



TRANSCRIPTS
FOR
CASE #:

DCI 2006-00055

LEE COUNTY HEARING EXAMINER MEETING

RE: DCI2006-00055

APPLICANT: ADAR INVESTMENTS, LLC
RE: AMAZING GRACE RPD

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 28, 2007.

PRESENT:

JOHN J. FREDYMA, Assistant County Attorney
ROBERT D. SPICKERMAN, Assistant County Attorney
RUSSELL P. SCHROPP, Attorney At Law
JOSH PHILPOTT, Sr. Planner, Division of Planning
KIM TREBATOSKI, Division of Planning

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ORIGINAL

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1 THE HEARING EXAMINER: All right. Folks, let's
2 start the hearing.

3 Good afternoon. I'm Diana Parker, Chief
4 Hearing Examiner for Lee County. This is Wednesday,
5 March the 28th. This is Case Number DCI 2006-00055,
6 Amazing Grace, RPD.

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

9 MR. FREDYMA: Yes, as an introduction.

10 Good afternoon. 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 to
14 insure that the record in this case is complete.

15 If you'd like to participate in today's
16 hearing, or obtain a copy of the Hearing Examiner's
17 recommendation, then we ask that you fill out one of
18 the white forms that's located on the small table up
19 near the louvered door. It's right up here. You'll
20 see the table and a bunch of forms and some pencils
21 are there.

22 Once completed, you can hold onto your form or
23 you can bring it up here and just drop it on the corner
24 of the table.

25 At the conclusion of the staff's presentation,

1 the Hearing Examiner will then open the floor for
2 public participation and comment. It's at that time
3 that you'll have an opportunity to address the Hearing
4 Examiner, and all public comment will be taken or heard
5 from the podium up front here.

6 when you approach, we ask that you state your
7 name and address for the record and then explain to
8 the Hearing Examiner what questions or concerns or
9 comments you have about the project.

10 This is a rezoning, so today's hearing is not the
11 final action on this matter. The Hearing Examiner will
12 prepare a recommendation based upon the evidence and
13 testimony that she hears today. That recommendation
14 will be passed along to the Board of County
15 Commissioners and they will hold a final public hearing
16 in probably about a month or a month and a half.

17 If you'd like to have your thoughts considered
18 in this matter, you must speak here today. You must
19 give the Hearing Examiner your questions, your
20 comments, your concerns; but, more importantly, if you
21 want to speak before the Board of County Commissioners,
22 you must speak here today to reserve your right to
23 address the Board of County Commissioners.

24 At this point in time, we'll simply go around
25 the front table up here and do a brief introduction of

1 the parties that are present.

2 Once again, my name is John Fredyma. I'm an
3 Assistant County Attorney, representing the Board of
4 County Commissioners.

5 MR. PHILPOTT: My name is Josh Philpott. I'm a
6 Senior Planner with Lee County Zoning.

7 MS. JOHNSON: Shellie Johnson, with Barraco and
8 Associates. I'm a planner.

9 MR. SCHROPP: Russell Schropp. I'm the attorney
10 for the applicant.

11 MR. FREDYMA: And with that introduction
12 concluded, we'll go back to the Hearing Examiner.

13 THE HEARING EXAMINER: All right. Folks, looking
14 at the number of you that are sitting here, I need to
15 explain a few of the other ground rules.

16 First off, as I indicated before I walked out,
17 water only in this room, please.

18 If you need to talk to your neighbor, please go
19 outside the door. You can always come back in. We
20 audiotape these proceedings. Noise in the back of
21 the room overrides what's coming in on the microphones
22 and onto the tape and it also interferes with the court
23 reporter's concentration. It means that that portion
24 of the record may not be able to be reconstructed.
25 okay? So I need you to remain quiet in the room. If

1 you need to talk to your neighbor or whatnot, please
2 leave the room and come back.

3 As I indicated earlier, please turn off your
4 cell phones or turn them on vibrate. All right?

5 Now, after the applicant and staff have made
6 their presentations, you all will be allowed to speak.
7 What I need you to do when you come up is state your
8 name and your address, tell me whether you are for or
9 against the request; and then give me the reasons why.

10 Now, let me make sure you understand. The reasons
11 why are things like the effect it's going to have on
12 you, on your property, whether it's going to change
13 the character of your neighborhood. If you don't like
14 the people that live there now, if you don't like the
15 people that are developing it, that has no bearing on
16 my decision. I can't do anything about that. Okay?
17 I can require larger buffers, I can reduce density;
18 these are some of the things that I can do. But I
19 cannot make somebody else buy that property and I
20 can't make somebody else live there.

21 So personal likes, dislikes, personality problems,
22 neighborhood conflicts, those have no bearing on my
23 decision and it's just easier not to get into them
24 here because somebody that's against, there's going
25 to be somebody for it and it's going to cause problems.

1 All right?

2 So keep your comments germane to the issue
3 at hand. What effect do you think this project, if
4 approved, will have on your property, your lives and
5 your community? Those are the things that I need to
6 know, that I can address them for you. All right?

7 The hearing will probably last a little longer
8 than two hours. If it gets to the two-hour point,
9 we will be taking a break. The court reporter cannot
10 unfocus during the course of the hearing. She must
11 remain focused. She needs time then to stand up and
12 stretch, get a drink of water, whatever. Okay?

13 So we will -- that's the procedures that we'll
14 follow. I do notice that we have a baby in the
15 audience. If he or she starts getting restless, let
16 me know. If I don't hear it, let me know. I will
17 take you out of turn so that you all can go ahead
18 and testify and leave. There's no point in her or
19 him having to sit through this cotton-picking hearing.
20 The rest of us may have to, but it's a little hard on
21 a little one.

22 All right. At this point in time, if you are
23 testifying in today's hearing, you need to be sworn
24 in. If you're an attorney and representing someone
25 or planning to testify to facts, you need to be sworn

1 in as well. So at this point in time, if you're going
2 to be testifying in today's hearing, raise your right
3 hand.

4 (Whereupon, all prospective witnesses were duly
5 sworn.)

6 THE HEARING EXAMINER: Now, after you've heard
7 staff's and applicant's presentation, if you feel the
8 absolute burning desire to get up here and talk, let
9 me know when you come up if you've not been sworn in.
10 I can swear you in at that time, but it's just easier
11 to swear everybody in at once.

12 Now, do let me stress to you very strongly here,
13 folks, if you don't like my recommendation, if you
14 have not talked to me, you can't talk to the Board of
15 County Commissioners. You must speak to me first.
16 You've got to give me the opportunity to address your
17 concerns with my recommendation to the Board of County
18 Commissioners; otherwise, you cannot talk to the Board
19 if you don't talk here. So if that changes anybody's
20 mind, you might want to think it over. But if that
21 changes anybody's mind and you're not sworn in, let
22 me know when you come up. I'll swear you in then.

23 Applicants ready to proceed?

24 MR. SCHROPP: Yes, we are.

25 THE HEARING EXAMINER: Okay. Let's do it.

1 MR. SCHROPP: Good afternoon, Madam Hearing
2 Examiner. For your record, my name is Russell Schropp.
3 I'm an attorney with the Henderson Franklin Law Firm
4 here in Fort Myers, here today representing the
5 applicant, Adar Investments. I'm here today with my
6 clients in the audience as well as our consulting
7 team, which consists of Shellie Johnson, sitting at
8 the table with me. She's the planner from Barraco
9 and Associates, and she is the project planner. Also
10 Stephanie Caldwell and Carl Barraco, seated in the
11 front row, the project's engineers; Parke Lewis, seated
12 there next to Kim, who's the project environmental
13 consultant; and Ted Treesh is here in the back row.
14 He's our project --

15 THE HEARING EXAMINER: I looked to see if he was
16 back there, but I didn't see him so I thought maybe he
17 wasn't in on this one.

18 MR. SCHROPP: He likes it in the back row.

19 (Cont'g.) -- the project's traffic analyst from
20 T. R. Transportation.

21 This is a request to rezone 250 acres from AG-2
22 to residential planned development to permit the
23 development of a 45-unit single family residential
24 subdivision.

25 The project is located in the Alva planning

1 community. It's on -- located off of Persimmon Ridge
2 Road.

3 Miss Johnson will go through the precise location
4 and character of the property.

5 The site plan is currently developed, I believe,
6 with three dwelling units; but the bulk of the property
7 is used for grazing at this time, for cattle purposes.

8 The uplands on the subject property comprise
9 about 221 or 222 acres of the 250 acres and are
10 designated as open lands on the Lee Plan future land
11 use map. The remaining 27 or 28 acres or so are
12 jurisdictional wetlands and would be, of course,
13 classified as wetlands on the Lee Plan future land use
14 map.

15 Under the open lands classification, which is
16 codified in the Lee Plan at Policy 1.4.4, the base
17 density for land in this classification is one unit
18 per ten acres, except that a maximum density of one
19 unit per five acres is permitted if the planned
20 development process is used to prevent adverse impacts
21 on environmentally sensitive lands. The idea or
22 concept, obviously, behind this exception in the
23 open lands classification is that through greater
24 environmental protections, those might be afforded if
25 the property is allowed to cluster, even at a little

1 bit higher density, than if the project was permitted
2 or required to develop at one unit per ten acres with
3 no such environmental protections afforded to the
4 environmentally sensitive land on the property.

5 In accordance with the open lands policy, this
6 project is utilizing the planned development process;
7 and as our consultants, primarily Miss Johnson and
8 Mr. Lewis, will testify, we have prevented any adverse
9 impacts on environmentally sensitive lands as required
10 by the policy. Accordingly, it's our position that
11 the project is entitled to the maximum density of one
12 dwelling unit per five acres allowed under the open
13 lands classification.

