



Transcripts for Case #
DC12006-00035

LEE COUNTY HEARING EXAMINER MEETING

RE: DCI2006-00035

APPLICANT: MORRIS MCGREGOR, LLC
RE: MORRIS MCGREGOR CENTER CPD

TRANSCRIPT OF PROCEEDINGS

Before Diana Parker, Chief Hearing Examiner
for Lee County, held at the Hearing Examiner's
Hearing Room, 1500 Monroe Street, Fort Myers,
Florida, on March 29, 2007.

PRESENT:

SHAWN LAMEY, Sr. Planner, Division of Planning
JOHN J. FREDYMA, Assistant County Attorney
CODY VAUGHN-BIRCH, Attorney At Law

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ORIGINAL

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1 THE HEARING EXAMINER: Good morning. I'm Diana
2 Parker, Chief Hearing Examiner for Lee County. This
3 is Thursday, March the 29th, Case Number DCI2006-00035,
4 Morris McGregor, LLC, in reference to Morris McGregor
5 Center, CPD.

6 County Attorney have comments he'd like to make
7 for the record before we commence the hearing?

8 MR. FREDYMA: Yes, ma'am. Thank you, Madam
9 Hearing Examiner.

10 Good morning. My name is John Fredyma. I'm an
11 Assistant County Attorney. I represent the Board Of
12 County Commissioners; but I'm also here to assist the
13 county staff, the applicant and the Hearing Examiner
14 to ensure that the record in this case is complete.

15 If you'd like to participate in today's hearing or
16 obtain a copy of the Hearing Examiner's recommendation,
17 we'd ask that you fill out one of the white forms
18 that's located on the small brown table next to the
19 projection screen up front here.

20 Once completed, you can either hold onto that
21 form or you can put it up on the black box here on the
22 corner.

23 At the conclusion of the staff's presentation
24 this morning, the Hearing Examiner will then open the
25 floor to public participation and comment. It's at

1 that time that you'll have an opportunity to address
2 the Hearing Examiner and ask questions or provide
3 comments.

4 All of the public comment and testimony will be
5 taken from the other podium that's right up here in
6 the front.

7 When you approach, we ask you that state your
8 name and address for the record; and then you can tell
9 the Hearing Examiner what concerns you have about the
10 project, what comments or what questions you may have.

11 This is a rezoning and today's hearing is not
12 the final action on this matter. The Hearing Examiner
13 will be preparing a recommendation based upon the
14 evidence and testimony that she hears today, and that
15 information will then be considered by the Board of
16 County Commissioners in probably about a month or a
17 month and a half at another public hearing.

18 If you'd like to have your thoughts considered in
19 this matter, you must speak here today. Additionally,
20 if you want to speak before the Board of County
21 Commissioners, you absolutely must speak here today
22 and provide the Hearing Examiner with your questions,
23 your concerns or your comments. You must do so in
24 order to preserve your right to speak to the Board of
25 County Commissioners.

1 At this time we'll do a brief introduction of the
2 parties that are at the table up here.

3 Once again, I'm John Fredyma. I'm an Assistant
4 County Attorney.

5 MR. GETCH: Andy Getch, Lee County DOT.

6 MR. LAMEY: Shawn Lamey, planner with the zoning
7 division.

8 MR. FREDYMA: If you folks would also --

9 MR. FRANCESCHETTI: I'm Vince Franceschelli, a
10 planner with DRMP.

11 MR. VAUGHN-BIRCH: I'm Cody Vaughn-Birch, with
12 Henderson, Franklin, Starnes and Holt.

13 MR. GRIFFITH: Kenneth E. Griffith, with DRMP.

14 MR. FREDYMA: And with that introduction complete,
15 we'll go back to the Hearing Examiner.

16 THE HEARING EXAMINER: Okay.

17 MR. FREDYMA: Thank you.

18 THE HEARING EXAMINER: All right. This hearing
19 is scheduled for four hours, right?

20 MR. FREDYMA: It's the only one on your agenda
21 today, I believe.

22 THE HEARING EXAMINER: This morning. This
23 morning. There is one this afternoon.

24 Okay. Folks, if this hearing runs past two
25 hours, we will be stopping the hearing to allow the

1 court reporter to stand up, stretch and get a drink
2 of water, whatever. You all can move around at that
3 time.

4 During the hearing, it's important that you
5 remain quiet. If you have a cell phone, please turn
6 it off or turn it on vibrate. All right.

7 We audiotape the proceedings but the court
8 reporter takes down the official transcript. Noise
9 in the back of the room overrides what's coming in
10 on these microphones and it interferes with her
11 concentration and it may very well obliterate that
12 part of the record. We cannot reconstruct it if we
13 don't have it, if we can't hear it. Okay. So it's
14 very important that you remain silent. If you need to
15 talk to your neighbor, head out the door. You can
16 always come back in.

17 When we do take a break, water only in this room.
18 Please do not bring sodas or coffee in here. Water
19 only in this room.

20 Now, the County Attorney has indicated that you
21 will be allowed to speak after the applicant and staff
22 have made their presentation. When you come up to
23 speak, I need you to keep your comments germane to the
24 issue at hand, the issue being if this is approved,
25 what effect is it going to have on you, your property

1 or your community. All right?

2 If you don't like the developer, I can't help
3 that. I can't do anything about that. That has no
4 bearing on my decision. If you don't like the people
5 that own the property, that still has no bearing on
6 my decision. I need to know what effect you think
7 this will have on you or your community so that I can
8 address those issues with conditions if appropriate.
9 Okay?

10 So personalities, neighborhood disputes, those
11 kind of things, don't bring them up. It just causes --
12 just inflames somebody else in the audience; and next
13 thing you know, we have a shouting match. So I'm
14 not up to a shouting match this morning, so let's not
15 do it.

16 All right. If you are going to testify in
17 today's hearing, you need to be sworn in. If you are
18 an attorney and testifying to facts, you need to be
19 sworn in as well. So at this point in time if you
20 intend to speak at today's hearing, please raise your
21 right hand.

22 (Whereupon, the prospective witnesses were duly
23 sworn.)

24 THE HEARING EXAMINER: Okay. Thank you.

25 Now, if you've not been sworn in and you feel

1 the absolute burning desire to speak after staff and
2 applicant have made their presentations, let me know
3 when you come up to the podium. I can swear you in
4 then.

5 Okay. Applicant ready to proceed?

6 MR. VAUGHN-BIRCH: Yes, ma'am.

7 THE HEARING EXAMINER: All right. Let's do it.

8 MR. VAUGHN-BIRCH: Good morning. For the record,
9 Cody Vaughn-Birch with Henderson Franklin on behalf of
10 the applicant, Morris McGregor, LLC.

11 I'd just like to start by way of a few
12 introductory comments and then I'll turn it over to
13 our planner on the project, Ken Griffith, of DRMP.

14 Also with me today is Barry Jones, our project
15 engineer, also with DRMP, and Greg Diserio. He is our
16 landscape architect.

17 This project involves a 1.85-acre site. It's
18 located on the roughly northeast corner of McGregor
19 Boulevard and John Morris. What we're proposing here
20 is a commercial planned development, just under 20,000
21 square feet as proposed, two buildings, one of those
22 being two stories, the other being a single story.
23 What we're proposing are general office and some
24 commercial retail type uses in the schedule of uses.

25 With that, I'll ask Ken Griffith to go ahead and

1 make some remarks regarding relevant planning issues
2 associated with this project.

3 THE HEARING EXAMINER: Okay.

4 Shawn, can you check and see if the microphone's
5 on for me, please? And we may end up changing that
6 battery here real soon.

7 MR. VAUGHN-BIRCH: And Mr. Griffith --

8 THE HEARING EXAMINER: Wait a minute.

9 Tap on it again because it's not showing green.

10 MR. LAMEY: How's that?

11 THE HEARING EXAMINER: No, it's still not showing
12 green.

13 All right. The battery's dead.

14 (Off the record discussion.)

15 MR. VAUGHN-BIRCH: Madam Hearing Examiner, Mr.
16 Griffith has testified before the Hearing Examiner
17 in the past and has been qualified as an expert in
18 planning. We would ask that he be accepted as such
19 today.

20 THE HEARING EXAMINER: Okay. Any objections from
21 county staff?

22 MR. LAMEY: No.

23 THE HEARING EXAMINER: County Attorney?

24 MR. FREDYMA: No, ma'am.

25 THE HEARING EXAMINER: Okay. Accepted.

1 MR. GRIFFITH: Thank you.

2 THE HEARING EXAMINER: Ken, state your name,
3 please, for the record.

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1 Thereupon,

2 KENNETH GRIFFITH,

3 a witness, produced by the Applicant, having been previously
4 duly sworn, testified as follows:

5 MR. GRIFFITH: For the record, my name's
6 Kenneth Griffith, with DRMP; and we are the applicant's
7 engineer, planning consultant, surveyor. I believe
8 that's it.

9 what I'll do today is just give you a brief
10 overview. We've prepared a PowerPoint presentation.
11 I think everybody can see it.

12 THE HEARING EXAMINER: If you all can't see it
13 over in this corner, you can move over.

14 MR. VAUGHN-BIRCH: And, Madam Hearing Examiner --

15 THE HEARING EXAMINER: Because that can only turn
16 so far.

17 Yes.

18 MR. VAUGHN-BIRCH: We would ask that this
19 presentation be accepted as Applicant's Exhibit 1.
20 We can do that right now or afterwards, whatever your
21 pleasure.

22 THE HEARING EXAMINER: All right. We can do that
23 now. I'll go ahead and mark it.

24 MR. VAUGHN-BIRCH: I believe we've got hard copies
25 and also CDs of the presentation.

1 THE HEARING EXAMINER: Okay. Good.

2 MR. FREDYMA: And I'm sorry, Madam Hearing
3 Examiner, is that going to be Applicant's Exhibit 1?

4 THE HEARING EXAMINER: Yes. The hard copy will
5 be 1-A, the CD will be 1-B.

6 MR. FREDYMA: I'm sorry. Would you say that
7 again?

8 THE HEARING EXAMINER: One-B for the CD and 1-A
9 for the hard copy.

10 MR. FREDYMA: Thank you very much.

11 MR. VAUGHN-BIRCH: And we would note that it's
12 intended that the hard copy and CD are identical.

13 THE HEARING EXAMINER: Okay. I hope so.

14 MR. VAUGHN-BIRCH: I hope so.

15 THE HEARING EXAMINER: All right.

16 MR. GRIFFITH: Thank you.

17 First slide we have here is a location map.
18 Like Cody said, the property is located at the
19 northwest corner of McGregor Boulevard and Oleander
20 Drive in South Fort Myers.

21 Here we have prepared an aerial photograph of the
22 site, with the project boundaries outlined in yellow.

23 Next you have a future land use map and zoning
24 map. And this is from the Lee County Property
25 Appraiser's GIS system; and it has the land use,

1 zoning and some project names for the CPDs which are
2 represented in -- I guess that's the pink color.
3 And as you'll see, the dark burnt yellow color, I
4 guess that is, is a suburban land use classification
5 according to the Lee County Comprehensive Plan. The
6 brown use is in urban community.

7 As you can see, the subject property, a little
8 less than half of it is under the current zoning
9 classification of CN-1. The balance of that property
10 is zoned AG-2.

11 Across the street from Oleander is a previously
12 approved CPD, which I believe was approved in 2002;
13 and it's a phased CPD. I believe this year they are
14 hopefully going to be implementing their Phase II part
15 of their plan. And this is right now the contractor's
16 storage yard operation, and that will be converted.

17 This is another CPD across John Morris Road.
18 It's presently a restaurant site. I believe in the
19 past it was a bank.

20 THE HEARING EXAMINER: Yeah, I think it was a
21 bank. I remember it as a bank.

22 MR. GRIFFITH: And my understanding is, according
23 to the CPD that's now approved on that property,
24 they're doing a mini storage facility.

25 THE HEARING EXAMINER: Okay.

1 MR. GRIFFITH: And I don't have any information
2 on the timing.

3 Directly across the street there's a Circle K.
4 Over here you have a two-story combination office
5 building.

6 THE HEARING EXAMINER: It's a little strip mall
7 type thing or something in it, yeah.

8 MR. GRIFFITH: This is an existing residential
9 area, with the majority of it being lots being zoned
10 AG-2.

11 This lot here north of us has actually been
12 rezoned to a TFC-2 classification.

13 This parcel here -- I'm sorry. This has an
14 existing duplex on it.

15 This property here is AG-2 and it has an existing
16 single family home on it.

17 And I'm sure you'll hear from the neighbors later
18 on.

19 THE HEARING EXAMINER: Okay. I'll do a site
20 visit out there, too.

21 MR. GRIFFITH: I think one point that we would
22 like to note here is, as I stated, there is --
23 approximately a little less than half of the property
24 is currently zoned CN-1; and on that parcel, which I
25 failed to mention, there's a -- I'm not sure -- a farm

1 produce --

2 THE HEARING EXAMINER: Oh, a produce stand.

3 MR. GRIFFITH: Produce stand. And there has been
4 a -- and I believe that it's still there -- a bait shop
5 that operates next to that, I believe under a sublet
6 agreement with the produce stand.

7 I would submit that the CN-1 category is certainly
8 consistent with Lee County's Comprehensive Plan; and
9 in fact we initially tried to do a conventional rezone
10 on the AG-2 portion of this property to CN-1 at the
11 suggestion of staff; and after meeting with the
12 neighbors, we decided to pursue the planned
13 development.

14 Under the neighborhood commercial district, you
15 can see that there's a -- the kind of commercial uses
16 that you'll see there, typically these kinds of zoning
17 districts are adjacent to or close by residential
18 areas, want to encourage pedestrian activity; and
19 you can see the other two bullet points there.

20 I think that what the importance of this is, I
21 think it underscores that the proposed CPD that we
22 have proposed at this time is certainly in line with
23 this kind of a conventional zoning district use. It's
24 more of a -- I believe we've incorporated, although the
25 county hasn't adopted them yet, the county's smart

1 growth, new urbanism type codes and --

2 MR. VAUGHN-BIRCH: Ken, if I could just stop you
3 for a second.

4 Going back to that slide, I just wanted to note
5 for the record that these bullet points are all taken
6 from the description of the CN-1 zoning district as
7 found in Chapter 34. I think Mr. Lamey has that
8 section open. I know it's 34 dash -- but, to be clear,
9 all of those --

10 MR. LAMEY: 841.

11 MR. VAUGHN-BIRCH: -- bullet points are taken
12 directly from the description describing the intent
13 of the CN-1 zoning district.

14 THE HEARING EXAMINER: 841. 34-841. Okay.

15 MR. GRIFFITH: And actually, Mr. Vaughn-Birch was
16 prepared for that. I took his copy of it the CN-1.

17 MR. VAUGHN-BIRCH: And also, Ken, that CN-1
18 property, as indicated in the staff report -- I believe
19 staff's got the zoning resolution attached -- but that
20 CN-1 zoning was done in 1983 and approved by the Board;
21 is that correct?

22 MR. GRIFFITH: That is my understanding, yes, sir.

23 MR. VAUGHN-BIRCH: Thanks.

24 MR. GRIFFITH: This exhibit represents the final
25 master concept plan that the applicant has submitted

1 to staff for review; and this project has been in the
2 works about a year and three months now, four months.

3 Initially we were looking at what I would say
4 would be a more intensive type of a building. I
5 believe we have a slide and we'll show that further
6 on. But it was primarily centered in this area here
7 with the parking and had the scheduled uses that the
8 applicant was proposing at that time, although it was
9 certainly, I think, uses that would be consistent with
10 the surrounding area and certainly I would say somewhat
11 limited in terms of the kind of commercial activity
12 that could occur on the site. Mostly it was
13 anticipated that we would have office, general office
14 uses and those kinds of things.

15 And actually through the past year we I think
16 have been through five or six different renditions of
17 this, this plan, in working with staff and trying to
18 address some of the concerns that the neighborhood had.
19 And to the best of my knowledge, although they would
20 probably prefer that nothing occur on this site, I
21 believe we've addressed just about all their concerns.
22 And this is what this plan represents.

23 It's a little over 19,600 square feet, I
24 believe --

25 MR. VAUGHN-BIRCH: Uh-huh.

1 MR. GRIFFITH: -- in size. This building here
2 is a proposed two-story building, this building here
3 will be a one-story building; and we'll have a little
4 bit of discussion later on about the buffers, but
5 that's the plan that we're hoping that the Hearing
6 Examiner will give us a positive recommendation on
7 and hopefully our client will build some day.

8 We've looked at the proposed development against
9 the county's comprehensive plan and land development
10 code for consistency. We've outlined what we believe
11 are several policies within the Lee Plan here that
12 this project is consistent with. You see once again
13 it's the suburban category.

14 I think one thing that we would certainly
15 probably like to underscore here is -- I believe it's
16 on the next slide -- the property is designated as a
17 neighborhood node, commercial node, on the county's
18 commercial node map.

19 THE HEARING EXAMINER: Okay.

20 MR. GRIFFITH: And although our particular
21 development probably -- and I think what the staff
22 report represents is more of a minor commercial
23 project, a development meeting the standards of the
24 neighborhood commercial, under the neighborhood
25 commercial, could be developed at this site; and

1 that's under the Policy 6.1.2.

2 Of course, you got sewer and water that -- we're
3 hooking up to both utilities.

4 Commercial node map right here is -- if I could
5 point that out, our property would be right here; but
6 all four quadrants of that intersection are designated
7 on the map.

8 THE HEARING EXAMINER: Go back to that a minute.
9 we have little red circles and then we have little
10 black circles. What's the red circles?

11 MR. GRIFFITH: I guess black circles with the
12 open white in the middle are the neighborhood
13 commercial node.

14 THE HEARING EXAMINER: Okay. And then the red
15 ones?

16 MR. GRIFFITH: And these are the community
17 commercial, I believe.

18 THE HEARING EXAMINER: All right. That makes
19 sense, because that's probably the outlet mall there
20 on that last little red circle.

21 MR. GRIFFITH: Here at Davis and --

22 THE HEARING EXAMINER: Yeah. I think that's
23 going to be your outlet mall there.

24 MR. GRIFFITH: Yeah, I would say that that's
25 about pretty close to it.

1 MR. VAUGHN-BIRCH: And as indicated, that is Map
2 19 from the Lee Plan.

3 MR. GRIFFITH: Yes. This is one of the county's.
4 We did add this little call box.

5 MR. VAUGHN-BIRCH: Call out.

6 MR. GRIFFITH: Call out. Cody showed me how to
7 do it.

8 As you can see -- actually, I think we got these
9 kind of reversed. I apologize for that.

10 This is the initial plan that we started with
11 that I was referring to earlier with the three-story
12 building. At that time we were looking at more of
13 probably a bank type drive-through, you know, certainly
14 more intensive in terms of traffic; and then, like I
15 said, that's evolved over through six or seven
16 different renditions to what we have today.

17 Through the -- we've had two neighborhood meetings
18 with the surrounding property owners. Like I said, we
19 believe we've addressed the concerns that they've
20 raised.

21 We would submit that these are the five issues
22 that are probably major issues that probably will be
23 discussed today and you'll hear some testimony on,
24 but it's the buffers around the property, to access
25 location into the site, building height and aesthetics,

1 the intensity of uses and traffic generation.

2 MR. VAUGHN-BIRCH: And, Ken, if I may, for just
3 a moment, those neighborhood meetings were held in
4 June and September of this past year; and that slide
5 that you just saw, for clarification purposes, were
6 issues that we had attempted to address through changes
7 in our site plan that were raised by neighbors. There
8 obviously are -- there's a scope in which we can make
9 modifications; and on that slide, those were issues
10 that we felt that we could attempt to address through
11 the site plan.

12 THE HEARING EXAMINER: Okay.

13 MR. GRIFFITH: For the purpose of this next
14 slide, this is Mr. Diserio's landscaping plan; and,
15 coincidentally, this project has submitted its plans
16 for a development order already to Lee County and
17 those are in -- I believe they're in the -- I don't
18 believe, I know they're in the review process and
19 this is part of that submittal.

20 And back behind Andy and Shawn here, we have --
21 of course, here's a hard copy of the master concept
22 plan. This is a color rendering, kind of Mr. Diserio's
23 landscaping plan here; and then here's some cross
24 sections of different buffers that we proposed along
25 the property.

1 I think the access issue -- I know it's kind of
2 hard to go back -- we won't go back and forth.

3 Initially we were proposing an access on McGregor;
4 and in meeting with county staff, they weren't really
5 enthused about that access point. We had proposed
6 a secondary access more in this location, up on
7 Oleander; and once it became clear to us that we
8 probably wouldn't get a lot of support for this access
9 point, in working with staff we basically moved our
10 main entrance to this location here, which lines up
11 with the approved driveway for that CPD across the
12 street.

13 And one of the concerns that the neighbors had
14 really had to do with this access point here. We at
15 first were looking at maybe making it just an emergency
16 secondary access and just stabilize it; but after the
17 last neighborhood meeting, I think it was determined
18 that we really didn't even need to do that. So we
19 have eliminated, of course, the one on McGregor, but
20 that access point as well, and this is the only access
21 point that we'll be using for this development.

