19 Now, I will tell you that the way the ordinances
20 are written, if you do not speak to me in this
21 hearing, you cannot speak to the Board of County
22 Commissioners. The ordinances are written in that
23 manner to allow me to address your concerns in my
24 recommendations to them, so if you don't tell me what
25 your concerns are, you cannot tell the Board of

1 County Commissioners. I have to be given the
2 opportunity to hear and address those first before
3 you can tell them you don't like what I did, okay?

4 Now, also at the same time, I'll explain the
5 process to you so you understand what we're doing.
6 With the number of people in here, this hearing will
7 probably run a little longer than two hours, all
8 right?

9 If the hearing runs over two hours we will be
10 stopping for a break. The court reporter to my left
11 over here cannot unfocus during the hearings and so
12 consequently she needs a break periodically and I
13 think you guys will too given the quality of those
14 chairs back there. You'll find out real soon how
15 comfortable those chairs will be, okay. So we'll be
16 taking a break about every two hours. Men's room,
17 right here; women's room opposite on the other side
18 by the elevators, by the exit door, all right?
19 Water only in this room. There is a soda machine and
20 a coffee machine I believe downstairs in the break
21 room.

22 MS. TREBATOSKI: Not right now.

23 THE HEARING EXAMINER: Oh, they took them out
24 already? Oh, okay. Well, if you can find a soda
25 machine and coffee machine here in the building, good

1 luck, because they're rearranging everything, we have
2 no idea what's happening, but water only in this
3 room please, okay?

4 If the hearing runs past 1:00 or 1:30, we will
5 be stopping for lunch, so what I will try to do is
6 take some public input before lunch for those folks
7 who have engagements or cannot stay for the rest of
8 the hearing.

9 Now, the applicant will make their presentations
10 to me first. They will bring up whatever witnesses
11 they have, whatever exhibits they have to explain the
12 request to me, so that I fully understand what
13 they're wanting to do.

14 After they have made their presentation, staff
15 will then make a presentation. They will also bring
16 up witnesses and exhibits. After both staff and the
17 applicant have made their presentations and I've
18 asked the questions that I need to ask for
19 clarification and full understanding of the project,
20 I will then open up the floor for public comment.
21 Until that point in time, it is very important that
22 you-all remain quiet. We audio tape the proceedings,
23 okay? The court reporter is also here, she's is the
24 official taker-downer of the official record, all
25 right? Noise in the back of the room overrides the

1 information coming in on these microphones, it also
2 interferes with her concentration. It's very
3 possible that it will obliterate that portion of the
4 record, so something you may have wanted me to hear
5 will no longer be there, because it cannot be
6 reconstructed, so I do need you to remain quiet.

7 If you need to talk to your neighbor, please go
8 outside the door, you can always come back in. As I
9 said, you will be given the opportunity after staff
10 and applicant have made their presentations, to
11 make your presentation, to ask the questions that you
12 have.

13 Now, in regard to your presentation, I need you
14 to keep your presentation, your comments, your
15 questions focused on the matter at hand. Don't care,
16 don't need to know that you don't like your neighbor,
17 but your neighbor likes the developer or that you
18 like the developer, but your neighbor doesn't like
19 the developer, okay? Don't need to know neighborhood
20 disputes. Don't need to know unhappiness with the
21 developer if you happen to reside in the community,
22 if it's already being constructed, all right?

23 I need to know what effect you think the
24 approval of this request will have on you, your
25 property, your lives, your community, all right?

1 Those are the things that I can address.
2 Neighborhood disputes, disagreements with your
3 neighbors, disagreements with your developer,
4 disagreements with the County on some other topic, I
5 have no control over, okay? I need to know what you
6 think the affect will be on you, your property, your
7 lives or your community if this request is approved
8 as conditioned by staff, okay?

9 Do I have any questions from anybody on the
10 procedures? Okay. If you intend to speak in this
11 morning's hearing, please raise your right hand.

12 (Whereupon, prospective witnesses were sworn as
13 a whole and answered in the affirmative.)

14 THE HEARING EXAMINER: All right. Now, if I
15 have not sworn you in and you feel the need to speak
16 after hearing the Applicant's and the Staff's
17 presentation, let me know when you come up, I can
18 swear you in at that time. It's just easier to swear
19 everybody in all at once.

20 Applicants ready to go forward?

21 MR. UHLE: Yes, ma'am.

22 THE COURT: Okay.

23 MR. UHLE: For the record, Matt Uhle,
24 representing the Applicant. The Hearing Examiner
25 should have received our list of issues.

1 THE COURT: Uh-huh. I did.

2 MR. UHLE: And that's also been sent to the
3 Staff and Count Attorney's office, so I will not
4 distribute that further at this point.

5 The list of issues looks fairly daunting,
6 but I think you'll find that this result of
7 discussions we've had with the Staff, subsequent to
8 the Staff report, that a number of those have
9 actually been resolved in one way or another, so we
10 really don't have that many issues.

11 THE COURT: Okay.

12 MR. UHLE: Nevertheless, this is a case that is
13 of public interest, as you can see from looking
14 around you, so we will be putting on a fairly
15 extensive presentation today; that will consist
16 of -- first of all, I will be giving you some
17 factual and historical background into the project
18 and basically explaining to some extent how this
19 relates to previous approvals and I will be talking
20 about what I think will be the principal issue when
21 it's all said and done, which has to do with a second
22 access point.

23 Following me, Carl Barraco will be providing
24 expert engineering testimony relating to the
25 character of the area and the subject property

1 described in the site plan and how it works, talking
2 about deviations and addressing a number engineering
3 issues.

4 Following him, Ken Passerella will be talking
5 about the permitting history of this property, as
6 well as the current condition. He will be followed
7 by Ted Treesh, who will be talking about traffic.
8 Mike Roeder will provide Lee Plan testimony and when
9 they're finished, I will go back through the issues
10 list and explain where we stand on all of those based
11 on the testimony we've put on the record.

12 By way of background, the subject property is
13 shown quite nicely on the aerial photograph that the
14 Staff has put on the wall there. The property
15 consists of slightly less than 2,000 acres.
16 Approximately 79 acres of it in the northwestern
17 corner is in the suburban land use category. There
18 are some wetlands on the property. The rest of it is
19 in a rural land use category that represents the vast
20 majority of it.

21 Most of the property is zoned RPD. A portion of
22 it is zoned AG-2. As you can see, it's located south
23 of State Road 80 and north of Lehigh Acres. To the
24 east you have Hickey Creek Mitigation Park. This
25 property has a history that is important to this case

1 and you need to be familiar with. And I would note
2 that when this case went through the system the first
3 time, you were not the hearing examiner, so I imagine
4 you're probably not familiar with it.

5 THE HEARING EXAMINER: Not as much as Sal would
6 have been, no.

7 MR. UHLE: This case started its history back in
8 1999 as an 1,800-acre parcel that at the time was
9 zoned AG-2. There were different owners of the
10 property at the time and they filed an application to
11 rezone the 1,800 acres to RPD to permit a golf course
12 community with 1,598 units, which equated to
13 approximately point 8 units per acre.

14 The Staff took a long look at that particular
15 application. The fact that it was a golf course
16 community and had some urban characteristics in the
17 rural land use category obviously raised some
18 interest, but in the final analysis the Staff
19 agreed that the project had merit; that the project
20 being proposed was much better than what could be
21 built on the property with the AG-2 zoning and that
22 the requisite infrastructure was actually in place
23 for the project, notwithstanding the designation of
24 the property as rural and so they recommended
25 approval.

1 And the fact of the matter is that the basic
2 parameters of the project were never very
3 controversial, even with the public, and didn't get
4 a whole lot of comment. There was, however, one
5 really significant issue that was discussed from a
6 variety of different perspectives and that had to do
7 with a second access point to the project.

8 As you know, from looking at your master concept
9 plan, what we have today is approval for one full
10 access point on State Road 80 that's kind of a
11 boulevard type arrangement. During the hearing
12 basically, there were a variety of different agendas
13 that were put forth and I'll discuss those very
14 briefly.

15 One issue had to do with the possibility of a
16 second access on Hickey Creek Road, which is located
17 to the north of the eastern part of the subject
18 property.

19 THE HEARING EXAMINER: Will you show that to me,
20 because I couldn't find it on the zoning map and --
21 that's it right there, okay. I was looking way over
22 here. No wonder I couldn't find the darn thing.
23 Okay.

24 MR. UHLE: One of the early versions of master
25 concept plan back in 1999 showed an access point onto

1 Hickey Creek Road. The affected public in that area
2 was of the very strong opinion that having a second
3 access on Hickey Creek Road was a bad idea even for
4 emergency access. And we ultimately came to agree
5 with them, so with the hearing, there was a consensus
6 among the Applicant and those residents that Hickey
7 Creek should not be used by this project for any
8 purpose and I would say parenthetically that that's
9 still the case today. There's no proposal to put any
10 traffic on Hickey Creek.

11 The Staff recommended a condition which required
12 a second access point for this project, either on
13 Hickey Creek, which they didn't fight too hard for in
14 light of the public reaction, or to the south, into
15 Lehigh Acres. And there were, basically, I think,
16 three rationales for the requested access point. One
17 of them was that the Staff felt that that was
18 necessary to provide adequate emergency access. The
19 second was that they thought it was appropriate for
20 traffic circulation. And the third was that they
21 thought the land development code required it, in a
22 nutshell. We didn't agree with that and so when we
23 went to hearing, we came forward with our plan to
24 just have one access point and we spent a lot of time
25 talking about the condition of Lehigh Acres and the

1 possibility of the second access point.

2 In a nutshell, we put on testimony establishing
3 that there was no safety problem with the one
4 access by virtue of the fact that it was a boulevard
5 that had a very wide right-of-way at the State Road
6 80 access and that was supported by the local fire
7 department.

8 We also provided legal argument to the effect
9 that the second access point was not specifically
10 required by the Land Development Code and provided
11 evidence of a number of analogous golf course
12 communities that only had one access point. And then
13 finally, we put on a lot of testimony as to the
14 unsuitability of the Lehigh Acres area for the second
15 access point. Some of the things that came up during
16 that discussion were the facts that the road system
17 in Lehigh in that area is not in particularly good
18 shape. It does not, in all likelihood, meet current
19 county standards, even though they're county-
20 maintained roads. The development pattern in the
21 area is quite random and there was some fairly
22 memorable testimony in the record about some of the
23 property in the area being used for sort of impromptu
24 gun ranges and for the dumping of light goods and
25 other such stuff, as well as testimony to the effect

1 that using it for emergency purposes was not
2 appropriate because the emergency vehicles would have
3 to go on such a wide sequacious road to get to the
4 property; that it simply wouldn't work well.

5 So our proposal at the hearing was that we would
6 not have to have a second access point. If there was
7 a second access point required, that it should be
8 emergency only and that that access point should be
9 to Buckingham Road, which was to the west. There was
10 an existing easement that connected this particular
11 property with Buckingham Road.

12 Bottom line is that the hearing examiner, and
13 subsequently the County Commission, essentially
14 agreed with our position on the issue, so when it was
15 all said and done, there was no access on Hickey
16 Creek Road and there was actually a condition imposed
17 which prohibited any access on Hickey Creek Road.
18 There was no condition that required any kind of
19 access to the south, whether it be emergency or full
20 access. There was no condition requiring a second
21 full access anywhere. There was a condition
22 requiring us to do an analysis when we hit a certain
23 number of units to see if an emergency access was
24 required, but the condition went on to say that if
25 the emergency access was required, it would be to

1 Buckingham Road, so that's the project that was
2 approved back in 1999.

3 Subsequent to that, a number of events occurred
4 that are relevant to this case. First of all, the
5 former owner went through the very lengthy and
6 difficult process of applying for and obtaining
7 environmental permits from both the State and the
8 Feds, so we do, in fact, have those permits. Among
9 other things, what we were required to do in that
10 process was set out large portions of this property
11 for conservation easements, those include uplands as
12 well as wet lands. Those conservation easement areas
13 are shown on the master concept plan. They establish
14 a pretty clear development footprint for the
15 property. It is not our intention, having fought so
16 hard for those permits, to jeopardize them by messing
17 with them in any way, so this particular application
18 does not. And particularly of note, is the fact that
19 there is a large conservation area on the eastern
20 boundary of our property which abuts the Hickey Creek
21 Mitigation Park. And Ken Passarella will give you a
22 little more detail on this when he gets up and
23 speaks.

24 A second thing that happened was that the
25 property changed hands actually on several occasions.

1 As a result of that, what we have now is a
2 development pattern that's somewhat different than
3 the one that was originally proposed and that's been
4 enshrined by an administrative amendment. Among
5 other things, the proposal now is to have three
6 different development concepts. For example, there's
7 one that's an active adult community that was not
8 specifically contemplated in '99, but is part of the
9 plan now. We also conveyed 20 acres of the property
10 to the school district for use as an elementary
11 school. And I would note that we did that prior to
12 the time when it would have been in our best interest
13 in order to facilitate the construction of a school
14 in accordance with what the school board wanted,
15 rather than necessarily what we wanted. So there
16 have been changes to the plan, internal to the site.
17 The inclusion of the school site is one of those
18 things. Those have been approved by
19 administrative amendment. One of the things that
20 happened during that process was that -- as I noted
21 before, the condition on the emergency access said
22 that we had to do a study when we hit a certain
23 number of units to determine whether it was necessary
24 or not, so whether it was even necessary or not was
25 open-ended. We concluded that that was just a -- the

1 idea of a study was too difficult to deal with and so
2 we actually went ahead and amended the plan to show
3 an emergency access through the Portico project.
4 We have an agreement with them to do that, so that
5 was a concession that we made even earlier in this
6 particular zoning process.

7 The third thing that happened in the interim
8 obviously is, as the hearing examiner knows, was
9 there's been a substantial amount of additional
10 development and additional permitting that's gone on
11 in this area since 1999. The project was known as
12 Hawk's Haven in 1999. It was really the first of its
13 kind in this area, but subsequent to that obviously
14 Verandah went through the process, the hearing
15 examiner I know is familiar with Portico and other
16 applications that have been filed in this general
17 area. And, in fact, the comprehensive plan was
18 amended to permit the property to the west of us to
19 be developed at two units an acre; that seems to be
20 the predominant development pattern in the area.

21 What we're proposing to do here today
22 essentially is three things: First of all, we're
23 proposing to add approximately 181 acres to the
24 original development site. Those parcels are
25 currently zoned AG-2. You'll find when you look at

1 the record of the previous case -- and I would note
2 that the resolution and the hearing examiner's
3 opinion from the previous case are attached to the
4 Staff report -- that there were a number of parcels
5 that we referred to as encapsulated parcels. Some of
6 those have been purchased and are now proposed to be
7 included in the project to the extent that there's a
8 rezoning from AG-2 to RPD; that's what's been
9 involved here.

10 If you read really carefully, you may find in
11 the back up, some different acreage figures for this
12 particular application. The reason for that is that
13 one of these parcels was actually purchased after the
14 original application was filed, so the application
15 had to be revised to accommodate that parcel, so
16 that's the reason for that. Obviously, those 181
17 acres zoned AG-2 in the rural land use category had
18 development rights of one unit per acre attached to
19 them even prior to this proposed rezoning, so when
20 you look at the actual impact of this application,
21 that needs to be viewed as an offset against what
22 we're actually asking for, since those rights already
23 existed.

24 The second thing that we are proposing to do is
25 to make this more of a mixed-use community by

1 providing a town center in the northern part of the
2 property. The concept behind that is essentially
3 to -- not to provide a traffic attractor from off
4 site, but to provide a limited number of uses for the
5 benefit of the residents of River Hall. We're in
6 general agreement, I think, with the Staff on that,
7 although we have some perhaps semantic differences on
8 some of the issues, but the bottom line is that's the
9 purpose behind that.

10 Initially when we filed the application, that
11 was just going to be part of the RPD, but it came to
12 my attention that the thresholds for commercial and
13 RPD were a little bit too low for what we were
14 asking, so we had to revise the application to
15 provide a CPD area as well as the RPD and so that's
16 why you see a CPD as well as an RPD and of course it
17 has its own list of uses and development regulations.

18 And then the third thing that we're proposing to
19 do, obviously, is to increase the number of units
20 from 1,598, to 1,999. As I indicated, that's
21 obviously 401 units, but when you actually look at
22 the amount of property that's being added and the
23 development rights associated with it, the actual
24 impact in the application are not 400 more units,
25 it's actually less than that, so that's what we're

1 asking for.

2 I want to conclude my opening just by
3 highlighting what I think is going to be the major
4 issue, which is the second access point. To some
5 extent, I suspect when it's all said and done, you
6 may find that this is a bit of a rerun of 1999 on
7 that point, although there may be parties here with
8 different agendas and they may not even be completely
9 consistent. We will find out when you hear from the
10 public.

11 The bottom line on that is that we are not
12 proposing any access to Hickey Creek Road, nor is the
13 Staff suggesting that, so that's not something that's
14 on the table today. The Staff, however, has proposed
15 a condition which says nothing more than we have to
16 provide a second access point on our master concept
17 plan. We do not believe that the evidence in this
18 case and the history of the project supports
19 requiring us to have a second access point and that's
20 particularly true in light of the fact that the plan,
21 unlike the previous plan from '99, actually does have
22 an emergency access, so that issue's been addressed
23 completely.

24 Nonetheless, in order to try to keep the peace
25 and keep everything moving, we took a look at that

1 particular condition and tried to determine whether
2 we could live with the second access point. And our
3 conclusion was that we could, if the condition were
4 clarified to address a number of issues that it
5 currently does not. For example, the current
6 condition does not explain when the access point has
7 to be built, it does not explain what kind of access
8 point is required, it doesn't describe where the
9 access point specifically has to go on the property
10 and it does not address the issue of what happens if
11 we can't build it because in order to build it, we
12 have to get permission from a property owner and we
13 don't have powers of eminent domain here. So when
14 we discussed this issue with the Staff, we came back
15 with a proposed condition that does, in fact, address
16 all of these things.

17 Our position is really that the second access is
18 not necessary, but we are willing to live with the
19 conditions so long as the items that I've described
20 are tied down in a way that makes sense, but if
21 they're not, we have a real problem, because what
22 we'd be doing is essentially writing a blank
23 check to the County on the second access and we don't
24 think that we can do that or should do that.

25 That concludes my presentation. If you have any

1 questions, I'll be happy to answer them.

2 THE HEARING EXAMINER: I don't have any
3 questions. Anything from Staff or County attorney?

4 MR. PALERMO: No, not from the Staff.

5 THE HEARING EXAMINER: Okay.

6 MR. UHLE: Our first witness is Mr. Barraco.

7 MR. BARRACO: Good morning. My name is Carl
8 Barraco. I'm a professional engineer representing
9 the Applicant. My resume is on file.

10 MR. UHLE: We would ask that he be accepted
11 as an expert in civil engineering and site design.

12 THE HEARING EXAMINER: Okay. Any objections
13 from Staff or County attorney?

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

15 MS. PERRY-LEHNERT: No.

16 THE COURT: Okay. Accepted.

17 MR. BARRACO: Thank you. I'm going to first hit
18 a few points and detail a few points that Matt
19 brought up. The first is ownership and I'm going to
20 use the proposed master concept plan to try to point
21 out the three different owners. Matt told you about
22 the school site; that's located here, so that's one
23 owner. The parcel which Matt talked about, I believe
24 he talked about the active adult community, is to the
25 west and that's owned by Levitt and Son.

1 MS. PERRY-LEHNERT: Madam Hearing Examiner, I
2 can't even see that and I'm way up here.

3 THE HEARING EXAMINER: You want to put that --

4 MS. PERRY-LEHNERT: Yeah. You've got a lot of
5 people back here and I'm thinking maybe try that
6 again.

7 MR. BARRACO: I'll try to speaker loud from here
8 then.

9 THE HEARING EXAMINER: All right. You can take
10 the microphone.

11 MR. BARRACO: Can you hear me if I speak like
12 this?

13 THE HEARING EXAMINER: If you guys can't hear,
14 you have to let me know because otherwise I assume
15 you can hear. If not, you can take the microphone.

16 MR. BARRACO: Thank you. I'll detail the three
17 owners of the property in question. Again, the
18 school site is in this location and I'm pointing to
19 the proposed master concept plan; that's one owner.
20 The second owner is Levitt and Son; that is the owner
21 of the adult active community and that's on the
22 western side of the property in this area. And the
23 balance of the property is owned by Landmark.

24 The next thing I'd like to point out is the land
25 use classification, and now I'm going to be pointing

1 to the master concept plan that is approved as of
2 today. This is the current master concept plan.

3 THE HEARING EXAMINER: Okay. This was the one
4 that was approved in the 2004 administrative
5 amendment?

6 MR. BARRACO: Yes. This is the most current
7 active master concept plan.

8 THE HEARING EXAMINER: Okay. All right.

9 MR. BARRACO: And Matt told you that a portion
10 of the property is suburban, the remainder is rural.
11 The suburban area is located in this area along the
12 western boundary and to the north. I think it's also
13 important to note that the project has started
14 construction. There are five active development
15 orders. They basically consist of the entrance
16 road, the active adult community and other
17 residential and that's essentially from State Road
18 80, through the project, up to the main wetland.
19 There are active development orders for those areas
20 and that is under construction. I was going to use
21 my aerial photograph, but I'll use the aerial that's
22 on the board provided by the County and I really want
23 to briefly go over the surrounding areas.

24 To the south is Lehigh and lots mostly
25 undeveloped. To the south and west is Portico.

1 Moving to the east, there's an East Lee County water
2 control conveyance facility and the mitigation park.
3 And then to the north, the Hickey Creek neighborhood
4 and the Carter property, which is undeveloped.

5 Now I'm going to switch back from both the
6 current master concept plan and the proposed master
7 concept plan to try to highlight the changes and I
8 think, in essence, they're really quite simple. As
9 Matt mentioned, the majority of the footprint remains
10 unchanged because of the environmental consideration,
11 the preserve area to the east and then the wetlands
12 internal. And most importantly there's a significant
13 wetland in the middle of the property. Those
14 footprints remain unchanged.

15 THE HEARING EXAMINER: Carl, do me a favor, put
16 an A-1 on the proposed master concept plan, please,
17 and A-2 on the that one and then an A-3 on the land
18 use summary; that way we can keep straight when the
19 girls start to number these little suckers.

20 MR. BARRACO: Okay. And I will do my best to
21 refer to those A-1, 2, and 3.

22 THE HEARING EXAMINER: That would be good.

23 MR. BARRACO: In addition to -- there are four
24 main components in land use. There's the entrance
25 where you have the school and town center. Moving

1 to the south -- and now I'm pointing to Exhibit
2 A-1 -- is the adult active community in this area.
3 As we head to the west, there are two more
4 communities, one is a golf course community, for
5 single family and residential in with the golf course
6 and then in the corner here, which is the south
7 western corner, that's single family without golf
8 course.