14 The staff report is -- I believe has been
15 presented to you already. It does contain a
16 recommendation for approval with conditions. Earlier
17 this week, I believe I filed with your office a
18 memorandum indicating that we concur with the staff
19 report and with the conditions as expressed in the
20 staff report; and certainly that is our position today.

21 I would call your attention to several of the
22 conditions just generally that we are in agreement
23 with, in particular, three of them.

24 Condition 3-C relates to a 30-foot wide buffer
25 along the western boundary of the property where it

1 abuts the Babcock, recent Babcock purchase of the
2 county. It was our feeling, I guess initially when
3 we looked at this, that a 15-foot buffer was what was
4 required by code because we thought it was development
5 adjoining to recreation lands; but in fact I think
6 the county views it as development adjoining to
7 preservation lands and the higher requirement of 30
8 feet rather than 15 feet. Rather than argue about
9 that point, we've simply agreed that we'll comply with
10 the 30-foot buffer requirement.

11 THE HEARING EXAMINER: Okay.

12 MR. SCHROPP: With regard to Condition 8, you'll
13 notice that requires a ten-foot-wide mixed use trail
14 easement along the northern portion of the property.
15 Again, that would be for a connection ultimately, if
16 needed by the county, to the Babcock property to
17 provide for horse trails and people trails for access
18 into the back of the Babcock purchase. Again, while
19 the easement requirement may or may not necessarily
20 be related to or adjunct to the actual development
21 impacts, we felt it was worthwhile to provide this
22 easement to the county and so we have agreed that that
23 easement will be provided to Lee County as part of the
24 development approval process.

25 THE HEARING EXAMINER: I'll have a couple

1 questions of staff regarding that, particularly the
2 part that goes across your natural area there, how
3 they think that's going to occur without causing some
4 problems.

5 MR. SCHROPP: Okay.

6 THE HEARING EXAMINER: Just to put staff on
7 notice.

8 MR. SCHROPP: And then Condition 14, I believe,
9 requires a Type F buffer along the eastern property
10 line where the road abuts the eastern property; and
11 I'll point it out on the site plan here that's up on
12 the board.

13 THE HEARING EXAMINER: Is that little sucker set
14 for north?

15 MR. SCHROPP: No. North is here.

16 THE HEARING EXAMINER: No wonder I don't know
17 which direction I'm going.

18 MR. SCHROPP: North goes this way, east is this
19 way, so the buffer that is required along the east
20 boundary and particularly it's required where the road
21 abuts the property line there.

22 THE HEARING EXAMINER: Because I'll get out there
23 and go the wrong direction. I'll get out there and go
24 the wrong dadgum direction, remembering all this in my
25 head.

1 That makes a little more sense.

2 MR. SCHROPP: In any event --

3 THE HEARING EXAMINER: Condition 14.

4 MR. SCHROPP: -- Condition 14 requires a Type F
5 buffer along the eastern boundary where the road
6 abuts the property; and I'd simply note that the
7 planting requirements recited in that condition of
8 14-foot-high trees and 40-inch-high shrubbery, exceeds
9 the code requirements required by Type F; but, again,
10 we have no objection to that requirement.

11 THE HEARING EXAMINER: Okay.

12 MR. SCHROPP: We'll plant a little bit more mature
13 vegetation at that location.

14 Our presentation today will consist of Shellie
15 Johnson, the project planner, who will discuss the
16 master concept plan, the compatibility of the project
17 with adjacent uses and the consistency of the project
18 with the Lee Plan.

19 Next we'd then present Parke Lewis, the project
20 environmental consultant, to discuss various
21 environmental issues associated with the project,
22 including the actions that have been taken by this
23 applicant to prevent adverse impacts on environmentally
24 sensitive lands.

25 Third, the project engineer, Stephanie Caldwell,

1 will discuss sewer, water and drainage aspects
2 associated with the project; and then Ted Treesh,
3 the project traffic consultant, will discuss the
4 traffic issues associated with the project.

5 At that point I'd like to bring Shellie Johnson
6 back up for a small recap, if I could. I'll take her
7 again out of order if I may.

8 THE HEARING EXAMINER: Okay.

9 MR. SCHROPP: So that's what proposed as far as
10 our presentation.

11 If there's any questions of me as to the
12 preliminary matters that I've covered, I'd be happy
13 to address them.

14 THE HEARING EXAMINER: I don't have anything.

15 MR. SCHROPP: Thank you.

16 If there's no questions at this time, I'd present
17 or tender Shellie Johnson as our first witness.

18 She has previously been -- appeared before this
19 forum as an expert in land use and planning and I
20 would tender her as an expert in that field today.

21 THE HEARING EXAMINER: Any objections from county
22 staff?

23 MR. PHILPOTT: (Shook head negatively.)

24 THE HEARING EXAMINER: County Attorney?

25 MR. FREDYMA: No, ma'am.

1 THE HEARING EXAMINER: All right. Accepted.

2 MR. SCHROPP: Thank you.

3 Thereupon,

4 SHELLIE JOHNSON,

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

7 MS. JOHNSON: Good afternoon. Shellie Johnson, a
8 planner with Barraco and Associates.

9 THE HEARING EXAMINER: Now, if you folks in the
10 back can't hear, you need to start waving at me or
11 something, okay?

12 MS. JOHNSON: As Mr. Schropp indicated, the
13 project is approximately 250 acres in size. It is
14 proposed for a 45-unit single family development. It
15 is located off of Persimmon Ridge Road, which is here.

16 Access to the site, the two major roadways are
17 State Road 80 and River Road. This is in the Alva
18 community, so this is obviously east of the Fort Myers
19 proper.

20 Surrounding land uses. The future land use
21 designations are open lands for everything around the
22 site as well as the site itself. Also, everything is
23 zoned AG-2 -- is currently zoned AG-2. The surrounding
24 properties to -- I have to reorient myself now because
25 I'm used to looking at it this way.

1 The surrounding properties to the east and to
2 the south are residential, and some grazing also to
3 the east. Citrus groves to the north and the Babcock
4 conservation lands to the west.

5 I'll walk you through the site plan a little
6 bit, and I know this is a little difficult to read.
7 I will try to point some things out as I go.

8 The main entrance, as I said, is from Persimmon
9 Ridge Road here at the southeast corner of the
10 property. The project is proposed with a single
11 spine road that will feed off to the lots.

12 There are two major natural areas to be preserved.
13 One is located here, the other is in this northwest
14 corner of the site. A large lake is also proposed in
15 the center that's to be used as a focal point for the
16 development as well as --

17 THE HEARING EXAMINER: And that's going to be dug,
18 correct?

19 MS. JOHNSON: That's correct.

20 THE HEARING EXAMINER: That's not existing?

21 MS. JOHNSON: Yes.

22 THE HEARING EXAMINER: Okay.

23 MS. JOHNSON: This lake will also serve for storm
24 water management.

25 THE HEARING EXAMINER: Okay.

1 MS. JOHNSON: The site right now includes an
2 existing equestrian facility. There's a small stable
3 and a couple of arenas, I guess is what you call them,
4 actually. I'm not really sure. The applicant is
5 proposing to keep those and maintain them on site as a
6 recreational amenity for the homeowners. Associated
7 with that are a number of equestrian or really
8 pedestrian trails, easements that will provide access
9 throughout the site as well as potentially off site in
10 the future.

11 Also on the site right now are three existing
12 homes. There's one here, here and a small one here.
13 Those three homes are proposed to remain and they do --
14 they are included in the 45 units that are proposed
15 for the development.

16 As Mr. Schropp indicated, the county parks
17 department has requested that we provide a ten-foot
18 trail easement along the north property line as part
19 of their Greenways expansion program, with the idea
20 being that potentially or eventually this may provide
21 a pedestrian connection to the conservation lands to
22 the west. And you can see that we would like to be
23 able to take advantage of that at some point, providing
24 an access easement to connect potentially to that and
25 then allow the residents to use that as well.

1 On the east side there are two portions of the
2 roadway that are less than -- that are less than 125
3 feet from the adjacent residential property. A Type F
4 buffer is required, which is either 15 feet with a
5 wall or a 30-foot landscape buffer. The applicant
6 has chosen to provide the 30-foot landscape buffer
7 as a means of in keeping with the compatibility of the
8 rural character of the neighborhood, where we think
9 that a wall is just not really appropriate for the
10 area.

11 The project may be gated. It's not really
12 decided yet; but, obviously, the road has been --
13 will accommodate a gatehouse if that's decided on.

14 There's also a Type B buffer that, again, Mr.
15 Schropp had mentioned to the west, adjacent to the
16 conservation lands. This buffer is proposed at 30
17 feet, as requested by the county, even though a Type B
18 buffer is typically 15 feet.

19 There are two additional natural areas I forgot
20 to point out that will be preserved. There's a small
21 area here and there's also one here.

22 The lake has been designed where there's sort
23 of an island in the middle, and all of that is part
24 of the recreational amenity that is being offered as
25 part of the development.

1 THE HEARING EXAMINER: Okay.

2 MS. JOHNSON: As Mr. Schropp indicated, the
3 open lands future land use category does allow for one
4 unit per five acres through the PD process and as a
5 means of reducing impacts to environmentally sensitive
6 areas. As I've shown on the site plan, there are very
7 minimal impacts to the environmentally sensitive areas;
8 and further demonstration of that will be provided by
9 the environmental consultant and we can talk further
10 about that later.

11 The density for the site, there are approximately
12 221 acres of uplands. At one unit per five acres, that
13 equates to 44 units. And there's approximately 28
14 acres of wetlands, which would equate to one additional
15 unit, for the total of 45.

16 Water and sewer is not available to this site.
17 The applicant is proposing wells and septic tanks.

18 And the traffic impact study does indicate that
19 all area roadways will continue to function at a level
20 of service level C, so there are no adverse impacts to
21 roadways as well.