22 Can we go back one? I'm sorry. There's one point
23 I did --

24 The buffer along Oleander here right now is a
25 Type -- we've proposed a Type C buffer -- D buffer;

1 and although Oleander is a private road and no buffer
2 typically would be required along there, we felt
3 initially and have always proposed that, but that
4 would be something that the surrounding properties
5 would want certainly. I believe that the applicant
6 thinks it enhances his development. And through
7 working with staff -- and I think this is an issue
8 that came up very recently, after we submitted our
9 development order plans -- the environmental staff
10 asked us to look at maybe doing an alternative buffer
11 here and increasing the size of the plantings, which is
12 also a condition that we discussed with the neighbors
13 at the last neighborhood meeting in September.

14 And Shawn at that point was going to I think
15 recommend that they increase the number of trees; and
16 basically what we have agreed to do and -- is increase
17 the size of the plantings, I guess, to a standard
18 higher than what would be required if we were required
19 to have a buffer there. So not only do we provide
20 the buffer, the plantings are more substantial and
21 they'll certainly provide visual and -- provide a
22 visual screening and sound barrier, hopefully, to
23 mitigate any potential impact to the surrounding
24 properties.

25 This is a elevation of the front of the building.

1 This is the two-story building here. Here's the
2 single-story building. This would be looking maybe
3 standing from that two-story office complex across
4 the street, looking at this parcel. That's the way it
5 would hopefully appear.

6 THE HEARING EXAMINER: All right. Ken, those
7 two buildings are not connected on the master concept
8 plan, so there really actually is a little separation.
9 It's difficult to see it from here. Right in there
10 there is a little separation, that little canopy cover
11 there.

12 MR. GRIFFITH: I don't know if the roofs are
13 actually -- the roof is not attached? Okay.

14 You'll see on the master concept plan there's
15 like a little triangle that represents that, I guess
16 that roof area there; but, yes, ma'am, there would be
17 two separate buildings there.

18 This is another rendering. This would be
19 standing --

20 THE HEARING EXAMINER: It's going to be across
21 Oleander, it looks like.

22 MR. GRIFFITH: Yeah, probably on Jennifer's
23 property, looking towards the development.

24 And one of the suggestions that the neighbors
25 had made also at the last neighborhood meeting was

1 trying to incorporate some art-tone colors into the
2 building; and that's what the architect's tried to do
3 here in terms of not only the style of the building,
4 but the coloring of it as well.

5 This was the original schedule of uses that was
6 submitted with the original application; and as you'll
7 see on the next slide, we have -- this is the schedule
8 of uses that we have ended up with after reducing --
9 eliminating many of the uses either at the request of
10 staff or the surrounding property owners.

11 THE HEARING EXAMINER: So the ones in red are the
12 ones that staff wants eliminated?

13 MR. GRIFFITH: Yes, ma'am.

14 THE HEARING EXAMINER: Okay.

15 MR. GRIFFITH: And we don't -- we would submit
16 that this -- we have really limited this project
17 already and Mr. Lamey's kind of five that are -- or
18 six that are proposed to either be eliminated or
19 conditioned are probably the most intensive uses I
20 would say in the schedule -- this schedule of uses.
21 But I would certainly submit that all six of those
22 uses -- and this personal services I believe he just
23 wants to limit to the Group I only.

24 THE HEARING EXAMINER: What's in Group I?

25 Shawn, do you know off the top of your head?

1 MR. LAMEY: Yes. For the record, Shawn Lamey,
2 Lee County Zoning.

3 In Group I you're going to have your hairdressing
4 salons, you're going to have your laundromats, you're
5 going to have your ATM machines. It's a more intensive
6 retail type use, more of a traffic generator.

7 THE HEARING EXAMINER: Okay.

8 MR. LAMEY: So actually we have allowed in our
9 proposal --

10 THE HEARING EXAMINER: Hairdressers and
11 barbershops.

12 MR. LAMEY: Correct.

13 THE HEARING EXAMINER: All right. Does this
14 include -- does Group I also include any of the spas
15 or --

16 MR. LAMEY: No.

17 THE HEARING EXAMINER: Where does the Turkish bath
18 come in?

19 MR. LAMEY: I think it's II, Group II.

20 MR. VAUGHN-BIRCH: I've got a copy of these.

21 MR. LAMEY: I think it's II, yeah.

22 THE HEARING EXAMINER: Because I remember the
23 Turkish bath and the blood banks and some of those
24 are -- palm readers and tattooists and that kind of
25 stuff are typically ones that we don't put in anything

1 close to a residential neighborhood. So those are
2 Group II.

3 MR. GRIFFITH: I think we would agree to not have
4 those.

5 MR. VAUGHN-BIRCH: And, Madam Hearing Examiner,
6 I talked with the applicant prior to this. The ATM
7 use was previously discussed and we had agreed to
8 eliminate that. The ATM is in that Group I. We would
9 have no problem with eliminating the ATM from that use.

10 But there's tailors, shoe repair, those type of
11 general services that we feel are appropriate for this
12 that are included in that Group I.

13 THE HEARING EXAMINER: All right. I'll look at
14 the list of uses and get a feel for what he's actually
15 allowed in that Group I uses.

16 MR. GRIFFITH: Thank you.

17 The next slide represents -- this project's asked
18 for three deviations. The first two deviations would
19 be -- the first deviation is to eliminate the actual
20 pavement in the roadway from this point here to our
21 northern property line; and the second deviation is to
22 eliminate the sidewalk from this point to our northern
23 property line. And both of those deviations were
24 requested after our neighborhood meetings and the
25 neighborhood property owners that attended that hearing

1 didn't want any pavement beyond our access point.
2 They felt that that would encourage traffic to drive
3 that way. And I'm not really certain about why the
4 sidewalk, other than probably from a visual standpoint
5 it's just pavement that they don't want to see.

6 THE HEARING EXAMINER: Are there sidewalks in
7 the rest of the neighborhood?

8 MR. GRIFFITH: In their neighborhood?

9 THE HEARING EXAMINER: Yes, in the residential
10 portion?

11 MR. GRIFFITH: No, ma'am.

12 THE HEARING EXAMINER: Okay. There are not. So
13 the sidewalk would just stop at the end of your
14 property?

15 MR. GRIFFITH: Yes, ma'am.

16 THE HEARING EXAMINER: Okay.

17 MR. GRIFFITH: And then Deviation 3 is the --
18 is on that northerly property line, has to do with
19 the buffer there; and that deviation is we're asking
20 to do the alternative, which was encouraged to us by
21 Lee County's environmental staff, the alternative
22 landscape buffer without the wall.

23 The deviation under that option, we would have
24 to provide a 30-foot-wide buffer and we only have 25
25 feet; and that is the deviation, just for the 30 feet

1 down to 25.

2 THE HEARING EXAMINER: So there is a berm in that
3 depiction?

4 MR. GRIFFITH: Yes, ma'am.

5 THE HEARING EXAMINER: Is there going to be a berm
6 along that property boundary?

7 MR. GRIFFITH: (Nodded head affirmatively.)

8 THE HEARING EXAMINER: What's the height of that
9 berm? Is that your regular water management berm or is
10 this a separate --

11 MR. GRIFFITH: This does -- and Mr. Johnson
12 testified to this. This area I believe he was planning
13 to use for dry detention, so, yes, there would be a
14 berm. And on top of that berm we've also got a double
15 staggered row hedge that we propose to plant at 48
16 inches and to grow within five feet within a year or
17 so.

18 THE HEARING EXAMINER: And you're planting the
19 trees down the front of that slope?

20 MR. GRIFFITH: Yes, ma'am.

21 THE HEARING EXAMINER: Which is going to augment
22 the opacity of the hedge?

23 MR. GRIFFITH: Yes, ma'am.

24 THE HEARING EXAMINER: Okay. So in lieu of the
25 wall, that's the way you all have designed it. And I'm

1 sorry, did you give me the height of that berm? I
2 missed it.

3 MR. GRIFFITH: It's two feet.

4 THE HEARING EXAMINER: It's two feet. It's like
5 your regular water management?

6 MR. GRIFFITH: Yeah. And the problem in putting
7 the wall here is there would be no landscaping within
8 the development; and, you know, I don't know that the
9 applicant particularly cares either way. We initially
10 did this at the request of staff and we kind of like it
11 now, so we would ask.

12 THE HEARING EXAMINER: This would have to be an
13 eight-foot-wall if you were doing it, or
14 eight-foot-wall/berm combination --

15 MR. LAMEY: (Nodded head affirmatively.)

16 THE HEARING EXAMINER: -- so it could be a
17 two-foot berm and a six-foot wall.

18 All right.

19 MR. GRIFFITH: In the interest of saving some
20 time, because I know Mr. Getch has to leave at 9:45,
21 if there's any additional information I can provide,
22 I can do that on rebuttal.

23 MR. VAUGHN-BIRCH: And, Madam Hearing Examiner,
24 that will conclude our case in chief. We anticipate
25 some of these issues being raised again during the

1 public comment portion and we would ask to reserve
2 some time to present additional information on
3 rebuttal.

4 As Ken did mention, Mr. Getch has another
5 appointment.

6 THE HEARING EXAMINER: You got one minute.

7 MR. VAUGHN-BIRCH: And we're trying to do what we
8 can.

9 THE HEARING EXAMINER: Okay.

10 MR. VAUGHN-BIRCH: Thank you.

11 THE HEARING EXAMINER: We'll ask questions.
12 Shawn?

13 MR. LAMEY: For the record, Shawn Lamey.

14 Typically I would speak next and then have
15 Mr. Getch speak; but because of his time constraints,
16 we're going to ask him to come to the stand now and
17 discuss two of the outstanding issues, which would be
18 the access location and some of the traffic generation
19 issues.

20 Thank you.

21 MR. VAUGHN-BIRCH: We have no objection to Mr.
22 Getch being qualified as an expert in transportation.

23 THE HEARING EXAMINER: Okay.

24 Transportation engineering, right?

25 MR. GETCH: Yes.

1 Thereupon,

2 ANDY GETCH,

3 a witness, produced by the County Staff, having been
4 previously duly sworn, testified as follows:

5 MR. GETCH: For the record, Andy Getch with the
6 Lee County Department of Transportation. I'm a
7 registered professional engineer in the State of
8 Florida and I've worked for Lee County DOT now for
9 11 years.

10 The concerns with the access, the reason that
11 staff made the sufficiency comments that we did,
12 the existing property frontage does not have enough
13 frontage to meet the connection separation standards
14 in the land development code.

15 THE HEARING EXAMINER: And that's on McGregor?

16 MR. GETCH: Well, actually both on McGregor and
17 on John Morris Road.

18 THE HEARING EXAMINER: Oh, I see. Okay.

19 MR. GETCH: McGregor Boulevard is an arterial
20 and the minimum connection separation standards on
21 an arterial in the land development code, Section
22 10-285(a), is 660 feet. The connection separation
23 centerline distance between John Morris Road and
24 Oleander Drive is only about a couple hundred feet,
25 and the separation distance between the centerline of

1 McGregor Boulevard and the west property line of the
2 subject parcel is probably about 150 feet.

3 The minimum connection separation standard on a
4 collector road is about 330 feet, so not only does
5 the site not have enough frontage to meet connection
6 separation, it's not even halfway there, so that's a
7 problem for us.

8 From an operational standpoint rather than just
9 site regulations, the bigger concerns are that the
10 project frontage on John Morris Road is in what we
11 call the area of influence of the intersection. It's
12 in the turn lanes, it's right near the intersection;
13 and for this project to do a driveway, it would
14 literally be right by the stop bar; and that's an
15 operational problem for us.

16 On McGregor Boulevard, that's an existing
17 five-lane section with a centerline, two-way left
18 turn lane. That means there's no way to regulate
19 vehicles turning left in or out.

20 Oleander Drive is already as close as -- it's
21 too close for comfort, to be honest; and anything any
22 closer on the subject property would be an operational
23 problem for us. The existing dirt driveway is into the
24 fruit stand or actually in the intersection. You can
25 see that on the aerial photograph and you would see

1 it going out on a site visit. They're actually --
2 their driveway on McGregor Boulevard is within the
3 intersection, past the stop bar. So that's a real
4 operational problem for us.

5 The trip generation, the applicant's TIS met
6 the standards for submittal for a zoning application.
7 There are no level of service problems on McGregor
8 Boulevard or on John Morris Road projected with the
9 development, so it's really -- it really boils down
10 to more of an operational issue.

11 My understanding is the neighbors have some
12 concerns with some of the uses based on being higher
13 trip generators versus lower trip generators and their
14 effects on how much traffic would go out onto Oleander
15 Drive, and I would let them speak for themselves on
16 that issue.

17 THE HEARING EXAMINER: Okay.

18 MR. GETCH: And with that I'm available for any
19 questions.

20 THE HEARING EXAMINER: Questions by staff?

21 MR. LAMEY: No.

22 THE HEARING EXAMINER: Questions by the County
23 Attorney?

24 MR. FREDYMA: Just one. John Fredyma, Assistant
25 County Attorney.

1 Andy, if I understand your testimony then, the
2 driveway location or the access point that they're
3 showing then on Oleander then would not require a
4 deviation.

5 MR. GETCH: No, sir. It actually -- Oleander
6 Drive is a local street, privately maintained, as
7 already mentioned previously. The minimum connection
8 separation standard on a local street is 125 feet;
9 and it lines up with an existing or an approved
10 driveway, which from an operational standpoint,
11 that's better.

12 THE HEARING EXAMINER: Okay.

13 MR. FREDYMA: Thank you.

14 THE HEARING EXAMINER: Questions?

15 MR. VAUGHN-BIRCH: Briefly. Yes, ma'am.

16 Mr. Getch, you mentioned that in your opinion
17 there were with no level of service problems with
18 McGregor. What is the level of service?

19 MR. GETCH: Could I borrow your staff report for
20 a moment? I don't recall that off the top of my head.

21 I believe that for this particular project --
22 I'm looking for the citation in the staff report.

23 THE HEARING EXAMINER: It should be somewhere --

24 MR. VAUGHN-BIRCH: Attachments E and F.

25 MR. GETCH: It would be on Page 12 of 13 of the

1 staff report; and it's a level of service B on McGregor
2 Boulevard, B as in boy.

3 MR. VAUGHN-BIRCH: And according to the staff
4 report, that's the level of service that is anticipated
5 to operate at build out; is that also correct?

6 MR. GETCH: Yes. Yes. The level of service
7 standard on McGregor Boulevard is E, so it's actually
8 a very -- operating very well.

9 MR. VAUGHN-BIRCH: Is the level of service in
10 your opinion a sufficient or a level of service that
11 you would find acceptable?

12 MR. GETCH: Yes. It meets the county standards.

13 MR. VAUGHN-BIRCH: One more question. The access
14 point as it is on Oleander, at the neighborhood's
15 request the applicant has shifted that towards McGregor
16 as much as possible in order to reduce stacking into
17 the neighborhood and congestion. Is it your opinion
18 that this site plan effects that intent?

19 MR. GETCH: I would say that people, vehicles
20 turning from the project, wishing to exit on McGregor
21 Boulevard, if there was any backing up, it would back
22 up into the parking lot.

23 MR. VAUGHN-BIRCH: Thank you.

24 THE HEARING EXAMINER: Okay.

25 MR. GETCH: Thank you for accommodating my

1 schedule.

2 MR. VAUGHN-BIRCH: Thank you for accommodating
3 our schedule.

4 THE HEARING EXAMINER: All right.

5 Before we do that, let's find out if there were
6 any questions of Kenneth by staff.

7 MR. LAMEY: No.

8 THE HEARING EXAMINER: County Attorney, questions
9 of Mr. Griffith?

10 MR. FREDYMA: Just one.

11 THE HEARING EXAMINER: Okay.

12 MR. FREDYMA: You had two architectural renderings
13 of elevations. Those are primarily to just show the
14 buildings themselves, correct?

15 MR. GRIFFITH: Yes, sir.

16 MR. FREDYMA: My point being that any of the
17 required plantings or buffers are not depicted.

18 MR. GRIFFITH: That's correct. That would be
19 the drawing behind you that depicts that.

20 MR. FREDYMA: Right.

21 MR. VAUGHN-BIRCH: And as County Attorney
22 has correctly presumed, those renderings, if the
23 landscaping were shown, you wouldn't be able to see
24 the buildings, so as is typical in those building
25 renderings, our buffers and the vegetation that's

1 intended to shield views and any effects on the
2 surrounding area would not be shown on those.

3 THE HEARING EXAMINER: Okay.

4 MR. FREDYMA: And, I'm sorry, I had one other
5 question.

6 If I understand correctly, the portion of the
7 buffer on the property where you -- I gather you do
8 not want a wall or you want the deviation is -- looking
9 at north --

10 MR. GRIFFITH: It would be the northern property
11 line, I guess.

12 MR. FREDYMA: What's shown on there now, it says
13 25-foot Type E landscape buffer with eight-foot-tall
14 CBS wall. Is that correct or am I looking at the wrong
15 section?

16 MR. VAUGHN-BIRCH: Yeah. Do you maybe want to
17 point on the MCP to maybe clarify that?

18 MR. GRIFFITH: That plan that's attached there
19 is not the -- the last plan that was submitted to the
20 county. I believe that because of the timing of when
21 it was submitted, I don't believe that Shawn had time
22 to get it into the staff report. I don't want to speak
23 for him, but --

24 MR. FREDYMA: The one that's attached to the staff
25 report, the most recent, is dated revised October 1,

1 2006, and date stamped received December 13, 2006.

2 Do you have some -- you have a newer plan?

3 MR. GRIFFITH: Yes, sir.

4 MR. FREDYMA: What is the date of that plan?

5 MR. GRIFFITH: Looks like it was submitted on
6 March 13th, '07.

7 MR. FREDYMA: Is there a date on the plan itself,
8 a revision date?

9 MR. GRIFFITH: Yes, sir.

10 MR. VAUGHN-BIRCH: Shawn, that would be behind
11 you, on the lower left-hand corner of the exhibit
12 behind you.

13 MR. GRIFFITH: It's dated actually October 1st,
14 '06; and the revision box has a date of March 10th,
15 '07.

16 MR. FREDYMA: Okay.

17 THE HEARING EXAMINER: And that's the one that
18 does not show the wall.

19 MR. FREDYMA: So in both instances along I
20 guess what would be the northerly and the westerly
21 boundaries -- along the westerly it looks like --

22 THE HEARING EXAMINER: West boundary is Oleander,
23 isn't it?

24 MR. FREDYMA: Along Oleander.

25 I'm just trying to see which is which.

1 okay. So along Oleander would be 18-foot Type D,
2 modified landscape buffer, with ten trees per 100 feet;
3 and along the northerly would be 25-foot modified Type
4 F landscape buffer, with ten trees per 100 feet and
5 continuous hedges maintained above 60 inches.

6 Is that correct?

7 MR. VAUGHN-BIRCH: Yes. What we've got -- and
8 for kind of housekeeping purposes here, would you
9 like us to introduce that into evidence as an exhibit?
10 That is Slide 6 of the presentation that's on the
11 board.

12 THE HEARING EXAMINER: Yeah. I've got that marked
13 as master concept plan, Applicant's Exhibit Number 2;
14 the landscape rendering is Exhibit Number 3, and the
15 elevation rendering is Exhibit Number 4. All the way
16 across, 2, 3 and 4.

17 Because I will need those in the back, mainly
18 because they're bigger, they're easier to see.

19 MR. VAUGHN-BIRCH: Sure.

20 MR. GRIFFITH: Can I just expand on my answer to
21 Mr. Fredyma?

22 THE HEARING EXAMINER: Certainly.

23 MR. GRIFFITH: This buffer, what's requiring the
24 wall or the 30-foot buffer with the enhanced plantings
25 is the fact that we've got either a drive or a parking

1 lot within 125 feet of the residential property.

2 Under that scenario, we would -- basically, we
3 could stop that somewhere in that area, the wall or
4 the enhanced buffer; but we have agreed to go ahead
5 and extend it from property line to property line under
6 the alternative buffer scenario.

7 Once again, we can -- there is a retaining wall
8 here on this parking lot. We could put a wall on top
9 of that. I don't know that the applicant -- like I
10 said, you know, it's not about he wants to fight. He
11 thinks that the alternative buffer certainly enhances
12 this project; and, in my opinion -- I guess I won't
13 offer that opinion because I'm not an expert in
14 landscaping.

15 THE HEARING EXAMINER: In landscaping.

16 MR. GRIFFITH: But it makes it look nicer.

17 MR. FREDYMA: The reason for my question was I
18 didn't realize there was a change in the master concept
19 plan. I have the one that's in the staff report and
20 I was trying to match up your comments and description
21 to what's shown on the MCP, and there's an obvious
22 discrepancy and that's why I asked.

23 MR. VAUGHN-BIRCH: Thank you.

24 THE HEARING EXAMINER: All right. Shawn.

25 MR. LAMEY: For the record, Shawn Lamey.

1 At the time of the staff preparing the staff
2 report, that was the latest submittal to staff.

3 MR. FREDYMA: That's fine.

4 MR. LAMEY: And that MCP that you have in your
5 staff report reflects the wall requirement. So if
6 in fact for this discussion today or through your
7 analysis, you in fact -- or through the testimony from
8 the neighbors feel that a wall is not a requirement,
9 then this in fact would be what you'd be looking at
10 as using your MCP. Okay?