9 THE HEARING EXAMINER: Okay.

10 MR. BARRACO: Matt told you that there are 181
11 acres being added. Those areas -- and now I'm going
12 to refer to Exhibit A-2 -- is a portion of property
13 along the north property line and I believe Matt
14 mentioned that that's encapsulated and it is.

15 THE HEARING EXAMINER: Uh-huh.

16 MR. BARRACO: The subject property surrounds it
17 on all four borders. Moving to the south, there's
18 another property that is now included. And then to
19 the east, there's -- I think this is approximately
20 seven and a half acres that has been purchased and is
21 included in this.

22 THE HEARING EXAMINER: Okay.

23 MR. BARRACO: So of that approximately 181
24 acres -- and I'll mention the math again -- the
25 difference in units requested through this process is

1 401, so the real difference in increase would be 220
2 units.

3 I mentioned that there was construction -- I'm
4 going to try to quickly walk through that --
5 beginning at State Road 80 and ending around the
6 large wetland which on Exhibit A-3 is area CE-11.
7 The main road/boulevard that Matt mentioned is under
8 construction to approximately midway to that
9 wetland, the entire adult active community is under
10 construction, and the other residential in area,
11 which is referred to as 4-A on Exhibit A-3, is also
12 under construction.

13 THE HEARING EXAMINER: Okay.

14 MR. BARRACO: So a significant portion of the
15 project along the west is under construction.

16 THE HEARING EXAMINER: Okay.

17 MR. BARRACO: As part of that, all the
18 infrastructure is under construction, the water, the
19 sewer, the drainage, lake excavation is under
20 construction.

21 I'd like to finish by talking about the
22 infrastructure and the plans that have been made to
23 facilitate the project if approved. The Water
24 Management District has issued an environmental
25 resource permit and the water management system as

1 designed will support the project that's proposed
2 today. The utilities have been modeled hydraulically
3 and they have been reviewed by Lee County Utilities
4 and those models have been done considering the
5 additional units, so the infrastructure that's
6 currently under construction will accommodate the
7 proposal.

8 And finally, I would like to talk about two
9 deviations, deviations number three and number
10 four. And I may get these out of order, I think
11 deviation number three refers to bulkheads. I've had
12 some discussions with Staff and I have an exhibit
13 which I've reviewed with Staff that I'd like to enter
14 into the record and we'd like to make this part of
15 the master concept plan if approved.

16 THE HEARING EXAMINER: Okay, that's Applicant's
17 Exhibit Four.

18 MR. BARRACO: After handing those out, I'd like
19 to make sure that everyone understands there has been
20 a change. The exhibit which was provided to the
21 hearing examiner has a handwritten note at the bottom
22 and in going over the exhibit with Staff prior to the
23 hearing, it was determined that the double littoral
24 plannings are based on the entire lake perimeter and
25 not the linear footage of bulkheads, so we wanted to

1 be clear on that. The only exhibit that has that
2 change is the exhibit that the Hearing Examiner
3 has. The others that I just handed out do not. In
4 essence, we are asking for 25 percent of the -- up to
5 25 percent of the lake perimeter for the lakes
6 adjacent to State Road 80 be allowed to utilize
7 bulkheads and up to 10 percent of lakes adjacent to
8 the golf course and amenity centers utilize
9 bulkheads in accordance with the typical sections
10 provided.

11 The last deviation that was mentioned was a
12 deviation to decrease setbacks from structures to
13 waterbodies to 25 feet to 20 feet and essentially
14 we're asking for that deviation to be consistent with
15 the existing plans that have been approved in the
16 development orders that I referenced earlier. The
17 existing development orders allow the 20-foot
18 setback from structures to the waterbody and we'd
19 like to make sure that we keep that consistent
20 throughout the project.

21 THE HEARING EXAMINER: I'm sorry, go through
22 that one more time. What allows the 20-foot setback?

23 MR. BARRACO: The existing development orders.

24 THE COURT: Oh, the existing development orders,
25 okay. I was thinking the master concept plan. Okay.

1 All right.

2 MR. BARRACO: I believe that concludes my
3 presentation. If you have any questions, I'd do my
4 best to answer them.

5 THE HEARING EXAMINER: Questions of your
6 witness?

7 MR. UHLE: Yeah. Just a couple, Carl. With
8 regard to deviation three, the bulkhead deviation,
9 what is it that you're attempting to accomplish with
10 that deviation?

11 MR. BARRACO: Along the lakes at the frontage on
12 State Road 80, to provide an entry feature and along
13 the golf course and amenity centers to allow the golf
14 course architect flexibility to finalize the golf
15 course architecture that he's looking for.

16 MR. UHLE: In your experience, is that a
17 deviation that has been granted previously consistent
18 with this proposed bulkhead section?

19 MR. BARRACO: Yes. As a matter of fact, it's my
20 understanding that the County Staff is trying to
21 modify the existing regulations so that this
22 deviation won't be required in the future.

23 MR. UHLE: Okay. Carl, I'd like you to refer to
24 our issues list, particularly item number two. Are
25 you familiar with the language that's being proposed

1 in item number two?

2 MR. BARRACO: Yes, I am.

3 MR. UHLE: You, in fact, drafted it, did you
4 not?

5 MR. BARRACO: Yes, I did.

6 MR. UHLE: Can you please explain to the hearing
7 examiner how that proposes to change the Staff
8 recommendations and why it the change is necessary?

9 MR. BARRACO: With the granting of five foot
10 side yard setbacks, it allows a ten-foot separation
11 essentially between adjacent structures. County
12 Staff in the past has had situations where the final
13 grading around the structures did not really provide
14 adequate drainage because there wasn't enough detail
15 looked at during construction. Staff was suggesting
16 that in order to make sure it was built properly so
17 that it would drain and those problems wouldn't be
18 encountered, that a professional engineer would
19 review each unit and provide a certification. We
20 agreed to that. I discussed that with the Staff and
21 agreed that in situations where there are two
22 structures built by two different builders that are
23 adjacent, it's difficult for two different companies
24 to look at that detailed grading in between those
25 units and I understood that. That won't be the case

1 in this project. The case in this project is
2 essentially one developer or one builder will come
3 in, in each community and build all those units.
4 Staff recognized that in that case that the
5 contractor has the ability to look at the detailed
6 grading around each structure. So in our
7 conversations, we thought that there would be two
8 ways to address that. In case the situation came
9 about where there were two different contractors, we
10 kept the Staff's language as they suggested. We also
11 agreed that that probably isn't going to be the case.
12 The case being that one contractor would come in and
13 build all the units would be more prominent, so we
14 agreed to the language that would require that
15 contractor to provide a letter stating that the
16 detailed grading was done in accordance with the
17 approved plans. Long explanation, but I wanted to
18 give you enough information to understand it.

19 THE HEARING EXAMINER: Okay.

20 MR. UHLE: No further questions.

21 THE HEARING EXAMINER: Since we're on that
22 topic, let me go back in.

23 If you'll look at the memo from Matt, I'm a
24 little confused on the language. It's not making a
25 whole lot of sense. When you go into condition

1 number two, item number two, the very first
2 paragraph, after the little one in parentheses is
3 says, in any case where two different contractors
4 permit and construct adjacent structures each
5 contractor shall, prior to issuance of certificate of
6 occupancy on each lot, the engineer of record must
7 certify -- all right, I'm not understanding this.
8 Each contractor shall what? The engineer of record
9 for each contractor must certify? I mean, is that
10 what you're trying to say here, because that makes no
11 sense whatsoever. It looks like somebody's got three
12 words in here that wasn't supposed to be in here.

13 MR. BARRACO: The intent is that when those two
14 units, if constructed by different contractors, each
15 will have the engineer of record provide a
16 certification with each structure.

17 THE HEARING EXAMINER: Okay. So then we can
18 modify this to simply say each contractor shall have,
19 prior certificate of occupancy on each lot, its
20 engineer of record certify?

21 MR. BARRACO: Yes.

22 THE HEARING EXAMINER: Take out the must and add
23 in a have; shall have, prior to -- okay -- its
24 engineer of record certify, okay. So that was -- and
25 then, of course, it was, you know, contained in the

1 next one as well, so -- okay, that makes more sense.

2 MS. PERRY-LEHNERT: I have questions on that
3 same thing. I don't know if you want to put them
4 together.

5 THE HEARING EXAMINER: Tony, do you have any
6 questions on this particular -- since we're talking
7 about this one particular proposed condition?

8 MR. PALERMO: No. I believe that the County
9 attorney has got that covered, but I understand what
10 you're saying.

11 THE HEARING EXAMINER: Okay.

12 MS. PERRY-LEHNERT: Dawn Lehnert, Assistant
13 County Attorney, just so we try to understand this,
14 whether or not the County agrees, may be a different
15 statement, but you're talking about a typical lot
16 grading detail, is that something that's going to be
17 submitted as part of the building permit or is that
18 the development order? I'm not sure where I'm
19 supposed to look for that document.

20 MR. BARRACO: I did not write that portion of
21 the language; that language is actually language that
22 I got out of the County's document, so I kept that
23 language the same, I added to that. However, my
24 understanding was that that plan would be in the form
25 of a development order for each subdivision.

1 MS. PERRY-LEHNERT: Okay. I'm familiar with the
2 language you're talking about. The typical lot
3 grading detail was the development order that was
4 actually approved by the County in the absence of, or
5 in the old subdivisions then it would be a lot
6 grading plan made specifically for that, you know,
7 residential building pod. But I need to know what
8 you think it is, because the way this reads, I don't
9 know who's certifying and what they're certifying.

10 MR. BARRACO: Again, I didn't write it, but the
11 way I read it, it would be -- it would have to be
12 consistent with the grading plans that are made part
13 of the development order for each subdivision.

14 MS. PERRY-LEHNERT: Okay. So the engineer of
15 record would be the person that created the
16 development order plan, as opposed to the
17 contractor's engineer of record?

18 MR. BARRACO: In my opinion, yes.

19 MS. PERRY-LEHNERT: Okay. So that's the
20 engineer for the DO, because typically building
21 permits don't get engineers. I also have a question
22 with respect to the second part where it says that
23 the contractor must, you know, provide some type of a
24 certification prior to the issuance of the CO. Is
25 that a certification from the contractor themselves

1 saying they did what they were supposed to do or is
2 there an engineer involved in that part, too?

3 MR. BARRACO: And that's the part that I did
4 write and actually it's not a certification that the
5 contractor would provide, because I don't believe the
6 contractor is licensed to provide certification, but
7 it's a letter. And in writing that my intent was --
8 and I believe it was the intent of Staff -- was that
9 the contractor, since he controls all the grading in
10 the subdivision and all the grading on each lot,
11 would at the beginning of construction provide the
12 County a letter stating that they will grade the
13 subdivision and each lot in accordance with the
14 development order.

15 MS. PERRY-LEHNERT: Okay. And so how does the
16 County -- I guess what I'm saying is the County's
17 looking for certification that it's been done
18 according to that way and as opposed to the promise
19 that you will do that way and we end up with
20 something other, so I'm just trying -- I was trying
21 to figure that. I didn't get what you were saying
22 that it was a letter that said we promise to do this,
23 but no back end certification, because you've got
24 something happening here before the certificate of
25 occupancy. I'm trying to figure out what it is we're

1 supposed to be relying on and the caliber of
2 information that we would be getting in accordance
3 with this condition.

4 MR. BARRACO: Well -- and again, I did write
5 this part of the language, and I'll quote. It says,
6 "Must provide -- the contractor must provide a letter
7 that the drainage for each lot has or will be built
8 in compliance with the typical lot grading detail
9 provided."

10 MS. PERRY-LEHNERT: Okay. Do you anticipate
11 that that contractor is going to call an engineer and
12 a surveyor to do topos and get a certification?

13 MR. BARRACO: No. My understanding of the
14 conversation I had with Staff was that contractors
15 are licensed and they're very capable of doing this
16 type of grading and the letter would simply be sent
17 to the County stating that they are a contractor,
18 they're building an entire subdivision, they're
19 building adjacent structures and they will provide
20 the grading in accordance with the detailed plan.
21 And I can't speak for Staff either, I can just tell
22 you my understanding is, but it was that they were
23 happy with that language.

24 MS. PERRY-LEHNERT: Are you aware of the fact
25 that the Board of County Commissioners has requested

1 that the County actually adopt regulations into the
2 land development code to address the site draining
3 issues?

4 MR. BARRACO: No, I'm not.

5 MS. PERRY-LEHNERT: Okay.

6 THE HEARING EXAMINER: Okay. Is County going to
7 propose changes to this?

8 MS. PERRY-LEHNERT: I -- these -- this change
9 that's been proposed here is not -- I mean, it's
10 not consistent with what the Board of County
11 Commissioners has directed to be done. There's a
12 regulation that is being worked out, probably will be
13 adopted in August.

14 THE HEARING EXAMINER: Right.

15 MS. PERRY-LEHNERT: I anticipate that Tony is
16 going to make the argument that this language that
17 they've proposed not be included, or if it is
18 included, that it would be completely and totally
19 superseded by whatever it is that the Board of
20 County Commissioners adopts in August because the
21 Board is looking for -- at the risk of making
22 somebody mad, hopefully I don't -- the building
23 contractor is the one that's causing the problem with
24 this type of site drainage stuff because they're not
25 really on the hook to comply with the DO and they

1 really don't have the training to do the drainage
2 site plans, so they're trying to close that gap.

3 THE HEARING EXAMINER: Okay. Okay. All right.
4 Tony ,any thoughts while we're on this?

5 MR. PALERMO: No, but I'll provide you a copy
6 with the changes that are being proposed by the
7 County Commissioners.

8 THE HEARING EXAMINER: Staff does have some
9 proposed changes, all right. Okay. Matt, you didn't
10 have any other questions of him --

11 MR. UHLE: No.

12 THE HEARING EXAMINER: -- on his presentation?
13 All right. Any questions by Staff of this witness on
14 anything else he covered in his presence?

15 MR. PALERMO: No, ma'am.

16 THE COURT: County Attorney, questions?

17 MS. PERRY-LEHNERT: No, ma'am.

18 THE HEARING EXAMINER: Okay. Okay. Now, let me
19 do ask this, Carl, we've got a 1 asterisk and a 2
20 asterisk, so both of those are the same, so the
21 changes that, you know, we discussed in the first
22 paragraph should also apply to the two asterisk
23 paragraphs; is that correct?

24 MR. BARRACO: They're essentially the same. The
25 only difference is if you'll look at the second

1 paragraph that begins with the two asterisks, side
2 opposite zero lot line or two-family attached
3 structures, which is essentially a difference between
4 a single-family and a multi-family. The remainder of
5 that language is the same.

6 THE HEARING EXAMINER: Uh-huh. Okay. All
7 right. All right.

8 MR. UHLE: It corresponds to the single and
9 double asterisks in the Staff report.

10 THE HEARING EXAMINER: In the Staff report,
11 yeah, I've got it marked. Okay. I do have a couple
12 of questions.

13 Now, the bulkheading that you're talking about,
14 up to 25 percent on the lakes around the entrance to
15 the property, I was looking at my little pull-out
16 site plan here, master concept plan, are we talking
17 about just along the roadway, being the internal
18 access roadway, the boulevard, because there's -- I
19 mean, there's several lakes that run right along,
20 that lie right along that spine road or are we
21 talking about actually over and around and close to
22 State Road 80, the State Road 80 right-of-way?

23 MR. BARRACO: Just speaking of the lakes
24 adjacent to State Road 80, and that again is for an
25 entry feature so that when you're entering the

1 boulevard, that there's some flexibility to do some
2 artscape design.

3 THE HEARING EXAMINER: Okay. So the lakes that
4 are actually lying along the spine road, those lakes
5 are not going to be bulkheaded; is that what I'm
6 hearing you say?

7 MR. BARRACO: Correct.

8 THE HEARING EXAMINER: Okay. Because it looks
9 like they would need to be done that way, too.

10 MR. BARRACO: And if I could clarify, unless --
11 as you go into the project there's a golf course lake
12 adjacent to or --

13 THE HEARING EXAMINER: Uh-huh. Uh-huh.

14 MR. BARRACO: -- then they may be.

15 THE HEARING EXAMINER: Okay. Yeah, because I
16 knew the golf course was ten percent bulkheading for
17 the golf course lakes. Okay. All right. Anything
18 else from anybody of this witness?

19 MS. TREBATOSKI: I just want to comment
20 on that. Kim Trebatoski. The final master concept
21 plan should have deviation three noted at only the
22 lakes that it will apply to.

23 THE HEARING EXAMINER: Okay. Because I don't
24 have -- of course, I'm not sure what I'm working
25 from. Mine's got writing all over it, but that's

1 okay.

2 MS. TREBATOSKI: I don't think it was included
3 previously and that's why it was denied. We didn't
4 know exactly where and such, so that's when Carl
5 contacted me talked more specifically, so --

6 THE HEARING EXAMINER: Okay. So the information
7 he's given here, then Staff will probably change
8 their recommendations to approval?

9 MS. TREBATOSKI: Yes. He's detailed it out in
10 such a manner that is acceptable.

11 THE HEARING EXAMINER: Okay.

12 UNIDENTIFIED SPEAKER: I have a question.

13 THE HEARING EXAMINER: Okay. Sir, you'll be
14 able to answer your question during public input,
15 okay? Just hang onto it because they're not going to
16 go anywhere. All right. Thank you, Carl.

17 MR. BARRACO: Thank you.

18 THE HEARING EXAMINER: Applicant's next witness?

19 MR. UHLE: Next witness is Ken Passarella.

20 MR. PASSARELLA: Good morning. For the record
21 my name is Ken Passarella pass and I'm an oncologist
22 with Passarella Associates.

23 MR. UHLE: His resume is on file and we ask that
24 he be accepted as an expert in environmental
25 sciences.

1 THE HEARING EXAMINER: All right. Any
2 objections from Staff?

3 UNIDENTIFIED SPEAKER: No.

4 THE HEARING EXAMINER: County attorney?

5 MS. PERRY-LEHNERT: No, ma'am.

6 THE HEARING EXAMINER: All right. Accepted.

7 MR. PASSARELLA: I'm going to step over to the
8 County's aerial photograph over here and point out
9 the areas that are being added to the master concept
10 plan and briefly talk about them.

11 THE HEARING EXAMINER: Okay. Can you-all hear
12 him in the back?

13 MR. PASSARELLA: I'm recovering from a cold so I
14 apologize if you can't hear me.

15 THE HEARING EXAMINER: That's all right. If
16 not, you can use the microphone.

17 MR. PASSARELLA: I'll try to speak up. The
18 project site, there are three parcels that are being
19 added to the master concept plan. There's a parcel
20 located on the western portion of the property that's
21 roughly seven and a half acres outlined right here.

22 THE HEARING EXAMINER: Uh-huh.

23 MR. PASSARELLA: There's another parcel located
24 along the southern boundary. This is 140-acre parcel
25 here and then there's another parcel on the northern

1 boundary that's roughly 33 and a half acres located
2 right here.

3 As you can see from the aerials, the parcels are
4 predominantly agricultural right now. This seven
5 and a half acre parcel on the west side of the
6 property here is abandoned ag that has now been
7 overgrown with wax myrtle. This 140-acre parcel down
8 here is ag, in current ag. And this 33 and a half
9 acre parcel on the north side is ag on the western
10 two thirds and then on the eastern third we have
11 wetlands and some native vegetation on that portion
12 of the property.

13 There are roughly four and a half acres of south
14 Florida jurisdictional wetlands on the eastern
15 part of the property there. We have done protective
16 species on the parcels. We -- the parcels -- the
17 140-acre parcel and the seven and a half acre parcel,
18 we did species surveys back in May of 2004 and then
19 the 33 and a half acre parcel we did a species survey
20 in February of 2005.

21 The two smaller parcels, the 33 and a half and
22 the seven and a half acre parcels had no Lee County
23 protected species on them. The larger 140-acre
24 parcel down here, we identified two Lee County
25 protected species on those parcels; that was the

1 sandhill crane and the burrowing owl and I'll come
2 back to those in a second.

3 With respect to the master concept plan, this
4 was Exhibit A-1. Everybody back there can see this?
5 Okay. The master concept plan identifies 465 acres
6 of indigenous open space for the project. Referring
7 back to the 33 and a half acre parcel, this little
8 bit of indigenous area that was located on the
9 eastern third of the property, that has now been
10 included in the proposed indigenous on the overall
11 master concept plan.

12 THE HEARING EXAMINER: Okay.

13 MR. PASSARELLA: Now, the required -- as
14 stated on Exhibit A-1 here, the required indigenous
15 for the site is 392.99 acres, roughly 393 acres, and
16 the project is actually providing 465 acres of
17 indigenous open space on the project.

18 In order to address the protected species that
19 were identified on the 140-acre parcel, there is a
20 condition that's in the approval requiring a Florida
21 sandhill crane management plan, which we will
22 implement and we have no objection to doing that.

23 Also to address the burrowing owls, the existing
24 approval, the existing zoning conditions require --
25 already requires a burrowing owl management plan for

1 the project, so we're going to comply with that and
2 that will apply to the additional land as well.

3 THE HEARING EXAMINER: Okay. So there were
4 owls found elsewhere on the site before then this
5 140-acre parcel was added?

6 MR. PASSARELLA: Correct. Correct.

7 THE COURT: Okay. All right.

8 MR. PASSARELLA: With respect to the existing
9 approvals, Carl and Matt touched upon that the
10 South Florida Water Management District has already
11 issued permits for the project, as well as the
12 US Army Corp of Engineers.

13 If I can step back up here again. Originally,
14 the original County master concept plan, the 1999
15 approval, had development located further to the east
16 over here along the eastern boundary. This is Hickey
17 Creek Park over here on this side as Carl had
18 mentioned earlier. And the original County master
19 concept plan had development areas that were over
20 this area. As part of the permitting process, with
21 the Southwest Florida Water Management District and
22 the US Army Corp of Engineers, additional preserves
23 were established in this area as a buffer to the
24 park. And as Matt mentioned, we now have conservation
25 easements in areas set aside as preserve that buffer

1 the park and this plan is not proposing to change
2 those. Those will all remain the same as
3 currently permitted by the District and the Corp.

4 Carl had mentioned that site work on the first
5 phase of the project has commenced. As part of that,
6 management plans have been implemented for the
7 project for protected species. In particular,
8 a gopher tortoise preserve had originally been
9 identified in the 1999 the master concept plan, down
10 in the southeast corner, a roughly 60-acre gopher
11 tortoise preserve down here, the gopher tortoise
12 fencing has been installed around that preserve and
13 the gopher tortoises from the site have been
14 relocated into preserve and this is something that's
15 been going on with the site, ongoing with the site
16 work and coordinating with the County Staff and
17 making sure that the tortoises got moved over into
18 the preserve. In addition, the exotic removal has
19 been commenced in the preserve areas, the indigenous
20 preserves, located in this first phase of the project
21 over here and exotic removal is ongoing in the
22 remainder of the preserves.