22 With regard to the comp plan consistency, again,
23 the open lands policy of 1.4.4 I think we've talked
24 about a lot. The applicant believes that the master
25 concept plan as proposed does meet the intent of this

1 policy. It does provide for minimal impacts to any
2 environmental areas and -- which is the intent of
3 allowing for that option.

4 Policy 1.5.1, which are land uses in wetland
5 areas, there obviously are no uses proposed in the
6 wetland areas. However, that density has been
7 transferred to the upland as one unit. Therefore,
8 it is consistent with Policy 1.5.1.

9 Policy 5.1.7, which talks about community
10 facilities and residential developments and how they
11 relate to dwelling units and pedestrian accessibility.
12 As shown on the master concept plan, there are
13 pedestrian interconnections within the site as well as
14 potential connections off site to future recreational
15 areas that are near or adjacent to the property.

16 Standards 11.1 and 11.2, which talk about water
17 and sewer being required for developments that exceed
18 two and a half units per acre, the project is proposed
19 at a density of one per five -- one unit per five
20 acres; therefore, no hookup is required and the project
21 is consistent with these two standards.

22 Policy 5.1.5, which talks about protection of
23 existing residential areas from encroachment of
24 uses that are adverse in character to the existing
25 residential community. I mean this policy really gets

1 to the issue of compatibility. The residential uses
2 that are proposed for the project are compatible with
3 the adjacent residential uses in that they are the same
4 use; and while the lot sizes may be slightly smaller
5 than some of the existing lot sizes surrounding the
6 project, a minimum lot size of two acres is still
7 rural in character and we believe is consistent with
8 the existing surrounding land uses.

9 Additionally, the proposed buffers to the east
10 and west provide for additional compatibility in a
11 couple of ways. First of all, they provide separation
12 of the uses; but probably more importantly is the
13 vertical element of the buffer. Because the lots
14 are a little bit smaller, the vertical vegetation
15 that's included in the buffers as well as the mature
16 vegetation that currently exists on the site that's
17 going to be preserved, break up visually the
18 development of the project, thereby continuing to
19 provide privacy to adjacent property owners and
20 lessening the impacts of development of the site.

21 The same goes for the buffer adjacent to the
22 Babcock conservation area. You can see -- actually,
23 probably this aerial's better.

24 You can see that -- you know, we're proposing a
25 30-foot buffer here. The adjacent Babcock property is

1 heavily vegetated. I would anticipate because it's
2 a conservation area that will remain. And so there
3 is essentially a natural buffer between the two uses.

4 Overall, the proposed development has been
5 designed to continue the rural character of the
6 existing area. The amenities are passive in nature,
7 the lots are large and there is significant
8 preservation of the mature growth that exists on
9 the site.

10 The staff recommendations and conditions
11 the applicant is in agreement with as outlined and
12 emphasized by Mr. Schropp.

13 And I believe that's all I have. If you have any
14 questions --

15 THE HEARING EXAMINER: Questions of your witness?

16 MR. SCHROPP: No, I have none. Thank you.

17 THE HEARING EXAMINER: Questions by county staff?

18 MR. PHILPOTT: No, ma'am.

19 THE HEARING EXAMINER: Questions by the County
20 Attorney?

21 MR. FREDYMA: If I may, just for clarification.

22 John Fredyma, Assistant County Attorney.

23 Shellie, Condition 3-D says prior to final
24 approval of an adopted master concept plan, the
25 notation referring to existing off-site Babcock trails

1 and the delineation of these trail locations must be
2 deleted from the MCP. Has that already been done?

3 MS. JOHNSON: Yes.

4 MR. FREDYMA: Okay. This is a newer master
5 concept plan then?

6 MS. JOHNSON: Yes, it is.

7 MR. FREDYMA: So 3-D is actually taken care of?

8 MS. JOHNSON: Yes.

9 THE HEARING EXAMINER: All right. Is the master
10 concept plan dated March the 14th? Is that -- okay.
11 The one that -- this one up here has deleted those
12 trails. What's the date on that one?

13 MR. PHILPOTT: This has not been stamped received
14 by our office.

15 THE HEARING EXAMINER: Okay.

16 MS. JOHNSON: That's correct.

17 MR. FREDYMA: The most recent revision is 3-28-07,
18 HEX hearing.

19 THE HEARING EXAMINER: All right. What we might
20 do is after the hearing, Josh or Shellie, one, take
21 this downstairs and have it stamped in.

22 MS. JOHNSON: Okay.

23 THE HEARING EXAMINER: Okay? Just to get the
24 stamp on it.

25 MR. FREDYMA: And the other questions I had just

1 relating to, again, a couple things appearing on the
2 MCP.

3 Maybe you explained it and I didn't understand
4 it, but I'd ask. There are two places where it says
5 potential future access easement, one along the north
6 side, one along the northeast corner of the MCP --

7 MS. JOHNSON: Right here.

8 MR. FREDYMA: -- and the northeast corner. And
9 then there's also a comment here that says ten-foot
10 trail easement, parens, need for trail easement shall
11 be determined at time of development order.

12 If you'd just comment on those three items.

13 MS. JOHNSON: A couple of weeks ago, or maybe
14 it was even last week, we met with staff to talk about
15 the easements that were being requested; and at that
16 time we had discussions of providing an easement both
17 on the east side and the north side. And -- but based
18 on the staff report it looks like the request is really
19 just for the north side, so I guess really that master
20 concept plan is incorrect.

21 MR. FREDYMA: So where it says potential future
22 access easement along the north side, that coincides
23 with Condition 8, the ten-foot-wide mixed use trail
24 easement condition?

25 MS. JOHNSON: That's correct.

1 MR. FREDYMA: Okay. That's what that's intended
2 to refer to?

3 MS. JOHNSON: Yes.

4 MR. FREDYMA: Okay. Thank you. In Condition 8
5 of the staff report.

6 THE HEARING EXAMINER: Uh-huh.

7 Shellie, that ten-foot-wide on the east property
8 line, now, there was a letter from -- or a memo to
9 Josh from Fred Johnson, planning manager, who indicated
10 that Florida Citrus owns property directly to the east
11 and north and they want to develop an access road along
12 the east side of -- I'm not sure what A-D-A-R is.

13 MR. SCHROPP: That's the applicant in this case.

14 THE HEARING EXAMINER: Is it? Okay.

15 As a continuation of Persimmon Ridge Road.

16 Is it possible -- the existing right-of-way for
17 this road is large enough to accommodate a ten-foot
18 easement for the Greenway and it says along with the
19 A-D-A-R easement represents a 20-foot connector.

20 Is it possible that that ten foot along that
21 east xx is actually what he's referring to in this
22 paragraph on Attachment D?

23 MS. JOHNSON: It is. Let me explain it to you
24 a little bit. The letter's not a hundred percent
25 correct.

1 THE HEARING EXAMINER: Oh, good. That's always
2 nice to know.

3 MS. JOHNSON: There is an existing 60-foot
4 access easement that runs north to south outside of
5 the subject property.

6 THE HEARING EXAMINER: Oh, okay.

7 MS. JOHNSON: And the discussions were that if
8 they were to choose to provide the access easement on
9 the east side, that ten feet could come from that
10 existing access easement and ten feet could come from
11 this property. And so that's how we resulted in having
12 a ten-foot-wide -- a potential ten-foot-wide access
13 easement along this property line.

14 THE HEARING EXAMINER: Okay. So that's still
15 going to be on there then? I mean that doesn't have
16 anything to do with the pedestrian use or whatever.
17 That's potentially for the citrus company?

18 MS. JOHNSON: The access --

19 THE HEARING EXAMINER: Yeah, the ten-foot-wide
20 across the east boundary.

21 MS. JOHNSON: No. That's actually off of this
22 property. The access easement that currently exists
23 for --

24 THE HEARING EXAMINER: Right.

25 MS. JOHNSON: -- is off of the property

1 completely, so the ten feet that he's asking for from
2 us would be a new easement.

3 THE HEARING EXAMINER: Okay. But it's still
4 going to be used by the Florida Citrus, right?

5 MS. JOHNSON: No, I don't think so.

6 THE HEARING EXAMINER: Then I'm really confused
7 on this then.

8 It says they apparently want to develop an access
9 road along the east side. The existing right-of-way
10 for this proposed road is large enough to accommodate
11 a ten-foot easement for the Greenway.

12 So the Greenway has nothing to do with access.
13 The Greenway is --

14 MS. JOHNSON: Yeah, let me change the word.
15 Let's talk about the trail easement as a trailway.
16 Okay? So we can distinguish between a road access
17 and a trailway.

18 THE HEARING EXAMINER: All right.

19 MS. JOHNSON: Does that help?

20 So there's a 60-foot-wide road access that's
21 off of this property and to the east. What county
22 parks had asked is that -- in our discussions it was
23 determined that he's ultimately looking for a
24 20-foot-wide trail easement.

25 THE HEARING EXAMINER: Okay.

1 MS. JOHNSON: And he was comfortable asking for
2 ten feet of that to come out of the existing 60-foot
3 road access and ten feet of it coming out of our
4 property.

5 THE HEARING EXAMINER: Off your property. All
6 right.

7 So that hasn't changed, though?

8 MS. JOHNSON: Not to my knowledge, except that
9 the staff report no longer requests that easement,
10 that trail easement, along the east side.