11 THE HEARING EXAMINER: All right. Anything else?

12 MR. FREDYMA: No, only I assume we'll get comment
13 from staff at some point on their response to the
14 change and what's shown.

15 THE HEARING EXAMINER: Ken, let me ask just a
16 couple of questions. I mean I know you guys have
17 been through four or five iterations on this master
18 concept plan.

19 was it ever considered putting the building
20 backing up to that northerly boundary with the parking
21 lot in front of it instead of -- you know, I mean
22 flipping it from what you've got to, you know, just
23 rolling it over? Was that ever considered; and if it
24 was, why was it rejected? What were the reasons for
25 rejecting it?

1 MR. GRIFFITH: I don't know that we ever had
2 a plan that, for instance, had a building that was
3 more oriented along that property line.

4 Just in terms of the internal access of the
5 parking lot and because of the land use classification,
6 the CN-1 zoning that exists on the property, in trying
7 to incorporate the new urbanism, smart growth --

8 THE HEARING EXAMINER: Principles.

9 MR. GRIFFITH: -- principles, you know, we
10 tried to get -- and at the request of the surrounding
11 property owners. They wanted it as close to McGregor
12 and out of the neighborhood area, so that's what we
13 tried to achieve.

14 THE HEARING EXAMINER: So even if the building
15 were -- the site plan were flipped and the building
16 were put along that, there would still have to be a
17 driveway behind that building for deliveries, because
18 I see there's a driveway behind the building now, I'm
19 assuming for the delivery vehicles and stuff. I think
20 that's a driveway.

21 MR. GRIFFITH: When you say behind the building,
22 are you referring to this area?

23 THE HEARING EXAMINER: Down, down. Right in
24 there. What is that?

25 MR. GRIFFITH: No, ma'am, that's not a driveway.

1 I'm not --

2 THE HEARING EXAMINER: Is that retention?

3 MR. GRIFFITH: Yes.

4 THE HEARING EXAMINER: Buffer and retention?

5 MR. GRIFFITH: I believe we proposed dried --
6 buffer, sidewalk. The sidewalk's there, existing
7 sidewalks.

8 THE HEARING EXAMINER: Looked like nice little
9 lanes of traffic to me.

10 MR. GRIFFITH: This is one of those plans where
11 we've kind of invoked different processes and kind of
12 merged.

13 THE HEARING EXAMINER: So essentially the
14 neighborhood wanted the building as far away from
15 them as possible? The only reason I was thinking
16 about it being the other direction is the back of the
17 building, if you didn't have deliveries and stuff,
18 the back of the building actually would form a better
19 sound barrier than -- you know, I mean the building
20 with the parking on the south side of the building
21 would form a better sound barrier, actually, than
22 putting the parking lot between the building and
23 the homes, so that was the only reason I asked.

24 MR. GRIFFITH: Madam Hearing Examiner, we have
25 actually slides that we didn't put in the presentation

1 of all the different renditions we've been through.
2 I don't know if that will help you at all.

3 THE HEARING EXAMINER: No. I just wondered why
4 it wasn't flipped, because that way then it would also
5 open the front of the little center up to the view by
6 the passers-by, where at this point they'll see the
7 rear of the building instead of the front, actually.
8 So okay.

9 MR. VAUGHN-BIRCH: And, Madam Hearing Examiner,
10 you are correct in the statement that the placement
11 of the buildings is in response to the community
12 concerns that we've heard. Initially plans called
13 for a higher building, closer to residences along
14 Oleander and to the -- I guess that would be the
15 north, generally the north and northwest direction.
16 In response to those comments, we brought the buildings
17 down and moved them as far away as possible, as we have
18 been in an attempt to respond to requests that we've
19 received.

20 THE HEARING EXAMINER: All right.

21 MR. GRIFFITH: We do have -- and I'll go ahead and
22 introduce this, I guess. There's part of a building --
23 one of the buildings on that site plan initially was
24 two different buildings. One was along the property
25 line, but --

1 THE HEARING EXAMINER: And that put the entrance
2 onto McGregor?

3 MR. GRIFFITH: Yes, ma'am.

4 THE HEARING EXAMINER: And DOT said ain't no way
5 that's going to happen, so -- okay. Okay. I won't
6 take this as an exhibit. I'll let you have that back.

7 MR. GRIFFITH: Okay.

8 THE HEARING EXAMINER: But I just wondered if it
9 had been considered.

10 That's actually the only question. I may have
11 some questions of your landscape person after I hear
12 from the public, do some discussing with him, the
13 landscape -- proposed landscape and stuff.

14 So you have no other formal presentation at this
15 time?

16 MR. VAUGHN-BIRCH: No, ma'am. Just comments
17 that we would request to reserve in rebuttal after
18 the public hearing; and as I noted before, we do have
19 our project engineer and landscape architect available
20 to provide information in response to issues that may
21 arise during that public hearing portion.

22 THE HEARING EXAMINER: Okay.

23 MR. VAUGHN-BIRCH: Oh, and those are -- again, as
24 a little housekeeping, Mr. Griffith mentioned several
25 Lee Plan provisions that we feel that we've complied

1 with --

2 THE HEARING EXAMINER: Okay.

3 MR. VAUGHN-BIRCH: -- that staff has -- I believe
4 the great majority of the Lee Plan provisions outlined
5 herein, staff has agreed with in their staff report.

6 These were part of the application materials
7 that have been submitted or are part of the file.
8 This would just be a narrative that outlines in a
9 little greater detail all the policies and how we
10 feel the project complies with those design-related
11 land development code and also Lee Plan-related
12 requirements.

13 THE HEARING EXAMINER: Okay. You wanted to
14 submit those as an exhibit?

15 MR. VAUGHN-BIRCH: Yes, ma'am.

16 THE HEARING EXAMINER: Okay. I'll take those as
17 Applicant's Exhibit Number 5, composite.

18 MR. VAUGHN-BIRCH: would you like a copy?

19 MR. FREDYMA: Sure.

20 MR. LAMEY: (Nodded head affirmatively.)

21 THE HEARING EXAMINER: That being it then for
22 the Applicant's case in chief -- I'm sorry. County
23 Attorney?

24 MR. FREDYMA: One other question if I may, Madam
25 Hearing Examiner. John Fredyma, again, Assistant

1 County Attorney.

2 This project does -- and I'll let whoever from
3 the applicant's team answer -- this rezoning does
4 include in part a rezoning from an AG zoning district;
5 and one of the popular topics, obviously, for our
6 office is any ag uses that either are on the property
7 or that might be considered for remaining, somebody in
8 your team would at least put something on the record
9 with regard to that.

10 MR. VAUGHN-BIRCH: Sure. For the record, Cody
11 Vaughn-Birch.

12 Aside from the operations of the produce stand
13 that are currently occurring in the CN-1 zoned portion
14 of the property, I'm of the -- it's my impression that
15 there are no agricultural uses going on on that AG-2
16 property. There are none intended to remain and
17 certainly none would be in place by the time of
18 development order.

19 That's correct. Okay. I just checked with --
20 okay, we did submit an affidavit regarding the ag
21 uses as well.

22 MR. FREDYMA: Okay. And, again, I think that
23 there are none on the property at this time.

24 MR. VAUGHN-BIRCH: Correct.

25 MR. FREDYMA: All right. Thank you very much.

1 THE HEARING EXAMINER: Okay. Staff ready to make
2 a presentation?

3 MR. LAMEY: (Nodded head affirmatively.)
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1 Thereupon,

2 SHAWN LAMEY,

3 a witness, produced by the County Staff, having been
4 previously duly sworn, testified as follows:

5 MR. LAMEY: For the record, Shawn Lamey with
6 Lee County Community Development, Division of Zoning.

7 I have previously been accepted as an expert
8 witness in land use planning and zoning issues. I'd
9 like to speak as an expert witness for this case.

10 THE HEARING EXAMINER: Any objections from the
11 applicant?

12 MR. VAUGHN-BIRCH: No, ma'am.

13 THE HEARING EXAMINER: Okay. Accepted as an
14 expert in land use planning and zoning.

15 MR. LAMEY: The staff report is numbered
16 DCI2006-00035 and is dated March the 13th, 2007.
17 At this time I'd like to incorporate this report as
18 part of the record.

19 THE HEARING EXAMINER: Okay. It is part of the
20 record. Thank you.

21 MR. LAMEY: The subject property is located at
22 the northwest intersection of McGregor Boulevard and
23 John Morris. The request is to rezone 1.85 acres from
24 agricultural, AG-2, and neighborhood commercial, CN-1,
25 to commercial planned development, CPD, to permit

1 19,672 square feet of commercial and retail space in
2 two buildings.

3 The proposal will connect to existing central
4 water and sewer.

5 The area is characterized by commercial uses
6 fronting McGregor and existing residential development
7 north and west of the subject property.

8 I have to my right some photographs of the site
9 to illustrate the nature of the surrounding area.

10 To my far right would be more or less the
11 commercial viewpoint of the John Morris/McGregor
12 intersection, and then closer to me are the photographs
13 of the residential component of the neighborhood.

14 Staff evaluated the proposed rezoning in the
15 context of the applicant's written narrative proposal
16 and impacts on the surrounding development pattern
17 and zoning designation.

18 Staff, after conducting a complete review and
19 analysis of the proposed case, now must ensure the
20 request in fact qualifies for a rezoning by compliance
21 with all regulations of the Lee County Comprehensive
22 Plan.

23 Staff have conducted three levels of analysis:
24 Number 1, concurrency; Number 2, compatibility with
25 the surrounding development pattern; and the third

1 level of analysis addresses consistency with the Lee
2 Plan.

3 First, this application addresses concurrency.
4 There is an adequate road network to support the
5 development. McGregor Boulevard will be at a level
6 service of B from the memo of development services.
7 This is Attachment E of the staff report.

8 Furthermore, we have a letter from Lee County
9 utilities that indicates to staff that there is
10 capacity to service the parcel with water and sewer.
11 This is Attachment C of the staff report.

12 The second issue is compatibility. The area
13 is surrounded with commercial uses fronting McGregor,
14 but there is established residential uses to the north
15 and west. This condition raises issues of allowing
16 greater commercial intensity. Therefore, staff has
17 limited the list of permitted uses. Furthermore,
18 limited hours of operation, enhanced buffering and
19 the termination of pavement and sidewalks all create
20 the separation of this commercial use from the
21 residential portion of Oleander.

22 Staff believes approval of the planned
23 development as conditioned with the deviations will
24 develop the property in a manner that is consistent
25 with the surrounding area.

1 The last part of our analysis addresses
2 consistency with the Lee County Comprehensive Plan.
3 The planned development as conditioned has been found
4 to be consistent with the policies and objectives of
5 the Lee Plan. The conditions and limited permitted
6 uses help to protect and limit the impact into the
7 residential neighborhood.

8 Transportation staff in Attachment F of the
9 staff report recommended no access from McGregor.
10 Based on this recommendation, the entrance onto the
11 development is placed away from the residential portion
12 of Oleander. Also noted, the MCP places the entrance
13 directly across from an already approved CPD found on
14 the west side of Oleander.

15 Furthermore, environmental science staff in
16 Attachment D of the staff report indicate there are
17 no environmental issues associated with this property.
18 No adverse impact to unique natural habitat is
19 expected.

20 The site is therefore expected to be developed
21 in a manner that is consistent with the intent of the
22 suburban land use category.

23 To conclude, based on the findings and conclusions
24 outlined in the staff report, staff recommends approval
25 of the planned development as conditioned.

1 I'm done.

2 THE HEARING EXAMINER: Okay. Questions of this
3 witness by County Attorney?

4 MR. FREDYMA: Just one or two if I may.

5 John Fredyma, Assistant County Attorney.

6 Shawn, you've seen the revised MCP, the one
7 that's now dated or last revised March 10, 2007. I'm
8 not sure if there are substantial differences between
9 the two; but you still have a recommendation for denial
10 of Deviation 3, which relates to the -- I believe the
11 requirement for the wall. Has staff changed their
12 position?

13 MR. LAMEY: No.

14 MR. FREDYMA: Okay.

15 THE HEARING EXAMINER: Any other questions, John?

16 MR. FREDYMA: I don't think so at this point.

17 THE HEARING EXAMINER: Cody, questions of this
18 witness?

19 MR. VAUGHN-BIRCH: A few.

20 THE HEARING EXAMINER: Okay.

21 MR. VAUGHN-BIRCH: In the memorandum that was
22 sent to your office identifying issues to be discussed
23 today, the schedule of uses was an issue; and for
24 clarification, specifically we were requesting that
25 Group I, personal services, the drugstore/pharmacy

1 use and hardware store be -- those would be uses that
2 staff has asked to be deleted that we would request
3 that the Hearing Examiner consider.

4 And my question to you, Shawn, as far as traffic
5 generation, adequate parking, those are all set forth.
6 There's certain requirements that must be fulfilled
7 pursuant to the land development code; is that correct?

8 MR. LAMEY: Correct.

9 MR. VAUGHN-BIRCH: And would you agree that the
10 review of the development order would also address
11 those issues as far as the square footage of use in
12 relation to parking and those matters?

13 MR. LAMEY: Correct.

14 MR. VAUGHN-BIRCH: And so as far as there being
15 adequate parking facilities and making sure that the
16 site can accommodate the traffic generated by certain
17 uses, the development order phase will take a close
18 examination at that; is that correct?

19 MR. LAMEY: They do not address the compatibility
20 of those uses. This is the time and place, at the
21 zoning hearing, to address the compatibility of those
22 uses.

23 MR. VAUGHN-BIRCH: Now, I believe in your
24 staff report you were recommending certain uses be
25 eliminated due to the fact that they were higher

1 traffic generators?

2 MR. LAMEY: Yes. They're more intense uses.
3 Hardware stores, drugstores generate more traffic.

4 MR. VAUGHN-BIRCH: And that's your
5 compatibility -- that's what leads it to be
6 incompatible?

7 MR. LAMEY: Yes, in part. There's two reasons,
8 in fact.

9 This proposal when presented to staff and
10 certainly the community was presented as a very low
11 intensive, more or less a general office type of
12 development; and that was the viewpoint that we've
13 taken and the stand that we've taken in terms of the
14 permitted uses. That's the impression that we've all
15 had, including the residents. When we reviewed the
16 list of uses, we kept that in mind; and we certainly
17 have taken note of what the residents are looking for
18 in their community.

19 MR. VAUGHN-BIRCH: And in regards to the pharmacy
20 use, there's no drive-through requested; correct?

21 MR. LAMEY: Not to my knowledge.

22 MR. VAUGHN-BIRCH: Okay. One more thing.

23 Mr. Griffith mentioned something about this
24 project being consistent with Lee Plan and general
25 county policies regarding infill development.

1 In light of the location of this site being
2 adjacent to approved commercial planned developments
3 and the site already existing of a part of it, existing
4 CN-1 zoning, would you agree that this project -- or I
5 guess let me rephrase that.

6 Would you say that this project is inconsistent
7 with the goals and policies that are outlined in regard
8 to infill development?

9 MR. LAMEY: You have to look at the project in
10 its entirety; and I feel that with the conditions and
11 with what we have today, and the extra buffering, the
12 enhancements on the site, I do feel it is consistent
13 with the Lee Plan. However, to alter any of those
14 conditions that we have in place now I think would
15 cause greater effects to the community, therefore
16 making it inconsistent with the Lee Plan.

17 So as conditioned and as staff have written up
18 the permitted list of uses, it is consistent with the
19 Lee Plan.

20 MR. VAUGHN-BIRCH: Okay. Let me see here.

21 For clarification purposes, with the revised
22 master concept plan, just to give us a little basis
23 on the chronology of how Deviation Number 3 came into
24 play here, originally the developer had proposed a
25 plan that would fulfill the buffer requirements on

1 that northern boundary line and they were not
2 requesting any deviation. Is that correct?

3 And by initially, I would say prior to a meeting
4 that we had that you were in attendance where
5 environmental staff had some issues.

6 MR. LAMEY: I think you're referring to Condition
7 6. I believe you mentioned 3. I think it's 6.

8 MR. VAUGHN-BIRCH: Deviation Number 3.

9 MR. LAMEY: Oh, deviation. Sorry. Condition 6.

10 MR. VAUGHN-BIRCH: Six of one, half a dozen of
11 the other; but, yes, I think we're both correct or
12 we're both wrong. I'm not sure.

13 MR. LAMEY: It is my understanding that
14 through the development order process this came to
15 the environmental science division for review. At
16 that point, the review staff felt that a wall would
17 not be the most aesthetically pleasing option for the
18 northerly property line. They felt enhanced tree
19 plantings and more vegetation would be the more desired
20 goal. However, that discussion did not include the
21 neighborhood; and I have spoken to the neighbors in
22 respect to that and they would like to keep the wall
23 requirement in place. So staff is sticking with the
24 opinion of the residents and their desire to keep that
25 separation of the -- the residential portion of the

1 neighborhood separate from the commercially zoned
2 parcel that we have here today and they feel that a
3 wall keeps that separation in place.

4 MR. VAUGHN-BIRCH: And let me see. So, therefore,
5 the deviation as requested regarding the width of that
6 is in response to a request from environmental science
7 staff that was verbalized at a prior meeting?

8 MR. LAMEY: It was just their general opinion.
9 They in fact deferred the compatibility back to the
10 zoning staff, so as my final recommendation it actually
11 is to use the wall.

12 MR. VAUGHN-BIRCH: And for the record, we
13 initially had planned a wall and I think we're caught
14 in a case of trying to please everyone. So as far as
15 this being a major issue for us, originally we had
16 planned on having a wall.

17 THE HEARING EXAMINER: All right.

18 MR. LAMEY: And it's very subjective, if a wall
19 would look good or not look good, or more plantings.

20 I think perhaps as the hearing continues today,
21 as the neighbors speak, perhaps they can give us some
22 direction on how they feel their community should look
23 in terms of the wall requirement.

24 THE HEARING EXAMINER: All right. Shawn, with
25 an eight-foot wall, the buffer width shrinks, does it

1 not? It's not required to be 30 feet any longer.

2 MR. LAMEY: Correct. Twenty-five.

3 THE HEARING EXAMINER: It only shrinks to a 25?

4 MR. LAMEY: Uh-huh.

5 THE HEARING EXAMINER: A Type D buffer shrinks to
6 a 25 with an eight-foot wall?

7 MR. LAMEY: Uh-huh. Because you have parking, you
8 have parking next to a residential area.

9 THE HEARING EXAMINER: Oh, that's right. Okay.
10 This is not a typical Type D. All right. I had
11 forgotten about the parking.

12 All right. So your recommendation then for
13 denial of Deviation 3 is not really based on comments
14 from environmental sciences as much as it's based on
15 a compatibility assessment?

16 MR. LAMEY: Yes.

17 THE HEARING EXAMINER: All right. Because I
18 couldn't find anything in environmental science
19 comments on the buffer, and normally they're the ones
20 that are pushing buffers and whatnot.

21 I have a couple of questions, getting away from
22 the buffer here right at the moment.

23 Condition Number 9, business hours, 7:00 a.m. to
24 9:00 p.m. Where did the 9:00 p.m. come from?

25 MR. LAMEY: I think if you look under the CN-3

1 zoning district, the conventional zoning district --

2 THE HEARING EXAMINER: CN-3?

3 MR. LAMEY: I think CN-3 does limit --

4 MR. FREDYMA: (Nodded head affirmatively.)

5 MR. LAMEY: -- does limit hours of operation.

6 THE HEARING EXAMINER: All right. And the uses
7 that are being asked for in this are based on CN-3?

8 MR. LAMEY: No. Just the general idea of limiting
9 hours, you know, when you have a commercial --

10 THE HEARING EXAMINER: All right. Do you know,
11 looking at across the street, catty-corner at that
12 little strip mall situation, strip area, where they
13 have the boating club and they have the -- they've got
14 a bunch of little -- yeah, that area there -- what are
15 the hours of operation for that building? Are you
16 familiar with those?

17 MR. LAMEY: I do not know.

18 THE HEARING EXAMINER: I know there's a restaurant
19 a little further down and there's a restaurant across
20 the street, I think, from this.

21 what about the CPD to the west of this site? Do
22 you know what the hours of operation for that are?

23 MR. LAMEY: There was no limitation.

24 THE HEARING EXAMINER: Okay. And is that
25 commercial and office -- I mean retail and office uses

1 in that CPD that was approved to the west?

2 MR. LAMEY: Yes.

3 THE HEARING EXAMINER: It was?

4 MR. LAMEY: (Nodded head affirmatively.)

5 THE HEARING EXAMINER: And there were no -- I
6 need to look at the site plan on that little fellow
7 because I didn't do that one. I'm not familiar with
8 that one.