23 So that concludes my presentation. I'd be happy
24 to answer any questions.

25 MR. UHLE: No questions.

1 THE HEARING EXAMINER: Hang on to your
2 questions, sir. I'll let you ask that during
3 public input.

4 Having none from the Applicant, nothing from
5 Staff?

6 MS. TREBATOSKI: (Shaking of head).

7 THE HEARING EXAMINER: County attorney, okay? I
8 don't have any either Ken, thank you.

9 MR. UHLE: Next witness is Mr. Treesh.

10 MR. TREESH: Good morning. For the record, Ted
11 Treesh, Metro Transportation Group. I've been
12 accepted as an expert in transportation planning
13 related issues, my resume is on file with the hearing
14 examiner and request that I be accepted this morning.

15 THE HEARING EXAMINER: Any objections from
16 Staff?

17 UNIDENTIFIED SPEAKER: No, ma'am.

18 THE HEARING EXAMINER: Okay. Accepted.

19 MR. TREESH: Thank you. I'm battling a cold
20 here so I apologize in advance, you might want to
21 move away.

22 THE HEARING EXAMINER: You and Kim been hanging
23 around together too much, huh?

24 MR. TREESH: Metro prepared the traffic impact
25 statement as part of the zoning application. The

1 original impact statement was dated May 24, 2004 and
2 I believe Tony was a part of the package; is that
3 correct?

4 MR. PALERMO: Yes.

5 MR. TREESH: Based on our analysis, the request
6 is to increase the density to 1,999 units, but also
7 add some uses that weren't included in the original
8 zoning, including the school site which now, as
9 Carl indicated, has been purchased by the school
10 district. Last conversations with the school
11 district indicated they had plans for an elementary
12 school on that property, so we indicated the trip
13 generation from the proposed elementary school.

14 The proposed town center -- and again which was
15 previously discussed, and Mr. Uhle will go over the
16 uses -- but those uses are located internal to the
17 project, referring to the master concept plan,
18 approximately in this location, so it's off the
19 frontage of State Road 80, but intended to be able to
20 capture some of the trips from this project from
21 residents that live within this project that they can
22 visit those amenity type uses, insurance office,
23 you know, convenience type uses, that it would be
24 available for them to visit without having to travel
25 on the public road system. As well as an internal

1 activity center -- and again located on the master
2 concept plan in approximately this location, that
3 will be your recreation center, your pool, exercise
4 room, et cetera, for the residents of those
5 communities.

6 And again, as previously indicated, the
7 community was broken up into three various -- three
8 distinct sections, the active adult community in
9 which Levitt and Sons is currently under
10 construction. A development order has been issued
11 for those units. A single-family community and then
12 a golf course community and previously I believe
13 there was 36 holes proposed for the golf course and
14 now the golf course is being proposed for 27
15 holes.

16 Based on our analysis and distribution of the
17 trips to the road system, there is adequate capacity
18 on the road system in the immediate area of the site
19 to accommodate this project for the 1,999 units. Our
20 analysis indicated that State Road 80 would function
21 within the adopted level service standards.

22 Improvements are -- and we have been preparing
23 development order traffic studies for each phase of
24 the project and we have designed the intersection up
25 at State Route 80 and a side access to accommodate a

1 future traffic signal as we fully anticipate as we
2 increase the density in this project to reach its
3 buildout. We were required, especially when a school
4 is located as well in this site, that a traffic
5 signal will be located at that intersection to
6 accommodate trips into and out of this project. And
7 the intersection has been designed to accommodate
8 future turn lanes, et cetera, that may be needed to
9 accommodate the buildout of this project.

10 Again, as Mr. Uhle indicated, the 1,598 units
11 were previously approved. Again, without those
12 internal amenities, adding the acreage, the 180
13 acres that Mr. Uhle indicated was -- is currently
14 titled to one unit an acre, the actual increase that
15 we're is looking at is probably in the neighborhood
16 of 200 plus or minus units overall to this project
17 and we don't see that as any substantial increase in
18 trip generation that this project may add by rezoning
19 and adding those amenities tease to the site, we're
20 encapsulating some of the trips that otherwise would
21 had to have gone to the exterior to the property for
22 those goods and services that are now going to be
23 provided within the project.

24 So with that, I conclude my comments and be more
25 than happy to answer any questions.

1 THE HEARING EXAMINER: Questions of your
2 witness?

3 MR. UHLE: Yes. Ted, I'd like to just ask you
4 some questions to try to pin down very clearly what
5 the incremental impact of this particular application
6 is on the road system relative to the existing
7 approval. So to start out, would you -- I think you
8 said that we're talking about an increase of 401
9 units in the project itself; is that correct?

10 MR. TREESH: Correct.

11 MR. UHLE: Okay. But of that, approximately 181
12 acres is simply being added to the property that
13 already has development rights; is that correct?

14 MR. TREESH: That's correct.

15 MR. UHLE: And those areas were zoned ag and
16 were in the rural land use category; is that correct?

17 MR. TREESH: That's correct.

18 MR. UHLE: So if you were to try to identify
19 what the impact of the existing zoning and Lee Plan
20 would be if that -- if this zoning were not approved,
21 what would you conclude regarding those 181 acres?

22 MR. TREESH: The additional impacts? Reword
23 that question.

24 MR. UHLE: Okay. Let's assume for purposes of
25 argument this zoning doesn't go through.

1 MR. TREESH: Okay.

2 MR. UHLE: What impact to the system would you
3 anticipate from those 181 acres based on their
4 existing zoning and future land use map category?

5 MR. TREESH: Based on the existing land use
6 designation, they could obtain a density of one unit
7 per acre, so approximately 181 units, assuming
8 single-family land uses, so it would be 181 single-
9 family units.

10 MR. UHLE: So we're not actually adding that 181
11 units to the system in this application, we're simply
12 acknowledging that they exist in a way; is that a
13 fair statement?

14 MR. TREESH: Correct. Yes.

15 MR. UHLE: Okay. Now, did I also understand you
16 to say that the addition of the town center will
17 actually reduce traffic on the arterial road system?

18 MR. TREESH: Yes. We did take some reductions
19 due to captures of trips that will occur for those
20 convenience type uses that will be available internal
21 to the site, that otherwise -- that currently, based
22 on the master concept plan that's right now approved,
23 does not have.

24 MR. UHLE: With regard to the possibility of a
25 second access point to the south, can you please

1 discuss what kind of trip distribution you would
2 expect from the addition of that access point?

3 MR. TREESH: Sure.

4 THE HEARING EXAMINER: All right. Let me first
5 understand where are we talking about, is this the
6 access that you were talking about to Buckingham or
7 is this the one that the Staff is requiring to 75th
8 Street West?

9 MR. UHLE: No. What we're talking about is the
10 Staff has a condition requiring an access to the
11 south. We have a condition accepting that condition,
12 but elaborating on it somewhat.

13 THE HEARING EXAMINER: Okay.

14 MR. UHLE: Buckingham Road is no longer an
15 issue, so this will all be about the property itself.

16 THE HEARING EXAMINER: Okay. All right.

17 MR. TREESH: Referring to the master concept
18 plan, as previously indicated, this by permit has
19 been put into a conservation easement, so any
20 road connection to the project along the eastern and
21 the southeastern areas, highly unlikely due to
22 permitting issues and we don't want to touch that
23 permit, so that leaves basically from this location
24 to the west, to our corner property here and this is
25 the Portico project and we have identified an

1 emergency access through the Portico project,
2 so referring to the County's aerial, 75th Street West
3 is approximately -- basically one lot removed from
4 the project. There's a canal that borders the
5 project for the entire length to the south and then
6 there's some lots, single lots. There are some
7 streets that stub in, right-a-ways that stub into the
8 canal, but then 75th Street West, basically
9 extends -- and it doesn't extend the entire length,
10 there's sections of it. It doesn't cross. You'll
11 see on the aerial some north/south canals, 75th
12 Street doesn't cross every one of those canals,
13 so, you know, we're still looking at where and that's
14 why the condition was written where this will tie in,
15 but in my opinion, in terms of the distribution,
16 there are uses in Lehigh, I mean, that residents of
17 this community will be able to use the Wal-Mart
18 Supercenter is on Lee Boulevard in Lehigh. And
19 again, if anyone is traveling to the airport, et
20 cetera, travel to the south, but in my opinion the
21 distribution to and from the south for this type of
22 project would be in the range of anywhere from 10 to
23 13, 14 percent of the total project.

24 MR. UHLE: What's the condition of the road
25 system in Lehigh Acres immediately to the south of

1 the subject property?

2 MR. TREESH: The last time I was up there, these
3 roads are basically the typical shellrock type
4 roadways that were originally built when Lehigh was
5 platted. Some of them have, you know, weeds growing
6 up through the roads. There's others that have
7 recently been repaved, but it's generally a
8 hodgepodge of the various roadway surface types in
9 that area.

10 Also, I'd like to point out one more thing that
11 I forgot got to point out here. This right here is
12 Sunshine Boulevard, so Sunshine does have continuity
13 all the way down to Lee Boulevard. Actually, it
14 continues south of Lee Boulevard to State Road 82.

15 MR. UHLE: Who has maintenance responsibility
16 for the roads in Lehigh in that area?

17 MR. TREESH: Right now Lee County, Department of
18 Transportation.

19 MR. UHLE: Okay. In your opinion, given the
20 limited amount of traffic that would be using the
21 roads to the south, would there be any justification
22 for requiring us to do road improvements to the
23 Lehigh road system if the second access is required?

24 MR. TREESH: When you say road improvements, do
25 you mean capacity improvements, additional lanes?

1 MR. UHLE: I mean any kind of improvements.

2 MR. TREESH: What's that?

3 MR. UHLE: Any kind of improvements.

4 MR. TREESH: Again, depending on where we tie
5 in. Capacity improvements, no. I don't anticipate
6 the amount of traffic that would go down there would
7 require any additional lanes to accommodate the
8 projects traffic. The principal access to this
9 project is to State Route 80. And again, any access
10 to the south would be a gated access and would only
11 be utilized by the residences of this community. As
12 you come in from State Route 80, the boulevard is
13 open and there's a gated access into the left
14 community. And as you proceed further in, then
15 approximately just past the amenities site there's a
16 gated access into these two communities, so each of
17 these communities is gated, so we would anticipate
18 this access to the south would also be gated.

19 MR. UHLE: Is the road system in this project
20 designed to handle substantial amounts of traffic
21 going north from Lehigh Acres to State Road 80?

22 MR. TREESH: No, it's not. It's designed as a
23 local internal subdivision street.

24 MR. UHLE: And is that true of the existing plan
25 as well as the proposed plan?

1 MR. TREESH: Correct.

2 MR. UHLE: No further questions.

3 THE HEARING EXAMINER: Questions of this witness
4 by Staff?

5 MR. PALERMO: I have nothing.

6 THE HEARING EXAMINER: Andy?

7 MR. GETCH: Just a couple. Do you want me to
8 ask from here or --

9 THE HEARING EXAMINER: Go ahead and talk and see
10 if my mikes will pick you up clearly.

11 MR. GETCH: Ted, you made reference -- for the
12 record, Andy Getch with Lee County Department of
13 Transportation.

14 Mr. Treesh, you had made reference to a canal
15 bordering on the south border of the property and
16 Mr. Barraco also made reference to the canal and I
17 believe Mr. Uhle made some reference to it and in the
18 written conditions as proposed by the Applicant there
19 is a reference to a question of whether or not you'll
20 be able to permit it. But just for clarification,
21 could you put on the record who is the owner of that
22 canal to the south?

23 MR. TREESH: I'm not the proper one to answer
24 that. I'm not sure. Perhaps Mr. Barraco would be
25 more --

1 THE HEARING EXAMINER: You don't know?

2 MR. TREESH: I do not know the answer.

3 THE HEARING EXAMINER: Okay. All right.

4 MR. TREESH: I mean, for a fact. I could say
5 who I think it is, but I don't know that for a fact.

6 THE HEARING EXAMINER: Okay. Any other
7 questions?

8 MR. TREESH: I deal in roads, not canals, so --

9 THE HEARING EXAMINER: Any other questions?

10 MR. PALERMO: No, ma'am.

11 THE HEARING EXAMINER: Okay.

12 THE WITNESS: I could find out from Mr. Barraco.
13 It is East Lee County -- the East Lee County Water
14 Control District is in ownership of that canal.

15 THE HEARING EXAMINER: Okay. All right. I've
16 got a couple of questions. Is that it, Andy?

17 MR. GETCH: Yes, ma'am.

18 THE HEARING EXAMINER: County Attorney,
19 questions?

20 MS. PERRY-LEHNERT: No, ma'am.

21 THE HEARING EXAMINER: All right. Ted, do you
22 have any idea when the school's going to be built?

23 MR. TREESH: No, I do not.

24 THE HEARING EXAMINER: Okay. School Board has
25 not given you any indication when they want to

1 commence construction of that site?

2 MR. TREESH: No. They have closed on the
3 property and do own the property, but I do not know
4 when they anticipate that facility to be open.

5 THE HEARING EXAMINER: Okay. You don't know the
6 proposed size of the facility?

7 MR. TREESH: It's an elementary school and the
8 prototype elementary schools are 1,000 students.

9 THE HEARING EXAMINER: 1,000 students, that's a
10 lot of traffic coming down into that one site.

11 MR. TREESH: Well, based on the population
12 projections, this project alone will fill about half
13 of that.

14 THE HEARING EXAMINER: So it's your own private
15 on-site school?

16 MR. TREESH: Pretty much.

17 THE HEARING EXAMINER: Okay.

18 MR. TREESH: Grady Miars Elementary.

19 MS. TREBATOSKI: I have a lot of volunteers from
20 the active adult community, they can walk, they can
21 volunteer.

22 THE HEARING EXAMINER: So you included the
23 anticipated traffic --

24 MR. TREESH: Oh, yes.

25 THE HEARING EXAMINER: -- from the school?

1 MR. TREESH: Absolutely.

2 THE HEARING EXAMINER: Okay. All right. What's
3 project buildout on this, again?

4 MR. TREESH: Well, again this is kind of a
5 unique one because we have development orders either
6 approved or pending for over 1,300 units right now,
7 so it's not as long out as a normal zoning case of
8 this size. I analyzed 2010, but I fully anticipate
9 it will be before that.

10 THE HEARING EXAMINER: You analyzed 2010, okay.
11 And I guess the same time that the need's going to be
12 generated so --

13 MR. TREESH: I am aware the school district
14 purchased a site near by as well, as well as they
15 have a site within the Portico -- not the Portico,
16 the Buckingham 345 project.

17 THE HEARING EXAMINER: Did they purchase one
18 over off of Old Olga Road or South Olga Drive or
19 somewhere in that area?

20 MR. TREESH: Yes. Yes.

21 THE HEARING EXAMINER: Okay. I seem to remember
22 that from one of the other cases that I did over
23 there.

24 MS. TREBATOSKI: For the record, Kim Trebatoski.
25 Some of my Staff just let me know that we received a

1 phone call from the school district that they're
2 wanting to start site work soon on this particular
3 piece.

4 THE HEARING EXAMINER: Okay. Okay. I do have
5 one other question and I don't know if -- I think,
6 Ted, you're the one to answer this, but if you're
7 not, somebody else can do it for me. I have to
8 find it. Hold on.

9 It's one of the conditions. Oh, page 12 of 26
10 of the staff report, condition number 10. And as you
11 know, I was not the hearing officer that did the
12 other hearing. So where did this condition come
13 from, construction traffic must enter and exit this
14 project from state Road 80 until 200 units have been
15 constructed in the project, thereafter construction
16 access may be permitted from Buckingham. In no event
17 will construction traffic be permitted on Hickey
18 Creek Road. I mean, if Buckingham is no longer a
19 viable alternative here as a secondary road or a
20 secondary access, are you guys planning to use it as
21 a construction access?

22 MR. TREESH: You're right. I'm not the one to
23 answer that question.

24 MR. UHLE: I think Mr. Miars is probably the
25 best person.

1 THE HEARING EXAMINER: Okay. Is he going to be
2 testifying?

3 MR. MIARS: Well, for the record, Grady Miars
4 representing Landmark Group, the developer. No, we
5 do not intend to use Buckingham Road as a
6 construction access.

7 THE HEARING EXAMINER: All right. Then the
8 point of condition number ten, can somebody tell
9 me -- well -- do we need to --

10 MS. TREBATOSKI: It's no longer applicable.

11 THE HEARING EXAMINER: Yeah. Is it moot?

12 MR. UHLE: It is and it isn't. Obviously the
13 last sentence, would be of concern to the resident.

14 THE HEARING EXAMINER: Okay. But the rest of
15 that the construction traffic entering and exiting
16 State Road 80, so we can take out actually the first
17 two sentences in that and just leave no construction
18 access traffic, okay. Because it just kind of struck
19 me as odd, you know, and then I was trying to figure
20 out, well, why and where. Okay.

21 MR. UHLE: Ken Passarella (inaudible).

22 THE HEARING EXAMINER: Okay. All right. I do
23 have one other question here. Condition number 15 on
24 page 13, where it's talking about the design of the
25 project and the manner to provide the internal

1 outparcels, the separate tracks encapsulated. All
2 right, you guys have already encapsulated and you've
3 already sucked up most of those except that one piece
4 over on the west; right?

5 MR. UHLE: Yes.

6 THE HEARING EXAMINER: On the west boundary, so
7 is this particular condition still applicable?

8 MR. UHLE: It's still necessary because of the
9 one remaining.

10 THE HEARING EXAMINER: Because of the one,
11 okay. And you've got the one -- the block out there
12 in the middle, too, at the front?

13 MS. PERRY-LEHNERT: That is the one I think.

14 THE HEARING EXAMINER: Is that the one they're
15 having problems with?

16 MR. TREESH: This one?

17 THE HEARING EXAMINER: No, over.

18 MS. PERRY-LEHNERT: The black square that you
19 just jumped over.

20 THE HEARING EXAMINER: There you go. That
21 little guy. Okay. So that's the one that 15 was
22 actually designed to apply to, not necessarily the
23 140-acre and the 19-acre and all that?

24 MR. UHLE: Yeah. At the last hearing, the owner
25 of that property was represented and participated and

1 there had been discussions with that gentleman
2 throughout, so the condition is still relevant.

3 THE HEARING EXAMINER: Okay. All right. All
4 right. I think that's the other question that I
5 might direct at Ted.

6 MR. TREESH: Thank you.

7 THE HEARING EXAMINER: Uh-huh. Thank you.

8 MR. UHLE: Next witness is Mike Roeder.

9 THE HEARING EXAMINER: State your name please
10 for the record.

11 MR. ROEDER: Good morning, Madam Hearing
12 Examiner. My name is Mike Roeder, Director of
13 Planning at Knott Consoer and I've been accepted as a
14 witness in the past.

15 MR. UHLE: We'd ask that he be accepted as an
16 expert in zoning and land use planning.

17 THE HEARING EXAMINER: Hearing any objection
18 from Staff?

19 MR. PALERMO: No objection, thank you.

20 THE COURT: County attorney?

21 MS. PERRY-LEHNERT: No, ma'am.

22 THE COURT: Okay. Accepted. Mike, you're going
23 to need to pull that microphone up because I'm not
24 registering you at all when you're talking.

25 MR. ROEDER: Is that better?

1 UNIDENTIFIED SPEAKER: Last name, Roeder?

2 THE HEARING EXAMINER: Yes, last name is Roeder,
3 R-O-E-D-E-R, sir.

4 UNIDENTIFIED SPEAKER: Thank you.

5 THE HEARING EXAMINER: Uh-huh. Okay.

6 MR. ROEDER: Thank you. I'm just here to speak
7 generally on the compliance of the Lee Plan of this
8 request and of course the original 1999 approval was
9 found in compliance, so strictly speaking we're only
10 looking at the additional acreage and the additional
11 units, but I'll talk in general about the entire
12 project.

13 I've reviewed the Staff report and their
14 analysis of the Lee Plan compliance and would
15 generally agree with their findings and conclusions.
16 There really isn't a lot here that raises the Lee
17 Plan issues. As the Staff points out, there's three
18 land use categories, suburban, rural and wetlands.
19 The suburban is only 80 acres. I would point out in
20 the rural category, if anything, we're over qualified
21 there. I think you'll find that under the analysis
22 for Policy 2.2.1, the County normally only requires
23 central water and sewer if you exceed a density of
24 two and a half units per acre and this is now with
25 the additional density, only barely over one unit per

1 acre. So it really exceeds all of the expectations
2 of the rural land use category and we've had some
3 discussions in another context about that.

4 Policy 5.1.11, which doesn't allow the spreading
5 of the density ,we're aware of that and this plan
6 complies with that. It's consistent with Objective
7 2.1 and 2.2, regarding development location and
8 development timing. This is definitely an area
9 that's quickly now developing and all of the
10 necessary urban infrastructure is available. There's
11 no physical constraints or hazards as 5.1.2 would
12 regulate. Policy 5.1.4 the Staff cites -- and again,
13 that speaks of high density residential development
14 being located near schools and shopping. I wouldn't
15 think you'd call this a high density development, but
16 again, we are definitely in compliance with that.
17 5.1.5 is the compatibility and Carl briefly discussed
18 the surrounding developments. I think it's important
19 to remember that on our southern border with Lehigh
20 Acres, its dimensions is a very large canal that
21 separates this from the single-family lots of Lehigh
22 and there's one other area that hasn't been
23 discussed. There's a street here Lynnwood and
24 there's some single-family homes and to the extent
25 that there was a proposal for open storage area for

1 boats and things, Condition 23 addresses that and
2 requires extra setbacks and buffering, so I think for
3 the one area where the project does come close to any
4 single-family homes, the site plan and the conditions
5 are adequately addressing that.

6 Staff talks about Goal 6 in and related policies
7 related to commercial CPD. It does meet the
8 commercial site location standards for minor
9 commercial use which is proposed and, of course, we
10 believe the mixed use development is a good thing and
11 something the County is trying to encourage whenever
12 possible now.

13 Standard 11.1, 11.2, central water and sewer
14 it will have. And also policy 100.9.5 Staff mentions
15 about maintaining the character of the residential
16 environment. The only other thing is that the Staff
17 talked about the Fort Myers Shores plan -- I mean
18 the general policy, but since then we have the
19 Caloosahatchee Shores Community Plan, which is now
20 Goal 21 and related objectives and policies. It
21 doesn't speak to this property directly, but to the
22 extent that there are policies in there, this would
23 be in full compliance with those as well of the
24 Caloosahatchee Shores Plan,. So we believe in all
25 respects that it is consistent with the Lee Plan and

1 we would request your approval.

2 I'll be happy to answer any questions.

3 THE HEARING EXAMINER: Questions?

4 MR. UHLE: Just a couple, Mike. Can you tell
5 us, first of all, what the land use category for the
6 Lehigh Acres property to the south is?