11 THE HEARING EXAMINER: All right. Was that an
12 oversight, Josh?

13 MR. PHILPOTT: I think -- for the record, Josh
14 Philpott on behalf of staff.

15 The discussion was -- I guess speaking on behalf
16 of parks and rec, some of these discussions were held
17 late, and the exact location of where this trail or
18 Greenway will be located was not determined. There
19 was some discussion using the eastern portion of this
20 property as a connector to the Babcock property.
21 However, there was also potential discussion about
22 using Parkinson Road. And I guess what the parks
23 and rec is requesting is to allow for a potential
24 connection; however, the final determination hasn't
25 been -- or the final location has not been determined

1 at this time.

2 THE HEARING EXAMINER: Okay. So does the master
3 concept plan need to be amended to remove that ten-foot
4 designation or should it remain on there?

5 MR. PHILPOTT: Through this memorandum, I believe
6 they're requesting the ten feet to remain.

7 THE HEARING EXAMINER: Okay. But there's not a
8 condition of approval on that.

9 MR. PHILPOTT: Correct.

10 THE HEARING EXAMINER: And that's the -- because
11 you're requiring all the others to --

12 MR. PHILPOTT: Correct. And I believe that's a
13 result of some of the discussions that were held so
14 late in the process.

15 THE HEARING EXAMINER: All right.

16 MR. PHILPOTT: There was a determination that
17 this was absolute, that they wanted that; however,
18 they were still looking into whether or not Parkinson
19 Road could potentially provide it. I guess the
20 direction that it's coming from, parks and rec is,
21 this could be a potential connection as well.

22 THE HEARING EXAMINER: All right.

23 MR. FREDYMA: Can I ask --

24 THE HEARING EXAMINER: Are we looking at any kind
25 of a -- I mean if the applicant is willing to donate

1 that ten-foot-wide strip along the -- is there any
2 kind of a credit that they get for park impact fees
3 or anything else?

4 MR. FREDYMA: There may be a potential for park
5 impact fees. Again, it depends on what it is and
6 what it's tied to and whether it's part of some park
7 project, which at this point I don't know enough about
8 the request.

9 THE HEARING EXAMINER: See, and I don't either.
10 Russ?

11 MR. SCHROPP: And I've never gotten park impact
12 fee credits before, so I don't know how that -- but,
13 however --

14 MR. FREDYMA: There's two types. There's
15 community and regional.

16 MR. SCHROPP: And I would simply submit that if
17 it's entitled to park impact fee credits, then we'd be
18 entitled to them; and if not, we're not and that will
19 be worked out at the time of dedication.

20 THE HEARING EXAMINER: The only thing that
21 concerns me is that we have sort of an open-ended
22 question here. Does parks really want this? I mean
23 we've got it shown on the master concept plan, but
24 we've got a condition requiring them to remove
25 everything but the one across the north. So if parks

1 still wants that at the east, then I think that the
2 condition needs to be modified to indicate that a
3 potential ten-foot strip along the east, to be
4 determined at a later time -- I mean something
5 that indicates that the master concept plan is not
6 incorrect as it stands right now, but -- and then
7 final determination to be made at a later point.

8 MR. SCHROPP: And I don't have any objection
9 to that, but I would request that the later point be
10 no later than at time of development order for the
11 project. That seems to be the logical time.

12 THE HEARING EXAMINER: All right. I'll let you
13 guys in our first break work out some language on that,
14 but that's the one thing that I do think needs to go
15 in here. If we're not going to definitely require
16 them to take that off, then we need to acknowledge
17 that it's there and that it may potentially be a
18 requirement at development order stage.

19 MR. FREDYMA: And that would ultimately relate
20 to the two notes that are on the east side, this one
21 and this one. I would agree.

22 I mean I think we need to be somewhat specific;
23 and, as Russell said, if they're entitled to park
24 impact fee credits, community or regional park,
25 whichever it happens to be at the time, that's

1 certainly appropriate.

2 THE HEARING EXAMINER: All right. I agree.

3 MR. FREDYMA: I just don't know at this point
4 whether it is or isn't.

5 THE HEARING EXAMINER: Any other questions of
6 Shellie?

7 MR. SCHROPP: No.

8 THE HEARING EXAMINER: I do have one other
9 question, Shellie. I'm sorry.

10 Looking at the aerial over here on the -- the
11 applicant's aerial, I guess, is that a canal on the
12 north property line between that and the citrus area?
13 Is that a canal or is that just heavy vegetation?

14 MS. JOHNSON: This might be a better question
15 for the environmentalist, but I believe that this is
16 a canal with sort of a bank that abuts our property
17 to the north; and it's part of the irrigation system
18 for the citrus groves.

19 THE HEARING EXAMINER: I remember reading that
20 they had lots of canals around the citrus groves.
21 Okay.

22 All right. Thank you.

23 Josh?

24 MR. PHILPOTT: One more question.

25 MS. JOHNSON: Sure.

1 MR. PHILPOTT: Can you briefly discuss the
2 existing crossing of the wetland feature and whether
3 or not that is going to be or will be required to be
4 expanded at the time of development?

5 MS. JOHNSON: Yup.

6 The way the road is proposed, it crosses this
7 existing wetland right here. There is an existing
8 bridge that meets the minimum width requirements and
9 I guess construction standards for the roadway, so
10 there really are no proposed improvements for that
11 road at all. It's a bridge, basically.

12 THE HEARING EXAMINER: All right. Anything else
13 of this witness?

14 MR. SCHROPP: No.

15 THE HEARING EXAMINER: Anybody at the table?

16 MR. PHILPOTT: No, ma'am.

17 THE HEARING EXAMINER: Thank you, Shellie.

18 MR. SCHROPP: Thank you.

19 Next we'd like to call Parke Lewis, from Dex
20 Bender and Associates to discuss the project's
21 environmental issues.

22 As he's coming to the podium, I would note that
23 he's previously appeared in this forum before and has
24 been accepted as an expert in ecology and I would
25 tender him as an expert in ecology at this hearing as

1 well.

2 THE HEARING EXAMINER: Okay. Any objections from
3 staff?

4 MR. PHILPOTT: No, ma'am.

5 THE HEARING EXAMINER: Where did Kim get off to?

6 UNIDENTIFIED SPEAKER: She had to go to another
7 meeting.

8 THE HEARING EXAMINER: Okay. Any objections from
9 the County Attorney?

10 MR. FREDYMA: No, ma'am.

11 THE HEARING EXAMINER: All right. I'll accept
12 Parke as an expert in ecology.

13 MR. SCHROPP: Thank you very much.

14 THE HEARING EXAMINER: Uh-huh.

15 MR. SCHROPP: You may proceed.
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1 Thereupon,

2 PARKE LEWIS,

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

5 MR. LEWIS: Good afternoon. For the record, my
6 name is Parke Lewis and I'm a biologist with W. Dexter
7 Bender and Associates in Fort Myers; and we represent
8 the applicant and we've prepared information for the
9 submittal to Lee County.

10 I'm going to break it into three parts for you:
11 The existing site conditions as they are out there
12 and how they pertain to the property; post proposed
13 development site conditions and environmental issues
14 for the parcel; and then a summary of those issues as
15 they relate to the Lee County Land Development Code.

16 The existing conditions vegetation map is the
17 one that you see on the far left over there. That is
18 an aerial photograph overlaying with the Florida land
19 use cover and forms classification system mapping
20 methodology that Lee County uses to identify wetlands
21 and uplands and different types of habitats.

22 Very briefly, the existing site conditions on
23 the 250-acre property consists primarily of just under
24 200 acres of improved pasture uplands. The remainder
25 of the property is broken out into another 8.6 acres

1 of wetland pasture, roughly 11.6 acres of live oak
2 and cabbage palm, got about almost 20 acres of cypress,
3 an acre and a half of a small borrow area and I have
4 about eight or nine acres of existing houses, fill
5 pads and yards associated with the project area.

6 In regards to wetlands on the subject property,
7 a wetland delineation was conducted with the South
8 Florida Water Management District and the wetland
9 boundaries were flagged and approved by them in June
10 of 2006. That includes this area of wetland pasture
11 here, which was probably historically forested
12 wetlands; but it was cleared sometime at least prior
13 to the '70s and it's all vegetation now.

14 This wetland area flows southwards off the
15 property and into what is a tributary of Cypress
16 Creek to the west, which extends into the Babcock
17 property. That drains this area to the south.

18 In the northwest corner is an additional area
19 of wetlands, consisting of oak and cypress, with a
20 small cabbage and oak hammock upland area in the north
21 corner. That drains this property to the northwest
22 as well into the cypress wetlands on the adjacent
23 preserve area as well.

24 Around that property you'll see a margin of
25 uplands that consists of mature pine and cypress,

1 some palmetto areas that have been maintained as cattle
2 pasture for a number of years, so a lot of it is open
3 understory but still has a lot of mature trees.

4 One of these areas contains an existing house
5 and yard here; got another house, out buildings here;
6 stable area and existing home here underneath these
7 mature pine and oaks as well.

8 It's important to note that this crossing is an
9 existing culvert crossing for the existing road that
10 accessed these buildings up here as well as these other
11 homes.

12 As such, for the project no wetland impacts are
13 proposed. All the wetlands within the property as
14 well as their associated upland buffers, as well as
15 associated upland areas of indigenous habitat,
16 excluding those that already lie within these yards,
17 the mature trees are included in the wetland
18 preservation plan.

19 A protected species assessment was conducted for
20 the property back in June of '06 and a supplemental
21 protected species assessment was conducted in January,
22 February, and March of '07. Species -- a protected
23 species assessment was conducted according to Florida
24 Fish and Wildlife Conservation Commission and Lee
25 County approved methodologies.

1 We have five gopher tortoises on the subject
2 property. As such, in the northwest corner, as you
3 can see on the site plan, post development I have
4 an upland preserve area consisting of this existing
5 pine and oak hammock and upland pasture area that
6 will be used as a tortoise preserve if and when site
7 development occurs in which a gopher tortoise burrow
8 is in the way of development.