9 All right. I'm just concerned about, you know,
10 a nine o'clock hour. With the office building, you
11 know, they'll be gone by 5:00, 6:00 or so. But nine
12 o'clock, with the building facing toward the residents,
13 yeah, I'm a little concerned about the hour. I have
14 to think about that and look at what --

15 MR. LAMEY: When we had discussions with the
16 applicants, I think they were in general compliance
17 with limiting the hours due to the fact they felt it
18 was going to be an office type of development.

19 THE HEARING EXAMINER: All right. Let's turn
20 our attention now to the schedule of uses and some of
21 the uses that you have recommended denial of. Food
22 and beverage service, limited. What the heck is that?
23 I think I've seen that a half dozen times, but I don't
24 know that I've ever actually understood what that was.

25 MR. LAMEY: A convenience store, like a 7-Eleven.

1 THE HEARING EXAMINER: Okay. No, food and
2 beverage service. I know what a convenience store is.
3 Food and beverage service. What is that? Is that --
4 I mean is that a caterer? Is it like one of these
5 discount beverage places where you can go in and load
6 up on 25 cases of soda or something? What is that?
7 And how do we know that that's a high traffic generator
8 if we don't know what it is? It's not a restaurant.

9 MR. LAMEY: It means a store specializing in
10 convenience products and other commodities, which may
11 have self-service fuel pumps.

12 THE HEARING EXAMINER: No, not convenience food
13 and beverage store. We're still looking at food and
14 beverage service. I know what a convenience food and
15 beverage store is. That's a 7-Eleven, a Jiffy Mart or
16 whatever.

17 MR. VAUGHN-BIRCH: I think it's at the top
18 right-hand corner of 34 -- Page 34-27 of the LDC.

19 MR. FREDYMA: Is that from the use groups?

20 MR. VAUGHN-BIRCH: Yes, sir.

21 MR. GRIFFITH: No. Actually, it has a definition
22 under the definition section.

23 THE HEARING EXAMINER: Oh, it does.

24 MR. FREDYMA: 34-2.

25 MR. GRIFFITH: Yes, sir.

1 THE HEARING EXAMINER: Have you got it, Ken?

2 MR. GRIFFITH: Yes, ma'am.

3 THE HEARING EXAMINER: Would you read it to us in
4 the record, please.

5 MR. GRIFFITH: Food and beverage service, limited,
6 means the provision of food and beverages for members
7 and guests of a private club or recreation center but
8 not available to the general public. See provisions
9 of Article 7, Division 5, of this chapter relating to
10 on-premise consumption of alcoholic beverages.

11 THE HEARING EXAMINER: Okay. So there's really
12 nothing in here that that would be -- it's almost
13 like an accessory use. I mean you've got a club that
14 they're going to serve, you know --

15 MR. LAMEY: Social club.

16 THE HEARING EXAMINER: Yeah, a social club of
17 some sort, you know. Okay. So that one can come
18 out simply because there's nothing that it actually
19 pertains to and there's no reason to have that as a
20 stand-alone use.

21 All right. Convenience food and beverage store,
22 I understand why you've struck that and I don't
23 particularly have a problem with that one because
24 there is one right across the street and I don't know
25 that we need another one in that close proximity and

1 I think the Board will definitely say we don't.

2 The drugstore/pharmacy. Now, drugstore/pharmacy,
3 your concern was based strictly on traffic?

4 MR. LAMEY: (Nodded head affirmatively.)

5 THE HEARING EXAMINER: All right. Do we have
6 anybody here who's got -- do you have an expert on
7 traffic, on traffic generation rates or anything?

8 MR. VAUGHN-BIRCH: We do not. We've got our
9 engineer, who can testify to the TIS that's been
10 prepared in relation to this.

11 I would note that that is based on two separate
12 calculations, one for the office and one for the
13 retail component. That retail component is based
14 on a shopping center. There's really not a really
15 great analogous use in terms of trip generations to
16 calculate this with; and I would submit that that
17 shopping center calculation would be quite adequate
18 in terms of estimating trips with -- in relation to
19 these and that many more intense uses fall under
20 that umbrella of the shopping center in terms of
21 trip generation.

22 THE HEARING EXAMINER: Right. Because I think
23 in shopping centers sort of, you know, your hobby shops
24 and whatnot balance out your drugstores, which have a
25 higher trip generation rate. That's why they just say,

1 okay, shopping center, because they figure you're
2 going to have a little bit of high and a little bit of
3 low and so we'll take the median here and that's this.

4 MR. VAUGHN-BIRCH: Additionally, what was -- the
5 desire of the applicant was to allow for a little bit
6 greater flexibility in terms of the uses on this site.
7 We are trying to make as many concessions as we can;
8 and there was a possibility that the one-story -- the
9 small one-story building in the corner might be
10 appropriate for a small drugstore, certainly not any
11 kind of -- just by looking at the location and the
12 square footage available, it wouldn't be desirable to
13 your larger CVS, Walgreen's, anything; and additionally
14 there is no drive-through, which is typically desired
15 of those larger users.

16 THE HEARING EXAMINER: All right. So the second
17 building over there, which is right now -- is that
18 second building going to be retail or is that going to
19 be your -- it's a general office. So it's not 5,000
20 square feet.

21 Shawn, do you have any idea on the difference
22 of trip generation for a Walgreen's or a CVS versus
23 a regular little pharmacy, you know, like a -- just a
24 pharmacy? It doesn't have all your other seasonal
25 goods and alcohol and drinks and sodas, all the stuff

1 that your Walgreen's and your CVS have gone into. I
2 mean they have become a little miniature department
3 store along with their pharmacy.

4 Do you have any idea what the difference of the
5 rate of the trip generation is for a pharmacy versus
6 the mini department stores?

7 MR. LAMEY: I do not.

8 THE HEARING EXAMINER: Okay. Hardware store,
9 same question. You have any idea what the actual trip
10 generation is for a hardware store?

11 MR. LAMEY: I do not know the answer to that
12 question. I do believe, however, that to include
13 drugstores and hardware stores does increase the
14 retail nature of the development and that there lies
15 the concern of that, the intensity of the CPD.

16 THE HEARING EXAMINER: All right. I will just
17 be up front right now, Cody. There's no hope of a
18 package store. This close to a residential community,
19 there's no hope of a package store.

20 MR. VAUGHN-BIRCH: And that use was not identified
21 as one that we were in disagreement with staff on when
22 it was proposed that it be eliminated.

23 THE HEARING EXAMINER: Okay. What I'd like to
24 do is --

25 MR. FREDYMA: There is, if I may point out --

1 THE HEARING EXAMINER: County Attorney.

2 MR. FREDYMA: -- in the staff report, staff is
3 recommending a partitioning of the uses; in other
4 words, 11,892 square feet of general office and then
5 a limitation of 7,780 square feet of commercial retail.

6 THE HEARING EXAMINER: Right.

7 MR. FREDYMA: So those limitations in and of
8 themselves will provide some limitation on the amount
9 of traffic, won't they?

10 MR. LAMEY: (Nodded head affirmatively.)

11 THE HEARING EXAMINER: I know that in other
12 cases we have limited -- in other CPDs and whatnot,
13 we've limited the drugstore/pharmacy use to 5,000
14 square feet.

15 MR. LAMEY: And no drive-through.

16 THE HEARING EXAMINER: And no drive-through.
17 The purpose behind that was to reduce the traffic
18 associated. Because I mean, I know I stop at
19 walgreen's, not for drugs, but for the department
20 store, you know. I mean it's just nice to run in
21 there and grab something and head back out, because
22 then you don't have to hunt all over for it. You
23 know right where it is. And I think a lot of people
24 do that. I see a lot of people going in there and
25 shopping and they're not buying from the pharmacy,

1 they're buying other things.

2 So I might consider the drugstore/pharmacy with a
3 5,000-square-foot limitation.

4 What I need, I need a trip generation manual.

5 MR. FREDYMA: If you want to hold the record open,
6 I'm sure staff can provide you with that information
7 and the applicant would be happy to, I'm sure, look at
8 that as well.

9 THE HEARING EXAMINER: Because I'd like to really
10 see the difference between a CVS or a general drugstore
11 versus a pharmacy and what a reduction of a five -- to
12 a 5,000 square feet of the two combination, what the
13 difference would be in the traffic. I'd like to see
14 that.

15 MR. LAMEY: You'll do that, Cody?

16 MR. VAUGHN-BIRCH: Yes.

17 THE HEARING EXAMINER: Okay. If somebody will
18 provide that for me, I'll leave the record open for
19 that. Because that will -- if the whole basis is
20 the amount of traffic -- and I know that drugstores
21 are high traffic generators.

22 I'm not real sure about hardware stores per se;
23 but I don't do a lot of shopping at hardware stores,
24 so I don't know how much traffic comes and goes there.

25 MR. VAUGHN-BIRCH: And if I may, as a point of

1 clarification, it's mentioned in the memorandum that
2 was provided to your office, I don't know if it's a
3 matter of semantics as listed in the staff report or
4 something that really needs to be cleared up. We've
5 got a proposed mix of square footage of retail and
6 square footage of office.

7 I think on the first page of the staff report
8 it references those being, for lack of a better word,
9 locked in to specific buildings. Later on in the
10 staff report it gives it more of a general -- this is
11 the total number of square feet, this is the square
12 footage for one use, this is the square footage for
13 the other.

14 We would like to clarify that our request is
15 not to lock any certain use into a certain building.
16 Rather, we do agree with the total square footage
17 and the -- we would anticipate being in substantial
18 compliance with the two estimated square footages
19 components of the retail and the commercial.

20 I did speak with the applicant for just a moment.
21 The one-story, roughly 4,000-square-foot building on
22 the corner, that was the location that he felt might
23 be appropriate for your smaller, nonchain mom and pop,
24 whatever you would call, pharmacy; and he would not
25 have an objection if a condition limited that use to

1 that building.

2 THE HEARING EXAMINER: All right. I have to --
3 get me the trip generation. All right. I'll leave
4 the record open for that and you guys get me the trip
5 generation. I'll issue the order on that and that
6 will go toward helping me decide whether or not to
7 recommend approval of the drugstore and the pharmacy
8 use.

9 while you're at it, you might as well -- Cody,
10 while you're at it, you might as well go ahead and get
11 me trip generation rate for a hardware store. Okay?

12 MR. VAUGHN-BIRCH: And I would -- go ahead, Ken.

13 MR. GRIFFITH: We had someone go over to get the
14 manual. We'll bring it over.

15 THE HEARING EXAMINER: All right. That will help.

16 MR. FREDYMA: Staff will probably want an
17 opportunity to look at it as well.

18 THE HEARING EXAMINER: I'm sure they will.

19 MR. FREDYMA: I know Andy's not here, but --

20 THE HEARING EXAMINER: Those are really the only
21 questions I had, Shawn, in that I think the rest of
22 the uses, your food stores or your little bread stores
23 or candy stores or, you know, specialty items, your
24 deli type things or something, so that's not a
25 supermarket. I think those are the only questions

1 that I had.

2 MR. LAMEY: Just to back up with the previous
3 discussion with Cody here, in mixing the allocation --
4 and I don't have a problem with that; but the
5 presentation to staff on the MCP was quite clear
6 that in building one -- sorry, building two, that
7 there would be -- it would be a general office
8 building. So I think if you do decide to mix the
9 retail and the office from building one and two, that
10 that should be reflected on the MCP.

11 THE HEARING EXAMINER: Okay.

12 MR. FREDYMA: See, the staff report doesn't
13 distinguish which buildings or which location. It
14 just gives you the overall parameters.

15 THE HEARING EXAMINER: Right.

16 MR. VAUGHN-BIRCH: I think it's the first page
17 makes a reference to that and then throughout the
18 discussion of the staff report.

19 MR. FREDYMA: But the actual conditions don't
20 have it, but the MCP does.

21 MR. LAMEY: Uh-huh.

22 MR. VAUGHN-BIRCH: And we would absolutely have no
23 problem making those revisions.

24 MR. LAMEY: To alter that.

25 Thank you.

1 THE HEARING EXAMINER: Okay. Thanks, Shawn.

2 MR. VAUGHN-BIRCH: If I might, on the question
3 that you had raised regarding the hours, while Shawn
4 was still up.

5 THE HEARING EXAMINER: Shawn.

6 MR. VAUGHN-BIRCH: If that's all right.

7 Real quick. It's my recollection that at a
8 September meeting we had actually in this room that
9 you were present at and we had -- you had actually
10 facilitated a meeting between the applicant's
11 representatives and the residents in the neighborhood
12 that were -- had expressed concern and interest
13 regarding the project. I believe the hours of
14 operation were discussed at that meeting. Do you
15 recall that?

16 MR. LAMEY: Yes.

17 MR. VAUGHN-BIRCH: And just for the record, the
18 hours that are contained in Condition 9 are hours that
19 the applicant had -- they're actually less than what
20 the applicant had originally desired; and in response
21 to neighborhood concerns at that September meeting, it
22 was adjusted to those hours. Whether or not that's
23 still satisfactory today, I don't know; but in
24 September I believe it was acceptable.

25 And I would also note that the LCD Trucking,

1 Inc., site is -- what is -- to the -- let me get my
2 bearings here.

3 THE HEARING EXAMINER: West.

4 MR. VAUGHN-BIRCH: Yeah, the west and south there.
5 That would be -- I've got the resolution here. It's
6 Resolution Z02052. And that has quite an extensive
7 schedule of uses, no hours of operation limitation.
8 it allows drive-throughs, hardware stores, quite a
9 few --

10 THE HEARING EXAMINER: I'll look at that.

11 MR. VAUGHN-BIRCH: -- quite a few uses that I
12 think if proposed on this site would be considered
13 much, much too intense.

14 THE HEARING EXAMINER: I'll look at that to get
15 a feel for what was approved on the project next door.

16 MR. VAUGHN-BIRCH: Thank you, Shawn.

17 THE HEARING EXAMINER: Thank you, Shawn.

18 Any other county witnesses?

19 MR. LAMEY: No.

20 THE HEARING EXAMINER: All right. Folks, what
21 I'm going to do now is take public input. If you all
22 wish to speak on this case, please come up one at a
23 time. Bring your white forms to me and then introduce
24 yourself for the record.

25 All I ask is that you keep your comments germane

1 to the issue at hand, as we discussed earlier. If
2 you have questions, ask the questions; but if I feel
3 they're inappropriate, I will tell you so.

4 The amount of money this applicant paid for the
5 property, the amount of money he hopes to make on this
6 property, is not your business, it's not my business
7 and it has no bearing on my decision. So let's just
8 assume that he's in it for a profit. He ain't giving
9 nothing away. I don't know many people that are, so
10 and we'll just let it go at that.

11 Do I have anybody that wishes to speak?

12 Okay. We have a gentleman standing up. Come
13 on up.

14 what you guys can do, this first seat up here
15 in the front row, stack up in there; and that way then
16 you can -- you know, you don't have to jump and run
17 anybody over trying to get there.

18 THE HEARING EXAMINER: Okay, sir. State your
19 name, please, for the record.
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1 Thereupon,

2

IAN JOHNSTONE,

3 a witness, having been previously duly sworn, testified as
4 follows:

5

MR. JOHNSTONE: Hi. My name is Ian Johnstone.

6

I own the property just actually north, at the end of
7 this buffer right here.

8

The concerns I have is this buffer. I have a
9 stilt house. I don't want to be looking over at a
10 two-story building.

11

with that also brings up a noise issue, especially
12 with the buildings. I know my other neighbors didn't
13 want to go ahead and have the building on this side
14 because it does affect them from that side; but by
15 having the building facing this way, any noise
16 generated from the building is basically directed
17 towards my property. And I am concerned about the
18 hours because of that and the intensity of uses.

19

Five thousand-square-foot pharmacy is pretty big,
20 about the same size as a Walgreen's now. I mean 5,000
21 square feet is a large -- a lot more than just a use
22 of a pharmacy. If you look at the pharmacy size and
23 actually in Walgreen's, it's actually very small. It's
24 probably limited to only fifteen to two thousand square
25 feet at best. So if you allow them 5,000 square feet,

1 you're basically allowing a full-fledged pharmacy with
2 all the things going around it.

3 THE HEARING EXAMINER: So you're talking about a
4 full-fledged drugstore, actually.

5 MR. JOHNSTONE: Well, yeah, when you get the 5,000
6 square feet.

7 THE HEARING EXAMINER: Okay.

8 MR. JOHNSTONE: Like I said, I'd like to see the
9 hours limited to seven o'clock. I mean if there's
10 people in and out of cars all till nine o'clock, it
11 can be very annoying. When you get home from work,
12 you want to go ahead and sit down and have dinner and
13 not have to listen to traffic. That's the reason why
14 I bought in there, because it was a quiet neighborhood.

15 Being that I'm on the north side, I know they're
16 talking about putting a wall, talking about putting
17 plantings in. Like I say, I have a two-story house
18 and I'd like them to be high enough that I'm not
19 looking at their building or at McGregor.

20 There is, I think, Australian pines there now,
21 which I realize are -- but they're tall and you can't
22 see anything because of it. So I'd like something, at
23 least.

24 THE HEARING EXAMINER: Are they on your property
25 or their property?

1 MR. JOHNSTONE: No. It's on this existing
2 property.

3 THE HEARING EXAMINER: It's on the subject
4 property. Okay.

5 MR. JOHNSTONE: On this property here.

6 THE HEARING EXAMINER: All right. So, sir, are
7 you -- you've marked on your form that you are against
8 the request.

9 MR. JOHNSTONE: Well, I'm against the request.
10 I'd like to see it -- I obviously realize that there's
11 something that's going to have to go in there. I'd
12 like to see it limited to a single story. I'd also
13 like to go ahead and not allow them to have the
14 deviation for not putting the road in. I would like
15 to have the road put all the way to the end. I think
16 we already have a problem now with dust and traffic on
17 it.

18 THE HEARING EXAMINER: You understand that if
19 they have to put the road in, it's only to the end of
20 their property?

21 MR. JOHNSTONE: That's fine.

22 THE HEARING EXAMINER: It's not going to make any
23 difference to the rest of the neighborhood.

24 MR. JOHNSTONE: Correct.

25 THE HEARING EXAMINER: It's only to the end of

1 their property. Okay.

2 MR. JOHNSTONE: We do have the dirt pit next
3 door to us right now. I understand that is leaving.
4 And because they at another time and people didn't pay
5 attention to it and have got it now regulated for
6 higher uses than what I think it should be in the
7 neighborhood, is not to go ahead because we didn't
8 have good foresight then, to go ahead and allow this
9 property now to go ahead and have the same conditions
10 that it had just because it slipped by and people
11 didn't go ahead and catch it. So because we made one
12 mistake, we shouldn't be able to allow to have somebody
13 make two mistakes.

14 THE HEARING EXAMINER: Okay.

15 MR. JOHNSTONE: And I don't mind having -- not
16 having to put the sidewalk in. I don't mind that
17 happening, but I do want to see the road go in.

18 THE HEARING EXAMINER: All right.

19 MR. JOHNSTONE: Okay.

20 THE HEARING EXAMINER: Thank you, sir.

21 MR. JOHNSTONE: Thank you.

22 MR. LAMEY: Are you for the wall or -- do you want
23 the wall put in or would you rather more vegetation?
24 What would be your preference?

25 MR. JOHNSTONE: Well, when you say 25 --

1 THE HEARING EXAMINER: Ian, hang on just a second.

2 Explain to him the difference in the buffer with
3 the wall and without the wall, because I don't know if
4 they understand that there's still going to be trees
5 and plants along with that wall. Because I think a lot
6 of the property owners when they're given the option,
7 they think it's just going to be a bare wall hanging
8 out there looking at them, so let's make sure they
9 understand what they're opting for here.

10 MR. JOHNSTONE: Once again, I'd probably like
11 to go ahead and see the wall, but with plantings, so I
12 don't have to see the wall, and also plantings behind
13 it so that -- like I say, I have a stilt house. I'm
14 going to be looking over the top of the wall anyway.
15 So I'd like plantings up high enough that I'm not
16 looking over the top of the wall into the parking lot.

17 But I think the wall would help probably eliminate
18 some of the noise that's being generated by the parking
19 lot.

20 THE HEARING EXAMINER: All right. Thank you, sir.

21 MR. FREDYMA: It's probably important to remind
22 them that if you put a wall in, the plantings go on
23 the outside of the wall, facing your neighborhood.

24 MR. JOHNSTONE: Yes. And I understand we have
25 a 25-foot buffer; but part of that is grass, which is

1 really just retention. It's not really much of a
2 buffer.

3 THE HEARING EXAMINER: All right. Sir, can I have
4 your white form?

5 State your name, please, for the record.
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1 Thereupon,

2 RICHARD BALSAMO,

3 a witness, having been previously duly sworn, testified as
4 follows:

5 MR. BALSAMO: Richard Balsamo, 16481 Oleander
6 Drive.

7 THE HEARING EXAMINER: All right. And can you
8 tell me approximately where you reside?

9 MR. BALSAMO: I'm at the far end of the street.
10 Where are we here?

11 THE HEARING EXAMINER: Right there by your head,
12 by your ear, the aerial photograph there.

13 MR. BALSAMO: This is Oleander going there?

14 THE HEARING EXAMINER: That's it. Uh-huh.

15 MR. BALSAMO: This is my home here (indicating).

16 THE HEARING EXAMINER: Okay. So you're at the far
17 end down there.

18 MR. BALSAMO: Far end.

19 THE HEARING EXAMINER: Okay.

20 MR. BALSAMO: My biggest concern is exit in and
21 out of the street. As it is right now, people come
22 down the street. It is a dead end road. I have many
23 people pulling into my driveway and turning around,
24 bumping into my mailbox, knocking it down, a lot of
25 incidences which people don't realize it's a dead end

1 street.