7 MR. ROEDER: Well, if I'm not mistaken, it's
8 urban community.

9 MR. UHLE: And in the real world, what's the
10 density of the single-family lots in that area?

11 MR. ROEDER: Well, I noticed at that the Staff
12 report said three and a half to the acre. Those are
13 typically 7,500 square foot lots, so three and a half
14 to four, four and a half; it's right in there.

15 MR. UHLE: And could you identify the Portico
16 property on the aerial photograph?

17 MR. ROEDER: Yeah; that's basically in this
18 area. It actually goes around and comes -- it's a
19 very odd-shaped piece, but --

20 THE HEARING EXAMINER: Uh-huh. Is that the one
21 that's north of the exceptional school there on
22 Buckingham Road?

23 MR. UHLE: (Nodding of head.)

24 THE HEARING EXAMINER: Okay. Now I know where I
25 am. Okay.

1 MR. ROEDER: And that was one of the features
2 that was amended in the Caloosahatchee Shores plan,
3 to the outline suburban of two units per acre and
4 both that and then the Buckingham 345 have been
5 recently approved for zoning at two units per acre.

6 THE HEARING EXAMINER: But those are not part of
7 the Buckingham Preserve?

8 MR. ROEDER: No, they're just to the north.

9 THE HEARING EXAMINER: They're outside of it,
10 okay. And this property is also --

11 MR. ROEDER: By all means.

12 THE HEARING EXAMINER: Yeah.

13 MR. ROEDER: Buckingham Preserve is much more
14 restricted.

15 THE HEARING EXAMINER: Much more, okay.

16 MR. UHLE: The density increase in terms of
17 units per acre on this property is just from .8 units
18 per acre to 1 unit per acre, is it not?

19 MR. ROEDER: That's correct. I think the Staff
20 said 1.1.

21 MR. UHLE: We'll round it out.

22 MR. PALERMO: I'll round it up to two.

23 MR. UHLE: In your opinion, is that an
24 appropriate density based on the surrounding land
25 uses and the Lee Plan?

1 MR. ROEDER: Well, if anything, it's on the low
2 side, but, yes.

3 MR. UHLE: Why would you say it's on the low
4 side?

5 MR. ROEDER: Well, I think given Lehigh Acres
6 and Portico, it would definitely be suited for a
7 little more density which is another discussion we're
8 having.

9 MR. UHLE: No further questions.

10 THE HEARING EXAMINER: Questions of this witness
11 by Staff?

12 MR. PALERMO: No, ma'am.

13 THE HEARING EXAMINER: County attorney?

14 MS. PERRY-LEHNERT: No, ma'am.

15 THE HEARING EXAMINER: Okay. Mike, I don't have
16 any questions either.

17 MR. ROEDER: Thank you. Thank you.

18 THE HEARING EXAMINER: All right. And Matt,
19 you're going to finish out?

20 MR. UHLE: Yes, ma'am.

21 THE HEARING EXAMINER: Okay. Folks, after
22 Mr. Uhle finishes his presentation, we will take a
23 short break, come back in and Staff will make their
24 presentation, which I don't imagine is going to be
25 very long.

1 MR. PALERMO: No.

2 THE HEARING EXAMINER: Okay. So we may get
3 finished earlier today than we all thought. Go
4 ahead, Matt.

5 MR. UHLE: For the record, Matt Uhle. I'm
6 representing the Applicant. I'm going to talk about
7 the issues list, but the first thing I'd like to do
8 is just to address an item in the Staff report and to
9 make it clear to you. There's a section in the Staff
10 report that talks about a pending Lee Plan amendment.

11 THE HEARING EXAMINER: Uh-huh.

12 MR. UHLE: Just for the Hearing Examiner's
13 information, that application for the amendment
14 has been withdrawn, so that is no longer on the table
15 at this point. It doesn't mean it won't ever come
16 back, but it does mean that it is not on the table
17 now. And in any event, this application was designed
18 to be consistent with the existing Lee Plan category
19 and is, in fact, consistent with it.

20 With regard to the issues list, the first item I
21 think is probably more of an issue of semantics
22 than anything else. It has to do with our request for
23 a convenience store on the site. Now, obviously when
24 you talk about a convenience store, that raises an
25 image of 24-hour operations, lots of lights, lots of

1 traffic and so on and that's not what the Staff
2 wants; that's not what we're asking for. What we're
3 asking for is something in the nature of a small
4 general store that will sell food and a variety of
5 convenience goods to the people who live in the
6 project. And so our version of this proposed -- to
7 add the language back with the provisos that there
8 would be no fuel pumps and no 24-hour operations,
9 because we could add additional conditions to it, but
10 I think those are the two that really get to the
11 heart of the matter and create the clear distinction
12 between what we're trying to do and the standard
13 convenience store. It's my understanding that the
14 Staff believes that this can be handled by just
15 through the food store group 1 use. Frankly, I
16 just as soon not call it a convenience store either
17 because I'm well aware of the baggage that comes
18 along with that label, but the fact of the matter is,
19 when you look at the definition of convenience store
20 it talks about a wide range of convenience goods, not
21 just food. And while a food store group 1 has the
22 ability to sell some things other than food, I'm a
23 little bit worried about that distinction and so not
24 withstanding our concern about the label and the
25 baggage, we would continue to request that particular

1 use. But again, I don't think what we're talking
2 about is any different than what the Staff really
3 wants to permit. They can speak for themselves, but
4 that's the point .there is absolutely no desire here
5 to create a trip attractor from off site.

6 Item number two, that has to do with the two
7 asterisk items. Carl has explained that and frankly
8 I don't understand the issue well enough to say
9 anything that he hasn't already, so I'm just going to
10 rely on what he said and leave it at that.

11 On item number three, the existing version of
12 Condition 24 requires some type of event that in the
13 real regulatory world doesn't in my opinion make a
14 whole lot of sense, so when we met with the Staff
15 last week, we did discuss this issue and I think the
16 proposed condition that we've written here is
17 consistent with what they want. They can speak for
18 themselves, but I think this is really what they were
19 trying to get at with the condition. I don't think
20 we have any issues with that.

21 THE HEARING EXAMINER: Matt, let me ask a
22 question now here for clarification. I'm not sure
23 exactly what you're -- what's being said in this
24 condition. It's a plan showing landscaping in
25 accordance with page two of two of the approved

1 master concept plan must be submitted and approved
2 prior to the issuance of the development order for
3 the golf course maintenance facility and amenities
4 center. Okay. Is this -- is it prior to the
5 issuance of the development order for the
6 golf course or is it the landscaping for the golf
7 course, that -- because in looking at the Condition
8 Number 24, it talks about the landscaping must be
9 there before the DO, but this -- so I'm confused?

10 MR. UHLE: And that's the part that's a
11 problem. What we're saying here is that when you
12 look at page two of two, it provides landscaping for
13 this particular facility, so what we're trying to do
14 is tie them all together and say before you can get a
15 DO for the facility, you have to have an approved
16 plan for the landscaping.

17 THE HEARING EXAMINER: Okay. So the development
18 order then is for the facility, it's not the
19 landscaping for the facility, it's the development
20 order?

21 MR. UHLE: Yes.

22 THE HEARING EXAMINER: Okay. So it's worded
23 correctly then. It's just i wasn't sure based on
24 what Condition 24 was requiring to start with, which
25 way the before the golf course maintenance facility

1 and amenities center, what that phrase was actually
2 modifying or attributed to. Kim?

3 MS. TREBATOSKI: Based on my -- to try to help
4 clear it up a little, it will probably be a little
5 more consistent with how we've had these conditions
6 before, is it would be better to state it as prior to
7 the approval of a local development order for the
8 golf course maintenance facility and amenities
9 center, a plan showing landscapings in accordance
10 with page two of two of the approved master concept,
11 plan must be submitted for review and approval.

12 THE HEARING EXAMINER: Okay. Do you have any
13 problem with rearranging the sentence?

14 MR. UHLE: That sounds like the exact same thing
15 to me.

16 THE COURT: Okay.

17 MS. TREBATOSKI: Yeah. It's just that when we
18 started out with the prior two clauses, it's a little
19 less confusing to the development order reviewers
20 and the engineers and landscape architects.

21 THE HEARING EXAMINER: Okay. All right.

22 MR. UHLE: We don't object to that.

23 THE HEARING EXAMINER: That works for me.

24 MR. UHLE: On item number four, this is --
25 Condition 25 is clearly a condition that's provided

1 to guarantee that the town center won't become an
2 outside type trip attractor and we agree with where
3 the Staff is going with that. The existing Staff
4 report condition talks about no signage on Palm Beach
5 Boulevard; that raises a question of exactly what
6 do you mean by that.

7 THE HEARING EXAMINER: Uh-huh.

8 MR. UHLE: So all we've done with this basically
9 is to say within 50 feet of the right away, so we
10 know what the standard is; that's all that that
11 language does. It's different from the --

12 THE HEARING EXAMINER: Okay. So the signage is
13 not -- no signage referencing the town center will be
14 allowed, but you can still have signage for the
15 development itself; correct?

16 MR. UHLE: No signage referencing the town
17 center.

18 THE HEARING EXAMINER: But the RPD section and
19 whatnot can still be --

20 MR. UHLE: Yes.

21 THE HEARING EXAMINER: Okay. All right. I'm
22 going to move that it reference the town center up to
23 the signage. Okay. Does Staff have any objection to
24 that?

25 MR. PALERMO: That's good. That's fine.

1 THE HEARING EXAMINER: Okay. All right. And
2 Condition 27?

3 MR. UHLE: Obviously this is going to turn out
4 to be the big issue in the case and that's why I
5 spent so much time in my opening dealing with the
6 history of the project.

7 The language that the Staff has proposed I think
8 the hearing examiner will conclude very quickly is
9 very open ended. It does not say -- it just says we
10 have to amend the plan; that's fine. I mean, we'll
11 amend the plan, but then the question comes, well,
12 how and where and when do we have to build it and
13 what happens if we can't get permission from the
14 Water Control District and bridge the property --
15 bridge the canal, does that mean the whole project
16 gets shut down. Those sorts of issues really need to
17 be addressed in this condition for it to be workable
18 and so we've added a number of items to identify
19 that.

20 The first sentence in here basically gives us
21 the discretion to put the access where we want, with
22 the exception of within a conservation easement and
23 the logic behind that I think is too obvious to
24 require any comment.

25 The second sentence in there addresses timing.

1 The 1,850 is probably not an obvious number, so let
2 me explain where that comes from. Obviously ,we
3 have approval for 1,598 today and we don't have to
4 build a second access, so we're not going to
5 agree to anything less than that. We're proposing to
6 add roughly 400 units, so we're suggesting that the
7 number should be split somewhere in the middle and
8 the 1,850 rather than the 1,800 is simply designed to
9 be more consistent with my client's proposed sequence
10 of development.

11 THE HEARING EXAMINER: Okay.

12 MR. UHLE: So that's where that number comes
13 from.

14 THE HEARING EXAMINER: Okay. It works out in
15 the development plan?

16 MR. UHLE: Yes.

17 THE HEARING EXAMINER: Okay.

18 MR. UHLE: The third statement here about making
19 improvements to the road system in Lehigh Acres I
20 think is vital to this particular case. We're not
21 talking about -- if we get this condition attached to
22 the case based on Mr. Treesh's testimony, we're not
23 expecting a lot of people to use this access point.
24 We just assume not have it all, but if we're going to
25 have it, we don't expect it to get a lot of use based

1 on what's to the south. We do not believe that we
2 should be required to undertake major road
3 improvements to the county road system within Lehigh
4 Acres based on the relatively small impact of this
5 particular project and we've gone through a lot of
6 trouble to try to indicate what that incremental
7 impact is. It's not 1,999 units, it's not even 401
8 units. It's less than that because we've reduced
9 traffic with the town center and there are a certain
10 number of units that would have the right to be built
11 anyway. So when you measure the amount of additional
12 impact that this actual application is looking at
13 putting into the system, and then you figure out how
14 few of those trips probably are actually going to go
15 through Lehigh if we build this access, the idea that
16 we would have some sort of opened-ended commitment to
17 make road improvements to the county-maintained road
18 system is difficult to swallow and so that's the
19 reason that's in there.

20 THE HEARING EXAMINER: Okay.

21 MR. UHLE: and Then finally the last sentence
22 basically reflects the fact that we do not anticipate
23 a lot of trouble getting the right to bridge the
24 canal because it is, in fact, owned by public
25 entity, but we cannot dismiss the possibility that

1 that would be a problem and we're trying to protect
2 ourselves here. It would be of vital importance to
3 us to make it clear that if for some reason we can't
4 get that permission, that doesn't give the County
5 the right to shut the project down. And by the
6 project, now I'm talking about the project as a
7 whole, not just the additional units, because from
8 the development perspective, it's not possible to
9 draw a distinction between the old and the new units,
10 so that's the rationale for those changes.

11 THE HEARING EXAMINER: All right. Let me ask
12 one question now. I don't have particularly -- and I
13 don't know what Staff is going to say yet -- but I
14 don't have any problem with nothing in the conditions
15 shall be construed to require the developer to make
16 improvements or maintain 75th Street West or any
17 other street within Lehigh Acres, provided y'all are
18 not planning to use that secondary access for
19 construction access for the south portion of the
20 property, because once you start doing that, I don't
21 care how good the streets are, those big 'ol huge
22 construction trucks and, you know, dump trucks and
23 all that stuff, you know, then end up -- they tear up
24 even the best streets. Look at 41, the new sections
25 of 41 are already getting pitted and rutted and

1 whatnot, so I don't have any problem specifically
2 with that provided that, you know, y'all are not
3 going to be using that for a construction access at
4 any time?

5 MR. ROEDER: I don't believe that's the plan. I
6 mean, looking at the maze of streets in Lehigh, I
7 would be very surprised if that were the plan. My
8 client can contradict me on that if I'm wrong.

9 THE HEARING EXAMINER: It's just with Sunshine
10 right there, it's a very nice -- I don't know how far
11 across 75th or any of the other streets go, where
12 there is a road that connects all the way across and
13 where y'all finally decide to put that second access
14 point; that would be the only concern that I would
15 have would be prohibiting any kind of construction
16 traffic utilizing that south access.

17 MR. UHLE: We would agree with you.

18 THE HEARING EXAMINER: Okay. All right.

19 MR. UHLE: As far as the last two items go, with
20 regard to deviation three, that's been discussed by
21 Carl and I believe we have an agreement with the
22 Staff. There's a deviation that's been approved in
23 other cases, including the Portico. And with regard
24 to deviation four, this is a little bit confusing,
25 but the bottom line is that while deviation four

1 wasn't called out as a deviation in 1999, the actual
2 20-foot setback was approved in the development
3 regulations in 1999 and is still approved as of the
4 most current master concept plan and the Staff
5 proposed property development regulations also
6 included it in this particular case, so to be
7 consistent, obviously, we're just cleaning this up
8 and so we're asking for that deviation. It's not
9 anything other than what we already have.

10 THE HEARING EXAMINER: Okay.

11 MR. UHLE: That concludes our presentation
12 unless you have any questions.

13 THE HEARING EXAMINER: All right. Questions by
14 Staff?

15 MR. PALERMO: No, ma'am, thanks.

16 THE HEARING EXAMINER: County attorney?

17 MS. PERRY-LEHNERT: No, ma'am.

18 THE HEARING EXAMINER: Okay. Anybody else? All
19 right. I think I asked the ones that I had to ask.
20 I do have some questions on some of the conditions in
21 here, but I'll ask those when Staff does their
22 presentation and if they can't answer them, then
23 we'll have to bring one of your guys back up.

24 Folks, let's take a ten-minute break here.
25 Let's be back at five minutes of 12:00, please, and

1 we'll take the staff's presentation. All right.

2 Water only, please, in this room.

3 (Whereupon, recess was had from 11:45 a.m. to
4 12:00 p.m. and hearing continued as follows:)

5 THE HEARING EXAMINER: Okay. Before we start
6 the Staff's presentation, I've had a number of the
7 public that asked to speak. She has a meeting that
8 she needs to get to at 1:00 and so we need to go
9 ahead and get her out of here. Cheryl Cook and
10 Terry Weiss. Okay. We'll go ahead and take your
11 statements. Now, do I have anyone else that needs to
12 leave before 1:00? Okay. All right. State your
13 name, please, for the record, please, ma'am?

14 MR. ROEDER: Terry Weiss.

15 THE HEARING EXAMINER: All right. And your
16 address.

17 THE WITNESS: 17540 Oak Creek Road, Alva,
18 Florida, 33920.

19 THE HEARING EXAMINER: Okay. And you had some
20 comments you wanted to make on the rezoning request?

21 THE WITNESS: Yes. I'm against the rezoning to
22 increase the density population. My property backs
23 up to the -- I believe it's the 33 and a half acre
24 parcel that's been discussed here today. And first,
25 from what has been said by the developer in their

1 witnesses today, it does not seem to me that these
2 people have any personal knowledge of the area or the
3 town and specifically the ecologist person who said
4 that all the gopher turtles have been relocated
5 behind the fence. I personally have seen gopher
6 turtles on two occasions two weeks ago not inside
7 their fence. Otherwise, I have a prepared speech
8 that I'll just give real quick.

9 THE HEARING EXAMINER: Okay. Tell you what,
10 pull that microphone down because you're -- there you
11 go.

12 THE WITNESS: Okay. I grew up in Broward County
13 and lived there most of my life. However, there came
14 a time when development got out of hand and green
15 space became very scarce. I was literally crowded
16 out of Broward County. When I decided to move to Lee
17 County, I accidentally found Alva. Alva, the town no
18 one knows about. Even some people in Fort Myers have
19 never heard of Alva. I moved to a rural neighborhood
20 where I was able to live on five acres of land. This
21 is unheard of in Broward County. It is quiet and
22 there is nature all around me. Even after five
23 years, I still relish driving up my treelined
24 driveway every day after work. I have seen every
25 animal I ever imagined on or around my house,

1 squirrels, raccoons, possums, armadillos, moles,
2 rabbits, otters, hogs, frogs, toads, crawfish, bats,
3 turtles, land and water turtles, snakes, black
4 racers, yellow rats, red rats, ring snakes, even
5 moccassins, fish and birds and even alligators.

6 The Hickey Creek neighborhood is a close-knit
7 community. Every morning I run through the streets
8 of this neighborhood along with other runners,
9 walkers and bikers. Everyone waves as they pass.
10 It is peaceful and quiet. I can walk through my
11 backyard and run down the path by the FPL easement
12 with the rabbits, turtles and otters. I can
13 kayak down Hickey Creek past the alligators and the
14 turtles. I can do all this because this is the basis
15 of our neighborhood. Big development does not
16 consider any of this. They want to push all the
17 nature and animals out so that eventually they do not
18 exist. I know what this is like. At this time in
19 Broward County all buildable land has been bought for
20 development. This is not concurrent with the ideals
21 of Lee County. Here we preserve land, we fight to
22 preserve Babcock Ranch, we preserve history. Please
23 do not let strangers come to our Lee County and
24 change this way of life. This is the reason we all
25 live this here. This is the reason we fight to keep

1 from just becoming another city. Thank you.

2 THE HEARING EXAMINER: Okay. Can you do me one
3 favor. You said that you were in -- you back up to
4 the 33 and a half acre parcel, is that -- can you
5 show me approximately on the aerial photograph
6 approximately where your house is or the area that
7 you live in. You said Hickey Creek Road?

8 THE WITNESS: This is my house right here, right
9 backed up to here, this AG-2.

10 THE HEARING EXAMINER: Okay. And does your
11 property line actually abut the subject property?

12 THE WITNESS: Well, right here, right behind it,
13 there's like a little -- like a waterway ditch and
14 then the FPL easement. I believe that's what this
15 piece is right here.

16 THE HEARING EXAMINER: Okay. Good. Thank you,
17 ma'am. Okay. And you are Cheryl?

18 THE WITNESS: I'm Cheryl Cook and my address
19 is the same, 17540 Oak Creek Road, Alva, Florida,
20 33920.

21 THE HEARING EXAMINER: Okay. And is Terry Weiss
22 your mother?

23 THE WITNESS: Yes, ma'am. And all I want to do
24 is just read my speech; is that all right?

25 THE HEARING EXAMINER: Okay.

1 THE WITNESS: Okay. Good afternoon, ladies and
2 gentlemen. I don't want the density of the
3 development to increase more than what it is now. I
4 enjoy every bit of the land and the peacefulness.
5 I don't want the development to increase because the
6 one thing that makes Alva is the land and already the
7 construction for this project will ruin the habitats
8 and the ability to run on the trails. I play a lot
9 of sports for my school and one of those is cross
10 country. Well, if the development was to increase, I
11 wouldn't be able to train. Alva is not built up
12 like North Fort Myers or Fort Myers and the people
13 that make up Alva enjoy every little bit of that. We
14 don't mind driving into town and using up our gas,
15 but I know the people would care a lot about this
16 development (inaudible) effecting the neighborhood
17 of Hickey Creek. We didn't do anything wrong to the
18 investors that purchased this land to build a
19 development and I know we certainly didn't do
20 anything to increase the density of this development.
21 I, as a teenager, I don't want to see my neighborhood
22 go downhill and I know it will if the development
23 increases.

24 My family and I love where we live and one of
25 the reasons is because there's no major development

1 or popular stores around us. And if this development
2 increases, that will all change and it would be a bad
3 thing. Plus, I may be only 15, but in my heart, in
4 the power of freedom of speech, I will do anything or
5 say anything to stop this development from
6 increasing. Wouldn't it be public (inaudible)
7 certain amount of land that they'll keep the same
8 amount? That's why they shouldn't increase the
9 density. (Inaudible) one thing if you're
10 sending us flyers that say it will effect our
11 neighborhood, well, it shouldn't anyways, because
12 we're not part of this development being built.
13 All the people that make up Hickey Creek (inaudible)
14 enjoy every part of where we live.

15 (Inaudible) to rethink over this plan that
16 you want to make and not increase the density of this
17 development. Please don't break my heart or break
18 the happiness of the people that are living in
19 Hickey Creek or Oak Creek Road. We love our land and
20 we want to (inaudible) as we can. For once, don't
21 worry about the value of making a dollar but worry
22 about how people feel about this development.

23 (Inaudible) any major feeling about this is that we
24 already don't approve prove of this development being
25 built, but we can't do anything about that, but we

1 can have a say in stopping the density increasing, so
2 please don't increase the development because Alva is
3 known to support its land. Thank you for your time.

4 THE HEARING EXAMINER: All right. Thank you
5 very much. Sir, you needed to leave also? You need
6 to state your name for the record so that I can find
7 your little white sheet.

8 THE WITNESS: Okay. Bo Terbyville (phonetic),
9 with the Lehigh Acres Community Planning Corporation.
10 Do you want copies of these?