9 So in regards to listed species on the site, that
10 was the extent of the issues that were encountered.

11 THE HEARING EXAMINER: All right. So what I
12 understand you just to say was that if the little
13 gopher tortoise -- if the little critter's in the way,
14 you're going to move him?

15 MR. LEWIS: Yes, ma'am.

16 THE HEARING EXAMINER: But if his burrow's not in
17 the way, you're going to leave it.

18 MR. LEWIS: Yes, ma'am.

19 THE HEARING EXAMINER: Okay.

20 MR. LEWIS: State guidelines require that if
21 development occurs within 25 feet of a burrow, then
22 we have to protect the burrow, move the tortoise
23 off site. Given that I've got 200 acres of upland
24 development, I've got 35.29 acres of preserve area
25 post development, most of the burrows are going to be

1 unimpacted for road construction or house pads or
2 driveways.

3 In the event that that does become necessary,
4 we'd obtain a permit from the Game and Fish Commission
5 to relocate them to the preserve area that Lee County
6 is requiring us to include in our site plan.

7 THE HEARING EXAMINER: Okay. Is that going to
8 be -- after the development is completed, is there
9 going to be a little fence or a barricade or something
10 to keep those little critters in that area or are they
11 going to be allowed to roam free at that point?

12 MR. LEWIS: Well, when the infrastructure -- if
13 burrows are located within 25 feet of an area -- you
14 always you have to watch out during construction --
15 if that proves to be the case, then those tortoises
16 are excavated and relocated to a fenced area for the
17 duration of that construction activity so that when
18 you're done, the fence comes out and the tortoises can
19 move.

20 THE HEARING EXAMINER: Then they can roam around.

21 MR. LEWIS: Yeah.

22 THE HEARING EXAMINER: All right. I just didn't
23 want them penned up there if they didn't have to be.

24 MR. LEWIS: Oh, no, they're not indefinitely;
25 and probably, given the nature of the development,

1 if the infrastructure, the initial road construction
2 doesn't affect burrows, you're talking about a period
3 of years of home and driveway development that you
4 have to update and resurvey to make sure that that
5 doesn't become an issue.

6 THE HEARING EXAMINER: Okay.

7 MR. LEWIS: In regards to the wetlands on the
8 site, there are no -- as I mentioned before, there
9 are no proposed wetland impacts to the property. In
10 addition, there is a 25-foot minimum -- 15-foot
11 minimum, 25-foot average upland buffer around all
12 of the wetlands on site.

13 And again, to recap, in addition to that, all
14 indigenous habitat areas that remain on site are
15 included in the development -- in the plan as set
16 aside.

17 THE HEARING EXAMINER: Okay.

18 MR. LEWIS: For example, these are small
19 cypress wetlands on the property. Even though they're
20 isolated, it would be avoided from development. This
21 area is contiguous to an existing upland area, the
22 cypress wetlands. These uplands here with the mature
23 trees, at the request of Lee County the buffer has
24 been enhanced and broadened to catch those areas. Even
25 though they may not be native habitat, they're just

1 cattle pasture, but they've got some large, nice
2 trees on them, county staff requested that we enlarge
3 the buffer in those areas to include them and the
4 applicant has concurred.

5 THE HEARING EXAMINER: Okay.

6 MR. LEWIS: At the current time there is a
7 South Florida Water Management District surface
8 water management permit application in house that
9 will require us to obtain permits from Florida Game
10 and Fresh Water Fish Commission for anything involving
11 listed species like the gopher tortoises.

12 THE HEARING EXAMINER: All right. Now, you're
13 going to do a management plan on that only if they have
14 to be moved? If they don't have to be moved, you don't
15 do a management plan?

16 MR. LEWIS: No, ma'am. The management plan for
17 the indigenous habitat, the indigenous habitat
18 management plan for Lee County will include preserving
19 those areas, regardless, and maintaining them --

20 THE HEARING EXAMINER: Okay.

21 MR. LEWIS: -- in a condition suitable for
22 tortoises as well as in a native condition, regardless
23 of the fact that tortoises are ever moved there or not.

24 THE HEARING EXAMINER: Okay. Thank you.

25 MR. LEWIS: Part of that South Florida Water

1 Management District permit as well as Lee County's
2 requirements at the time of development order will
3 also require that all of the 35.29 acres of natural
4 areas remaining on the site be maintained free of
5 exotic and nuisance vegetation, which we have some
6 out there. We have areas of 25, 50 percent Brazilian
7 pepper in some areas.

8 And on top of that the district permit application
9 that's in house will provide for the replanting of this
10 area, which is roughly 6.3 acres of historic wetlands.
11 It still gets wet here and water crosses it, but right
12 now it's an actively used cattle pasture. So that area
13 will be replanted and restored to its historic forested
14 wetland condition.

15 THE HEARING EXAMINER: Okay.

16 MR. LEWIS: And, Russell, I think if you'd like
17 I can go down the checklist of the quickly five or six
18 things just --

19 MR. SCHROPP: Please.

20 MR. LEWIS: -- to recap for the Hearing Examiner.

21 In regards to the wetlands, you have 28.3 acres
22 of wetlands. There are no wetland impacts proposed
23 for the project.

24 In regards to the existing vegetation on site,
25 these indigenous areas are all going to be preserved

1 and enhanced and maintained in perpetuity as part of
2 the conservation easement under the South Florida
3 Water Management District permit.

4 In regards to critical wildlife, the species
5 that we have out there consists of the gopher tortoise
6 and we're making accommodations for them should it be
7 necessary to move them out of the way.

8 The waterways -- the wetlands on the property
9 are tributaries to off-site wetlands to the northwest;
10 and, moreover -- which is a seasonally inundated --
11 I should mention that. This appears to be only
12 seasonally inundated. It's very dry during the dry
13 season. But this is probably historically connected
14 to wetlands to the east and to the north, but now it's
15 a seasonally inundated wetland that connects to a
16 tributary to Cypress Creek off to the west.

17 THE HEARING EXAMINER: Okay.

18 Is that a borrow pit? Is that the little borrow
19 pit thingy down here?

20 MR. LEWIS: I've got two them. I have got one
21 here and one here.

22 THE HEARING EXAMINER: Oh, that is one up there?

23 MR. LEWIS: Yes, ma'am.

24 THE HEARING EXAMINER: All right. Now, you're
25 going to be taking that one out down here -- I mean

1 inside that preserve area?

2 MR. LEWIS: Within the preserve area?

3 THE HEARING EXAMINER: Yes.

4 MR. LEWIS: No. That's going to be replanted.
5 we're not going to do any filling or excavating within
6 the wetlands.

7 THE HEARING EXAMINER: So it will still stay?

8 MR. LEWIS: It's going to stay, but it's going to
9 be planted and enhanced.

10 THE HEARING EXAMINER: Okay. So animals can still
11 go there and drink. Okay.

12 MR. LEWIS: I sold myself short. I've got
13 another -- up here I've got another borrow pit, which
14 is included in the preserve areas. So, yeah, if you
15 have -- at the current time the cattle need these areas
16 to get water. It's pretty dry out there and wetlands
17 don't hold water.

18 I do have another one that's actually surrounding
19 the northwest corner upland preserve area.

20 So at the request of Lee County we had this area
21 set aside; but in order to provide a little bit more
22 upland grassy pasture areas for the tortoises, the
23 applicant agreed to expand it, pick up another acre,
24 so that in the event we have to move tortoises, we've
25 got a little more room.

1 THE HEARING EXAMINER: Okay. Good.

2 MR. LEWIS: And, again, in regards to rare
3 and unique uplands, we don't have rare and unique
4 uplands; but we do have what Lee County considers
5 heritage trees, mature pines and live oaks, on the
6 site, which are -- in coordination with Kim at DES
7 have been incorporated into the buffer areas and
8 into the indigenous habitat so that they're protected.

9 THE HEARING EXAMINER: Good.

10 MR. LEWIS: That's a quick summation, Russ. Do
11 you want me to go on?

12 MR. SCHROPP: I think that covers it. I have no
13 questions.

14 THE HEARING EXAMINER: Questions by staff?

15 MR. PHILPOTT: No, ma'am.

16 THE HEARING EXAMINER: County Attorney?

17 MR. FREDYMA: No, ma'am.

18 THE HEARING EXAMINER: Parke, I don't have any
19 questions either. You were quite clear.

20 Applicant's next witness.

21 MR. SCHROPP: Yes. Thank you. If we could call
22 Stephanie Caldwell, project engineer. She will address
23 sewer, water and surface water management.

24 I believe, while she's been a practicing engineer
25 since -- about eight years, it looks like, I believe

1 this is her first appearance in this forum, so I
2 would like to briefly go through her qualifications
3 and tender her as an expert in civil engineering.
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1 Thereupon,

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

5 MR. SCHROPP: So, if you could, just state your
6 name, address and occupation and where you're employed.

7 MS. CALDWELL: Sure. My name is Stephanie
8 Caldwell. I'm employed by Barraco and Associates as a
9 professional engineer and the address is 2271 McGregor
10 Boulevard.

11 MR. SCHROPP: Okay. And could you briefly
12 summarize your educational background?

13 MS. CALDWELL: Sure. I attended college at the
14 University of Florida, graduated in December of 1995.

15 I'm sorry. I saw your smile.

16 And worked mostly in Jacksonville till about
17 2003 and have been down here for about a year and half
18 now, practicing engineering.

19 MR. SCHROPP: Your degree from the University of
20 Florida is in --

21 MS. CALDWELL: Bachelor of Science in civil
22 engineering.

23 MR. SCHROPP: In 1995?

24 MS. CALDWELL: And I got my PE registration in
25 July of 2000.

1 MR. SCHROPP: Okay. And your previous work
2 in Jacksonville, could you basically -- could you
3 describe that?

4 MS. CALDWELL: It was actually a pretty varied
5 mix of residential and commercial and a little
6 industrial and some recreational, like golf course
7 developments and that type of thing, so it's a little
8 bit of everything.