2 with additional traffic coming in and out and us
3 being able to get out of the property, I think it's
4 going to be hazardous.

5 Circle K is directly across the street from us.
6 Their exit is -- okay, this is subject property. This
7 is Circle K's driveway going on into McGregor, which
8 is almost directly opposite Oleander.

9 We have a very difficult time as it is right now
10 coming out and making a left turn.

11 THE HEARING EXAMINER: So there is no median
12 across there? There's no median block?

13 MR. BALSAMO: No. There is a double line.

14 THE HEARING EXAMINER: All right.

15 MR. VAUGHN-BIRCH: Madam Hearing Examiner, are
16 you getting all of him on your record without the
17 microphone?

18 THE HEARING EXAMINER: Oh, yeah. He's quite
19 loud enough. They're picking him up on these ones
20 over here. Thank you.

21 MR. VAUGHN-BIRCH: All right.

22 MR. BALSAMO: The intersection of McGregor and
23 John Morris over here, there's traffic turning from
24 Circle K. When they come out and make a left and
25 we're making a right or whatever, I mean, the traffic

1 there right now is dangerous enough as it is. I would
2 like to see this widened and have a left and right turn
3 lane coming out of Oleander.

4 The project you're looking at building is very
5 attractive. It's pretty. I wouldn't mind seeing
6 something like that on the corner. It doesn't look
7 obstructive to the eye.

8 But it is a concern of mine with the safety of
9 the traffic coming out, and would I like to see a gate
10 go up at the end of their property prohibiting traffic
11 to come down to our property.

12 THE HEARING EXAMINER: Talk to your neighbors.

13 MR. BALSAMO: Okay. But that is a concern.

14 I am for having them pave the road. That's my
15 personal opinion. I would like to see the pavement
16 go in. I don't care one way or another about the
17 sidewalk.

18 The wall and the buffer with the trees is
19 acceptable. I think that's an enhancement.

20 If you turn my paper over, I had some other
21 things written on the back of that, I think. I'm not
22 sure.

23 THE HEARING EXAMINER: Landscape buffers to be in
24 place before construction of project.

25 MR. BALSAMO: Yes. I would like to see that go

1 in before the construction of the project to kind
2 of give us some privacy while you're doing whatever
3 you're doing.

4 I think that's my main concern, basically the
5 safety of the -- and the double lanes, a left and
6 right turn lane coming out of the property.

7 THE HEARING EXAMINER: Gated entrance to
8 neighbors, dead end street signs, no outlet --

9 MR. BALSAMO: I discussed whatever I needed to.
10 That's fine.

11 THE HEARING EXAMINER: All right.

12 MR. BALSAMO: I thank you for your time and I wish
13 you luck with your project.

14 MR. VAUGHN-BIRCH: Thank you.

15 UNIDENTIFIED SPEAKER: Could you spell your last
16 name, please.

17 MR. BALSAMO: B like in boy, A-L-S-A-M-O.

18 THE HEARING EXAMINER: And now, Mr. Balsamo, you
19 have this marked as general interest, so you're not
20 against the request?

21 MR. BALSAMO: (Shook head negatively.)

22 THE HEARING EXAMINER: These are just some of the
23 things that you'd like to see?

24 MR. BALSAMO: Yeah. Some of the things I'd like
25 to see done.

1 THE HEARING EXAMINER: Your preferences. Okay.

2 Thank you, sir.

3 Next speaker.

4 Thank you, sir.

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1 Thereupon,

2 RICHARD FERREL,

3 a witness, having been previously duly sworn, testified as
4 follows:

5 MR. FERREL: Richard Ferrel, 16501 South Oleander.

6 THE HEARING EXAMINER: Okay. Can you show me
7 approximately where your --

8 MR. FERREL: I'm right next to Richard.

9 MR. BALSAMO: Myself.

10 MR. FERREL: Right here.

11 THE HEARING EXAMINER: Okay. You're back in
12 there. All right.

13 MR. FERREL: Yes. I'm the second to the last
14 house.

15 My main concern is what I think everybody on
16 our street is, is entering and exiting. The traffic,
17 it's -- during the season or any time during the year,
18 that McGregor Boulevard is packed. Getting in and out
19 of Oleander is a long wait; and with these extra cars
20 exiting and entering, too, it's just going to put a
21 burden on us trying to get out.

22 THE HEARING EXAMINER: When you're talking about
23 getting out, you're actually talking about making a
24 left turn? Because the right turn shouldn't be that
25 much trouble.

1 MR. FERREL: Left turn, yes, ma'am.

2 THE HEARING EXAMINER: It's the actual left turn
3 out of your property.

4 MR. FERREL: Yes, ma'am.

5 And I think just having an entrance and an exit on
6 Oleander, to me it seems like the property's too small
7 for this project, that there ought to be another --
8 they ought to be able to come up with another way to
9 get in and out.

10 THE HEARING EXAMINER: Okay. Lee County's already
11 told them they can't come up with another way to get in
12 and out.

13 MR. FERREL: I know that. I understand that.
14 That's why I'm saying I think the property is too
15 small.

16 THE HEARING EXAMINER: So you think there's going
17 to be too much traffic?

18 MR. FERREL: Yes, ma'am. That's all I have to
19 say.

20 THE HEARING EXAMINER: All right, sir. Thank you.
21 Next speaker.

22 Thank you, ma'am.
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1 Thereupon,

2 LISA HUNGERFORD,

3 a witness, having been previously duly sworn, testified as
4 follows:

5 MS. HUNGERFORD: My name is Lisa Hungerford.

6 I'm on -- I'm right here. I'm on the north wall.

7 THE HEARING EXAMINER: Okay. Which side of it?

8 MS. HUNGERFORD: Right along where they're going
9 to put the development.

10 THE HEARING EXAMINER: Okay. Are you on the John
11 Morris side? Are you in the duplex?

12 MS. HUNGERFORD: No, I'm not in the duplex. I'm
13 the single family home.

14 THE HEARING EXAMINER: All right.

15 MS. HUNGERFORD: I also have two small children
16 living there with me. I'm a single parent. I fear
17 for the safety of the kids with all the traffic going
18 through there.

19 I definitely want the wall.

20 THE HEARING EXAMINER: Okay.

21 MS. HUNGERFORD: I worry about the pedestrians
22 coming through, the traffic, the wall and my property
23 line. I don't want -- because it's going to be cleared
24 out, I don't want people walking through there.

25 THE HEARING EXAMINER: Okay.

1 MS. HUNGERFORD: I worry about the kids getting
2 on the school bus.

3 THE HEARING EXAMINER: Where do they catch the bus
4 now?

5 MS. HUNGERFORD: Right now they're -- we just
6 moved into the location. They should be getting the
7 bus at the end of Oleander.

8 THE HEARING EXAMINER: So they catch it right on
9 McGregor?

10 MS. HUNGERFORD: Right.

11 THE HEARING EXAMINER: Okay.

12 MS. HUNGERFORD: And the hours that that's going
13 to be going on, the kids are going to be waiting for
14 the bus. I do have a problem with the hours.

15 I think it should be a single floor. It shouldn't
16 be a large -- to cut down on all the traffic.

17 I just fear for the safety of the kids, so that's
18 why I'm against it.

19 MR. VAUGHN-BIRCH: I missed where her property
20 was. I apologize.

21 THE HEARING EXAMINER: Would you show him again,
22 please, where your property is?

23 MS. HUNGERFORD: I'm on the north side right here,
24 the single family house, not the duplex.

25 MR. VAUGHN-BIRCH: Are you next to Mr. Johnstone?

1 UNIDENTIFIED SPEAKER: She's on Oleander.

2 MS. HUNGERFORD: The wall's going to be on the
3 side of my house.

4 THE HEARING EXAMINER: All right. Where is Mr.
5 Johnstone -- Mr. Johnstone, where was your --

6 UNIDENTIFIED SPEAKER: He's next to her.

7 THE HEARING EXAMINER: One over. He's one house
8 over. I thought he was on the line, too.

9 UNIDENTIFIED SPEAKER: He's the second house over.

10 MS. HUNGERFORD: He's above. I'm below. He looks
11 over my house.

12 THE HEARING EXAMINER: So he's the second house
13 down.

14 Do you have any thoughts or anything about the
15 pavement or the sidewalk?

16 MS. HUNGERFORD: I think that would just encourage
17 people to go down there and I don't think it's a good
18 idea.

19 THE HEARING EXAMINER: All right. So you don't
20 particularly want the sidewalk, even though that would
21 help the kids get to the bus stop?

22 MS. HUNGERFORD: It would help, but I think it
23 would probably help bring more people down our road.

24 THE HEARING EXAMINER: All right. Any questions
25 of this witness?

1 MR. VAUGHN-BIRCH: No, ma'am.

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

3 okay. Anyone else wish to speak?

4 Thank you.

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1 Thereupon,

2 DAN HAHN,

3 a witness, having been previously duly sworn, testified as
4 follows:

5 MR. HAHN: Hi. My name is Dan Hahn. I am
6 building -- currently don't reside there yet, but I'm
7 building a new home at the end of the street, which is
8 right behind Richard, which is right here. I've been
9 spending the past five years developing that piece of
10 property and I'm in the process of building my home
11 there, so it definitely concerns me about the traffic
12 issues mainly more than anything else.

13 I don't really have a problem with the building.
14 I did at first; but when you guys came back and
15 redesigned it, it looks fairly attractive. It's not
16 offensive looking. The problem I have with it mainly
17 is just the entrance coming on our private road.

18 I don't know if it should have been -- when they
19 first developed this particular piece of property, I
20 think they should have thought about that entrance
21 onto McGregor instead of onto Oleander. I don't know.
22 Like Circle K has their entrance right on McGregor.
23 It's closer than it's probably supposed to be, but
24 it's there; and I think that Lee County needs to
25 relook at that area and consider another entrance off

1 McGregor.

2 I just think an entrance onto a private road like
3 that is going to cause major traffic problems for us
4 as residents as well as people leaving the office
5 building, trying to get in and out of that -- onto
6 that private road onto McGregor, making a left-hand
7 turn. So that would be my biggest concern.

8 Obviously, I'm also concerned about noise. Even
9 though I'm farther back, I'm up elevated, so I'm going
10 to have more of a view, just like Ian is, down into
11 this particular parking lot. So I would recommend a
12 higher buffer for the back side of the property, not
13 only to the road.

14 I'm pretty much in agreement with some of the
15 other concerns as well. I'm not going to keep bringing
16 up the same issues that have already been brought up
17 before, but that would be my main concern is the
18 traffic issue.

19 THE HEARING EXAMINER: All right. Thank you, sir.

20 MR. VAUGHN-BIRCH: I have one quick question.

21 How tall -- you're building a stilt house, you
22 said?

23 MR. HAHN: Uh-huh.

24 MR. VAUGHN-BIRCH: How tall is that?

25 MR. HAHN: First level is 13 foot elevation.

1 MR. VAUGHN-BIRCH: The roof.

2 MR. HAHN: Oh, how tall is it? Overall it's
3 about 26 feet to the roof height.

4 MR. VAUGHN-BIRCH: And also Mr. Hahn indicated
5 that he was at one of the neighborhood meetings. I
6 don't know if that would help you to -- I guess as
7 people come up to know whether they were or not at
8 previous meetings.

9 THE HEARING EXAMINER: It doesn't really matter.
10 Their concerns are their concerns.

11 MR. HAHN: Well, we've been having little
12 discussions between the neighbors; and these concerns
13 have come up obviously over the past however long this
14 thing's been going on.

15 THE HEARING EXAMINER: All right. Thank you, sir.

16 All right. Anyone else wish to speak?

17 Thank you, ma'am.
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1 Thereupon,

2 STEPHANIE HAHN,

3 a witness, having been previously duly sworn, testified as
4 follows:

5 MS. HAHN: Good morning. My name is Stephanie
6 Hahn and I'm Dan's wife, so our house is at the end
7 down here (indicating), the house that we're building.

8 I am going to back up my neighbors and repeat
9 the traffic issue. That is our main concern. Getting
10 in and out of the property is a very narrow road.
11 It's a dirt road. We now have to kind of squish over
12 to let other people pass us on the road as it is.

13 There's going to be a problem as mentioned before
14 with the left-hand turn off of Oleander. There's also
15 going to be a problem with a left-hand turn onto
16 Oleander coming from the west.

17 With the buffer, I'd like to address that. I
18 would also like to see the buffer come alongside of
19 Oleander to try and make it look more of a residential
20 area and just to have that division of commercial and
21 residential.

22 The issue with the pharmacy is also theft and
23 crime that I know the pharmacy will bring into the
24 neighborhood. You know, I don't need to mention
25 about the drugs that are kept on the premises, so

1 that's also an issue.

2 The gentleman that was here earlier that left -- I
3 cannot remember his name, but he already mentioned that
4 he believes Oleander is too close to the intersection
5 of John Morris and McGregor now and it's already a
6 problem. It's only going to amplify that problem.
7 Too close is too close. We live there. We don't
8 have a choice of how we get out of our street.

9 I agree with the gentleman who said that he
10 would like to see another entrance somehow. It's
11 working now with the little fruit stand that's there
12 with the entrances that they use. It's working now
13 and it's not something that is -- someone's just coming
14 up with the idea to put those entrances in. I don't
15 see why if it's working now, why it can't continue to
16 be that way.

17 Keep our neighborhood safe and put a buffer
18 between commercial and residential.

19 Also, I have an issue with the lighting. I
20 would like to make sure that the lighting is low,
21 even the emergency lighting at night is low; not only
22 focused on the property, but low enough that we don't
23 see it when our higher house is built. We don't have
24 to have a light just glowing that we can see through
25 our windows at night.

1 Also, the hours of operation, seven o'clock
2 would be something I would like to see, business end
3 at seven o'clock. Nine o'clock, many people are
4 putting their children to bed, winding down.

5 We have neighborhood watch between us; that
6 if there's traffic going on till nine o'clock, of
7 course, we're going to keep watching and making sure
8 that everyone's where they need to be.

9 Seven o'clock seems a more reasonable time to
10 end the traffic and the businesses, especially if
11 they are going to be office oriented, and that will
12 cut down on traffic.

13 I also have an issue with -- I would like to
14 see signs that -- on the proposed property that state
15 not to block the road for people coming in and out
16 off of Oleander that need to go past that little
17 intersection. It's going to be very difficult to get
18 out if someone is trying to pull out of the property
19 and has blocked that road. That will be an issue.

20 You know, if we could keep them back into the
21 property, into the parking lot, but I just don't see
22 that happening.

23 So I think I've said all of my concerns.

24 THE HEARING EXAMINER: Okay. Thank you, ma'am.
25 All right.

1 Thereupon,

2 JENNIFER DORNING,

3 a witness, having been previously duly sworn, testified as
4 follows:

5 MS. DORNING: Good morning. My name is Jennifer
6 Dorning. I live in this house right here, right by
7 where the entrance was originally going to be.

8 I am here -- first of all, I had an e-mail in
9 the staff report that was from my business and I want
10 to make sure that you know I'm here as a resident and
11 not as a part of my business, too.

12 We've lived there since May of '04; and before
13 we bought the property, we looked into that these were
14 agricultural lots, there wasn't anything happening in
15 the long-range transportation plan around us, that
16 things were just going to stay the way they were.
17 There wasn't any commercial going in, anything like
18 that.

19 We knew about the landscape supply place that
20 was there. It was already there. We knew that when
21 we bought it. But, again, that place is closed --
22 it's five o'clock, I believe, they're done and over
23 with. But, anyways, we moved there because it was a
24 private, dead end gravel road. So that brings me to
25 my first point.

1 I don't know if everyone understands that if
2 you pave, it's going to stop right here. We do not
3 want to look like we are part of the development. We
4 want to make sure that when you come down our street,
5 it says okay, now this starts residential, and this is
6 gravel, because we don't want to have the first house
7 and then our house look like we are still in the
8 driveway of a commercial development. So we do not
9 want the pavement and we do not want the sidewalks in
10 front of our home.

11 I also have another concern about all the
12 commercial development going on in Iona. There
13 seems to be a lot of lots that are being rezoned
14 right now and they -- there's a lot of vacant
15 commercial buildings and property, and what this one
16 specifically -- there is the parcel that is actually
17 down a residential road. I understand the pieces
18 here will be commercial. They're on McGregor. It's
19 a four-lane road. This parcel right here was
20 originally meant to be a single family home.

21 And right now we just have the Australian pines
22 that block everything, including the sound and the
23 dust and the lights from McGregor. I hope that Lee
24 County can look into not developing every parcel,
25 every piece of land that's left.

1 If the rezoning is recommended to be approved,
2 there are definitely some things that I think we need
3 to look at and to keep.

4 We agree with putting the -- I agree with putting
5 the wall on the north side where Lisa just moved in.
6 She does have the two little boys. I'm afraid without
7 the wall they may be crawling through the woods because
8 there'll be new trees. You know, little boys go
9 playing around in there and they could end up in the
10 parking lot. I can just see the headlines now. I
11 don't want them to go off and all of a sudden they're
12 gone.

13 Our neighborhood's become pretty close through
14 this whole thing and I don't think that's something
15 that we want to deal with, especially when we can make
16 the right decisions now to keep that from happening.

17 We even would like to keep, if at all possible,
18 some type of -- they have the buffer here that they
19 are saying -- that the developer is saying that they
20 would do. We would even be interested in a wall. We
21 would like to be as separate as much as possible from
22 the commercial development.

23 We keep referring to the residential portion
24 of South Oleander. Currently it is all residential.
25 There are no commercial driveways off of South

1 Oleander.

2 And, again, we brought up before the piece that
3 has already been approved in 2002. That was before we
4 lived there. That was before we knew the way this
5 worked. And now we know.

6 So Oleander is a residential road.

7 The hours. 7:00 p.m. would be a lot better. We
8 expect our neighbors to start kind of winding down.
9 People are coming home from work. People are having
10 dinner. It just seems to be a quieter time. If
11 they're going to be a part of our area, a part of our
12 street and a part of the residential community, we
13 believe they should be held to the same standards that
14 the residents are. There's no loud, crazy parties
15 going on on our street. This is just a few of us on
16 this dead end, gravel road.

17 I also believe the schedule of uses should remain
18 the same as requested in the staff report.

19 Highly concerned about the access issues. I
20 understand -- I've done a lot of research. I have
21 talked to traffic engineers, attorneys, everybody I
22 can think of to try to figure out a way to get that
23 access off of Oleander; and it seems like that is
24 where the access would go if this was to happen.

25 I think that maybe this is not the best piece

1 to develop; but, again, I understand where it's at.
2 The best solutions we can look at are to keep the
3 uses minimal, keep them less intensive, the fewer
4 trips generated. Less square footage means less
5 parking places means less cars.

6 Also, I think the left out and the right out
7 is a good idea out of South Oleander because it is so
8 hard to get out.

9 McGregor, they talk about McGregor as being a
10 level of service B. That means that traffic can move.
11 That means it's hard to get out because cars aren't
12 stopped. That's -- on McGregor in the morning, when
13 traffic is dead stopped, you can get out at the side
14 streets. On McGregor right now, cars can go 55, 60
15 miles an hour, so you don't want to pull out; and that
16 is I think a big misconception.

17 This may not put more traffic on McGregor. It's
18 going to put more traffic on South Oleander, and it's
19 already difficult to get out because of the speed on
20 McGregor. So I think that we need to keep that in
21 mind as we look at this. It's not just at McGregor.
22 It's not going to fail because of this project.

23 And we have brought up that we would like an
24 electronic gate to keep this separate. That would be
25 something the residents would maintain; but it's just

1 one more thing that would keep the people, the patrons
2 from the development. This first house here has a
3 circle driveway and we can see cars stacking up here,
4 so people will come out of this driveway, go here and
5 turn around in the first house to get in line, to get
6 out on McGregor. And we don't want to see that. We
7 don't want people coming down our street at all. They
8 should be able to go right this way. But if they start
9 stacking up -- if there's a gate, they'll stack up
10 through the parking lot and it won't be down our road
11 and through our driveways.

12 We've had a lot of community involvement on this
13 and we're doing our best to go through this process,
14 so we just hope that the county recognizes that.

15 The time line of construction, if they -- if
16 this is approved and the lots are getting cleared, we
17 would like to have the buffers and the walls up first.
18 We are sitting really close to McGregor, but currently
19 no one knows we're there. I didn't know that street
20 was even there until I moved there because of the
21 amount of trees and it's just so dense right there.
22 So we don't want to look like we're standing on
23 McGregor. We think that would open up to a lot of
24 crime and the safety and security, and we're accustomed
25 to having that safety right now.