11 THE HEARING EXAMINER: Okay. Good. Thank you.

12 THE WITNESS: Who else should I give one to?

13 THE HEARING EXAMINER: Applicant's Attorney and
14 the County Attorney. Do I have a white form for you?

15 THE WITNESS: You should.

16 THE HEARING EXAMINER: There you are. Right at
17 the very bottom of the stack.

18 THE WITNESS: Yes. Save the best for last.

19 THE HEARING EXAMINER: Okay. State your name
20 again for the record. I'm sorry.

21 THE WITNESS: That's okay. Bo Terbyville and
22 I'm the chairman of the Lehigh Acres Community
23 Planning Corporation, Incorporated. We have
24 developed two resolutions and I'd like to read both
25 of those out to you and I won't read both of them

1 completely, I'll shorten it up.

2 THE HEARING EXAMINER: Okay.

3 THE WITNESS: Whereas the board of Lehigh Acres
4 Planning Corporation Incorporated hereafter I'll
5 refer to it --

6 THE HEARING EXAMINER: Slow down.

7 THE WITNESS: I'm Sorry.

8 THE HEARING EXAMINER: I didn't want to
9 upset the young lady by telling her to slow down
10 because I knew it would just make her that much more
11 flustered, but I can do that to you.

12 THE WITNESS: I'll refer to it from now on as
13 the LACPC. We were formed to represent the best
14 interest of the residents, the voters and tax
15 payers of the Lehigh Acres. We have been charged
16 with the responsibility of gathering public input,
17 building public consensus and formulating and
18 adopting a community plan. A major component of
19 this is to plan for adequate future infrastructure,
20 including water management, flood control,
21 conservation of natural resources, water recharge and
22 the protection of the environment.

23 We have two different resolutions. The first
24 is, the East County Water Control District and
25 Southwest Florida Water Management District have

1 opposed (inaudible) studies and outfall diverter
2 canal and related structures to allow surface water
3 from Lehigh Acres to flow northward to the
4 Caloosahatchee River, east of the Franklin Locks.
5 And pending Lee County Board of Commissioner
6 approval, the project known as Hawk's Haven present a
7 major and immediate opportunity for the acquisition
8 of canal right-of-way and other mitigation
9 opportunities to make such a northern connection to
10 the Caloosahatchee River possible in the future.

11 The LACPC board has an obligation to assist
12 Lee County Government in negotiating such land
13 acquisitions for future flood control that will
14 effect the community of Lehigh Acres and all the
15 communities downstream of our community.

16 The LACPC board respectfully asks that the Lee
17 County Board of County Commissioners to make the
18 approval of the Hawk's Haven project contingent upon
19 the developer's dedication and donation of such a
20 right-of-way that will allow for the eventual
21 connection of the above referred canal and water
22 control system from Lehigh Acres to the
23 Caloosahatchee River in a way that would be
24 beneficial to the developers and all the concerned
25 parties.

1 The second resolution the LACPC board has also
2 proposed among it some studies a north/south corridor
3 that connects Sunshine Boulevard in Lehigh with Green
4 Meadows/Alico Road, all the way to the south and
5 as far north all the way to State Road 80. Pending
6 Lee County Board of County Commissioners approval,
7 the project known as Hawk's Haven presents a major
8 and immediate opportunity for the acquisition of road
9 right-of-way to make such a northern connection to
10 State Road 80 possible in the future.

11 The LACPC board has an obligation to assist
12 the Lee County Government in negotiating such land
13 acquisitions for future roads that will effect the
14 community of Lehigh Acres.

15 The LACPC board respectfully asks the Lee County
16 Board of County Commissioners to make the approval of
17 the Hawk's Haven project contingent upon the
18 developers donation of such right-of-way that will
19 allow the potential connection of the above-referred
20 north/south corridor from Sunshine Boulevard to State
21 Road 80.

22 THE HEARING EXAMINER: Okay.

23 THE WITNESS: And that is it.

24 THE HEARING EXAMINER: Okay.

25 MR. UHLE: I have a question for this witness.

1 THE HEARING EXAMINER: Okay.

2 THE WITNESS: Yes.

3 MR. UHLE: Can you please tell us if your
4 community plan is finished yet or not?

5 MR. ROEDER: It is not finished yet.

6 MR. UHLE: Can you tell us where it is in the
7 process? Has it been reviewed by the Staff at all?

8 MR. ROEDER: Not currently.

9 MR. UHLE: No further questions.

10 THE HEARING EXAMINER: Anything by Staff of this
11 witness?

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

13 THE HEARING EXAMINER: County attorney?

14 MS. PERRY-LEHNERT: No, ma'am.

15 THE HEARING EXAMINER: Okay. Thank you.

16 THE WITNESS: Thank you.

17 THE HEARING EXAMINER: Do I have anyone else who
18 wishes to speak before we start taking Staff input?
19 Mr. Defelice, you want to get back to work?

20 THE WITNESS: No. I've used up all my time.
21 For the record my name is Charles Defelice. I'm a
22 member of the Lehigh Acres Planning Corporation. I'm
23 chair for the transportation and infrastructure
24 committee. Obviously with the growth that we
25 have in Lehigh which is tremendous right now

1 including along the Sunshine corridor, there's been
2 tremendous growth up in that area, the Board has
3 adopted these resolutions to bring here before the
4 Hearing Examiner for consideration.

5 We've looked at -- being on that particular
6 subcommittee, we've looked at a lot of different
7 possibilities and there's really for a north/south
8 corridor, this is the only viable one that we could
9 find. The problem that we have is it's an older
10 community, the road system is just not adequate right
11 now. It's to capacity even with the widening of Lee
12 Boulevard. This north/south corridor could actually
13 alleviate a lot of that traffic that's northbound
14 as well as southbound and relieve some of the
15 pressures that is currently being felt.

16 As far as the canal, the importance that was
17 expressed to our committee concerning the canal that
18 they wanted to stretch the Caloosahatchee is they
19 felt it was vital to get this canal in to have it
20 east of the Franklin Locks, which would require that
21 right-of-way so that when they're releasing all that
22 fresh water, it won't have as much impact on the
23 estuaries downstream. So with that, that's about all
24 I have to say.

25 THE HEARING EXAMINER: Okay. Let me make sure I

1 understand what you're saying here now, Charlie.
2 You're on the Community Planning Corporation, you're
3 part of the --

4 THE WITNESS: Yes, ma'am.

5 THE HEARING EXAMINER: And you're the chairman
6 of the transportation committee?

7 THE WITNESS: Yes.

8 THE HEARING EXAMINER: And you guys are looking
9 for a north/south road?

10 THE WITNESS: That's correct.

11 THE HEARING EXAMINER: And something that
12 parallels Joel, where it leads out to State Road 80;
13 is that what I'm hearing you say?

14 THE WITNESS: No. Where it would actually go is
15 straight up Sunshine and Sunshine, as it jobs,
16 would go straight out, possibly along 75th Street,
17 maybe up along Spine Road or something in that area.

18 THE HEARING EXAMINER: Okay. So you guys are
19 looking at not only a drainage canal system, but also
20 a roadway system that actually utilizes a portion of
21 this property to make your way north to State Road 80
22 and to the Caloosahatchee?

23 THE WITNESS: Yes, ma'am.

24 THE HEARING EXAMINER: Okay.

25 THE WITNESS: It's actually -- it's actually ---

1 so far, you know, it's going to be a vital corridor
2 for us for the future of the community.

3 THE HEARING EXAMINER: Okay. Any questions of
4 this witness? County attorney?

5 MS. PERRY-LEHNERT: I have to ask this question.
6 You're a county employee?

7 THE WITNESS: Yes, I am.

8 MS. PERRY-LEHNERT: Are you here on your own
9 time?

10 THE WITNESS: I am here on my own time; that's
11 correct.

12 MS. PERRY-LEHNERT: Thank you.

13 THE COURT: He's on vacation. All right.
14 Any other questions of this witness?

15 MR. PALERMO: No, ma'am.

16 THE HEARING EXAMINER: Okay. Thanks, Charlie.

17 THE WITNESS: Thank you.

18 THE HEARING EXAMINER: Okay. No one else wishes
19 to speak before we take the Staff input, make the
20 Staff presentation? Okay. Let's do Staff's
21 presentation then.

22 MR. PALERMO: Good afternoon, Madam Hearing
23 Examiner. My name is Tony Palermo. I'm a senior
24 planner for Lee County. First thing on hand I'd like
25 to be recognized as an expert in planning, zoning and

1 land use and I've been recognized before and my
2 resume is on file.

3 MR. UHLE: No objection.

4 THE HEARING EXAMINER: Okay. No objections,
5 accepted?

6 MR. PALERMO: Madam Hearing Examiner, we have
7 five objectives to go through in my presentation and
8 I'll try to keep it brief and I'll also try to keep
9 it slow so everyone can keep up.

10 Number one, I'll put some exhibits on the
11 record. Number two, I'll make just a few corrections
12 to the Staff report, just some minor things. Number
13 three, we'll go through the one or two issues that
14 have been identified as issues between the applicant
15 and Staff. And fourth thing we'll do is we'll
16 just highlight some of the facts, the essential facts
17 of the May 31st Staff report and then I'll make some
18 concluding remarks.

19 But first let me get you what I have in terms of
20 exhibits. Just the first thing I'll point out is we
21 have a 2002 aerial photograph on the wall; that is
22 Staff's.

23 THE HEARING EXAMINER: Okay. We've got that as
24 Staff's Exhibit Number One. Thank you, sir. All
25 right. Now, is this the one that the applicant has

1 just indicated was withdrawn?

2 MR. PALERMO: Yes, ma'am. I'm just going
3 through this. We have -- on the title you see it's
4 CPA 2004, Number 10, Hawk's Haven amendment; that
5 was withdrawn. Second thing attached to that is the
6 Hearing Examiner's recommendations in the 1999 case.
7 I believe that's a duplication. I apologize for
8 that. I just wanted to make sure that you had that.
9 Also attached are e-mails and faxes from the public.
10 I think there were a total of four and you'll find
11 those in back.

12 THE HEARING EXAMINER: Okay.

13 MR. PALERMO: Next exhibit, we'll give you our
14 photographs from a site visit to both River Hall and
15 the Lehigh Acres properties that we've been talking
16 about. All were taken in May of 2005.

17 THE HEARING EXAMINER: All right. The
18 photographs will be Staff's Composite Three.

19 MR. PALERMO: And I just have three corrections
20 and they're real simple. On the May 31st, 2005 Staff
21 report, just turn your attention to page two,
22 Condition 1 is of course is a two-page master
23 concept plan dated May 23rd, 2005, not a one page.

24 The next one is on page three, Condition 2-A and
25 under the use model display center, I crossed out

1 some language there, but the language is appropriate,
2 I'll just quote it. "The model display center must
3 be in compliance with land development code section
4 341955, limited to one, which must be located in the
5 sales center area shown on the master concept plan
6 and must only serve this project and that's of course
7 at the entrance."

8 Page eight, Condition 3-G, just a minor thing
9 and I quote, "A minimum of 465 acres of indigenous
10 preservation area," and then on and on. I think we
11 just put the wrong number down, but there's a minimum
12 of 465 acres of indigenous preservation.

13 Madam Hearing Examiner, we did receive about a
14 dozen phone calls from property owners, mostly Lehigh
15 Acres. Some of them just had concerns about how does
16 this effect my property, will this increase, decrease
17 my property values and there were some calls from the
18 Fort Myers SHores community. Some were concerned
19 about traffic and some were just curious, you know,
20 what was going on. Just another notation I'll make
21 is that you have a copy of the master concept plan
22 with some corrections on it, some of my scribblings
23 on it. I apologize for that.

24 THE HEARING EXAMINER: No, that's all right.

25 MR. PALERMO: We just put in some minor

1 corrections regarding zoning, future land uses and we
2 put in the type B and D buffers that we recommended
3 and just some minor stuff.

4 THE HEARING EXAMINER: Uh-Huh. Okay.

5 MR. PALERMO: And the issues remaining, we have
6 Matt Uhle's memo from June 15th, Staff is in
7 fundamental agreement with items number three, four,
8 six and seven, where the County Attorney's office has
9 raised some important and good issues with number
10 two, that might be able to wordsmithed away.

11 While I'm on Condition Number 2, let me get you
12 a copy of the what the County Commission is
13 considering doing to the land development code,
14 Section 34.3104 which is clearing, grading or filling
15 of land, and this has to do to do with the site
16 grading and having the engineer making approval.
17 it's pretty complicated stuff. If Matt Uhle can't
18 figure it out, then I certainly can't.

19 Issue Number 1 -- I'll go through the easy one
20 first and then the hard one next. Convenience food
21 and beverage store, the Applicant has offered to keep
22 in that use, but offers no fuel pumps and no 24-hour
23 operations. Let me just go through briefly what the
24 definitions are that are relevant here. Convenience
25 food and beverage store is defined in the land

1 development code as something that's specializes in
2 convenience products and other commodities, which may
3 include self-service fuel pumps and which is normally
4 open to the public beyond normal sales hours of other
5 retail stores. We're not recommending approval of
6 convenience food and beverage store. We are
7 recommending approval of food store group one, which
8 is defined in the land development code as follows,
9 retail stores primarily engaged in selling food for
10 home preparation and consumption, not establishments
11 primarily engaged in prepared food and drink for
12 consumption on premises or stores primarily selling
13 liquor. Group one food stores include, bakeries,
14 candy stores, dairy, deli, fish, groceries, meat,
15 produce, specialty foods and even supermarkets. I'll
16 just raise four issues that we have with the
17 convenience stores and with the proposals that the
18 Applicants came up with. It's a fairly decent
19 proposal, but we just can't quite cross the threshold
20 of approving a convenience food and beverage store.

21 Number one, what are the hours, and just
22 arbitrarily I've picked out 6:00 a.m. to 9:00 p.m.,
23 which sounds reasonable, early morning, fairly late
24 at night. We need to define better what is not a
25 24-hour store. We need assurance that it's not going

1 to primarily be a liquor store. Drive-thru, they
2 haven't specified whether this will be a drive-
3 thru facility ,again trying to attract traffic off
4 Palm Beach Boulevard and will it be selling things
5 that are primarily packaged convenience goods or
6 convenience foods then that would be attracting
7 traffic from Palm Beach Boulevard.

8 Staff can support food store group one, maybe
9 with the explicit condition saying that such stores
10 may sell food and non-food items, such as newspapers
11 or other goods, that are customarily found in
12 supermarkets. If the Hearing Examiner does
13 recommend approval of convenience and food
14 beverage store, I'd ask that you consider a condition
15 saying that there will be no fuel pumps, hours are
16 specifically limited, there's no drive-thru and no
17 establishments that primarily sell liquor and no
18 establishments that primarily sell prepared food for
19 consumption on premises.

20 MR. UHLE: If it will facilitate matters, we
21 will agree with all of the Staff conditions attached
22 to the convenience food and beverage store, except we
23 would prefer to have 10:00 rather than 9:00 be the
24 time when it closes.

25 MR. PALERMO: That's not a big deal.

1 THE HEARING EXAMINER: Okay. All right. Now,
2 let me do say one thing now, when you're talking
3 about no prepared foods for consumption, I have a
4 concern about that, because anything that has been
5 bread, you know, anything that has been cooked, you
6 know, any of the luncheon meats, anything that has
7 been processed and packaged is a prepared food, so
8 consequently, I mean, you would be limiting this
9 person to eggs and milk, you know, or alcohol, so --
10 you know, I understand what you're trying to say. I
11 think what you're trying to say is there would be no
12 foods prepared for consumption or no foods prepared
13 on the premises for consumption.

14 MR. PALERMO: It's sort of obvious when you have
15 a picnic bench outside and they're selling primarily
16 burritos, that you can eat right there.

17 THE HEARING EXAMINER: Yeah. Or the Subways,
18 but they do have some that have the little
19 kitchenette in there that they make pizzas and
20 sandwiches and that kind of stuff, so you're
21 specifically looking for something with -- that does
22 not prepare the food on the premises?

23 MR. PALERMO: Yes. Correct.

24 THE HEARING EXAMINER: All right. Applicant
25 have any comments on that?

1 MR. MIARS: For the record, Grady Miars for the
2 developer. Just a clarification and maybe I wasn't
3 understanding it correctly, but we would eliminate
4 the opportunity for a deli-type service or home
5 cooked cookies or something like that; is that what
6 you're stating? We would like that opportunity I
7 guess.

8 THE HEARING EXAMINER: I think what Staff is
9 looking at is not having a Subway store, not having a
10 McDonalds.

11 MR. UHLE: We're not.

12 MR. MIARS: All I'm saying is the concept is to
13 create a hometown and it would be a nice town to have
14 homemade cookies or a deli that is part of this, not
15 a chain Subway or something like that.

16 THE HEARING EXAMINER: Okay.

17 MR. PALERMO: I know what you're saying and food
18 store group one does allow a supermarket, it allows
19 a deli; that's the intent in that sort of thing.

20 THE HEARING EXAMINER: Okay. Okay. But -- does
21 the Staff have any problems with the no fast food?

22 MR. PALERMO: I wouldn't have an objection to
23 putting that in there just to put it in there.

24 MR. MIARS: Then that would allow us the
25 opportunity?

1 THE HEARING EXAMINER: I think that would allow
2 the deli. County attorney?

3 MS. PERRY-LEHNERT: Dawn Lehnert, Assistant
4 County Attorney. I was going to ask a question, it
5 sounds like you're rewriting for the purposes of this
6 resolution -- the definition of convenience store so
7 it reads like the food store one stuff. It
8 doesn't -- I'm not -- I'm really not understand --
9 I'm not understanding the distinction. You're
10 creating -- you're calling it a convenience store and
11 I'm not sure what it is about that use that is so
12 important the food store one -- it's not clear to
13 me.

14 THE HEARING EXAMINER: Okay. Matt you need
15 to --

16 MR. UHLE: The answer to that question is that
17 the convenience food and beverage store doesn't
18 (inaudible) that's why there's convenience products
19 and other commodities; that's because of a wide range
20 of products that are not food. Anybody who
21 goes into a convenience store would find soap and
22 paper and paperclips and shampoo and what have you
23 and that's not clearly permitted in a food store
24 group one; that's what this is all about.

25 THE HEARING EXAMINER: It also carries things

1 like motor oil and, you know, light bulbs, things
2 that are automotive, you know, related, that kind of
3 stuff, but I'm not sure that it's contained in it.

4 MS. PERRY-LEHNERT: Well, from what I understand
5 from what Tony said, the supermarkets; the
6 supermarkets that I shop in have all of those things.

7 THE HEARING EXAMINER: Uh-huh. I don't think
8 I've ever seen a supermarket with motor oil in it.

9 MS. PERRY-LEHNERT: Oh, I have. Publix. Motor
10 oil, filters, pool stuff, grates so you can change
11 out your air compressor.

12 THE HEARING EXAMINER: Yeah, air conditioner
13 filters.

14 MS. PERRY-LEHNERT: And I mean, just about
15 anything you need to -- batteries, movies. I mean,
16 they've got everything.

17 THE HEARING EXAMINER: But is that --

18 MS. PERRY-LEHNERT: That's a supermarket.

19 THE HEARING EXAMINER: Yeah, but is a group one
20 food store a supermarket?

21 MR. PALERMO: Yeah; that's one of the uses
22 that's in there.

23 THE HEARING EXAMINER: Oh, okay. All right.
24 Supermarket is not a separate category, all right.
25 applicant needs to discuss that and make a decision

1 on that situation. I'll let y'all respond to that
2 later, okay?

3 MR. PALERMO: And let's do away with that issue
4 and then conclude on it. The second and more
5 important issue is the second access issue and let me
6 just directly address the language that was proposed
7 by the Applicant.

8 First, the developer may show the access at any
9 location along the southern boundary of the property
10 except where the plan shows existing conservation
11 easements. I don't know if that's necessarily, but
12 it's generally acceptable, that was the intent of the
13 condition and that's all I can say about that.

14 Second part is the developer is not obligated to
15 construct this access until Lee County has issued a
16 certificate of occupancy for the -- for at least
17 1,850 dwelling units within the project. Madam
18 Hearing Examiner, that's only 149 short of completion
19 of the project. If such a trigger is going to be put
20 in, Staff would recommend it be triggered at 1,599
21 dwelling units for the second access. Putting it at
22 the end just wasn't acceptable.

23 Third point was, you know, quote, "Nothing in
24 this condition shall be construed to require the
25 developer to make improvements or maintain 75th

1 Street West or any other streets within Lehigh Acres;
2 that's been put on the record. These are county-
3 maintained roads, but this wording practically
4 prohibits or Department of Transportation and
5 Development Services during the development order
6 process or even asking for pavement repairs,
7 improvements or any cost sharing for the roads which
8 this development will have an impact. Mr. Treesh's
9 testimony was it will be an impact between 12 and 14
10 percent of the total traffic. 75th Street and the
11 end of Sunshine Boulevard are in very poor shape.
12 They're kind of dangerous and they need improvements,
13 but I've shown photographs showing the conditions of
14 those roads. They are a mixed bag, 75th Street,
15 you'll see is quite a trip and there are some roads
16 within Lehigh Acres area that are paved and brand
17 new. Staff does not recommend this language in its
18 proposed by the Applicant. The Applicant called to
19 say -- written as -- written condition as a
20 blank check. I would categorize that that is not the
21 case, but the Applicant instead of asking for a
22 blank check is basically asking for a free ride,
23 because they're not going to be doing any
24 improvements to 75th Street which may or may not be
25 required during the development order process and

1 that should really be determined when the road is
2 actually built, we can get more professional info on
3 what the condition the roads are in, but just from a
4 laymen's point of view they're in pretty bad shape,
5 but they are passable. I was able to travel 75th
6 Street and a lot of the other roads in the area.

7 The public has raised a number of issues,
8 particularly Lehigh acres residents again talking
9 about other issues that were including will it be
10 possible to develop Sunshine Boulevard to State Road
11 80? Will there be public access from the 75th Street
12 access to State Road 80 or will it be gated off? I
13 think we got the answer from the Applicant, which
14 they are going to gate that off. Will this be a
15 public or spine road in the development? It's a
16 private road. I'll just make a note that the public
17 will need access to the elementary school site and
18 the Applicant has gotten some detail about where
19 exactly the gates will be constructed. And will
20 there be access through Hickey Creek Road? The
21 answer from Staff's perspective is emphatically no,
22 there won't be. And we do have Staff from the
23 Department of Transportation to answer any questions
24 about this project or these other issues that have
25 been raised and I'll be glad to listen to the public

1 when they come up on these issues on this particular
2 development.

3 Let me just put a few essential facts on the
4 record after I've said all that. This is an
5 application to rezone approximately 2,000 acres of
6 property from residential planned development and
7 agriculture to residential planned development,
8 commercial planned development. It adds 181 acres.
9 It adds 401 dwelling units. There's an elementary
10 school site and there's a town center consisting of
11 some commercial uses. The future land uses that's
12 been put in the record is predominantly rural with a
13 little bit of suburban property and there's about
14 over 250 acres of wetlands future land use. The
15 current zoning that's been (inaudible) residential
16 planned development and the agricultural property to
17 be added.