9 MR. SCHROPP: Okay. And that was in the civil
10 engineering side of it?

11 MS. CALDWELL: Yes, sir.

12 MR. SCHROPP: And when were you first employed
13 at Barraco?

14 MS. CALDWELL: February of 2006.

15 MR. SCHROPP: Okay. And since being employed
16 at Barraco and Associates, what kind of projects have
17 you been involved in?

18 MS. CALDWELL: It's almost exclusively residential
19 projects, varying in scale from 40-acre multifamily
20 subdivisions up to -- I'm working on a -- it's close
21 to a 500-acre mixed use between single family and
22 multifamily subdivision; but it's almost all
23 residential work.

24 MR. SCHROPP: And this would consist of the
25 general civil engineering for sewer, water, surface

1 water management?

2 MS. CALDWELL: That's correct.

3 MR. SCHROPP: Are you a member of any professional
4 associations?

5 MS. CALDWELL: No, I'm not currently.

6 MR. SCHROPP: Okay. And you've been a licensed
7 professional engineer since when?

8 MS. CALDWELL: Since July of 2000.

9 MR. SCHROPP: Thank you. With that, I would
10 tender the witness as an expert in civil engineering.

11 THE HEARING EXAMINER: Any objections from staff?

12 MR. SCHROPP: And I'm sorry, if I could submit

13 a --

14 MR. PHILPOTT: Do you have an extra copy of that?

15 MR. SCHROPP: No, I don't have an extra copy.

16 MS. CALDWELL: I have copies.

17 MR. SCHROPP: Okay. Great. I'll submit one for
18 the record, if I could, a copy of her resume.

19 THE HEARING EXAMINER: That will be Applicant's
20 Exhibit -- are both the other aerals on the board
21 staff's or is the one over behind you, Josh, is that
22 applicant's over there?

23 MR. PHILPOTT: Yes, ma'am.

24 THE HEARING EXAMINER: All right. This will be
25 Applicant's Exhibit Number 4.

1 MR. SCHROPP: Thank you.

2 MR. FREDYMA: If I could ask a couple questions.

3 THE HEARING EXAMINER: Certainly.

4 MR. FREDYMA: And I'm sorry. Maybe you answered
5 it and I missed.

6 How long have you -- I know you said you worked
7 or you started work at Barraco in --

8 MS. CALDWELL: It was February of 2006, a little
9 over a year ago.

10 MR. FREDYMA: A little over a year ago. Any work
11 in Lee County or this area prior to that?

12 MS. CALDWELL: No. No, I was new to the area at
13 that time.

14 MR. FREDYMA: Any projects that you've worked
15 on that we might be familiar with, couple names of
16 residential projects in particular that --

17 MS. CALDWELL: Here in Lee County?

18 MR. FREDYMA: Yes.

19 MS. CALDWELL: Is it okay for me -- I guess
20 everything's public record.

21 I've been working on the Paseo subdivision that's
22 within the city limits of Fort Myers. I've worked
23 on -- for Taylor Woodrow Homes, Lucaya, which is off
24 McGregor, and also Stonegate, which is on Gladiolus.
25 We're currently going through our DO submittal on that.

1 And the other stuff, there's some in Hendry
2 County, a little bit in Charlotte County; but that's
3 about it for Lee County so far.

4 MR. FREDYMA: But so far, again, your work thus
5 far has all been within the State of Florida?

6 MS. CALDWELL: Yes.

7 MR. FREDYMA: Okay.

8 THE HEARING EXAMINER: Anything else from the
9 County Attorney?

10 MR. FREDYMA: I don't have any other questions.

11 THE HEARING EXAMINER: Anything else from staff?

12 MR. PHILPOTT: No, ma'am.

13 THE HEARING EXAMINER: Okay. Any objections to
14 her being accepted as an expert in civil engineering?

15 MR. FREDYMA: No, ma'am.

16 THE HEARING EXAMINER: All right. Accepted.

17 MR. SCHROPP: Thank you.

18 Proceed.

19 MS. CALDWELL: Okay. I'm here to give you a
20 brief synopsis on the engineering design intent for
21 Amazing Grace. There's four main components involved
22 in the engineering design; and that would be water,
23 sewer, fire protection and storm water management.

24 As far as the water needs, because there are no
25 existing water mains located in the vicinity of the

1 project, the potable water demand will be provided
2 through individual wells. Each homeowner will be
3 responsible for the permitting and construction of
4 his or her well.

5 Likewise, with the sewage collection, due to the
6 lack of any force main or sewer in the area, the sewage
7 collection will be provided through individual septic
8 tanks. Those will also be permitted individually
9 by the homeowners. And in reviewing the State of
10 Florida minimum criteria for these septic tank
11 configurations, due to the large lot size proposed
12 for this development, we well exceed both the minimum
13 lot area requirements and the minimum separation
14 distances between, say, the septic tanks and potable
15 wells or nonpotable wells, so that should not be a
16 problem.

17 We've also reviewed the USDA soil survey to try
18 to determine the suitability of the soils for the
19 septic tanks and took some samples on site and they
20 both confirmed that the site consists mainly of
21 soil -- I'm sorry, sands which are suitable for the
22 construction of these individual septic tanks, so the
23 on-site samples confirm the information that we found
24 in the soil survey.

25 The fire protection for the site will be

1 accommodated through a series of drafting hydrants.

2 THE HEARING EXAMINER: I'm sorry?

3 MS. CALDWELL: Drafting hydrants.

4 THE HEARING EXAMINER: Okay.

5 MS. CALDWELL: Now, because of the lack of water
6 mains in the area, these drafting hydrants are designed
7 in a similar fashion to standard fire hydrants; but
8 instead of pulling water from a water main, it pulls
9 water from the lake system. And the influent pipe
10 that's going to be pulling this water is placed deep
11 enough into the lake so as not to be affected by the
12 seasonal fluctuations in the groundwater table, so
13 water will be available when it's needed. And also
14 the minimum spacing for these fire hydrants will
15 conform with the Lee County Land Development Code,
16 which is 800 feet spacing, so they basically will act
17 like standard fire hydrants and be in accordance with
18 the Land Development Code.

19 The storm water management system consists of
20 a series of swales, roadway culverts and driveway
21 culverts that will direct the runoff from the
22 individual lots to the centralized lake management
23 system; and these lakes have been sized to adequately
24 store and treat runoff resulting from the 25-year,
25 three-day storm event, which is a standard design

1 criteria in this area.

2 And these lakes, as Shellie had mentioned
3 earlier, there is some green space in between them.
4 From a storm water point of view, the lakes will all
5 be connected with equalizer pipes, so they will act
6 as a single, unified lake. And there will be a control
7 structure -- it's located in the northeast portion of
8 the lake -- that will discharge the treated runoff into
9 the existing wetlands at a slow and controlled rate not
10 to exceed the maximum allowable discharge as set forth
11 by Southwest Florida Water Management District, which
12 I believe for this site is 37 CSM, which is a pretty
13 low allowable discharge. It's about 13 CFS for this
14 entire site.

15 THE HEARING EXAMINER: Okay.

16 MS. CALDWELL: And that's about it for my summary.
17 If you have any questions --

18 MR. SCHROPP: I have no questions. Thank you.

19 THE HEARING EXAMINER: Questions by staff?

20 MR. PHILPOTT: Yeah, just -- the installation
21 of dry hydrants and use of dry hydrants, are they
22 acceptable fire prevention methods for the State of
23 Florida?

24 MS. CALDWELL: Yes. We've actually used them
25 on a couple of previous projects that are located in

1 Lee County that are not too far away from this project
2 and they were accepted.

3 THE HEARING EXAMINER: County Attorney?

4 MR. FREDYMA: One follow-up.

5 Has the servicing fire district -- do they accept
6 dry hydrants with this type of configuration?

7 MS. CALDWELL: Yes. I believe Caloosa Preserve
8 is in the same district as this project and it was
9 accepted for that. Now, we can have subsequent
10 conversations with them to make sure -- you know, at
11 the time that we submit for a development order to
12 make sure they are on board with it.

13 MR. FREDYMA: Okay. Thank you.

14 THE HEARING EXAMINER: Okay. I don't have
15 anything, Stephanie. Thank you.

16 MS. CALDWELL: Okay. May I give you a business
17 card?

18 THE HEARING EXAMINER: Thank you.

19 Applicant's next witness.

20 MR. SCHROPP: Next we'd like to call Ted Treesh,
21 the project traffic consultant; and as he's coming to
22 the podium, I'd note he's previously appeared in this
23 forum before and has been accepted as an expert in
24 transportation planning, as recently as this morning in
25 another hearing, as I recall, but I would tender him as

1 an expert in transportation planning at this time.

2 THE HEARING EXAMINER: Any objections from staff?

3 MR. PHILPOTT: No, ma'am.

4 THE HEARING EXAMINER: County Attorney?

5 MR. FREDYMA: No, ma'am.

6 THE HEARING EXAMINER: All right. Accepted.

7 MR. SCHROPP: Thank you.

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1 Thereupon,

2 TED TREESH,

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

5 MR. TREESH: Good afternoon. Ted Treesh for
6 the record, with T. R. Transportation Consultants.

7 Our firm prepared the traffic impact study in
8 conjunction with this application; and then there's
9 some transportation comments made in the staff report
10 prepared by Josh on Page 11 and then supplemented by
11 Attachment E of the staff report, which is a memo from
12 Lili Wu to Josh, basically summarizing the information
13 in our report; and we're in agreement with that
14 information.