1 The other thing is you talked about moving the
2 building location, why we didn't look back, to moving
3 it back. Our problem was that would be what we saw.
4 At least if there are trees here, the parking lot is a
5 lower level and we could -- it could look more like a
6 natural state --

7 THE HEARING EXAMINER: Okay.

8 MS. DORNING: -- with just the buildings being
9 moved out to the front.

10 I believe that's everything. I just want to be
11 sure that we don't compromise the integrity of the
12 neighborhood by putting in a development that comes
13 so far back.

14 Again, I -- we even discussed if that lot was
15 ever for sale, the residents could have got together;
16 but we never saw it go up for sale.

17 Thank you for you time.

18 I have a copy of this for you as well.

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

20 All right. Anyone else wish to speak?
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1 Thereupon,

2 JOHNNY DORNING,

3 a witness, having been previously duly sworn, testified as
4 follows:

5 MR. DORNING: For the record, my name is Johnny
6 Dorning. I live at 16580 South Oleander Drive, which
7 is exactly where Jennifer is. It's directly across
8 from the development, which is this house here.

9 You know, I'm probably not going to tell you
10 anything new that you haven't heard already; but the
11 main issues are obviously, you know, rezoning the ag
12 lots from -- rezoning the two ag lots to commercial,
13 to the CE-1 from the current ag status. I understand
14 that the fruit stand is already commercial; but at
15 least, I would say, to help us -- help minimize the
16 commercial impact on South Oleander, maybe if we could
17 even just leave this lot here as ag, maybe a nice
18 residential home. We'd much rather see that go in
19 there than even a parking lot.

20 So that's obviously a huge concern. If this
21 is passed and all three of these lots are zoned
22 commercial, I think it will have a huge impact on our
23 street, not just from a transportation issue, but from
24 also a safety issue. Let's face it. We're going to
25 get more traffic. If traffic starts stacking up down

1 the -- in the parking lot, people trying to get onto
2 McGregor, you know, customers are going to take a right
3 out of the development, come down South Oleander and
4 probably wind up turning around in our driveways, maybe
5 even turning around down at Dan at the dead end street.

6 So I don't know if you guys have visited the site,
7 but I just want to reiterate that it is a private, dead
8 end street. This is our only means of egress. This is
9 our only exit.

10 I understand the commercial development where I
11 guess the rock pit is now, the building, LWC Trucking
12 is at, and that's already been zoned commercial; but
13 they do have another exit on Arbor Ridge and also Arbor
14 Ridge is a through street. There's more than one exit
15 there.

16 I think with that, it's just going to amplify
17 our transportation once that commercial development,
18 you know, goes in there along with this one. I think
19 we're really going to get the short end of the stick,
20 so to speak, because we have no other way out.

21 If it does happen, I would certainly like to see
22 a right in, maybe a three-lane there where we pull out,
23 right in, left out on our street onto McGregor.

24 Obviously, I think the best thing is if they had
25 their own exit onto McGregor like everyone else there

1 or possibly even John Morris. If the developer wants
2 to develop this piece of land bad enough, maybe he
3 should purchase some of the rental homes along John
4 Morris and help push that entrance back if that's an
5 option.

6 I understand why Lee -- it doesn't fit the Lee
7 Plan due to the I guess distance restrictions from
8 the intersection. However, like everyone else has
9 mentioned, Circle K has two exits.

10 The shop, the two-story here which has guitar
11 lessons and a sailing school, the second stories are
12 residential on there, so obviously they are limited a
13 little bit as far as traffic.

14 Most of that building's vacant anyway. It's
15 actually rundown and I think it's a sore thumb within
16 our community, to be honest with you.

17 They do have an exit almost at the stop bar
18 right on John Morris. This exit here is past the
19 Stars Pizza exit, which, I mean, it's probably more
20 than enough. I don't know the exact linear feet,
21 probably 300 feet or so. But, yeah, I don't see how
22 or see why we can't make this work with their own
23 exits, maybe a right in, right out on John Morris and
24 a right in, right out on McGregor rather than dumping
25 commercial traffic onto our private, dead end street.

1 As far as safety is concerned, as far as the
2 walls and the buffering zones, I certainly would like
3 to have a wall not only on the north side for Lisa
4 and her kids, but also on the west side, which would
5 be adjacent to South Oleander. I think we should
6 definitely have a wall with maybe vegetation in front
7 of that. This not only helps from the safety
8 standpoint, from people coming into the parking lot,
9 it's also going to help the noise and light pollution.

10 If people are starting their cars up at 7:00 at
11 night, 6:00 at night, 5:00 at night, certain parts
12 of the year, you know, it's going to be nighttime and
13 they're pulling through the parking lot, it's going
14 to be shining into my living room and right through
15 our front door. So it's certainly a huge concern for
16 us. I am in favor of the wall.

17 I am certainly in favor of the deviation not to
18 have sidewalks down our street. Again, I want a
19 separation between the residential and the commercial
20 development piece of that so it does not encourage
21 traffic.

22 Ideally I would like to see the developer put
23 in some type of electronic gate. As my wife mentioned,
24 we would be more than happy to do the upkeep on that.
25 But at least that would help deter crime and unwanted

1 traffic down our street.

2 Drainage. Drainage is a huge issue. I understand
3 you guys are going to tap into the city system there
4 and probably -- I know he has to -- the developer has
5 to maintain his own water, but drainage is a huge issue
6 in our area. Certain times of the year, even after a
7 heavy rain -- it doesn't take a hurricane, just
8 moderate rain -- my yard specifically is under water,
9 our backyard, I'd say more than three-quarters of it,
10 almost three months of a year. That's just rain, not
11 hurricanes.

12 I did bring some photos if you guys want to take
13 a look at those. Some of these are Charley, which
14 are obviously very flooded. Even our street is solid
15 water. We're very low there. Most of the homes are
16 anywhere from four to seven feet. The base of this
17 structure's going to start at ten feet. It's going
18 to be level with McGregor.

19 It doesn't take a rocket scientist to figure that
20 one out.

21 So let me just pass these photos around.

22 THE HEARING EXAMINER: Now, you understand if you
23 give them to me, I get to keep them.

24 MR. DORNING: Oh, really?

25 MS. DORNING: That's fine. We have copies.

1 MR. DORNING: We have copies? Okay.

2 These are two months after Charley.

3 This is just heavy spring rain during March,
4 obviously not during a hurricane season. We have a
5 lot of ducks come back every year and wood storks, as
6 you see.

7 This is October. This is just a rain again, no
8 hurricane damage, nothing like that.

9 This is Charley, which was probably -- Charley
10 came within a quarter of an inch of coming into our
11 front door, which is obviously a very -- this is our
12 entire backyard.

13 But during the summer, to be honest with you,
14 most of our backyard is under water and a lot of the
15 front is as well. There's many days that I have to
16 change shoes to even walk to my car. We have built
17 up our driveway to help with that issue, but it is a
18 real issue.

19 So just to touch on that again, the base of this
20 building is I think proposed at ten feet, level with
21 McGregor.

22 UNIDENTIFIED SPEAKER: That one water shot, show
23 them McGregor.

24 MR. DORNING: Yeah. That turned the two-story
25 building into a three-story building already.

1 THE HEARING EXAMINER: What now?

2 MR. DORNING: He just wanted me to show you this
3 shot here. This is our street. This is the ag lots.
4 My home sits directly behind this. This is Dave's home
5 and this is McGregor here.

6 THE HEARING EXAMINER: Okay.

7 MR. VAUGHN-BIRCH: What? What was the
8 three-story?

9 MR. DORNING: You guys have a question?

10 THE HEARING EXAMINER: So putting it on ten feet
11 automatically makes it a three-story building?

12 MR. DORNING: Absolutely, yeah, from our
13 perspective. You know, we're going to be below the
14 parking lot anyway to start out with. I was just
15 stating that that makes a two-story building already
16 pretty much a three-story building from our
17 perspective, from our homes.

18 THE HEARING EXAMINER: Okay.

19 MR. DORNING: Ideally we'd love to see a
20 single-story building go in there. I think that
21 would help out from not only another sore thumb in
22 our neighborhood, it would be more compatible. There's
23 a lot of other nice office developments just up the
24 street. I don't know if you can see on this one.
25 Actually, it's right here. These are very nice,

1 well-done, single-story development. It's all office.
2 You don't have drugstores. You know, you certainly
3 don't have ATMs and a lot of that at issue. It's
4 professional buildings. I think that would be a
5 little more compatible with our area.

6 You can drive even from here down McGregor to
7 our home and there's not many two-story developments.
8 I could probably count on one hand the amount of
9 two-story developments, and certainly I don't feel
10 it's compatible with our neighborhood. You know, I
11 don't see why a two-story would fit there.

12 Access is a huge issue, as everyone has already
13 mentioned. You know, like I said, ideally, we should
14 certainly look at options giving them their own access
15 if this happens onto McGregor and onto John Morris,
16 right in, right outs, whatever we need to do to keep
17 the commercial development, you know, from dumping
18 down our private residential street.

19 As I did mention, there's only a handful of
20 two-story buildings even from downtown Fort Myers
21 to the John Morris/McGregor intersection; and none of
22 them dump onto a private residential dead end street.
23 I don't see why we should start it now.

24 MR. FREDYMA: If I could ask --

25 THE HEARING EXAMINER: Go ahead.

1 MR. FREDYMA: Did you take the photos?

2 MS. DORNING: I did.

3 MR. DORNING: I did. Well, me and my wife.

4 MR. FREDYMA: So one of you or the other took
5 the photos?

6 MS. DORNING: Yes.

7 MR. DORNING: Yeah. It's the same camera.

8 MS. DORNING: And I have those.

9 MR. DORNING: We can e-mail those out if we need
10 to.

11 MR. FREDYMA: I was just asking to find out who
12 took the photos.

13 MR. DORNING: Yes, absolutely.

14 THE HEARING EXAMINER: All right. Anything else,
15 Mr. Dorning?

16 MR. DORNING: I think I've pretty much touched
17 on everything.

18 The hours of operation, certainly I'd rather
19 see 7:00 to 7:00. We want to limit those as much as
20 possible. If we could do 7:00 to 2:00, then obviously
21 that would be ideal; but I understand that's not
22 going --

23 THE HEARING EXAMINER: 2:00 p.m., not 2:00 a.m.;
24 right?

25 MR. DORNING: Exactly. 2:00 p.m. Let me clarify.

1 But certainly 7:00 to 7:00 I think would fit us better.

2 Certainly no gentlemen's clubs or social clubs,
3 anything of that nature.

4 Pharmacies. I think there's enough pharmacies
5 in the area. Southwest Florida has a pharmacy on
6 almost every corner. We can practically crawl to
7 two from our house now if we need to. I don't see
8 why we need one at the end of the street.

9 I think that's it.

10 You know, certainly thank you for your time.
11 Hopefully, we can work something out on this. I
12 would like to see, you know, at least maybe -- at
13 least preserve one of the ag lots so it's not as
14 intrusive on our street and it also helps with the
15 traffic flow because it would cut down on the number
16 of parking spots as well as the single-story building.

17 THE HEARING EXAMINER: Thank you, sir.

18 Anyone else wish to speak?

19 Thank you.

20 MR. FREDYMA: Is her statement Dorning Exhibit
21 Number 1?

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1 Thereupon,

2 JEANINE WELKER PASSMORE,
3 a witness, having been previously duly sworn, testified as
4 follows:

5 MS. PASSMORE: My name is Jeanine Welker Passmore.

6 THE HEARING EXAMINER: Hang on just a second,
7 Jeanine.

8 The exhibit that she just handed me is J Dorning
9 Number 1.

10 MR. FREDYMA: Okay. And the composite of photos
11 is --

12 THE HEARING EXAMINER: Was D -- oh, dear, we've
13 got two Js, don't we? JA Dorning will be the -- Mrs.
14 Dorning's and Mr. Dorning's is J and Composite Exhibit
15 Number 2 for the photos. Number 1 is his written
16 statement.

17 MR. FREDYMA: Hers, I guess.

18 THE HEARING EXAMINER: No. Hers is JA Dorning.
19 He gave me a written statement as well.

20 MR. FREDYMA: Oh, he did? I'm sorry. I didn't
21 realize that.

22 THE HEARING EXAMINER: So I've got one from each
23 of them.

24 MR. FREDYMA: All right. Thank you.

25 THE HEARING EXAMINER: All right. I'm sorry. Go

1 ahead.

2 MS. PASSMORE: I live at 16500 South Oleander.
3 It's right here.

4 MR. FREDYMA: Her name again?

5 MS. PASSMORE: It's down Oleander. It's the
6 second house on the left, the end road.

7 MR. FREDYMA: I'm sorry. Could you repeat your
8 name again, please?

9 MS. PASSMORE: Jeanine Welker Passmore.

10 MR. FREDYMA: I'm sorry.

11 MS. PASSMORE: Welker Passmore.

12 MR. FREDYMA: Thank you.

13 THE HEARING EXAMINER: Okay.

14 MS. PASSMORE: I've lived on Oleander for 23
15 years. We bought an old Florida home, terrazzo. We
16 can't build up any further. When it rains, it rains.
17 Why we bought down there is because it was quiet; it
18 was very -- you know, you knew all your neighbors.
19 Everybody looked out for everybody.

20 I'm agreeing with everybody. The access, trying
21 to get out of Oleander is a nightmare. I've had a
22 couple almost close calls. Other than that, I'm
23 agreeing with my neighbors with everything they said
24 and I'm not going to repeat everything.

25 THE HEARING EXAMINER: Okay.

1 MS. PASSMORE: Thank you.

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

3 All right. Excuse me. Do I have anyone else in
4 the audience?

5 UNIDENTIFIED SPEAKER: You got everybody on the
6 street here.

7 THE HEARING EXAMINER: All right. Because we're
8 going to need to take a short break here for the court
9 reporter.

10 How many other people do I have that need to
11 speak? I've got two others? All right.

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1 Thereupon,

2 MICHAEL PASSMORE,

3 a witness, having been previously duly sworn, testified as
4 follows:

5 MR. PASSMORE: 16500, where Jeanine just pointed
6 out.

7 THE HEARING EXAMINER: State your name, Michael.

8 MR. PASSMORE: My main concern --

9 THE HEARING EXAMINER: State your name. Michael,
10 state your name.

11 MR. PASSMORE: Mike Passmore.

12 THE HEARING EXAMINER: Okay.

13 MR. PASSMORE: 16500 South Oleander Drive.

14 My main concern is the road access. It's a real
15 mess there right now and we're going to drive down the
16 road and get in line to make a left onto the road.

17 All the other properties that are commercial
18 that are around there all have egress to both John
19 Morris and McGregor with the exception of this one
20 lot; and if I had my druthers, they would not get
21 access to Oleander Drive, a private, dead end dirt
22 road.

23 We've maintained, no tax money for as long as
24 I've been there. They've got one real buildable lot
25 on Oleander; and, as you can see, everybody from the

1 street is here and I don't think anybody's spoken out
2 for this project.

3 I'm not necessarily against the project. what
4 I'm against is access to a private, dead end dirt
5 road; and I think that's about it.

6 THE HEARING EXAMINER: Okay. Thank you, sir.
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1 Thereupon,

2 DAVID DOANE,

3 a witness, having been previously duly sworn, testified as
4 follows:

5 MR. DOANE: My name is Dave Doane. I'm at 16600.
6 I'm the one with the circle driveway, pretty much first
7 house on the left. I'm right there.

8 I agree with everything the neighbors have said;
9 and it's the same, the same over and over. It's our
10 entrance on South Oleander that's going to be the
11 problem.

12 The property -- their development seems to be
13 suitable; but the traffic there, like everyone else
14 says, is just not going to make it.

15 And that's all I have to say. Thank you for your
16 time.

17 THE HEARING EXAMINER: All right. Thank you, sir.
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1 Thereupon,

2 DAVID FRANK,

3 a witness, having been previously duly sworn, testified as
4 follows:

5 MR. FRANK: My name is David Frank. I live at
6 16560 South Oleander Drive, which is the third house
7 between -- there's Dave, Jennifer and there's me right
8 there.

9 And it's the same issues, the hours of operation,
10 the traffic and noise. I'm not for paving the road.
11 There's drainage issues. I'm for the wall on South
12 Oleander as well as the north property line. I'm
13 against the pharmacy.

14 We need to maintain our availability to emergency
15 access, emergency vehicles; and if we stack all this
16 traffic up between our houses and McGregor, I think
17 that's going to create a major problem for us all.

18 We've bought our homes here for a reason, because
19 of the dirt road and the nice, quiet neighborhood; and
20 we just want to maintain that situation.

21 Thank you very much.

22 THE HEARING EXAMINER: Okay. Thank you, sir.

23 Okay. Anyone here who did not speak that wishes
24 to speak?

25 Okay. If everyone has spoken --

1 MRS. DOANE: I do have a piece of paper from one
2 of our neighbors. His wife is at the hospital and he
3 had to leave.

4 THE HEARING EXAMINER: Okay. I'll take that.
5 I'll just mark him as not speaking.

6 MRS. DOANE: Okay.

7 THE HEARING EXAMINER: Okay. What we're going
8 to do at this point is take a ten-minute break, let
9 the applicant figure out what their responses are going
10 to be to your concerns; and then staff and applicant
11 will have the opportunity to make those responses and
12 we will then close the hearing.

13 After staff and applicant have made their
14 responses, there will be no more testimony from the
15 public. This is it. So if you've not spoken, this
16 is your only opportunity; and if you don't speak to me,
17 if you don't like my recommendation to the Board of
18 County Commissioners, you can't talk to them either.
19 So you've got to talk to me to talk to them.

20 Okay? Let's take a ten-minute break. Let's be
21 back here, please, at 25 minutes of 12:00.

22 (Proceedings in recess.)

23 THE HEARING EXAMINER: Let's go ahead now.

24 All right. I notice we only have a couple of
25 folks left from the public. Everybody here has spoken,

1 correct?

2 Okay. Then let's turn this over to the -- I'm
3 sorry. County Attorney.

4 MR. FREDYMA: Just a procedural question before
5 you do that, question about two of the exhibits up on
6 the board, whether or not you admitted them.

7 One was the composite of photos that Shawn is
8 responsible for.

9 THE HEARING EXAMINER: Staff's Exhibit 2.

10 MR. FREDYMA: Okay.

11 THE HEARING EXAMINER: Uh-huh.

12 MR. FREDYMA: And then the second was -- and I
13 don't know that it's been referred to --

14 THE HEARING EXAMINER: The aerial photograph is 1.

15 MR. FREDYMA: That's going to be Staff 1?

16 THE HEARING EXAMINER: Uh-huh.

17 MR. FREDYMA: Okay. Great. Thank you very much.

18 THE HEARING EXAMINER: You're welcome.

19 Okay. You ready?

20 MR. VAUGHN-BIRCH: Okay. Yes, ma'am, we are.

21 There were several issues raised by -- in the
22 public comment that related to site design and
23 engineering of the site. At this time we'd like to
24 have Barry Jones, our project engineer, come up and
25 provide some testimony.

1 THE HEARING EXAMINER: Okay.

2 MR. VAUGHN-BIRCH: And I don't believe that Mr.
3 Jones has been qualified before the Hearing Examiner
4 before. Is that correct?

5 MR. JONES: That's correct.

6 THE HEARING EXAMINER: You look awful familiar
7 for not having been here before.

8 MR. JONES: I've been in the room once or twice
9 before.

10 THE HEARING EXAMINER: I was going to say, maybe
11 you've been here, just haven't spoken. Okay. There is
12 a difference.

13 Go through his qualifications then, please.
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1 Thereupon,

2 BARRY JONES,
3 a witness, produced by the Applicant, having been previously
4 duly sworn, testified as follows:

5 MR. VAUGHN-BIRCH: If you would, please, give
6 us some background on your educational background
7 and experience. It would be in the field of civil
8 engineering. In addition, Mr. Jones has prepared
9 the traffic impact statement that's been used in the
10 submittals and the development order TIS submittal;
11 and in that capacity as well we'd like him qualified
12 for his expertise in preparing those and being
13 knowledgeable about the methodology used.

14 MR. JONES: For the record, Barry Jones,
15 professional engineer, licensed by the State of
16 Florida, PE Number 52675. I'm a graduate of the
17 University of Florida. Go Gators.

18 MR. FREDYMA: Too bad Rob isn't here. He'd
19 appreciate that.

20 MR. JONES: I've been licensed in the State
21 of Florida since 1990. I've practiced -- I'm sorry,
22 1995. Practiced professional engineering in Lee
23 County, Collier County, surrounding municipalities
24 since that time. I've been involved in multiple
25 residential and commercial projects, responsible for

1 all phases, including traffic, storm water, site
2 planning, code compliance, water and sewer, every
3 typical phase of civil engineering that was related
4 to those residential and commercial projects.

5 THE HEARING EXAMINER: All right. Cody, you
6 want him accepted as an expert in transportation
7 planning and surface water management? Are those
8 the two projects he's going to be testifying about
9 today?