18 The existing land use is basically vacant.
19 There was livestock, grazing, pasture with ag
20 exemptions. There is construction under way for a
21 residential subdivision. This project is called
22 River Hall. It used to be called Hawk's Haven and it
23 is correct to say that the density of this
24 application is about 1.01 units per acre and that's
25 what they're proposing and this is an increase from

1 what exists which is 0.88 units per acre. And the
2 County Commission has approved Hawk's Haven through
3 Resolution 99056 which you have on the record. Staff
4 also approved this administrative amendment and you
5 have that in record; that's Administrative Amendment
6 2004-000627.

7 In brief, the Applicants accurately described
8 what's surrounding the property. To the north is
9 Palm Beach Boulevard. To the east is rural single
10 family development, Hickey Creek Mitigation Park
11 also. To the south is the canal to residential
12 single family zoned lots of Lehigh Acres. Again,
13 that's mostly vacant land with paved and unpaved
14 roads. There are single family dwelling units in
15 that Lehigh Acres community; some of them were built
16 by Habitat for Humanity. And to the west, again,
17 there's Portico and there's some agricultural
18 property and some residentially zoned tracts with
19 Hawk's Preserve residential development. And as you
20 know, it is in the Fort Myers Shores Planning
21 Community.

22 Staff recommends approval of this project with a
23 pretty long list of conditions. We've taken the
24 trouble to strike through and underline the existing
25 ordinances or the existing resolutions and what was

1 approved before. There's a set schedule of uses for
2 the residential element, for the town center element.
3 We've recommended no fast food, no carwashes, no gas
4 pumps and the Applicant proposes food and beverage
5 convenience store with some conditions that Staff has
6 done in considering it. Staff recommends that any
7 tall structures be limited to the amenity
8 recreational buildings on the interior of the
9 property. And just of note, the height approved on
10 the approval zoning originally was three stories,
11 45 feet.

12 We've updated some of the environmental
13 conditions. We've got a lot of golf conditions.
14 We've kept the Lee Plan conditions and we've done a
15 little bit of updating to the modeling in that
16 condition. We accept Condition Number 17 saying, I
17 quote, "Vehicle access from the northern boundary of
18 the subject property over and across Hickey Creek
19 Road is prohibited." Conditions 18 through 28 are
20 new. They include, no blasting, the use of 100
21 percent native vegetation, the nullification of the
22 old resolutions, limiting the school site to a public
23 school and the condition regarding no signs on Palm
24 Beach Boulevard referencing the town center and we
25 also have some buffering conditions to make it

1 consistent with the Land Development Code.

2 We've also included conditions regarding the
3 second access and sort of beefing up the standard
4 condition and I'll put this on the record. The
5 approval of this rezoning request does not mitigation
6 of the project's vehicular or pedestrian traffic
7 impacts. Additional conditions consistent with the
8 Lee County Land Development Code may be required to
9 obtain a local development order. We've added one
10 new paragraph. The developer may obtain the
11 necessary development orders when the project
12 meets Lee County Concurrency requirements, such
13 approval may require either road improvements and/or
14 a reduction in requested intensity and/or density.

15 On the deviations, we talked about this already.
16 We recommend approval of the first one, withdraw the
17 second one. We're going to recommend approval of
18 the third one, with some conditions that have been
19 specified by our Environmental Staff. And Deviation
20 Four, that's approvable. We recommended approval of
21 that one.

22 The Staff report goes through the DRI issues,
23 just safe to say this is not a DRI. This does not
24 pass those thresholds. This is a plan amendment to
25 increase the density to 2,999 units; that was

1 withdrawn, but I've given you the Staff report on
2 that, but that's no longer the case and that's not
3 part of this project.

4 The developer conducted a public information
5 meeting with the East Lee County Counsel September
6 27, 2004 and a summary of that meeting is attached.
7 As the Staff report says in pages 19 through 23,
8 "This development as conditioned is consistent with
9 the Lee Plan," and Mr. Roeder went through that quite
10 well.

11 We've also found on page 24 and 25 of the Staff
12 report, that this development is and was compatible
13 with the surrounding environment, the public park and
14 the residential uses.

15 Now, I'll just make a note in terms of traffic
16 and our development services is more expert in
17 talking about this, but our development services
18 Staff, Mr. Roeder indicated that there was a level of
19 service failure at Palm Beach Road east of State Road
20 31, showing a level of service going from B to F
21 which was a pretty dramatic drop, but that's what his
22 numbers showed, but just keep in mind that the
23 traffic will be analyzed at the development order
24 stage and if it's necessary to augment the
25 development to, you know, meet concurrency, we have

1 conditions addressing that.

2 As for the environment, there are wetlands,
3 protected species, habitats. Our environmental
4 sciences department did a field visit, probably more
5 than one, and conditions are included in the Staff
6 report.

7 Just in conclusion, this request to rezone with
8 conditions, it meets the criteria for residential
9 and commercial planned development, consistent with
10 the Lee Plan, compatible with the neighborhood. It
11 won't adversely effect the environment and as
12 conditioned, it won't place an undue burden on the
13 road network. And the deviations we recommended for
14 approval enhance the objectives of the planned
15 development and preserve and promote the general
16 intent of the Land Development Code to protect the
17 public health, safety and welfare.

18 With that, I'll end it and I'll let you ask any
19 questions you have.

20 THE HEARING EXAMINER: Any questions of this
21 witness by the County attorney?

22 MS. PERRY-LEHNERT: No, ma'am.

23 THE HEARING EXAMINER: Questions by the
24 Applicant?

25 MR. UHLE: It may not be fair to ask you this

1 question, but you're the one standing there.

2 In the blurb that you have about traffic, when it
3 talks about the impact of the level of service with
4 the project?

5 MR. PALERMO: Uh-huh.

6 MR. UHLE: -- is it your understanding that with
7 the project is the difference between 0 and 199 units
8 or does with the project mean the incremental mental
9 affect of this particular application?

10 MR. PALERMO: You'll have to ask whoever made
11 the findings of the report, but he's just saying with
12 the additional traffic it would go from level of
13 service from B to F. I don't know if he was
14 analyzing the existing zoning or 0 from 199 to the
15 town center.

16 MR. UHLE: Would you agree that it's a
17 significant distinction in looking at this
18 application to determine whether it's we're
19 talking about the difference between absolutely no
20 project, no project or the difference between the
21 project as approved and the project as proposed?

22 MR. PALERMO: That's a roundabout question, but,
23 yeah, I think you're making a good point there.

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

25 THE HEARING EXAMINER: Don't go anywhere because

1 I got a couple. I was looking through the conditions
2 and I do have some questions on some of the
3 conditions and you may end up having to defer this
4 over to or refer this over to Kim on a couple of
5 them. Well, let's go specifically to page 6 of 26.
6 This one I think you can answer, if not, the
7 Applicant will have to. Under the maximum height,
8 very bottom of the page, maximum height recreational/
9 amenity sites on the interior maybe 60 feet/30
10 stories high. What the heck are we talking about?

11 MR. PALERMO: Three, three stories.

12 THE HEARING EXAMINER: I'm sorry, three stories
13 high. What are we talking about? It's 60 feet.
14 Are you talking about a clubhouse or are we talking
15 about -- you're going to have a three-story club
16 house at 60 feet high?

17 MR. MIARS: I believe -- for the record Grady
18 Miars -- it's to address potential architectural
19 elements.

20 THE HEARING EXAMINER: Oh, like little copulas
21 and spires and clocks and all that other neat, nifty
22 stuff?

23 MR. PALERMO: Yes, ma'am.

24 THE HEARING EXAMINER: That just seemed slightly
25 out of character.

1 MR. PALERMO: Or 320-foot ceilings, that would
2 be great.

3 THE HEARING EXAMINER: Yeah. Okay. Condition F
4 on page 8, 3F, where it says open space must be
5 provided per the Master Concept Plan, all individual
6 tracks must provide a minimum ten percent open space
7 within the track and may be met with private open
8 space. I am assuming the private open space that
9 you're talking about here is the residential lots
10 over 6,500 square feet; is that what I'm hearing,
11 or -- Kim, is there something else that I should be
12 knowing here?

13 MS. TREBATOSKI: For the record, Kim Trebatoski.
14 Any private open space, because they are meeting the
15 30 percent common open space elsewhere on the site,
16 so if you have a lot that's less than 6,500 square
17 feet, if that's allowed, and it's privately owned,
18 you know, a privately-owned lot, that can be it.
19 It's just the Land Development Code allows them to
20 provide the open space on an overall basis of the
21 project, but each tract has to have a minimum of ten
22 percent open space.

23 THE HEARING EXAMINER: All right. And so that
24 does go then to the residential lots?

25 MS. TREBATOSKI: Yes.

1 THE HEARING EXAMINER: Then that's where the
2 difference is being made up then or can be made up
3 from the privately-owned residential lots?

4 MS. TREBATOSKI: Yes, it can be.

5 THE HEARING EXAMINER: Okay. All right.
6 Because I wasn't sure if there was something else
7 that I wasn't seeing here. Okay. I'm thinking about
8 rephrasing Condition Number I, because I think it's
9 the plans must delineate the preserved boundary sign
10 location rather than the residential units on
11 individual lots must delineate. I think it's the
12 plan that does that.

13 MS. TREBATOSKI: Oh, yes. Yes, that's correct.

14 THE HEARING EXAMINER: Okay. Going to Condition
15 Number 6 on page 9 of 26, and this is the fertilizing
16 and whatnot of the golf courses and stuff. Have we
17 ever in any way, shape or form applied the same kind
18 of best management practices and whatnot to
19 residential developments that don't have a golf
20 course? I'm talking about the actual maintenance of
21 the residential community, like the lawns and common
22 areas and stuff. Why have we not done that? I mean,
23 if we're going to be so specific on the golf course
24 and we're getting all these large developments in
25 here and we know they're all going to be doing the

1 same thing to make themselves beautiful, why are we
2 not -- why are we not requiring something similar in
3 the maintenance of those, especially when there's a
4 lot of environmental areas around and near by the
5 sites or actually on the site?

6 MS. TREBATOSKI: Good question. I think, first
7 of all, it goes to the fact that with the golf course
8 you're having large expanses of green space with the
9 golf course and that we want to be sure that they
10 have the least amount of impact on the environment
11 and also it has a single entity that you can have
12 that keeps very strict records. If you start going
13 into each individual tract's common open space and
14 such, you're now dealing with all those different
15 homeowner's associations and such. Hopefully through
16 the practice as demonstrated by the developer on the
17 golf course and through programs like Florida Yards,
18 a neighborhood and every minute that we get a chance
19 to talk to people and now with the water restrictions
20 that the County has adopted, hopefully over time
21 we'll get better management. But, yes, single-family
22 homes are a very big issue with how they're managed.
23 I believe the common areas of golf course communities
24 are managed pretty similarly to the golf course
25 themselves, because the developers have learned that

1 it is cost-effective, as well as environmentally
2 sound.

3 THE HEARING EXAMINER: Okay. All right. I just
4 wondered because I know we came up with these things
5 for the golf courses years ago and when we have a
6 2,000-acre or whatever development, that's not just a
7 lot of golf course, that's a lot of other development
8 on that parcel, so I just thought I'd ask.

9 MR. UHLE: If I may comment on that condition
10 briefly, to put this in perspective, this case was
11 heard initially -- and of course, this is the
12 existing language right about the time that the Staff
13 and the Board of County Commissioners were
14 considering golf course and the DRGR amendment.

15 THE HEARING EXAMINER: Right.

16 MR. UHLE: This property is not in the DRGR, but
17 this language was basically taken from the
18 golf courses and the DRGR standard and put on a
19 parcel that isn't in the DRGR ,so this is really
20 quite a sensitive situation.

21 THE HEARING EXAMINER: Yeah. Okay. I just, you
22 know, just wondered, because I'm seeing more and more
23 of these.

24 Looking at page 13 of 26, would you Kim,
25 Condition 16-A, 6 trees per 100 hundred linear

1 feet. At installation, trees must be a minimum of 12
2 to 14 feet tall with a 2X, what the heck is a 2X-inch
3 minimum caliper?

4 MS. TREBATOSKI: I didn't write this.

5 THE HEARING EXAMINER: So you don't know a 2X is
6 either, an extra large inch, one of them extra large
7 inches, you know, like the bigger half.

8 MR. PALERMO: Look in the old resolution and see
9 if it's in there.

10 MS. TREBATOSKI: Well, I would say that if we're
11 doing 12 to 14-foot tall trees, it probably would
12 need to be a minimum -- a 3-inch minimum caliper
13 to have (inaudible).

14 MR. UHLE: That's supposed to be two and a half
15 inches.

16 THE HEARING EXAMINER: Oh, okay. Is that what
17 it is?

18 MS. TREBATOSKI: Okay. I just saw two Xs and it
19 said two and a half; that makes sense because you
20 might not exactly get 3 at 12 feet, but at 14 feet
21 you would and we're just trying to insure it's a
22 sturdy, healthy tree and not a little whippy thing
23 that's been over fertilized and won't do any good.

24 THE HEARING EXAMINER: One of those little whips
25 with a frazzled top, okay.

1 MS. TREBATOSKI: You haven't seen the labels
2 on the trees now? They come in medium, small and 2X.

3 THE HEARING EXAMINER: That's what I thought
4 you were talking about, because I didn't want any
5 extra large inches. That's all. Those are the only
6 questions I had on the conditions and stuff.

7 I do need to ask the Applicant one question, are
8 you going to withdraw Deviation Request Number Two?

9 MR. UHLE: Yes.

10 THE HEARING EXAMINER: Okay. Because I don't
11 recall that being stated. All right. Kim, do you or
12 Elena have any presentation you want to make?

13 MS. TREBATOSKI: Very short, please.

14 THE HEARING EXAMINER: Okay.

15 MS. TREBATOSKI: For the record, I'm Kim
16 Trebatoski with the Division of Environmental
17 Sciences. I'm an environmental planner. I was
18 involved with the original rezoning and Elena Ray who
19 is on my Staff and is actively involved in the
20 development order review is here today too in case
21 there's questions that arise.

22 The project as Ken Passarella noted has met all
23 of its environmental analysis requirements and there
24 are a number of listed species on the site and
25 we've been working through the development order

1 process to finalize the management plans.

2 With these additional lands, one additional
3 species was located and that was sandhill crane.
4 People may wonder how do you manage sandhill cranes
5 within a residential community. With the golf course
6 included, it's actually one of the easier areas to
7 provide some habitat for sandhill cranes in that the
8 open areas of the golf course, they can wander around
9 in. But the other issue as you start getting into
10 this part of county, we actually have nesting
11 sandhill cranes and what they can do is incorporate
12 some systems into the lake and the sandhill cranes
13 have been known to nest within golf courses, so they
14 will be available.

15 An initial relocation of gopher tortoises
16 has occurred and have been moved to the gopher
17 tortoise preserve. Yes, there is a possibility that
18 other tortoises wander in and around and that's why
19 our Staff works very closely with the clearing
20 contractors. In fact, when each phase of development
21 occurs, not only the does the developer have his
22 environmental consultant check for additional species
23 that need to be addressed or County Staff also does
24 site verification to insure the protection of the
25 species and that they're moved to appropriate

1 preserves.

2 With this design versus the original design, the
3 preserve on the eastern boundary has enlarged, which
4 actually is beneficial to the wildlife and we've been
5 under discussion and starting the phases of the
6 Burrowing Owl Management Plant. The burrowing owls
7 are scattered in the ag fields. There is appropriate
8 native habitat and this is within the eastern
9 preserve and what we're doing is preparing areas to
10 be a little bit more open, cutting back some of the
11 palmettos and stuff and finding areas that are more
12 open and putting things that will attract the owls
13 into there. It is nesting season right now for the
14 owls, so anywhere where there is an active burrow
15 within the development is not going to be able to be
16 impacted at this time. And both gopher tortoises and
17 any other listed species, any burrow that would be
18 impacted through development, they need to secure
19 Fish and Wildlife Commission permits, so we will be
20 watching all of that and working together on that.

21 Otherwise, I would just say we have reviewed a
22 number of development orders and another large
23 development order for the eastern portion of the
24 property that is not any of the new property that
25 this case -- that was previously approved is

1 just about ready to be approved, so when you go do a
2 site visit you may see a lot of construction going
3 on.

4 THE HEARING EXAMINER: I've seen the
5 clearing, I think, driving east on State Road 80.

6 MS. TREBATOSKI: Yeah, because up in this
7 multi-family tract is under construction and the road
8 is under construction, the school site and like I
9 said, this portion to the west, a residential area
10 is under construction. A lot of this area is about
11 to be approved on the development order and
12 preliminary site inspection to start installing silk
13 fencing along the preserves has occurred. We're
14 just waiting to write the permit to install the silk
15 fencing approved in the development order but that
16 will occur, but our Staff will be going out there
17 incrementally, step by step, as they proceed through
18 the development with that and we've worked with Grady
19 before on other projects so we have close
20 coordination on them.

21 Otherwise, I think we made some corrections
22 to some of the conditions and I'm just here for
23 questions and to hear public concern so that I can
24 answer any of their questions.

25 THE HEARING EXAMINER: Okay. Questions of this

1 witness by Staff? County attorney?

2 MS. PERRY-LEHNERT: No, ma'am.

3 THE HEARING EXAMINER: Applicant?

4 MR. UHLE: One. Kim, I think you heard the
5 proposal from the Lehigh Planning Committee that
6 Sunshine be extended north through our project to
7 State Road 80; that would obviously require it to be
8 constructed through our preserve area next to the
9 County's Hickey Creek Mitigation Park and I'm
10 wondering if you have an opinion on that subject?

11 MS. TREBATOSKI: Well, I have opinion, whether
12 it will be an overall staff opinion -- from an
13 environmental standpoint, I mean, if you go back to
14 the very first proposal for Hawk's Haven, there was
15 multi-family showing very close to the eastern
16 property boundary and actually the State had a big
17 concern with that because Hickey Creek Mitigation
18 Park is one of the -- it's the only gopher tortoise
19 mitigation park in Lee County so they wanted that
20 preserve there. The other lair is that along this
21 western property line we have a lot of scrub habitat
22 which is both good for the tortoises and there's been
23 noted scrubjays. I think there would be -- if a
24 proposal came forward to extend Sunshine up this way,
25 I mean, you've got two things that jump out at me.

1 You've got the Hickey Creek Mitigation Park and then
2 you have the big preserve here that was -- that the
3 State and everybody was trying to keep somewhat
4 connected, but then you also are crossing Hickey
5 Creek at some point. I think it would have a lot of
6 discussion and I think that it -- there would be a
7 number of concerns environmentally.

8 MR. UHLE: No further questions.

9 THE HEARING EXAMINER: Okay. Anything else?

10 MR. PALERMO: No.

11 THE HEARING EXAMINER: Thanks, Kim. Andy, any
12 comments?

13 MR. GETCH: I'm just here to answer any
14 questions.

15 THE HEARING EXAMINER: County attorney?

16 MS. PERRY-LEHNERT: Dawn Lehnert, County
17 Attorney and I have -- there's really nobody here
18 that I can ask this question of or to explain to you,
19 so I'm going to make -- the Applicants proposed
20 Condition 27 contains a statement that says, "Nothing
21 in this condition shall be construed to require the
22 developer to make improvements to or maintain 75th
23 Street West or any other street within Lehigh Acres."
24 And I understand that they don't want to be
25 responsible to construct streets in Lehigh Acres. My

1 concern with this has to do with something that
2 typically occurs at development order stage and it's
3 not really an issue here for you now and that is the
4 fact that if there is access point or streets that
5 lead to your development and provide access to the
6 development that are necessary for the development
7 through the zoning process or from the development
8 order process, typically the county will require you
9 to make sure that that road meets the County standard
10 for the purpose for which you are now going to use
11 it; that may require this developer to improve a
12 portion of some of these roads in order to meet this
13 condition and this says that they're not going to be
14 responsible for the payment and I have a problem with
15 that.

16 THE HEARING EXAMINER: Okay. All right. I will
17 look at that provision, because the situation that I
18 have in, you know, recalling that, yeah, it makes the
19 roadway almost a site-related situation, okay?

20 MS. PERRY-LEHNERT: That's exactly what it is.

21 THE HEARING EXAMINER: And I think the term that
22 you used was necessary. And at this point, I think
23 the Applicants already admitted that this is not
24 necessary. This, at best, is going to be a back
25 door, you know, that Staff is requiring the secondary

1 access, you know, out of an abundance of caution or
2 whatever, but they are requiring it, but whether or
3 not it rises to the degree of necessity, I have to
4 look the provision over, Dawn. And I understand what
5 you're saying about this, but I'm not -- I'm not sure
6 that I don't specifically agree with the Applicant to
7 a degree on this condition.

8 MS. PERRY-LEHNERT: I'm concerned if it's a
9 site-related improvement, it's a site-related
10 improvement and if it's necessary and it's required,
11 then the Applicant should be responsible for its
12 payment, if it's a site-related improvement. Because
13 we would be treating this Applicant different than we
14 treat other applicants in Lee County and that's a
15 precarious position to be in. There's also the
16 potential that this development could come in and get
17 additional approvals in the future and then we have
18 this condition in here that would not necessarily
19 comport with the other things that may go on.

20 THE HEARING EXAMINER: Well, let me look at the
21 requirement in the Land Development Code, because my
22 understanding of site-related is something that's
23 really, really necessary for the actual operation or
24 the actual effectiveness of the project and, you
25 know, I don't know that Staff has indicated or you

1 know shown that this is a necessity for the operation
2 of this project for the effectiveness of this
3 project. So let me look it all over and, you know, I
4 may just bring the matter up. I'll have to bring it
5 up before the Board any way. I'll just bring it up
6 in the discussion with the Board and let the Board
7 make a decision on that, as is their right, on
8 whether or not they want to push this forward.

9 MS. PERRY-LEHNERT: I don't know if operational
10 issues are fully addressed at the zoning level. I
11 suspect not.

12 THE HEARING EXAMINER: And that's the thing, you
13 know. I mean -- but, yeah, let me look over the
14 requirement and the definitions and whatnot, but my
15 definition of site-related, this is a little tenuous,
16 I think, to be specifically a site-related
17 requirement, so that's the only reason that I don't
18 particularly agree with your comment.

19 MS. PERRY-LEHNERT: That's okay.

20 THE HEARING EXAMINER: I'll check it.

21 MR. UHLE: We'll obviously have a lot to say
22 about this in rebuttal.

23 THE HEARING EXAMINER: Okay. Now we're going to
24 take public input at this time or we can break for
25 lunch. What do you guys want to do?