15 Basically, this project, as Shellie indicated,
16 will be served by Persimmon. Persimmon, as you travel
17 south -- I believe I'll refer to this overall -- this
18 larger exhibit.

19 Do we have an exhibit number on this yet?

20 THE HEARING EXAMINER: That's 3.

21 MR. TREESH: Exhibit 3.

22 Persimmon travels south, where it intersects with
23 North River Road. North River Road, there's a bend in
24 the road at this location where Persimmon intersects
25 and then North River continues south, curves again

1 where Broadway crosses the river, and intersects with
2 State Route 80. So the majority of our trips, peak
3 hour trips, obviously, the home to work, work to home
4 trips, will most likely be destined towards State Route
5 80, as that is the major corridor in this vicinity that
6 gets you into LaBelle to the east and the City of Fort
7 Myers to the west.

8 River Road on the north side of the river does
9 travel westward towards State Route 31 and then you
10 can intersect with State Route 78 to continue on to
11 the west as that road as well; but, obviously, the
12 majority of these trips we analyzed traveling down
13 Persimmon, down North River Road via Broadway to
14 intersect with Palm Beach.

15 And our analysis indicated that both the existing
16 as well as projected level of service on those two
17 roadways, North River and Broadway, will operate at
18 an acceptable level of service. Our analysis shows
19 at build out a level of service C on those roadways.
20 As you are aware, the Lee Plan allows a level of
21 service E on all roadways in the county, so we're
22 well within the level of service threshold; and the
23 level of service C volumes are even less than 50
24 percent of the overall capacity of the roadway, so
25 our project of -- the proposed trips we're anticipated

1 to generate from the 50 dwelling units will not
2 significantly impact those roadways.

3 Further improvements will be analyzed at the
4 time of the local development order when we look at the
5 impacts specifically at the intersection of Persimmon
6 and North River Road. We'll have to relook at that
7 intersection again at the time of local development
8 order for the project; but, overall, the impact to
9 the roadways is within the guidelines of the Lee Plan.

10 That's really all I have to offer this morning.
11 I'd be more than happy -- or this afternoon.

12 Be more than happy to answer any questions.

13 MR. SCHROPP: I have no follow-ups.

14 THE HEARING EXAMINER: Questions by staff?

15 MR. PHILPOTT: No, ma'am.

16 THE HEARING EXAMINER: County Attorney?

17 MR. FREDYMA: No, ma'am.

18 THE HEARING EXAMINER: Ted, answer me just a
19 couple.

20 MR. TREESH: Sure.

21 THE HEARING EXAMINER: Now, looking at the aerial
22 photograph over here, it looks like that Persimmon is
23 maybe paved, okay? I can't tell for sure.

24 MR. TREESH: Yes.

25 THE HEARING EXAMINER: All right. So it is paved.

1 Now, where it takes a jog and goes to the east,
2 is that still part of Persimmon or is that a different
3 roadway? You see over here it curves and goes that
4 way?

5 MR. TREESH: Yes, it does curve. I'm not sure
6 if it keeps the name Persimmon. Perhaps the area
7 residents would know better than I on that.

8 THE HEARING EXAMINER: Okay.

9 MR. TREESH: But it dead ends as you go further
10 to the east.

11 THE HEARING EXAMINER: All right. But coming
12 onto the property, that is a dirt road, that is not
13 paved; is that correct?

14 MR. TREESH: That's correct.

15 THE HEARING EXAMINER: Okay. So the connection
16 there of the internal roadway is going to have to be
17 paved and it's going to have to --

18 MR. TREESH: That's correct. And there is a
19 curve right at our property corner as well. We'll
20 have to work out at time of development order the
21 geometrics. This probably will end up being a T
22 intersection.

23 THE HEARING EXAMINER: All right. But the --
24 ignoring the level of service right now, the roadway
25 itself is standard? I mean it meets the county

1 requirements and whatnot for a local road? Do you
2 know?

3 MR. TREESH: I am not sure in terms of its width,
4 if that meets the local road standards.

5 THE HEARING EXAMINER: All right.

6 MR. TREESH: I did not survey that.

7 THE HEARING EXAMINER: Okay. Josh, do you know?

8 MR. PHILPOTT: There was --

9 THE HEARING EXAMINER: It looks awful narrow.

10 MR. PHILPOTT: There was some question as far
11 as the exact width; however, if it is deficient in
12 any manner, it will have to be improved to meet local
13 road standards prior to development.

14 THE HEARING EXAMINER: By this developer?

15 MR. PHILPOTT: Prior to any issuance of
16 development order. If -- I guess if they could lobby
17 Lee County DOT to improve it, but I doubt that.

18 THE HEARING EXAMINER: Okay. Ted, how far is
19 it from the property all the way down to North River
20 Road?

21 MR. TREESH: I want to say it's about a mile.

22 UNIDENTIFIED SPEAKER: It's mile and a quarter.

23 MR. TREESH: Yeah, just over a mile. This
24 distance.

25 MR. FREDYMA: Is that a county-maintained road at

1 this point, do you know?

2 MR. TREESH: Persimmon? Yes, it is.

3 THE HEARING EXAMINER: All right.

4 MR. FREDYMA: Thank you.

5 THE HEARING EXAMINER: I don't have any other
6 questions.

7 Anything else from anybody at the table for this
8 witness?

9 MR. SCHROPP: No.

10 MR. TREESH: Okay. Thank you.

11 MR. SCHROPP: As a final witness we'd just like
12 to recall Shellie Johnson to kind of summarize a few
13 issues with regard to the density on the project.

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1 Thereupon,

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

5 MS. JOHNSON: Shellie Johnson, planner with
6 Barraco and Associates.

7 I just wanted to kind of go back to the Policy
8 1.4.4, which is the open lands future land use category
9 and description.

10 Based on the testimony here today, particularly
11 Parke's environmental testimony, I think that we've
12 well demonstrated that any adverse impacts to
13 environmental -- to environmentally sensitive areas on
14 the site have been protected or mitigated very well.

15 As Parke discussed, these natural wetland areas
16 are not being impacted. This area that was previously
17 disturbed is going to be restored. This borrow pit
18 here -- I guess that's what you call it -- will be
19 replanted. This pit here is incorporated into the
20 proposed lake and this pit here will be part of the
21 preservation area.

22 THE HEARING EXAMINER: Okay.

23 MS. JOHNSON: What's important to note here is
24 that the preservation areas that are associated with
25 the project will all fall under common ownership of

1 the homeowners' association, which grants the project
2 or grants these areas a much higher level of protection
3 from being disturbed or destroyed because of that, that
4 type of ownership, as compared to -- if this project
5 were to be developed at one unit per ten acres and not
6 go through the PD process, it could simply be divided
7 into ten-acre parcels with no controls over those
8 particular areas as -- because probably what would
9 result is a subdivision of the land that would include
10 pieces of those conservation areas in each lot that
11 would then really be controlled or at the will of each
12 property owner.

13 So having said that, the open lands policy and
14 the ability to have an opportunity to increase density
15 slightly but at the benefit of conserving the natural
16 areas that are on the site is beneficial and I think
17 that the project does maintain consistency with that
18 policy.

19 MR. SCHROPP: Thank you.

20 That's what I wanted her to basically expound
21 on on the basis of primarily Mr. Lewis's testimony,
22 that in fact the project as proposed does meet the
23 qualification for the increased density contained in
24 the open lands policy.

25 THE HEARING EXAMINER: Okay.

1 MR. SCHROPP: If there's any questions -- I have
2 no questions of her, but --

3 THE HEARING EXAMINER: County Attorney, did you
4 have a question?

5 MR. FREDYMA: Ag use.

6 MR. SCHROPP: Yes, there is ag use on the
7 property. I assumed that -- does the staff report
8 not have the standard condition?

9 THE HEARING EXAMINER: Yes, it has a condition
10 in it.

11 MR. FREDYMA: It does. And I guess what that
12 brings up is the need to add to the schedule of uses,
13 we probably should add agricultural use subject to
14 Condition 15. I might even suggest maybe it read
15 agricultural use, livestock grazing, subject to
16 Condition 15.

17 MR. PHILPOTT: I'm just -- the concern that I
18 may have is agricultural uses are not a permitted use
19 in a residential planned development.

20 MR. FREDYMA: Well, they are -- in this case they
21 would be temporary because they're subject to Condition
22 15 till the time the DO is pulled.

23 MR. SCHROPP: Right.

24 MR. FREDYMA: In the past what we've normally
25 done is we've put that in the uses, the schedule or

1 table of uses, so I think it would be appropriate to
2 do that; and there's a policy that allows them to
3 continue until they are pulled for a development.

4 THE HEARING EXAMINER: Is it in there, Josh?

5 MR. PHILPOTT: No, ma'am.

6 THE HEARING EXAMINER: It is not. All right.

7 Could it be -- Josh, in your opinion can it be
8 viewed as a temporary use? Does it fall within the
9 definition of temporary use in the -- or under the
10 temporary use section? Because I know there are
11 certain things that are listed underneath the temporary
12 use section.

13 MR. PHILPOTT: Just to give you a definition
14 quickly --

15 MR. FREDYMA: It's been a past practice.

16 THE HEARING EXAMINER: Uh-huh.

17 MR. SCHROPP: Yeah.

18 THE HEARING EXAMINER: I know; but that comment
19 has never come up before, John, which I think is rather
20 interesting.

21 MR. PHILPOTT: It is not defined in 34-2; however,
22 it does have --

23 THE HEARING EXAMINER: Okay. Look under
24 temporary use in the back where it goes and talks
25 about the different things, the Christmas tree sales

1 and fireworks and construction trailers and that kind
2 of stuff.