10 MR. VAUGHN-BIRCH: Does that cover it?

11 MR. JONES: Yes.

12 THE HEARING EXAMINER: Okay. Any objections from
13 staff?

14 MR. LAMEY: No.

15 THE HEARING EXAMINER: County Attorney?

16 MR. FREDYMA: A couple questions if I could first.

17 THE HEARING EXAMINER: Certainly.

18 MR. FREDYMA: Who are you employed by now, Barry?

19 MR. JONES: I'm employed by Dyer, Riddle, Mills,
20 Precourt, DRMP.

21 MR. FREDYMA: Okay. And before that?

22 MR. JONES: I worked for Throgmartin Development
23 and prior to that I worked for Banks Engineering.
24 That's how we crossed paths many times.

25 MR. FREDYMA: I was going to say, that's where

1 I'm familiar with.

2 No objections, ma'am.

3 THE HEARING EXAMINER: All right. Accepted.

4 MR. VAUGHN-BIRCH: Previously we had been
5 discussing the trip generation for the hardware store,
6 the pharmacy, those types of things. Mr. Jones has
7 gotten the materials that you had requested. We would
8 like to offer those at this time.

9 THE HEARING EXAMINER: Okay.

10 MR. JONES: We'd reference the ITE trip generation
11 manual and we pulled out the three sections for
12 shopping center, hardware stores and for pharmacies.

13 And I'll draw your attention to three things
14 in the shopping centers. The typical shopping center,
15 which is the code that we utilized for the trip
16 generation, allows for restaurants, banks, high traffic
17 generators, so just as you discussed in your previous
18 testimony, it is an average. It does contemplate high
19 and low uses.

20 With respect to the pharmacy drugstore, the
21 studies that are utilized in the ITE manual reference
22 an 11,000-square-foot average store, which is more
23 conducive to the CVS, Walgreen's type scenario that
24 we're all familiar with, so the traffic generations
25 there really didn't contemplate a neighborhood mom

1 and pop smaller drugstore like is proposed for this
2 site.

3 with respect to the hardware/paint store land
4 use category in there, it again contemplates a
5 freestanding building that's selling lumber, et cetera,
6 a Lowe's or a larger Ace Hardware, things like that,
7 not a three or four-thousand-square-foot nuts and
8 bolts and smaller type of hardware store that might
9 be utilized in a development such as this.

10 So we provided those documents for your reference.
11 I hope they give you the information that you need.
12 I hope you understand why we did not break it down to
13 any one particular thing.

14 THE HEARING EXAMINER: Okay.

15 MR. JONES: We took the shopping center, which
16 did contemplate some higher usage than what was
17 proposed in this development.

18 With respect to the entering and the exiting
19 cycles, I would like to offer that typical, your
20 residential and your commercial cycling are off cycle,
21 so while the residents are going out, the commercial
22 would be coming in; while the commercial is leaving,
23 the residents would be incoming. So they really move
24 opposite one another on a traditional pattern, which
25 would help alleviate some of the queuing issues that

1 they were -- the residents were discussing.

2 We'd also like to point out that there are no
3 signs at the exit that say no right turns to discourage
4 anybody from turning and going down Oleander into the
5 residential neighborhood. There is queuing distance
6 within the driveway that lines up directly. State law
7 says --

8 MR. VAUGHN-BIRCH: And I think there might have
9 been one too many nos in that last statement. There is
10 a no right turn sign.

11 THE HEARING EXAMINER: Right.

12 MR. VAUGHN-BIRCH: Okay.

13 THE HEARING EXAMINER: Got it.

14 MR. JONES: Sorry.

15 THE HEARING EXAMINER: I'd have figured it was
16 the court reporter's fault, you know.

17 MR. JONES: With respect to storm water issues,
18 all the storm water that currently falls on the site
19 now just either migrates off or settles right there.
20 The storm water will all be collected internal to
21 the site, conveyed to a detention area and then piped
22 directly into the existing DOT storm water management
23 system that outfalls to an IDD canal. That will
24 prevent --

25 THE HEARING EXAMINER: Where is that canal? Do

1 you know?

2 MR. JONES: It's north about a mile or so.

3 THE HEARING EXAMINER: So it's going to outfall
4 into one of the ditches along John Morris or --

5 MR. JONES: No. It will outfall into the piping
6 system that collects the storm water for McGregor
7 Boulevard, so straight into the DOT pipe system that
8 goes out to -- similar to the other neighborhoods in
9 the area.

10 THE HEARING EXAMINER: Okay. I didn't realize
11 there was pipe system out there for McGregor.

12 MR. JONES: Yes, there is. It's a closed drainage
13 system. It collects all the storm water into a system
14 that then conveys it to the IDD canal.

15 But the main focus is it's being contained on
16 site. Anything up to the 25-year storm is being
17 stored on site and contained in site before being
18 discharged off site.

19 THE HEARING EXAMINER: Okay.

20 MR. JONES: And discharged directly to a clean
21 outfall.

22 Those calculations have been submitted as part
23 of the development order. Lee County reviews that as
24 part of their DO process.

25 In addition to the storm water, currently

1 Oleander's an unpaved, ungraded, no real swales or
2 anything. There is an inlet up at the corner of
3 Oleander and McGregor that is intended to collect
4 some storm water that may accumulate. Unfortunately,
5 the intent doesn't really meet the reality in that the
6 grading doesn't allow the water to get there.

7 So as part of this development, it is proposed
8 in the development order plans that have been submitted
9 that Oleander would be resurfaced or built up with
10 some lime rock and a swale provided along our section
11 of property that abutted Oleander to allow for a
12 cleaner outfall to give that water an access path to
13 that outfall system.

14 So it will take -- it will actually improve the
15 drainage from what it currently is right now.

16 THE HEARING EXAMINER: How deep is that swale
17 going to be?

18 MR. JONES: It's only about a foot and a half
19 deep. It's more of a conveyance, you know.

20 THE HEARING EXAMINER: So you'll have a small
21 culvert, that it will go through a culvert for your
22 driveway?

23 MR. JONES: Correct. There's a culvert underneath
24 our driveway that would allow the water to run down
25 Oleander underneath our driveway and then actually get

1 over to the outfall, which ties into the same DOT
2 system that we're connecting to with our storm water
3 outfall.

4 MR. VAUGHN-BIRCH: And on that storm water
5 note, in accordance with the district permitting,
6 requirements of the land development code, obviously,
7 we have to manage our own site. Is there any chance
8 that this may have a positive effect on the
9 neighborhood in terms of drainage?

10 MR. JONES: What it will do, it will prevent
11 any ponding from our site from running off into the
12 road or into the neighboring swales. It will take
13 it, collect it on site and then convey it out. Right
14 now it's all just part of a neighborhood system.

15 THE HEARING EXAMINER: Okay.

16 MR. JONES: The major improvement will be the
17 installation of the swale to provide the positive
18 outfall from anything along Oleander there.

19 MR. VAUGHN-BIRCH: Another thing, I think we
20 heard a concern from I think it was Johnny Dorning
21 about the -- I think when he's envisioning driving
22 down Oleander to get to his home, he's going to look
23 over and see this parking lot down low -- I think is
24 how he referenced it. Could you give us a little bit
25 better idea of what would you -- from the road grade

1 of Oleander, what are we proposing in terms of a berm
2 along that area, where the parking lot level will be?

3 MR. JONES: The proposed water management berm
4 around the perimeter of the site would be approximately
5 two to two and a half feet higher than the existing
6 grades, which is the equivalent of the existing road
7 now. On top of that -- and the parking lot would be
8 about that same elevation.

9 Along Oleander with that berm and with the
10 buffering that's proposed down through there, I believe
11 we also had a hedgerow along that side there, you won't
12 even see the parking lot. You might see the top of
13 cars. You probably won't even see car doors with a
14 four-foot-tall hedgerow down through there.

15 THE HEARING EXAMINER: Okay.

16 MR. VAUGHN-BIRCH: I think -- Shawn, are we at
17 something above four feet on that anyways?

18 THE HEARING EXAMINER: Is it installed at four
19 feet and maintained at 60 inches?

20 MR. LAMEY: It's going to be five foot high.

21 MR. JONES: Along Oleander?

22 MR. LAMEY: Hedgerow.

23 THE HEARING EXAMINER: Some of them are installed
24 at four feet and maintained at 60 inches, 48 inches
25 installed.

1 MR. JONES: That hedgerow would definitely
2 be opaque enough with the plants that have been
3 considered to preclude any even lighting from going
4 through it. It's my experience -- I've got a ficus
5 hedge, but that's not what's proposed. It's similar
6 to a coco plum. You can't hardly fight through them,
7 even pedestrian access.

8 THE HEARING EXAMINER: Okay.

9 MR. VAUGHN-BIRCH: In terms of the proposed
10 lighting on the site, is that foot candle amount in
11 compliance with what's required by the county?

12 MR. JONES: We've submitted a photometric plan
13 as far as our development order requirements, which
14 is consistent with the LDC's, that precludes any
15 intrusion of light on the neighboring properties.
16 I think there's a limit of point one foot candles
17 at the property line and the plan we've submitted
18 is in compliance with that and certainly development
19 services wouldn't issue us a DO without meeting those
20 codes.

21 THE HEARING EXAMINER: What's the height of the
22 parking lot lighting?

23 MR. JONES: I believe at this time it's 25 feet.

24 THE HEARING EXAMINER: Twenty-five feet for the
25 poles?

1 MR. JONES: Yeah. Those are shielded. They're
2 not freestanding lights that just have a glaring bulb,
3 which is also consistent with the LDC requirements.

4 THE HEARING EXAMINER: So the light's going to
5 go straight down, it's not going to go out?

6 MR. JONES: Correct.

7 It does this. It doesn't have just a freestanding
8 bulb that's shadowed out in ever direction, and that's
9 also spelled out in the LDC requirements for the
10 photometric plans.

11 THE HEARING EXAMINER: Okay.

12 MR. VAUGHN-BIRCH: Additionally, and this is
13 the last thing I'm going to ask, we've had a lot of
14 discussion on that buffer on the northern side; and
15 I think the simplest way to think about it would be
16 that there was an Option A of what we had originally
17 proposed, then an Option B of an enhanced buffer that
18 environmental sciences had suggested, and then I think
19 the C would be sort of -- I think it's been a mix of
20 the two, as recommended by staff in their staff report.

21 I know that the applicant is willing to install
22 a vinyl-coated fence along the north and that area
23 of Oleander Drive. The wall is a bit too much; and,
24 frankly, I'm not sure we want to turn this area into
25 a walled-off type of area.

1 If you could, just give us a brief overview where
2 I think we maybe lose some shrubbery if we go with the
3 wall and what the advantages or disadvantages may be of
4 those options.

5 MR. JONES: To some degree I'll defer to our
6 esteemed landscaping consultant because he's certainly
7 much more versed in that than I am; but with respect to
8 pedestrian ingress and egress and being able to isolate
9 it from the residential component, the buffering that's
10 proposed, as I indicated earlier, typically precludes
11 that; but the applicant has agreed that if it served
12 the public that he would be willing to install also a
13 vinyl-coated chain-link fence, which would basically
14 disappear into the buffer but would serve as an
15 additional level of protection to preclude any --
16 I've got small kids, too -- preclude any kids from
17 getting into the parking lot or preclude people from
18 using the parking lot as a shortcut to try and move
19 back to the residential neighborhood and shortcut
20 over to John Morris Road.

21 So that would certainly serve as a barrier to
22 any tape of pedestrian trespass upon the neighboring
23 properties.

24 I think he's also indicated that he was willing
25 to extend it all the way up Oleander to the entrance,

1 which really brings everything away from the
2 pedestrian; and between the landscaping and the fence,
3 we're really trying to satisfy the neighborhood's
4 concerns.

5 THE HEARING EXAMINER: Okay.

6 MR. VAUGHN-BIRCH: That's all I have.

7 THE HEARING EXAMINER: Questions of this witness
8 by county staff?

9 MR. LAMEY: I have a question.

10 Earlier in your discussion you discussed the
11 queuing issue and you did feel that that issue would be
12 resolved in some part by the opposite trips generated
13 from the residential to the commercial.

14 In your opinion, would adding a right-hand left
15 lane also help in the queuing issue?

16 MR. JONES: Everything helps. It becomes a
17 matter of warrants. I mean, putting a traffic signal
18 up there would help. But as anything, it's a measure
19 of standards and whether it's actually warranted and
20 then you get into whether there's physically an area
21 within the right-of-way or the private road that was
22 contemplated for this area to begin with.

23 It's a 50-foot-wide private road. That 50 foot
24 right now -- there was some testimony as to cars had
25 to squeeze by one another. We're expanding the width

1 of that pavement to allow for the standard travel
2 lanes there. That should preclude any problems with
3 trying to squeeze by each other, at least for the
4 distance that we're proposing to improve.

5 But trying to put in a right turn and a left out
6 there, there physically isn't space without further
7 encumbering the property, which would even further
8 reduce the allowable usable area of the property.

9 MR. LAMEY: Right now the right-of-way is 50
10 feet. You're saying that you could not accommodate
11 a right and left out lane?

12 MR. JONES: Not and the open swale type drainage
13 and everything that's there. You're talking about four
14 lanes then, a right out, a right -- I mean a right in,
15 a left out and a straight in and a straight out. So
16 you'd have --

17 MR. LAMEY: There's no straight.

18 THE HEARING EXAMINER: No. It would have to be --

19 MR. JONES: Right out, then.

20 THE HEARING EXAMINER: Yeah. It would have to
21 be this way, this way and this way. But they can also
22 come in -- well, it wouldn't make any difference if
23 they came in left off of McGregor. That would not be
24 a problem.

25 MR. JONES: Put in a total of three lanes would

1 be about 36 feet in a 50-foot area, and then by the
2 time you get down and get to your swales and get back
3 to your property line, I don't believe that there's
4 room in the 50-foot section.

5 MR. LAMEY: You couldn't do a closed drainage
6 area, close the drainage? That would reduce the
7 requirement.

8 MR. JONES: You've still got a -- there would
9 probably be a way to engineer it in. Right now the
10 swale would run all the way down Oleander, all the way
11 up to the inlet that exists on McGregor Boulevard.
12 You would have to extend that drainage system down and
13 install it there.

14 MR. LAMEY: But it could be done?

15 MR. JONES: Three lanes physically could be done,
16 yes.

17 MR. LAMEY: Thank you.

18 THE HEARING EXAMINER: Okay.

19 MR. VAUGHN-BIRCH: I would just follow up.

20 Barry, you mentioned warrants and things like
21 that. Are those issues not typically addressed at
22 the development order stage by development services
23 staff?

24 MR. JONES: They are; and as part of the traffic
25 impact statement that was done, you have to address

1 whether this traffic generation warrants a right in
2 or a right out as part of the turn lane analysis; and
3 those have been addressed and it doesn't meet the
4 warrants for that.

5 THE HEARING EXAMINER: Okay. County Attorney,
6 did you have any questions?

7 MR. FREDYMA: No, ma'am.

8 THE HEARING EXAMINER: All right. I don't either.
9 Thank you, Barry.

10 MR. JONES: Thank you.

11 THE HEARING EXAMINER: All right. Any other
12 witnesses?

13 MR. VAUGHN-BIRCH: Yes. Mr. Greg Diserio. He's
14 our landscape architect.

15 He has been qualified as an expert in I would
16 guess landscape architecture and design. We would
17 request that he be qualified as such today.

1 Thereupon,

2 GREG DISERIO,

3 a witness, produced by the Applicant, having been previously
4 duly sworn, testified as follows:

5 THE HEARING EXAMINER: Okay. You've been here
6 before, Greg?

7 MR. DISERIO: Yes, ma'am.

8 THE HEARING EXAMINER: Okay.

9 MR. DISERIO: My name's Greg Diserio. I'm with
10 Dave Jones and Associates, landscape architects and
11 planners.

12 THE HEARING EXAMINER: All right. Hang on just
13 a second.

14 Any objections to him being accepted as an expert
15 in landscape architecture?

16 MR. FREDYMA: I'm sorry. He's been here before,
17 you said?

18 THE HEARING EXAMINER: Yes.

19 MR. FREDYMA: No.

20 Is he sworn?

21 THE HEARING EXAMINER: Yes. You are sworn?

22 MR. DISERIO: They do have if you need it, my
23 resume, just in case you want to see it.

24 THE HEARING EXAMINER: All right. I'll accept
25 him.

1 MR. DISERIO: Briefly, I just wanted to touch
2 on a couple of things that were discussed here and
3 just clarify a few things so that everybody can
4 understand. There were a lot of numbers or letters
5 being thrown out as far as types of buffers and what's
6 typically required and what isn't.

7 First starting on Oleander Drive, again a private
8 road under a typical scenario would require no buffer
9 whatsoever. The applicant had originally proposed a
10 Type B buffer, which is -- I'm sorry -- Type D buffer.

11 THE HEARING EXAMINER: D as in dog.

12 MR. DISERIO: D as in dog, which is typically
13 15-foot wide, five trees and a double hedgerow or
14 roughly 66 shrubs every hundred feet.

15 In meeting with staff, environmental sciences
16 and the neighbors obviously wanted an increased buffer.
17 We felt a Type D buffer, one, went above what would
18 normally be required; but the applicant also has
19 agreed to increase the size of the trees as well as
20 put a stipulation in that requires the shrub material
21 be permitted to grow to a minimum of five-foot height.
22 In reality, what happens is it grows naturally and it
23 will achieve a much denser or taller height.

24 We are proposing coco plum along there, which is
25 a good native, very dense, very opaque. You will not

1 be able to see through it if it's maintained.

2 I do want to just state that the 60-foot height
3 requirement I think was from the access drive and
4 into this parcel back and not the front portion.

5 THE HEARING EXAMINER: Right.

6 MR. DISERIO: Because of site visibility. There's
7 some other issues.

8 THE HEARING EXAMINER: Right.

9 MR. DISERIO: That in and of itself would be a
10 standard Type D buffer where it's maintained at least
11 three foot height.

12 Along the -- I guess that's the north we're
13 calling it there?

14 THE HEARING EXAMINER: Yes.

15 MR. DISERIO: That typically requires --
16 commercial to residential or multifamily requires
17 either a C or F buffer. A C buffer is -- so I don't
18 get them mixed up -- a C buffer is 15 feet wide, with
19 five trees and 18 shrubs per hundred feet and the
20 shrubs are required to be allowed to mature.

21 AN F buffer is 30 foot wide with ten trees and
22 a double hedgerow installed at 48 inches and again
23 permitted to grow. Because of the parking area
24 abutting it, a Type E buffer then is now required,
25 which is sort of between the two. It's 25 feet in

1 width, with five trees, 30 shrubs per hundred feet
2 and a wall. what we are proposing is -- in the
3 deviation is a Type F buffer, which -- from here down.

4 THE HEARING EXAMINER: And that's from the edge
5 of the smaller building.

6 MR. DISERIO: Yes, from the edge of the smaller
7 building.

8 THE HEARING EXAMINER: To John Morris?

9 MR. DISERIO: We do have the 30 feet there to
10 meet the Type F buffer, which is per code.

11 From there north we are requesting a deviation
12 to provide the F type buffer plantings, which are
13 double the number of trees and basically doubling the
14 number of shrubs, also taller shrubs, and eliminating
15 the wall.

16 We also -- as part of the landscape with that
17 is also proposing to install some herbaceous material
18 in the retention areas to help hide the little stem
19 wall that's there and provide a much better quality.

20 During the break I did put this exhibit up,
21 which you may want to enter.

22 THE HEARING EXAMINER: Yes, I do. Okay. That
23 will be Applicant's Exhibit Number 6, which is going
24 to be buffer rendering.

25 MR. FREDYMA: If that's 6, what did you do with

1 the three composites?

2 THE HEARING EXAMINER: The TIS and the --

3 MR. FREDYMA: ITE.

4 THE HEARING EXAMINER: Thank you. (Cont'g.) --
5 the ITE is Applicant's Exhibit 5, composite.

6 MR. FREDYMA: Okay. The only reason I'm asking
7 is I think you had Applicant's Exhibit 5 as the Lee
8 Plan considerations.

9 THE HEARING EXAMINER: Oops. Oh, you're right.
10 I did.

11 Okay. The ITE has got to be 6 and the buffer
12 renderings will be 7.

13 MR. FREDYMA: Perfect. Thank you very much.

14 MR. DISERIO: This graphic basically is just
15 cross sections that relate back to the site plan
16 through the various buffers. It actually does show
17 the elevations and lay of the land, the engineering
18 sections; and we've supplemented and put our landscape
19 buffers on it just again to give you a little bit of
20 visual of what is required.

21 The far top left one is a buffer along Oleander.
22 The second one in the middle there on the left would be
23 what we're currently proposing along the north property
24 line, a Type F buffer, with the exception of it being
25 only 25 feet wide in the area adjacent to the parking

1 lot.

2 The material we're using is all 100 percent
3 native within the buffers. We have selected plant
4 material that will provide a very opaque screen that
5 will grow to heights that exceed the five-foot shrub
6 height. The trees, of course, naturally, as they
7 mature will more than adequately screen the parking;
8 and, quite frankly, for the most part, the buildings,
9 which again you can see on the exhibit on the far left
10 there the different elevations.