1 MR. UHLE: Lunch.

2 THE HEARING EXAMINER: We've got two
3 lunches, anybody in here want to do public input
4 before we break for lunch? All right. Give me a
5 show of hands. All right. If you want to speak
6 before lunch, what I'll do is I'll call out the white
7 forms that I have here. If you want to speak just
8 come on up. If you want to pass, let me know and
9 I'll put you at the back of the pile here.

10 So the first name I have on here is Walter
11 G, IV?

12 THE WITNESS: I'll pass.

13 THE HEARING EXAMINER: Okay. Ryan Duggan?

14 THE WITNESS: Pass.

15 THE HEARING EXAMINER: James Waller,
16 W-A-L-L-E-R? Nancy Valentasis -- Nancy, how about we
17 do it that way. Nancy? No Nancy. Gail Cutshaw?
18 Are you sure you guys are in here?

19 UNIDENTIFIED SPEAKER: There was a bunch in here
20 before and they just left.

21 THE HEARING EXAMINER: Oh, they just left
22 everything for me, huh? Rodolpho?

23 THE WITNESS: I'll pass.

24 THE HEARING EXAMINER: Thank you, Rodolpho.
25 Erick Leebel?

1 THE WITNESS: Yeah.

2 THE HEARING EXAMINER: Libel, Labelle? All
3 right. Eric, you are under oath; is that correct? I
4 did swear you in?

5 THE WITNESS: That's correct.

6 THE HEARING EXAMINER: Okay. State your name,
7 please, for the record?

8 THE WITNESS: My name is Eric Leebel for the
9 record. I mainly -- I don't know if this is here,
10 but I mainly had a question. I -- you know, I like
11 everything about the project. I think it looks
12 nice what they're doing. You know, I agree with
13 everything. The one question that I had that
14 we've kind of -- me and the two neighbors together,
15 we have -- can I show you where our parcel is?

16 THE HEARING EXAMINER: Sure. Sure.

17 THE WITNESS: We have -- together we make up
18 these 30 acres right here and we've had a meeting
19 with the people at Levitt and Sons, I'm not sure if
20 any of them are here today, at Mr. Barraco's office
21 and it was brought to the attention that a couple of
22 months ago, Butch Ronsifer, one of the neighbors
23 who's lived out there for years and when I bought
24 it, I watched the water situation very carefully
25 because I didn't want to buy wetlands naturally, and

1 we were assured that when the project's done we're
2 going to be in a better situation than we started
3 and, you know, that it would be monitored by the
4 developers. We gave Levitt and Sons permission to
5 come on our property and monitor and do whatever
6 monitoring had to be done. And I didn't know, is
7 there something saying that during construction, I
8 know what it's going to end up, but what about
9 between now and then is my question. Is there
10 something in the plan saying you have to maintain
11 your neighbor's property until the project is
12 finished something of that nature, because we were
13 assured, but then right now I was out there the other
14 day, there's two foot of water on it, you know, so
15 I'm just concerned if there's something that was
16 addressed or maybe that something needs to be looked
17 about saying if that's a complaint that maybe, you
18 know, it should be looked at or something in the
19 wording of that nature.

20 THE HEARING EXAMINER: Okay. All right. So
21 your problem is that right now -- of course we've
22 had, what, 12, 15 inches of rain, but right now
23 you've got more water on your property than you would
24 normally have and you think it's related to the
25 development activity on the parcel adjacent to yours?

1 THE WITNESS: Correct.

2 THE HEARING EXAMINER: Okay. I'll have to ask
3 them to answer that because I don't know if there's
4 anything that the Water Management District has
5 conditions in their permits and stuff, so they'll
6 have to answer that for you.

7 THE WITNESS: That's something we brought up to
8 them and I didn't know if this is something that
9 was a condition or something we should -- you know,
10 maybe it's not appropriate, we should be taking it up
11 with them.

12 THE HEARING EXAMINER: Well ,it would be part
13 of, I think, the Water Management permits, you know,
14 the Surface Water Management System that they've got
15 going, so whatever -- and I don't have those permits.
16 I've not seen those permits, you know, so they would
17 is to answer your question about, you know, does the
18 Water Management District require any special
19 activities or special actions by the developer to
20 prevent flooding on your property.

21 THE WITNESS: Okay. Thank you.

22 THE HEARING EXAMINER: So I'll have them answer
23 your question. William Ronsifer?

24 THE WITNESS: I'll speak afterwards.

25 THE HEARING EXAMINER: Okay. Charles Morris?

1 THE WITNESS: I'll speak later.

2 THE HEARING EXAMINER: Okay. John Miller?

3 THE WITNESS: I will.

4 THE HEARING EXAMINER: Now or later?

5 THE WITNESS: Yes.

6 THE HEARING EXAMINER: Okay, now. Okay.

7 THE WITNESS: Madam Hearing Examiner, and other
8 distinguished people here, my name is John Miller and
9 I'm a member of the Lehigh Acres Community Planning
10 Corporation. We had been advised by the Smart Growth
11 Department that Lehigh Acres will some day reach
12 population of 300,000 people within this century.
13 it will probably exceed that and this is a sleeping
14 giant who will come back to haunt this community if
15 we don't have some way to get our water out and our
16 people out. There is also property on the other side
17 of the canal, on the other side of the property line.
18 We just need to be considered. When this community
19 reaches 100,000 people, and it's at 60 right now, and
20 there are 500 permits a month, when this community
21 reaches 100,000 people and there's a storm and
22 somebody is killed because of this storm, is
23 flooded out or whatever may happen, then there's
24 going to be an outcry and there will be lawsuits and
25 all of these other things and I believe in the

1 foresight of the County Commissioners. I believe
2 that the County Commissioners need to consider this
3 property, as well as other opportunities, but not to
4 dismiss this in the process to allow us to have
5 access to State Route 80 and to allow us to have
6 ways to get rid of water. Water will flow up hill.
7 You might find it some day in your Hawk's Haven. We
8 wish Hawk's Haven well in every respect. I think
9 it's something to be proud of. I think the people
10 that move in there will be happy with it. We're not
11 happening with Lehigh Acres right now. As has been
12 stated, our roads are in terrible condition. 75th
13 Street is a piece of junk as far as that's concerned,
14 but all of these problems will be corrected in the
15 future. We will have a fire station in the northern
16 part of Lehigh Acres; that is not -- that is not a
17 finished plan, as has been stated, but we will have
18 other things out there and the population growth will
19 determine that we have paved streets and the other
20 amenities tease that we provide out in that district
21 may be an enticement for people in Hawk's Haven to
22 come south for more things than just Wal-Mart. We
23 must be considered and we ask that the County
24 Commissioners -- I have presented a letter and I
25 didn't know that I was supposed to make several

1 copies, so will you see that people that want a copy
2 get it?

3 THE HEARING EXAMINER: That's all right. Yeah.
4 If anybody wants it, I've got it and you-all can get
5 it from me.

6 THE WITNESS: We will be a large community of
7 people. These people we have not seen. We're
8 talking about grandchildren right now and we're
9 talking about people beyond the grandchildren. We're
10 talking about people who may move in here. We have
11 to have the imagination to see these faces of these
12 people, as well as of the people that are here today
13 and that's all I have to say.

14 THE HEARING EXAMINER: Okay. Questions of this
15 witness? Okay. Thank you, Mr. Miller. Okay. Linda
16 Carter? Now, can you stand, Linda?

17 THE WITNESS: I can stand for a few minutes,
18 yeah.

19 THE HEARING EXAMINER: Okay. I don't want you
20 to --

21 THE WITNESS: Now, it's going to be kind of
22 hard, but I want to show you something. For the
23 record, I'm Linda Carter. I work with ADA issues for
24 the disabled. I also work with the Disaster
25 Preparedness and one of the things that we learned

1 from Hurricane Charlie we just had last year that
2 nobody brought up was disaster planning in this
3 development.

4 Now, I'm going to go to your map over here if
5 you don't mind. We have one entrance coming into
6 your development, okay? You have people going to be
7 living in this area, you got people over here in your
8 area here. Normally, when you design a
9 development or any building, you have a primary and
10 an alternate exit. If we are leveled and this area
11 gets wiped out, these people here cannot exit and be
12 given opportunity and access to survive. They're
13 locked in. You have no other ways to go in. At the
14 same time, when you build your community building for
15 your community, you do need to make sure that it's
16 hurricane and have generators. Some of these
17 people are going to be senior citizens. They are not
18 going to be able to drive. They may not be able to
19 move. You need to make sure you have accessibility
20 for these people and be able to survive up to seven
21 days without power. Last year, a lot of us --
22 because this was FP&L, LEC, we were without power for
23 a week or more. What are you going to do to these
24 people if they can't get in and you don't have access
25 for these people? If this becomes our north/south

1 corridor to 80 for evacuation, these people are going
2 to be evacuating, everybody is going to be evacuating
3 over to Hendry County and go straight up the middle
4 of the state. You don't want them to go up around.
5 This is already going to be flooded with thousands of
6 cars. You're talking what, 1,800 units, average two
7 cars, you're talking 2,000 cars minimum in this area.
8 What are you going to do, put 2,000 cars through the
9 one exit in a hurricane? You've got to look now,
10 hurricane preparedness hits now. What we're doing is
11 designing for the present for the future because our
12 children and you may be in that situation to get out
13 and you can't get out. You look back, I made a
14 mistake. We have to put disaster planning here, now.
15 This is the first time we had four hurricanes in 40
16 years or 60 years. We learned our lessons. We need
17 to start putting disaster planning into our
18 developments so that when it happens we're prepared.
19 Thank you. Any questions?

20 THE HEARING EXAMINER: Thank you.

21 MR. UHLE: No.

22 THE HEARING EXAMINER: Questions? No? Thank
23 you.

24 THE WITNESS: Thank you.

25 THE HEARING EXAMINER: Ralph Anderson?

1 THE WITNESS: Robert.

2 THE HEARING EXAMINER: I'm sorry?

3 THE WITNESS: I've never been called Ralph. I've
4 been called other things in my life, but not Ralph;
5 that would be a first.

6 THE HEARING EXAMINER: Although I was busy
7 concentrating on the Anderson, I wasn't sure that was
8 what it was, you know? I mean, so it started with an
9 R.

10 THE WITNESS: Yeah. That's fine. My name is
11 Robert Anderson. I'm the president/chairman of
12 Lehigh Acres Watch Dog, Incorporated. We're a non
13 for profit organization in Lehigh Acres. At this
14 time I have a resolution to read and I will leave
15 copies out after I read it. Thereas, the Board of
16 Directors of Lehigh Acres Watch Dog, thereas
17 referenced the Board, is formed to represent the
18 interest of residents, voters, taxpayers and state
19 quarters of Lehigh Acres. And thereas, the Board has
20 been charged with informing the citizens of Lehigh
21 Acres on good government, smart growth and to
22 preserve the great town of Lehigh Acres for years to
23 come.

24 Thereas, a major component of the community is
25 the planning of adequate future infrastructure,

1 including future traffic regs and road connectivity.
2 ThereAs, the Board in agreement with other groups in
3 Lehigh Acres, a north/south corridor connecting
4 Sunshine Boulevard in Lehigh Acres with Green Meadows
5 Road/Alico Road to the south and SR 80, Palm Beach
6 Boulevard to the north.

7 Thereas, the pending Lee County Board of
8 County Commission's approval of the projected project
9 known as Hawk's Haven, now as River Hall, presents a
10 major and immediate opportunity to for the right of
11 ways to make the north connection to SR 80 possible
12 in the future.

13 Therefore, it is resolved that this Board that I
14 represent respectfully asks the Lee County Commission
15 to approve Hawk's Haven and contingent upon the
16 developer's dedication and donation of the right-of-
17 way to make this possible.

18 The north/south corridor needs to be done, as
19 John Miller and some other people have stated.
20 Lehigh is growing in leaps and bounds. If we do not
21 have a north/south corridor soon and are not able to
22 have that north/south corridor, we have no more --
23 growth cannot continue as it is and it's going to
24 stagnate and the town is basically going to --
25 there's no way you can also control disaster

1 preparedness like Linda Carter said because --
2 without a north/south corridor and I appreciate
3 your time. I will give you each a copy.

4 THE HEARING EXAMINER: Okay. Thank you, sir.
5 Okay. Connie's already spoken. Okay. All right,
6 folks, that's it. Do I have anyone's name that I did
7 not call that wishes to speak?

8 UNIDENTIFIED SPEAKER: Do I have to fill out a
9 piece of paper?

10 THE HEARING EXAMINER: Uh-huh. Yes. Come on up
11 and then you can fill the form out after you've
12 spoken.

13 UNIDENTIFIED SPEAKER: Okay.

14 THE HEARING EXAMINER: All right. And you'll
15 need to -- have you been sworn in, sir?

16 UNIDENTIFIED SPEAKER: No, ma'am.

17 THE HEARING EXAMINER: Okay. Raise your right
18 hand, sir.

19 (Whereupon, witness was sworn.)

20 THE HEARING EXAMINER: State your name, please?

21 THE WITNESS: My name is Phillip Redibeau
22 (phonetic). I'm here today on behalf of the
23 Community Counsel of Lehigh Acres and our concern in
24 line with the Lee County Planning, Commissioner
25 Planning Committee's concerns and that is the

1 north/south access, the long-term prospects for
2 connecting Sunshine, it's my understanding, via 75th
3 and Spine road to State Road 80, you know, as
4 Charlotte and Hendry counties develop and that
5 corridor south of Sunshine and this development
6 growth and that need for an easterly north/south
7 connector, I think it would be prudent to consider
8 easement or some means to make that connection. So
9 we just wanted to voice that concern. Thank you.

10 THE HEARING EXAMINER: Okay. All right. Thank
11 you, sir. Fill one of the white forms out and give
12 it to me I'll mark down that you've spoke and that
13 way you can speak in front of the Board of County
14 Commissioners.

15 THE WITNESS: Thank you.

16 THE HEARING EXAMINER: All right. Mr. Sheller?

17 THE WITNESS: Uh-huh.

18 THE HEARING EXAMINER: Okay.

19 THE WITNESS: Yes. My name is Damon Sheeler.

20 THE HEARING EXAMINER: Okay. Have I sworn you
21 in?

22 THE WITNESS: Yes. I was here earlier.

23 THE HEARING EXAMINER: Okay. Good. Thank you.

24 THE WITNESS: I'm a member of the Lehigh Acres
25 Community Counsel and also the Lehigh Acres Community

1 Planning Corporation. I also serve as an advisor on
2 the Lee County Parks and Recreation Department. I
3 just wanted to again express my concern for
4 consideration on and corridors through that area to
5 high 80. There are plans, the County has, I think
6 it's a national program, certainly a state program,
7 on bikeways and pathways, greenways. Sunshine has
8 been identified for a corridor for that area. Part
9 of it has continued green space areas, part of it's
10 wildlife and other uses, passive uses. I understand
11 that some of the areas are environmentally sensitive.
12 I think our technology and whatnot can take some of
13 those considerations into effect and provide a nice
14 area. And I just basically wanted to get my name on
15 the list to be able to talk and to express support
16 for concern of access to Lehigh. It will be a
17 community in excess of 300,000 people, a six-lane
18 road running east and west through Lehigh is not
19 going to be sufficient to counter that. Thank you.

20 THE HEARING EXAMINER: Let me ask you a question
21 before you head out, Damon. There are several of
22 you folks who have spoken about this north/south
23 corridor situation. Has anybody, to your knowledge,
24 from Lehigh, any of the civic organizations and
25 whatnot out there been working with Lee County

1 Department of Transportation or, you know, pitched
2 any of this to the Board of County Commissioners?

3 THE WITNESS: Well, quite frankly, if you've
4 read through the newspapers about some of the things
5 that are going on in Lehigh, the Lehigh Community
6 Planning Corporation had some turmoil. We've been in
7 existence for about six months. It is new. In
8 reality, we should have started this process 18
9 months, two years ago, expecting the growth. The
10 growth that's occurred, moving up south, a lot of
11 people expected it. It's hit Lehigh very severely.
12 Some numbers were thrown out here, 500 permits.
13 There's basically -- we've exceeded 12,000 residents
14 increase this year in Lehigh, so we are working under
15 a gun, behind the 8 ball so to speak, as far as
16 trying to catch up to provide commercial properties,
17 parks, schools. We are behind the curve as far as
18 planning for those things; that's one reason why
19 you're seeing such an effort here today. We're not
20 trying to stop development. We don't want to -- we
21 want to work with development and essentially what
22 we're trying to do is get out here and identify some
23 of these things for the future that are necessarily
24 not only for the community of Lehigh, but also Lee
25 County itself. And that's why we've come forward

1 here. Yes, there's communication to the community
2 counsel. Rick Angelic is the chairman of the MPL
3 board. He's aware of this.

4 THE HEARING EXAMINER: Oh, okay. So he's got a
5 finger on the pulse from that respect?

6 THE WITNESS: And one reason why we kind of --
7 you know, right or wrong, we're not trying to
8 dictate where this road goes, where this access goes,
9 it's just in looking at it, Sunshine Parkway runs
10 right up there, it's a section line. You've got the
11 mitigation park to the east of that. There's a
12 canal, I think, that some drainage goes up through
13 there. It goes into Hickey Creek. I guess we're not
14 really saying where it needs to go. We're saying
15 Lehigh and Lee County needs a north/south corridor
16 through that area.

17 THE HEARING EXAMINER: Okay.

18 THE WITNESS: And where it happens to be, you
19 know --

20 THE HEARING EXAMINER: All right. So, I mean,
21 y'all have looked at this because this appears to be
22 the perfect opportunity. Have you looked at any
23 other potential north/south roadways?

24 THE WITNESS: I'd have to defer back to what
25 Charlie Defelice said earlier in his comments, was

1 that he had -- his subcommittee looks at
2 transportation and roads and they have looked through
3 there and said this is the one that we really need.

4 MS. CARTER: Ma'am, on that subcommittee. One
5 thing about the Sunshine Road, right now the
6 right of way is almost 200 feet wide or so and it's
7 basically wide enough to support a four to six-lane
8 road, from 82 on up to the end of Sunshine. If we
9 get the Green Meadows Road down to Alico, that will
10 take care of the people coming south, coming up
11 through -- the County already has that six-lane, 200
12 foot right-of-way. All we need is from Sunshine at
13 the end of there, straight up to 82 --

14 THE HEARING EXAMINER: Up to 80, yeah.

15 MS. CARTER: Because of the fact, you know, what
16 are you going to do? You've got 200 lane road going
17 into a two-lane road, you really can't tunnel that
18 many cars into it for safe evacuation.

19 THE HEARING EXAMINER: Okay. All right. I was
20 not really familiar with y'all's community
21 organizations and so -- yeah. Yeah.

22 THE WITNESS: Yeah. And I think the chamber,
23 I don't think the chamber was able to get here, but I
24 think --

25 THE HEARING EXAMINER: They're feeling the same

1 way?

2 THE WITNESS: Yeah.

3 THE HEARING EXAMINER: Okay. Okay. All right.
4 Thank you very much. Anyone else wish to speak
5 before we break for lunch?

6 All right. Folks, we're going to break for
7 lunch. Let's be back here, please, at 2:30. Water
8 only in this room when you return. If you want to
9 leave anything in the room, I will lock the doors so
10 it will not be stolen, okay? So if you don't want to
11 want cart around your backpacks --

12 (Whereupon, lunch recess was had from 1:15 p.m.
13 to 2:30 p.m. and hearing continued as follows:)

14 THE HEARING EXAMINER: All right. Let's go back
15 on the record. Now, before we broke for lunch we
16 had Staff's presentation, Applicant's presentation
17 and several people from the public spoke. What we
18 need to do now is to go ahead and get the last of the
19 public speakers and then we'll have the applicant
20 address the issues that are brought up so these are
21 the last folks that I have here on white forms.
22 Walter Gee?

23 THE WITNESS: I don't need to speak ,ma'am.

24 THE HEARING EXAMINER: You don't want to speak?

25 THE WITNESS: No, ma'am.

1 THE HEARING EXAMINER: All right. Ryan Duggan?
2 Ryan Duggan?

3 UNIDENTIFIED SPEAKER: He's gone.

4 THE HEARING EXAMINER: He's gone, okay.
5 James Waller? Is he gone also? Must be. Oh, God
6 we're back to Nancy again. Obviously I don't see any
7 Nancys in here either, so I'll put a no down for her
8 too. Gail Cutshaw? Rodolpho? He passed the last
9 time, he doesn't want to speak, he's not back now,
10 okay. William Ronsifer?

11 THE WITNESS: That's me.

12 THE HEARING EXAMINER: All right. And you're
13 going to speak, right?

14 THE WITNESS: Just for a short bit, ma'am.

15 THE HEARING EXAMINER: All right.

16 THE WITNESS: Staff, Madam Hearing Examiner --

17 THE HEARING EXAMINER: Okay. State your name.

18 THE WITNESS: My name is William Ronsifer. I'm
19 a property owner. I'll show you. I haven't been
20 hearing too much about this property right here
21 today. This is 30 acres there. You've heard from one
22 owner I believe. We've been working closely with
23 Grady about a few problems, but we've got them taken
24 care of. I don't have anything against them
25 getting permitted for what they want to do. I think

1 everything should be a go for them. I have no
2 complaints with them. Thank you.

3 THE HEARING EXAMINER: Okay. Thank you, sir.
4 And then I have a Charles Morris.

5 THE WITNESS: Yes, ma'am.

6 THE HEARING EXAMINER: Okay. And I have a --
7 you've attached a short note to your --

8 THE WITNESS: Yes, ma'am. It's just basically
9 what I'm going to say to you.

10 THE HEARING EXAMINER: Okay. State your name
11 for the record?

12 THE WITNESS: I'm a Charlie Morris and I'm a
13 resident of the Hickey Creek area, been involved with
14 it since '99. It's not my first time here addressing
15 people. I've got a couple things and I think the
16 first one is pretty much said and done. We would
17 like for you to deny the access to Hickey Creek. I
18 think everybody understands that. Also, I think when
19 it comes to the zoning, I would like for you to keep
20 that zoning consistent to the way the original
21 property stands adding this new additional purposes.

22 THE HEARING EXAMINER: So you want the density
23 to remain the same; is that what you're saying or you
24 do not want the commercial aspect on this one at all?

25 THE WITNESS: No. Just the residential part,

1 I'd just like to keep that density the same in the
2 residential part. And also, it was said earlier and
3 I think maybe somebody needs to give some thought to,
4 it was mentioned that they thought the school would
5 be half filled within the project. I think they need
6 to understand that our school system is by choice.
7 Just because you live next to a school, does not
8 mean you get to go there. You're still going to have
9 a lot of bus traffic coming and going there. And I
10 just want you to thank you for listening to my
11 opinion.

12 THE HEARING EXAMINER: Okay. Okay. Thank you,
13 sir.

14 THE WITNESS: Thank you.

15 THE HEARING EXAMINER: All right. I do not have
16 any other witnesses to speak from the public; is that
17 correct? Everyone has had their opportunity? Okay.

18 The Applicants -- I'm sorry, is that a
19 hand up?

20 MR. PALERMO: No; that was a may I have some
21 attention.

22 THE HEARING EXAMINER: Yes, you may be excused.

23 MR. PALERMO: Okay. I was wondering if it would
24 work better if -- I had four editorial points to make
25 and just something I wanted to put in the Staff

1 report and then let Matt and his crew have the last
2 word.

3 THE HEARING EXAMINER: That's fine. If Matt has
4 no objections?

5 MR. UHLE: I have no objections.

6 THE HEARING EXAMINER: All right.

7 MR. PALERMO: Good afternoon. For the record,
8 Tony Palermo, Lee County Staff. I'll make four brief
9 points and then I'll wrap up our presentation.

10 Just the first point I want to make is to
11 just elaborate a little bit more about the emergency
12 access points that are on the master concept plan and
13 they go to Portico, which is a residential -- it's a
14 residential community on Buckingham Road and it only
15 has one primary access and it's on Buckingham Road
16 and it has the two emergency access points that were
17 mandated by the zoning resolution at Z04080 which is
18 one of your attachments. Portico is a development of
19 1,178 dwelling units, combination of single and
20 multi-family units. And the reason I bring that up
21 is because hypothetically if there is no second
22 access to the south through Lehigh Acres and
23 something happens at the Palm Beach Boulevard access
24 or happens to Palm Beach Boulevard period, you could
25 potentially have people exiting using the emergency

1 exits to Buckingham Road, add the Buckingham Road
2 element to that, you could have 3,177 total units
3 using Buckingham Road under a very worse scenario, so
4 I wanted to raise that point.

5 Second point I wanted to raise is that I'll go
6 through a little bit of what's in the Staff report on
7 page 16 and 17 which quotes what Land Development
8 Code Section 10.291 says and I want to just reiterate
9 the point that this second access is not an amenity
10 that we're suggesting and it's not a nice thing.
11 It's a necessity. And if you'll indulge me, we said
12 in the Staff report, "Staff strongly believes the
13 second access, in addition to the emergency access
14 points, is a necessary element for residential and
15 commercial development of this size and scope." Land
16 Development Code Section 10.291, paragraph 3 says,
17 the director will determine, quote, "if residential
18 development of five acres or more must provide more
19 than one means of ingress and egress." In Staff's
20 view, a second access is both good planning and good
21 public safety. And Staff went on to reiterate what
22 the potential disasters that could happen on Palm
23 Beach Boulevard, including hurricanes, traffic
24 accidents, plane crashes, multi-car, semi-trailers,
25 fire, chemical spills, you name it, it could happen

1 on the entrance to Palm Beach Boulevard. It is a
2 health, safety and welfare issue and our director has
3 determined that it is a necessity, not an amenity.

4 Third point that I'd like to make is, 75th
5 Street to Sunshine, if we have a second access, an
6 off-site improvement, and by discussion with the
7 development services director, the answer was, yes,
8 it is. And at the very least there needs to be some
9 surface and perhaps drainage work. I don't know the
10 details, whether the development order is eventually
11 closed and the second access is put there. And
12 again, that's another reason for us to be standing by
13 our conditions as we put them in the Staff report.
14 This is a 2,000-unit development encompassing a
15 three square mile area .if we don't require a second
16 access here, then it begs the question when will we.

17 Last point I'll make is regarding a north/south
18 corridor from Lehigh Acres to State Road 80. From a
19 planing perspective, that's a good idea, but both
20 alternatives that have been talked about are
21 fraught with some consequences. I'll go through two
22 of them briefly. State Road 80 to Sunshine, going
23 through the preserve, obviously there are some
24 environmental issues. There's the matter of acquiring
25 the property, using that easement. There's just a

1 whole host of issues with that sort of north/south
2 corridor, but a north/south corridor is needed.

3 The second alternative would be to use the
4 development's, River Hall's, Spine Road for traffic
5 going from Palm Beach to 75th; that would require
6 two things: Number one, you would have to remove
7 entrance gates as a use and Staff did not put that in
8 their Staff report. And number two, if that were to
9 be a public road that anyone can go through, the
10 public would have to buy it and again that's a
11 decision fraught with consequences, so that's just a
12 discussion of those issues. I don't know how to
13 resolve the north/south corridor issue because it's a
14 big one. It's bigger than this and that's the only
15 points I'm going to make for now. Thank you.

16 THE HEARING EXAMINER: Okay. Anything else from
17 any of the Staff members? Okay. All right.

18 Applicant ready to make a rebuttal response?

19 MR. UHLE: We have three rebuttal witnesses and
20 then some closing comments from me. First, Mr.
21 Barraco.

22 Carl, you've had, I think, an opportunity to
23 hear the presentations from the Lehigh folks about
24 surface water management and some suggestions that
25 they have about surface water management within this

1 property. Could you please comment on that?

2 MR. BARRACO: Sure. And that's not a new
3 subject. It's probably good to go over a little bit
4 of history. When we were going through the
5 environmental resource permitting process with the
6 Southwest Florida Water Management District and even
7 before that, we've had discussions with the East
8 Lee County Water Control District about bringing some
9 water from south to north, trying to open that up as
10 you heard. Again, we've had multiple meetings with
11 the East Lee County Water Control District and
12 several with the Southwest Florida Water Management
13 District. As a result, when we did the environmental
14 resource permitting, provisions were made to provide
15 a drainage corridor through this project in working
16 with the East Lee County Water Control District and
17 I'm going to move up here to one of the exhibits,
18 when I figure out which one would be best. I'm going
19 to use Exhibit A-1 because that's the most recent
20 plan.

21 THE HEARING EXAMINER: Okay.

22 MR. BARRACO: The East Lee County Water Control
23 District is trying to get water from the south to the
24 north into the river. When they first came to us,
25 their thought was we'd like to come through here. At

1 that time, this lake was in our water management
2 system. Through the water management permitting, we
3 actually took this lake out and provided them a
4 conveyance through this lake system into this wetland
5 and they would have to cross this road and then could
6 continue to the north. We actually put those
7 provisions in the environmental resource permit. So,
8 at that time we provided the East Lee County Water
9 Control District with a remedy. After that, and
10 after construction, they started looking at other
11 alternatives and one was to go to the east of the
12 property and then head to the west, so they were
13 looking at other options, but there is an option in
14 our environmental resource permit to take care of
15 that issue.

16 THE HEARING EXAMINER: Okay.

17 MR. UHLE: Carl, another question arose about
18 interim problems during construction with surface
19 water management on adjoining parcels. Can you
20 please discuss that and identify what requirements
21 are imposed on this project to deal with those
22 issues?

23 MR. BARRACO: Sure. And again, I think it's
24 important to point out that they're speaking about
25 during construction. And it's also important to know

1 that we documented over 15 inches of rain on the site
2 in this month alone, which is a lot of rainfall and I
3 think everybody is experiencing that, so that's
4 making the problem a little bit worse. The South
5 Florida Water Management District was out on the site
6 yesterday and they're aware of the situation, because
7 again, we met with several of the owners and with the
8 District. I spent probably three hours out on the
9 site walking it with five members of the South
10 Florida Water Management District, so they're well
11 aware of the situation. We've also started making
12 some arrangements to visit the contractor and visit
13 the site and see if there's anything else we can do.
14 My guess is there is and I want to make sure that
15 it's understood that this is a situation during
16 construction. But the last thought I want to leave
17 you with, and it may simplify this issue for the
18 Hearing Examiner, the area they're talking about is
19 along the eastern side --

20 THE HEARING EXAMINER: Western.

21 MR. BARRACO: I'm sorry, the western side, which
22 is all under construction. It's all permitted and
23 whatever the outcome is of this zoning case will have
24 no effect on that.

25 THE HEARING EXAMINER: Uh-huh. Okay.

1 MR. BARRACO: So -- but we are taking steps to
2 do whatever can be done.

3 MR. UHLE: No further questions.

4 THE HEARING EXAMINER: Anybody questions of this
5 witness?

6 MR. PALERMO: No.

7 MS. PERRY-LEHNERT: No.

8 THE HEARING EXAMINER: Okay.

9 MR. UHLE: Next rebuttal witness is Grady Miars.
10 Grady, you heard the testimony from Ms. Weiss about
11 her concern about development in the area close to
12 her house. Could you please tell the Hearing
13 Examiner what the closest use on our parcel is to her
14 house an how close it is?

15 MR. MIARS: For the record, Grady Miars for the
16 Applicant. If I can approach Exhibit A-1, in this
17 area that's represented, I'll approach the aerial
18 first that's highlighted here, really there's a
19 dashed line that you can see on this exhibit, but
20 this is that area that's in question and the adjacent
21 property owners are right in this area and then
22 obviously we have a preserve where we wouldn't be
23 buffering, but the distance between back of lot to
24 the first use, which I would call an actual interior
25 roadway, is approximately 223 feet. It does include

1 the FPL easement and it does include what I would
2 call old spike stripes or small strips that we were
3 able to acquire to make sure we own that land. And
4 then all of the residential uses, while not showing
5 up well on this plan, none of which face or back up
6 to those residential units. It's actually a roadway
7 with units, what I would call single-loaded roadway,
8 there is units on both sides and they face the south
9 or the east or west of at the end of what I would
10 call a cul-de-sac in each instance.

11 MR. UHLE: No further questions for Mr. Miars.

12 THE HEARING EXAMINER: Okay. Anything from
13 anybody? Okay.

14 MR. UHLE: Final rebuttal witness is
15 Mr. Treesh.

16 MR. TREESH: For the record, Ted Treesh with
17 metro Transportation Group.

18 MR. UHLE: Ted, can you please identify this
19 map?

20 MR. TREESH: Yes. This is Map 3-A. Is this
21 the Comprehensive Plan?

22 MR. UHLE: I hope so?

23 MR. TREESH: It's a big book. Lee County
24 Comprehensive Plan, Map 3-A is the Lee County 2020
25 Financially Feasible Highway Plan.

1 MR. UHLE: Does that map show any extension of
2 Sunshine through the subject property through to
3 State Road 80?

4 MR. TREESH: No, it does not.

5 MR. UHLE: Does it show any roads extending from
6 Lehigh to State Route 80?

7 MR. TREESH: No, it does not.

8 MR. UHLE: Okay. Just a couple other questions,
9 Ted. You've already testified as to what the
10 incremental impact of this particular application are
11 relative to what has already been approved. Can you
12 give us some idea of what that means in terms of
13 additional peak-hour trips?

14 MR. TREESH: Sure.

15 MR. UHLE: And then give us some comparison and
16 what that would mean, say, in a commercial context?

17 MR. TREESH: Yes. If I could just direct the
18 Hearing Examiner to Table Two of my TIS, you don't
19 have to turn to it now but for future reference.
20 Table Two on page five of the May 24th, 2005 traffic
21 impact statement indicates a trip generation table
22 that basically contains two things. It contains the
23 trip generation of the property as its currently
24 zoned on this Master Concept Plan that was identified
25 earlier as Exhibit A-2. And then at the bottom of

1 the table is the trip generation as currently
2 proposed, with our Master Concept Plan, which is Map
3 A-1: The P and Peak Hour, which is highest trip
4 generation period, the trip increase is only
5 anticipated to be 110 additional P and Peak Hour
6 trips total.

7 MR. UHLE: Can you put that in perspective? I
8 mean, what would that mean, say for, a commercial
9 context? What would you be talking about for 110
10 peak-hour trips?

11 MR. TREESH: I don't have that off the top of my
12 head but, I mean, a bank typically is between 100 and
13 150 trips depending upon the number of drive-thru
14 lanes. You know, not a large commercial development.

15 MR. UHLE: All right. No further questions.

16 THE HEARING EXAMINER: Any follow up?

17 MR. PALERMO: No.

18 THE HEARING EXAMINER: Okay. Thank you, Ted.

19 MR. TREESH: Thank you.

20 MR. UHLE: Matt Uhle for the record. What I'm
21 going to do is just address first the public comments
22 that required further attention and then I'm going to
23 talk about the two remaining issues that we
24 have with the Staff.

25 With regard to the public comment, I think Mr.

1 Miars has fully addressed the concern about
2 compatibility with the Hickey Creek folks. Obviously
3 we're talking about a single-family use being the
4 closest actual use to their property and it being a
5 considerable distance away, so we've actually done
6 quite a lot to insure that they don't have a problem.

7 The interim surface water management use we've
8 also addressed. One of the witnesses testified as to
9 concern about emergency access, but I'm not sure that
10 she was aware that we are providing emergency access
11 on this project regardless of the second access or
12 not, so I don't think that her testimony was
13 particularly persuasive.

14 I'd also point out a couple of things. One of
15 them is that there are already conditions in this
16 particular Staff report and in the previous
17 resolution that address hurricane preparedness and
18 evacuation and so on, so that's already been
19 addressed. And I would point out that this property,
20 being where it is, you would expect it not to be in
21 the coastal high hazard area obviously and it's not.
22 According to the Staff report for the plan amendment
23 with which the Staff gave to you, this property
24 ranges from a little bit of it's category two, but
25 some of it's four and some of it's three, so when you

1 look at this realistically, this is the kind of place
2 where you probably wouldn't want to be evacuating
3 except in a really strong storm.

4 The major issues with the public obviously were
5 with the Lehigh Acres Planning folks. Carl has
6 addressed the concern about surface water management,
7 so I'm going to confine my remarks to their desire to
8 have us donate property in exchange for approval of
9 the additional units. And I would say preliminary
10 that I have a certain sympathy for where they are in
11 the planning process. Lehigh presents some major
12 planning issues that are difficult to deal with and
13 obviously they're making a good-faith effort to try
14 to address transportation, as well as other issues
15 and they haven't gotten very far in the process yet,
16 but one can certainly appreciate that they're doing
17 their best to deal with the situation as it currently
18 stands. But it's fact of the matter is that their
19 plan is still in an embryo stage, it hasn't been
20 reviewed by the Staff, it hasn't been reviewed by the
21 planning Staff or the County Commission or anybody
22 else. It's just an embryo at this point. So the
23 only document that we have to look at to determine
24 whether this is necessary or not is the comprehensive
25 plan and the comprehensive plan doesn't include this

1 particular road segment. So if it's not on the 2020
2 plan, then it's kind of hard to make an argument at
3 this point that there is a strong public need for it.
4 Now, that could change in the future, but as of now,
5 that's just not there.

6 I would also point out that there's absolutely
7 no evidence that establishes a rationale nexus
8 between the impact created by this particular
9 application and the need to provide the north/south
10 right-of-way; that simply is not on the record and
11 does not exist and presents major legal problems.

12 and I would further point out that the fact of
13 the matter is, the area that they want this
14 right-of-way for is a preserve area. It abuts
15 a county park. We have given conservation
16 easements which drastically limit our use of that
17 property. We have no plans to build anything on it,
18 so even if we were to comply with this particular
19 request, the County having the right-of-way in their
20 hands, would still have the difficulty of dealing
21 with the conservation easements, whereas on the other
22 hand, we're not doing anything to interfere with this
23 particular right-of-way if and when the County
24 decides that they want to build the road. There
25 won't be any development there, so it would be

1 relatively easy for them to run the road there if
2 they find that's in the public interest and I have no
3 idea whether that will happen or not. So bottom line
4 on that is that we're certainly sympathetic to the
5 planning concerns. If the County, as a matter of
6 policy, goes through the entire gamut of the
7 transportation planning process and concludes that
8 they need a right-of-way at that location, in spite
9 of its environmental sensitivity, the County is
10 certainly welcome to acquire the property and deal
11 with the problems with the conservation easements,
12 but as of right now, there's no basis for the
13 condition that was being requested by the Lehigh
14 Acres folks. And even if we did comply, it's not
15 clear that that would do them a whole lot of good.
16 I think that pretty well concludes the public
17 input.

18 Now, as to the Staff input, there really at this
19 point are two big issues, one much larger than the
20 other. The first one has to do with the convenience
21 store. All I'm going to say about that at this point
22 is that the definition of the food stores talks about
23 retail stores primarily engaged in selling food.
24 Now, that doesn't mean that there can't be other
25 sales of other kinds of goods, but it does say

1 primarily and so I get a little bit worried about if
2 we were to agree that what we were doing is a food
3 store, whether the County then is going to impose
4 some sort of requirement that 51 percent of our sales
5 revenues has to be from food or something like that,
6 I mean, I just don't know. This is not an issue that
7 we want to fight about, but on the other hand, I
8 don't want to try to develop this site and then find
9 out that the County is imposing some limitations on
10 the other goods that we're selling that would not be
11 a problem under the definition of convenience store,
12 but would be a problem under food stores. And with
13 that, I'll conclude the discussion of that subject.
14 It's not that big a deal.

15 On the second access, I think I'll begin by
16 making the remark that regardless of how you may view
17 the second access issues substantively, I don't think
18 any reasonable person can look at the Staff
19 conditions and say that it doesn't need to be
20 clarified. It's way too open-ended, and it leaves
21 a lot of issues that are very important to this
22 project and to the public, totally up in the air and
23 in an area where they can't be discussed in a public
24 forum, so it's our opinion that regardless of what
25 you do here, it needs to be done in a condition and

1 it needs to change the Staff version of the
2 condition.

3 The second overall point is that we don't
4 believe that the Staff has in any way justified the
5 need for this second access point at all. The amount
6 of traffic that this particular application is going
7 to result in is relatively minimal and Ted Treesh
8 has already identified just how minimal that is on an
9 overall basis. Then when you start distributing it
10 to the various access points and figuring 10 to 14
11 percent of what we're actually putting into the
12 system is going to the south, you understand that
13 we're talking about a very minimal use of this
14 particular access point. And the Staff, in our
15 opinion, has provided no justification for requiring
16 it under those circumstances, particularly in light
17 of the fact that the access point was discussed very
18 thoroughly in 1999, was not required, and since then,
19 the only meaningful change that's occurred in this
20 particular process is we've provided the emergency
21 access points that we didn't even think we needed
22 back in 1999 and the Hearing Examiner found we didn't
23 necessarily have to include it, so it's our opinion
24 that the evidence in this case shows that if we
25 provide the second access point, it's purely as an

1 accommodation. It's not something that's legally
2 required.

3 With that in mind, looking at the conditions as
4 the Staff has written them, the Staff wants us to use
5 1,599 dwelling units as a trigger; that basically is
6 overturning the Hearing Examiner's and the Board of
7 County Commissioner's previous decision that we don't
8 even need a second access at 1,598. I mean, it's
9 basically the same number, so in spite of the
10 evidence both then and now, if we use that as the
11 trigger, we're basically going back and saying that
12 the original decision was wrong and I don't think
13 there's any basis for that conclusion. The trigger
14 should be something that's more of a compromise and
15 we've provided the information to support our
16 particular request. It really should be something in
17 between what we're asking for and what we're already
18 entitled to and 1,599 is not that number.

19 With regard to the road improvement issue, it's
20 our position that if you believe, as we do, that
21 there's no basis for mandating us to have the second
22 access point, then this is a classic piece of
23 bootstrapping, because now as a result of an
24 accommodation that we're making to the County for a
25 second access point, now the County is saying, well,

1 you have to do additional road improvements in Lehigh
2 and we only have the vaguest idea of what the
3 parameters of that are. For all we know, we could be
4 talking about hundreds of thousands or even millions
5 of dollars worth of improvements to the road system.
6 We have no idea what the geographic parameters of
7 that are, we have no idea what the functional
8 parameters of that are. We just don't know and under
9 the circumstances, that is a very unreasonable
10 thing to impose on us and we think in light of the
11 evidence, would violate the rational nexus test and
12 so it's our opinion that if we go forward with this
13 particular access, that we need to have the
14 protection that we've asked for in these conditions.
15 And if you don't, for whatever reason, believe that
16 it's appropriate to give us that protection, then our
17 response is, well, we should eliminate the access
18 altogether because it's not required. It wasn't
19 required in '99, the evidence doesn't support it
20 today.

21 And then finally as to the last sentence, the
22 Staff has some reasonable concerns about the
23 interpretation of the language that talks about
24 reasonable efforts and so on, but we don't know what,
25 if any, problems we're going to run into with the

1 East Lee County Water District and we cannot put
2 ourselves in a position to have this project shut
3 down because somebody is being unreasonable and
4 won't cooperate with us. It is not unusual, either
5 in conditions or in contracts, to have
6 reasonableness written into conditions and so we're
7 simply asking to do that in this case as well.

8 As to the other issues raised by the public in
9 Tony's memo, the answer to Sunshine Boulevard, I've
10 already addressed. I believe actually we've
11 addressed all of these issues. As to whether the
12 public -- the spine road will be public or private,
13 clearly there will be parts of it close to Route 80
14 that will be public. I mean, clearly the Staff is
15 right. The public will have to get to the elementary
16 school; that's not where the gates will be, so there
17 will be access provided to the public to the extent
18 necessary, but there are parts of the spine road that
19 are purely local roads, serving low density golf
20 course type developments that will be gated and so
21 those will be private and any effort to try to run
22 traffic from Lehigh through our project through a
23 local street that's intended to be gated and then
24 through a local road that was not designed to traffic
25 from Lehigh Acres either in the current configuration

1 of the plan or in the existing configuration of the
2 plan, would be unreasonable. So in our opinion,
3 we've addressed all of those issues.

4 We believe that this application should be
5 approved with the changes to the conditions that
6 we've proposed and we appreciate your time. Thank
7 you.

8 THE HEARING EXAMINER: Okay. All right.
9 Anything else from anybody on the case? All right.
10 As I indicated earlier, I will need to review the
11 regulations and whatnot on this with regards
12 specifically to that second issue, that second access
13 point issue. I don't know yet what my
14 recommendations will be with regard to that until
15 after I've gone through the regulations and really
16 looked things over. I don't have a particular
17 problem recommending approval of this to the Board of
18 County Commissioners, pretty much as conditioned and
19 discussed herein, but my final decision will be based
20 on my site visit and review of the Land Development
21 Code and the Lee Plan provisions, okay? So anything
22 from anybody else? And don't expect this little
23 sucker tomorrow, okay? All right. I'll get it to
24 you as quick as I can. All right. This hearing is
25 closed. (Whereupon, hearing concluded at 3:00 p.m.)

1 STATE OF FLORIDA)

2 COUNTY OF LEE)

3 I, Sharon Dutton, Court Reporter and Notary
4 Public, State of Florida at Large, do hereby certify that
5 the foregoing proceedings were taken before me at the
6 date and place as stated in the caption hereto on Page 1
7 hereof; that the foregoing computer-assisted
8 transcription, consisting of pages numbered 3 through
9 173, inclusive, is a true record of my stenographic notes
10 taken at said proceedings.

11 Dated this 22nd day of July, 2005.

12 Sharon Dutton
13 Sharon Dutton, Court Reporter
14 and Notary Public, State of
15 Florida at Large



SHARON DUTTON
MY COMMISSION # DD 382455
EXPIRES: January 1, 2009
Bonded Thru Budget Notary Services

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