11 One thing I do want to note, in the staff report,
12 Item 6, where they're talking about must delineate a
13 20-foot-wide Type E buffer with plantings, minimum
14 of five trees and a double staggered hedgerow of 48
15 inches in height at time of planting, that is really
16 an enhanced Type E. It's taking the wall requirement
17 and the F buffer requirement and merging them together.

18 THE HEARING EXAMINER: Uh-huh.

19 MR. DISERIO: Where a typical E buffer, again, is
20 25 feet with five trees and 30 shrubs.

21 THE HEARING EXAMINER: Okay.

22 MR. DISERIO: And, again, we're proposing to
23 utilize smaller shrubs, but permit them to grow in
24 height.

25 And then, as stated, the applicant is willing to

1 install a vinyl-coated chain-link, whether it be green
2 or black, which will disappear within the landscape to
3 provide any further pedestrian access.

4 If there's any questions, I'd be happy to --

5 MR. VAUGHN-BIRCH: I do.

6 THE HEARING EXAMINER: Okay.

7 MR. VAUGHN-BIRCH: Just to restate then, the
8 preferred buffer would be that enhanced buffer. We
9 would be willing to put a vinyl-coated fence type of
10 material in there to try and enhance that even further.

11 Greg, there was a mention of installing buffers
12 prior to any construction activities. Is that the way
13 it's typically done and, if not, is there a reason for
14 that?

15 MR. DISERIO: I have seen that condition on
16 different projects. We have done that on different
17 projects, but it's usually a much larger scale project.

18 I'm not saying it can't be done. It makes it
19 quite a bit more difficult, especially on smaller
20 scale projects such as this.

21 One is physically getting the -- one, you have
22 to get the earthwork done and then the site prepped for
23 that. But typically, too, a lot of times there is no
24 electric, there is no water available to help maintain
25 the plantings, you know; and it makes it real tough and

1 difficult. Again, it's not that it can't be done,
2 it's just given the site constraints that it makes it
3 a little bit more difficult to do.

4 THE HEARING EXAMINER: So there's no irrigation
5 system?

6 MR. DISERIO: There will be an irrigation
7 system --

8 THE HEARING EXAMINER: Eventually.

9 MR. DISERIO: -- eventually; but typically
10 trying to get that kind of plant material installed
11 and getting irrigation to it, short of talking to the
12 fire marshal and letting you put a temporary meter on
13 the fire hydrant and irrigating with pulp, it's very
14 difficult to get it.

15 MR. VAUGHN-BIRCH: Also there was a concern
16 about headlights shining through buffers. You
17 mentioned that the buffer would be opaque. If you
18 could comment on that.

19 MR. DISERIO: Yes. Both buffers along Oleander
20 as well as on the north side. The Type B buffer
21 requirement came in with wall and all that. It was
22 specifically added to the codes to address issues such
23 as this where there's a potential for headlights from
24 parking areas and roads to basically invade residential
25 lanais and that kind of thing. So that's where they

1 stipulate whether it's a Type E or a Type F will
2 provide the screening.

3 These buffers will in fact -- in fact, the one
4 on the north side will, the day it is installed, will
5 prevent that from happening. The one along Oleander
6 may take six months or more to get there, but it will
7 get there.

8 THE HEARING EXAMINER: To fill in.

9 MR. JONES: It may even do it when it's first
10 installed because of -- since it's up two feet higher
11 than the existing, the line of sight. It may already
12 do that.

13 MR. VAUGHN-BIRCH: That's all I have. Thank you.

14 THE HEARING EXAMINER: Questions by staff?

15 MR. LAMEY: Yes.

16 You've discussed an alternative to the typical
17 requirement from the eight-foot-high solid wall.
18 Can you describe what you're suggesting in more detail
19 or even have a photograph of what you're suggesting?

20 MR. DISERIO: I don't have a photograph; but
21 what we're suggesting, if I may point, is installing
22 within the buffer, either within the double hedgerow
23 or probably on the back side of the double hedgerow, a
24 six or eight-foot-tall chain-link fence, vinyl coated,
25 which is either -- it would be here -- and as the

1 vegetation matures and grows, it pretty much
2 disappears. I mean you see that a lot in a lot of
3 residential developments. I know along State Road 80,
4 the big project out there, they've done that.

5 I recommend if they do that the black because it
6 does have a tendency to disappear a little quicker.
7 The green sometimes conflicts with the native greens
8 we have here and the plant material.

9 So that would be installed along the entire --
10 I believe what we're proposing is along the entire
11 length. Right now the E buffer is only required from
12 this point here. What they're proposing is to go ahead
13 and add that through here as well as bringing it down
14 around here, again just as another -- I mean it's not
15 going to keep people out, obviously. If somebody wants
16 to get somewhere, they're going to get there. But it
17 is a major deterrent and it will keep children from
18 roaming.

19 MR. VAUGHN-BIRCH: And you just indicated on
20 there, the buffers, of where that vinyl-coated fence
21 would be. Could you indicate where the wall would go
22 if we went with that option as far as where we would
23 be required to?

24 MR. DISERIO: If required for the wall, it would
25 start here at the edge of the building and come north

1 to here. That would be the limits of the wall. And
2 the wall, according to the way the Type E buffer now
3 is, along the back edge, 25 feet from the property
4 line, which puts it right at the curb of the parking
5 area, which complies with all the land development code
6 regulations but does prohibit or limits landscaping on
7 the internal side that will help again make it more
8 aesthetically pleasing in the process.

9 MR. VAUGHN-BIRCH: And just one more thing.
10 The spartina planting, I think that had come as a
11 recommendation from environmental staff?

12 MR. DISERIO: The environmental staff recommended
13 that again as part of an enhanced landscaping. One,
14 they wanted to hide the little stem wall here. Even
15 though it's quite effective from off site, it won't
16 be visible. It does provide for a more natural water
17 treatment.

18 MR. VAUGHN-BIRCH: Is any of that required?

19 MR. DISERIO: That is not required as part of
20 the Type E buffer, no. The Type E buffer requires a
21 wall, five trees and -- I apologize. I get
22 jurisdictions mixed up with the A, B, Cs and Ds.

23 THE HEARING EXAMINER: Eighteen shrubs?

24 MR. DISERIO: Eighteen shrubs, again, and they
25 only have to be maintained at three feet height.

1 THE HEARING EXAMINER: I only have one
2 jurisdiction I have to worry about, so I can sometimes
3 remember it.

4 Okay. Anything else?

5 MR. VAUGHN-BIRCH: I do not.

6 THE HEARING EXAMINER: All right. Shawn?

7 MR. LAMEY: Just one point to make.

8 I just looked at the master concept plan, which
9 is Attachment B to the staff report; and you did
10 mention in your presentation that you guys would not
11 be required to place that wall along the northern
12 property along its entirety. However, I want to point
13 out that in the master concept plan that is submitted,
14 it does show the wall all the way across.

15 THE HEARING EXAMINER: All the way across. Okay.

16 MR. LAMEY: Thank you.

17 THE HEARING EXAMINER: I don't have any questions.
18 Okay. Cody, any other witnesses?

19 MR. VAUGHN-BIRCH: No. I just have some closing
20 remarks addressing the issues that came up. I don't
21 know if you prefer me to stand or sit.

22 THE HEARING EXAMINER: It may be better if you
23 stood so everybody can see you.

24 We do have another hearing. It starts here at
25 one o'clock, so we do need to be out of here by 1:00.

1 I think we'll be wrapped up by then, but just on the
2 off chance if I start -- Cody.

3 MR. VAUGHN-BIRCH: When you start playing the
4 music?

5 THE HEARING EXAMINER: Yeah.

6 MR. VAUGHN-BIRCH: I just have a couple of
7 comments; and I think the testimony that you've heard
8 today from the neighborhood and from the applicant
9 and from staff does indicate a concerted effort to
10 take into account the neighborhood, the concerns of
11 the neighbors and to as much as possible find some
12 kind of common ground.

13 You know, in starting off, I think the developer
14 starts on one side of the spectrum, the neighbors start
15 on the other side.

16 I realize that ideally the neighborhood would
17 love for it to stay exactly as it is today, Australian
18 pines and everything like that. On the other hand,
19 ideally, possibly some more intense uses or greater
20 use of the property might be desired by the developer.

21 I think one of the signs of a good compromise is
22 where everybody's not thrilled about the outcome but
23 everyone can live with it.

24 I know that the neighbors would like to see a
25 little bit more from our side as far as less done on

1 the site and in turn, as I said, we would probably
2 rather do a little bit more.

3 We had heard some concerns about the height.
4 Initially I think the plan that you saw in the
5 PowerPoint, there was a large building pushed up
6 to Oleander. Many of the residents expressed concern.

7 There were two neighborhood meetings that we
8 heard concerns and tried to respond to those as best
9 that we could, lowered the building height and moved
10 it forward onto McGregor, as Mr. Griffith said, which
11 is in line with these new urbanism type concepts
12 of planning and design, and also increasing the
13 pedestrian-friendly type of design along McGregor
14 and discouraging pedestrian-friendly type of access
15 going down Oleander, evidenced by the agreement or at
16 least listening to the residents' concerns. And we
17 moved our access as close to McGregor as we could,
18 limited the pavement, cut the sidewalks out. You know,
19 really we would want everything to be directed out to
20 McGregor and not into the neighborhood.

21 I would note that -- let me go up to this aerial
22 quickly.

23 We do have two stories here. Two stories are
24 contemplated here. The approved CPD for Tropicana --
25 I might be mistaken, but we could look into this, but

1 I believe the maximum height in the development
2 regulations for the proposed mini warehouse CPD that's
3 been approved and is going in there is 35 feet.

4 THE HEARING EXAMINER: I'll look it up. I can
5 look it up. Okay.

6 MR. VAUGHN-BIRCH: And additionally I would say
7 that the uses are consistent, especially the uses in
8 this -- I believe it's called the LCD Trucking CPD,
9 which they're to phase out the current operations and
10 to phase in these more intense uses. They do not have
11 any hours of operations restricting that site. I do
12 not believe that they are required to do any enhanced
13 buffers beyond what the code requires. So certainly
14 this project and the proposed enhanced buffers over
15 here would be going far above and beyond what
16 ultimately will be put in place on this LCD Trucking
17 site.

18 Unfortunately, in regards to access, there's
19 not a whole lot that we can do. We heard testimony
20 from Mr. Getch saying that Oleander is really the
21 option for this site. I did hear some concerns saying
22 well, that's because this site is too small and you're
23 trying to jam too much onto the site. We did hear some
24 testimony from Mr. Griffith regarding the commercial
25 location site standards found in the Lee Plan; and on

1 this site what's recommended is a development of
2 between 10,000 and 30,000 square feet. The maximum
3 for that type or that designation of commercial
4 development, the maximum size for the site is two
5 acres. We're at 1.85. So I would suggest that the
6 size of the site is quite appropriate for the
7 development; and, in addition, at 19,600 some square
8 feet, we're below half of the range that's recommended
9 for that type of site regarding the square footage
10 that's proposed.

11 And I would also suggest that the willingness
12 of the applicant to strike out quite a few uses, when
13 you go back and look what was originally desired,
14 what's been asked, I think the applicant here has
15 accommodated to the greatest extent possible that
16 they can and still have a viable site to try and work
17 with the neighborhood.

18 Again, the hours of the site that is further
19 down the road, the LCD Trucking, there are no hours
20 of operation restrictions there. And as far as safety
21 concerns and things like that, we would be very willing
22 to put up some sort of signage saying residents only,
23 no through traffic, something like that, no right turn
24 out of the site, those type of mechanisms to allay any
25 of the problems that might be associated with that.

1 And really I think this is a good example of
2 a developer working to formulate something that will
3 work. The future land use designation on this site --
4 I know I heard some people saying, well, it's not
5 zoned for commercial and we didn't know. The future
6 land use and I think the infill development policies
7 support this. Certainly the commercial node map in
8 the Lee Plan supports commercial development going
9 here.

10 I'm not sure, there was a reference to I think
11 a sentiment of everything's -- not everything, excuse
12 me -- there were quite a few properties that were
13 wanting to go commercial in the Iona area. I think
14 it's clear from the testimony you've heard today
15 that the Lee Plan specifically directs commercial
16 development to go to this site; and combined with
17 the infill nature of the existing area -- we do know
18 that it is an agricultural area that has developed as
19 residential. And with that, your McGregor corridor
20 has developed and the commercial node map directing
21 commercial development there, along with your
22 commercial site location standards found in the Lee
23 Plan, I think suggest that what's being proposed here
24 is actually very appropriate for the site, is in
25 compliance with the Lee Plan, the land development

1 code and really goes above and beyond what's required.

2 The developer has attempted to respond to
3 everything that's been asked. You know, aside from
4 turning it into walls and gates like Gulf Harbor, I
5 think that they've accommodated the concerns greatly.

6 We would respectfully request that you recommend
7 approval of this request with the uses that we have
8 requested herein.

9 I think the three that we were not eye to eye
10 with on staff were the drugstore, hardware, Group I
11 personal services. We did acknowledge that the ATM
12 that's listed in the Group I personal services would
13 not be -- well, we would say that the residents have
14 expressed a desire to not have that use in there and
15 we would acknowledge that and abide by that.

16 In addition, we would prefer the -- although
17 the wall was proposed down the entire area there,
18 when environmental staff came to us with a different
19 suggestion, we were amenable to that and that's
20 acceptable, although I really think maybe we focused
21 too much on this buffer today because it's not really
22 our focus necessarily and that we certainly acknowledge
23 that enhanced buffers are appropriate in protecting
24 surrounding residential uses and I think that
25 acknowledgment probably is evinced by our willingness

1 to instead of the section of concrete wall, go ahead
2 with the vinyl-coated fencing along the entire boundary
3 and going down Oleander. And, as you know, Oleander
4 does not even require a buffer per the land development
5 code at all, so I think the enhanced -- the trees along
6 Oleander, the planting height has been heightened; and
7 the willingness to put the vinyl fence is something to
8 be considered.

9 Again, I don't think that our primary concerns
10 are with buffers and we certainly would want to be
11 a good neighbor and try and deflect any sort of
12 intrusion from the residential uses adjacent to there.

13 So with that, again, we would respectfully request
14 that you recommend approval of this zoning request.

15 Thank you.

16 THE HEARING EXAMINER: Thank you.

17 Shawn, you have any comments you'd like to make
18 before we close the hearing?

19 MR. LAMEY: Yes.

20 THE HEARING EXAMINER: Okay.

21 MR. LAMEY: Madam Hearing Examiner, as a result
22 of the two meetings we had with the applicant and the
23 neighborhood, we drafted a list of conditions and
24 limited uses for your approval. However, hearing
25 today, we do hear a lot of the residents do still

1 have a lot of concerns regarding the traffic and
2 access, as the access point being Oleander. We
3 would like to perhaps, based on the analysis of the
4 applicant, even with their own witness, recommend
5 that a right out, left out lane be added as part of
6 this approval.

7 THE HEARING EXAMINER: Okay.

8 MR. LAMEY: I think that would alleviate some of
9 the concerns that we're hearing from the neighborhood
10 and perhaps it would -- I would feel like it would
11 enhance the development as well.

12 Personally, I went to the site yesterday. I
13 was trying to turn left onto McGregor and it was a
14 challenge.

15 The second issue that we heard today was the
16 issue over hours of operation. I don't believe the
17 applicant is willing to change the recommended hours
18 from 7:00 to 9:00. However, from hearing from the
19 neighborhood today, I think I would recommend perhaps
20 the closing time be 7:00 p.m.

21 Another issue I think we could add as a condition,
22 which would be just to clarify what Mr. Vaughn-Birch
23 had just mentioned, adding more signage to the master
24 concept plan. Under the staff recommendation and
25 approval for -- as Condition 7, we recommend a no

1 outlet sign be placed on Oleander as depicted on the
2 MCP as Condition Number 7 of the staff report.

3 Perhaps we can recommend another sign near the
4 entrance leaving the property that would indicate
5 there is no outlet or no right turn, perhaps, signage
6 that would be added to the list of conditions. That
7 would perhaps deter further intrusion into the
8 residential neighborhood.

9 I don't have a clear direction from the
10 neighborhood in terms of the wall requirement versus
11 the proposal today, which is a six-foot-high coated
12 chainlink fence. I don't have any clear direction
13 in terms of what would be preferred. I think a wall
14 is what we -- they initially proposed and I think
15 that's what the community's more comfortable with.

16 The last issue I have would be the granting of
17 additional uses on the property other than we have
18 suggested in the staff report. We feel to alter the
19 scheduled uses to include drugstores, hardware stores
20 or other uses associated with Group I personal services
21 would increase the intensity of the CPD and we look at
22 that as harmful to the residential neighborhood.

23 That concludes my presentation.

24 THE HEARING EXAMINER: All right. County
25 Attorney, any comments or anything before we close

1 the hearing?

2 MR. FREDYMA: The only comment I guess I would
3 make -- there were several people that talked about
4 gating Oleander; and the only comment I would make
5 with regard to gating Oleander is in order to do so --
6 there is a process for doing so. It's not really as
7 part of this request.

8 One of the things that typically makes gating
9 any neighborhood difficult is you need 100 percent
10 participation of all the property owners affected,
11 which means if you have one property owner who says
12 no, the request cannot be granted by development
13 services.

14 I don't know what the disposition towards this
15 is in the neighborhood, whether everybody would
16 ultimately agree or not. That's something they could
17 pursue at a different venue.

18 Thank you.

19 THE HEARING EXAMINER: All right. I don't
20 have a problem with the rezoning request for the site.
21 There will be or may be some changes to some of the
22 conditions. Okay? I've already indicated that there's
23 no way I would even recommend to the Board of County
24 Commissioners a package store at this location.

25 The drugstore/pharmacy, I may look at that.

1 I've got to go over the ITE material that you all
2 gave me. If I recommend something along that order,
3 it may just be a pharmacy rather than a drugstore.
4 It may be just a pharmacy. But I need to really look
5 the situation over.

6 I want to look over the additional uses that
7 are set out in personal services, Group I. I also
8 want to look at the approvals for the recent rezonings
9 surrounding this property, get an idea what was
10 approved on them, you know, if they were limited in
11 uses, limited in hours of operation and whatnot before
12 I make a final recommendation as far as the schedule
13 of uses is concerned.

14 I think the concern that I heard most was for
15 the wall, was the people preventing the children from
16 getting through the buffer and into the parking lot
17 or preventing other folks from getting through the
18 parking lot and through the buffer into the community.

19 I would not have a particular problem with the
20 chain-link fence. I think that would stop the trespass
21 situation. Knowing how dense a coco plum buffer is, I
22 tend to agree with the applicant's landscape architect
23 that the coco plum plants will eventually hide that. I
24 think that may be more acceptable to them, to have the
25 fence hidden rather than a wall that would be pretty

1 much visible.

2 But as far as the -- I can't do anything about
3 the access point. DOT has spoken on the access point.
4 I have no control to override DOT. It's not just a
5 safety issue for you folks. It is a safety issue for
6 everybody on McGregor. And they're looking at the
7 bigger picture by relegating the entrance to Oleander
8 and off McGregor and John Morris.

9 So overall I think my recommendation to the
10 Board will be a recommendation of approval of the
11 plan, with possibly some modifications.

12 All right. So at this point in time then this
13 hearing is closed. It will take approximately four
14 to six weeks for my decision to come out. Once my
15 decision comes out, the zoning staff across the way
16 will be scheduling this in front of the Board of County
17 Commissioners.

18 You all will receive a copy of my decision, my
19 recommendation; and you will receive a notice letting
20 you know when it's coming up in front of the Board of
21 County Commissioners, so that if you don't like my
22 recommendation you can talk to the Board.

23 Now, I will warn you. I do not limit input here
24 unless it gets to be inflammatory or defamatory or
25 some of them other things; but the board will not let

1 you talk more than three minutes.

2 MR. FREDYMA: Five.

3 THE HEARING EXAMINER: Is it five?

4 MR. FREDYMA: Five for zoning.

5 THE HEARING EXAMINER: Okay. I thought it was
6 three.

7 All right. Will not let you talk more than five
8 minutes.

9 So if you're going to make a presentation, try
10 to keep all your points that you want to make in that
11 first five minutes. Expound later. But get your
12 points down first, because they will stop you. They
13 will stop you. And so if you save your slammer for the
14 last, you may not get to it.

15 All right. This hearing is closed then. Thank
16 you all for coming.

17 (Hearing Concluded.)
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1 STATE OF FLORIDA .)

2 COUNTY OF LEE)

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4 I, Patsy Lynn Coleman, Registered Proficiency
5 Reporter, and Notary Public, State of Florida at Large,
6 do hereby certify that I was authorized to and did
7 stenographically report the foregoing proceedings and
8 that the typewritten transcript, consisting of pages
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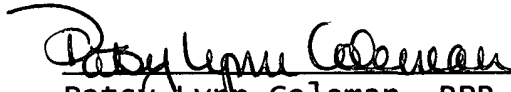
10 Dated this 23rd day of April, 2007.

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Patsy Lynn Coleman, RPR
Notary Public, State of Florida

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