3 MR. SCHROPP: If I'm not mistaken, this policy
4 or the condition that we've historically had in these
5 rezonings has evolved from the County Attorney's
6 Office; and I believe the view is that it's quasi --
7 it's kind of a quasi-legal nonconforming use after
8 the zoning is improved but can continue until the
9 development order is actually issued.

10 MR. FREDYMA: Actually, we don't take credit
11 or blame for it. Actually it's coming from the
12 Department of Community Development. And actually I
13 think it was actually found in the comp plan, 9.1.2,
14 I think.

15 I know we like to try to address it.

16 Just let me look quick. Recognizing that it
17 disappears --

18 MR. PHILPOTT: Specifically relating to
19 agricultural uses, it's not really discussed under --

20 THE HEARING EXAMINER: Temporary uses?

21 MR. PHILPOTT: Correct.

22 Just the purpose, the purpose statement. The
23 purpose of the subdivision is to specify regulations
24 applicable to certain temporary uses which because of
25 their impact on surrounding land uses require a

1 temporary use permit.

2 THE HEARING EXAMINER: Okay.

3 MR. PHILPOTT: I'm not really sure that
4 agricultural -- I mean it just brings up a point and
5 that's why I was a little uncomfortable with adding
6 agricultural uses to the schedule of uses.

7 MR. SCHROPP: There is a policy, as John noted,
8 in the Lee Plan, Policy 9.2.2, which says planned
9 development rezonings within future urban areas, which
10 isn't applicable to here, but then it says bona fide
11 agricultural uses that exist at the time of rezoning
12 may be approved and the use allowed to continue until
13 development commences.

14 THE HEARING EXAMINER: Okay.

15 MR. SCHROPP: That's where it's coming from.

16 THE HEARING EXAMINER: That's where it's coming
17 from. All right.

18 MR. FREDYMA: But the difference, obviously, here
19 is this is not a future --

20 THE HEARING EXAMINER: Land use. But the intent
21 is the same.

22 MR. FREDYMA: Uh-huh.

23 THE HEARING EXAMINER: Okay. So ag use is what?
24 Cattle grazing and pasturage?

25 MR. FREDYMA: I believe it's just livestock

1 grazing is what's recited in the ag affidavit that's
2 been provided -- actually, livestock grazing and
3 pasturage, I think is what the words were.

4 This is from the ag affidavit, the agricultural
5 affidavit that was provided by Ayal Reyes. A-Y-A-L --
6 I'm sorry, A-V-A-L.

7 MR. SCHROPP: A-Y-A-L, you're correct.

8 MR. FREDYMA: It's hard to read the copy.
9 Let's see here.

10 THE HEARING EXAMINER: And it calls it grazing
11 and pasturage?

12 MR. FREDYMA: It said livestock grazing and
13 pasturage.

14 THE HEARING EXAMINER: All right. That's what
15 we'll stick in for the use then.

16 MR. FREDYMA: Okay.

17 And, again, I understand the point that Josh
18 makes. I mean, obviously, my other choice would be
19 to simply to exclude the ag use altogether and it
20 would terminate with the approval of the zoning; but
21 that hasn't been a policy that's been followed or
22 endorsed necessarily.

23 THE HEARING EXAMINER: Okay. As long as the
24 Lee Plan allows it. Even if the regs don't allow it,
25 the Lee Plan does.

1 MR. FREDYMA: It's geared towards urban -- future
2 urban land use categories, but --

3 THE HEARING EXAMINER: I think the argument can
4 be made the intent is the same.

5 MR. FREDYMA: It's what's been done in other
6 cases, so --

7 THE HEARING EXAMINER: Okay. Any other?

8 MR. SCHROPP: No. Thank you.

9 With Shellie's presentation, that concludes our
10 presentation and we would like the opportunity for
11 rebuttal if the need arises.

12 Thank you.

13 THE HEARING EXAMINER: You need five minutes,
14 Josh?

15 MR. PHILPOTT: Please.

16 THE HEARING EXAMINER: All right. How's the baby
17 doing?

18 You sent her home? Oh, okay. I was going to
19 let you go ahead and testify now so you could go ahead
20 and leave.

21 All right. The staff's asking for a five-minute
22 break here. Let's take -- let's go ahead and make it
23 ten minutes because it always runs into more than five.
24 Be back here, please, at three o'clock.

25 Water only in this room.

1 we'll take up staff's presentation and then go
2 to the public input. Okay?

3 Three o'clock, please.

4 (Proceedings recessed.)

5 THE HEARING EXAMINER: All right, Josh.
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1 Thereupon,

2 JOSH PHILPOTT,

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

5 MR. PHILPOTT: For the record, Josh Philpott on
6 behalf of staff. My resume is on file with the Hearing
7 Examiner and I ask to be accepted as an expert in
8 planning and zoning.

9 MR. SCHROPP: No objection.

10 THE HEARING EXAMINER: Okay. Accepted.

11 MR. PHILPOTT: The subject property consists,
12 obviously, of 250 acres on the north end of Persimmon
13 Ridge Road. Currently there are three existing
14 single family homes on the property as well as some
15 agricultural uses that -- grazing fields as well as
16 some equestrian facilities.

17 The subject property is in the open lands future
18 land use category.

19 To the north is Florida Citrus, very large,
20 covering several sections of land, citrus groves.
21 It is again open lands future land use category and
22 agriculturally zoned.

23 Just to get the zoning out of the way and future
24 land use, the entire area surrounding the subject
25 property is in the open lands future land use category.

1 There is some change, approximately half a mile
2 south, half a mile to three-quarters of a mile, where
3 it changes to rural as it gets closer to the North
4 River Road intersection.

5 To the west of the subject property is Babcock,
6 a recently purchased property from Babcock Ranch.
7 This is currently being maintained by the state; but
8 at sometime in the future, I think the expectancy is
9 about five years that this will be locally maintained
10 as a conservation area.

11 To the east of the subject property are single
12 family residences with agricultural uses; to the south,
13 again, a mixture of residential and agricultural uses.
14 There's also a preserve area and this area right here
15 is currently conservation.

16 THE HEARING EXAMINER: What area is that? That's
17 within a quarter of a mile of the property?

18 MR. PHILPOTT: Yes, ma'am.

19 THE HEARING EXAMINER: Okay. And who owns it?

20 MR. PHILPOTT: I believe it's Conservation 2020
21 or --

22 UNIDENTIFIED SPEAKER: Yeah, the county owns it.

23 MR. PHILPOTT: Yeah, it's a county-owned property.

24 THE HEARING EXAMINER: County-owned, all right.

25 MR. PHILPOTT: Yes, ma'am. I think that was

1 actually a purchase that we made several years ago.

2 THE HEARING EXAMINER: Okay.

3 MR. PHILPOTT: Again, the subject property is
4 on Persimmon Ridge Road. Access to that is provided
5 from North River Road.

6 Just to go through some of the staff report.

7 I'll start off with discussing the future land
8 use designation. This is one of the more important
9 policies -- or one of the more important aspects of
10 this rezoning.

11 The subject property is located in the open
12 lands future land use category, along with associated
13 wetlands. The open lands future land use category
14 has a density of one unit per ten acres. However,
15 the density can be increased to one unit per five
16 acres if a residential planned development is pursued
17 and approved which protects environmental features of
18 the site.

19 To go through some of the environmental features,
20 as the applicant has discussed -- it would probably be
21 best to use the applicant's exhibit. I believe this
22 is 1?

23 THE HEARING EXAMINER: Yes -- no. I'm sorry.
24 That's 2. Master concept plan is 1.

25 MR. PHILPOTT: All right. As you can see here

1 on the FLUCCS map and the vegetation wetland map
2 overlaid on an aerial, a large wetland extends through
3 the southern portion of the property and then extends
4 east off the property.

5 Also, another portion is located in the northeast
6 corner of the site.

7 The applicant has provided a portion of this as
8 restoration which is currently being used for grazing
9 lands as well as preservation of the existing forested
10 wetlands that extend through the site. Also, beyond
11 that wetland delineation, additional uplands have been
12 preserved or proposed to be preserved.

13 One crossing does exist of this wetland through
14 the southern portion of the property. As testimony
15 has been given, no expansion or increased impact will
16 be done due to the development. Currently that
17 crossing is sufficient to provide access.

18 The northern area of the property also has
19 cypress wetlands which are preserved, as well as some
20 uplands that are adjacent that will be preserved as
21 well.

22 There are large heritage vegetation, trees, that
23 are surrounding some of the existing facilities on the
24 site. The single family homes, much of that has been
25 maintained in a lawn manner, yard, cleared understory

1 with turf or grass under it; and the applicant plans
2 to keep that. However, there are no conditions
3 requiring that remain due to some of the difficulty
4 in enforcing the conservation of hammocks when located
5 within yards or within parcel boundaries.

6 THE HEARING EXAMINER: Okay.

7 MR. PHILPOTT: Those do fall within the proposed
8 parcel lines and aren't preserved at this time.

9 The density that the applicant is requesting
10 is one unit per five acres of uplands. Approximately
11 221 acres of uplands currently exist on the property.
12 That allows for 44 dwelling units from the uplands.
13 Currently there are 28 acres of wetlands on the site,
14 with a density range of one unit per 20 acres of
15 wetlands. The applicant does have one dwelling unit
16 that may be transferred to the uplands, for a total
17 of 45 dwelling units on the 250 acres.

18 THE HEARING EXAMINER: So my understanding is
19 the three dwelling units that are currently on the
20 property will remain, so there will be 42 new dwellings
21 on the property.

22 MR. PHILPOTT: Yes, ma'am.

23 THE HEARING EXAMINER: Okay. Forty-two
24 additional. Okay.

25 MR. PHILPOTT: Lee County staff has worked with

1 the applicant to preserve a significant portion of
2 the wetlands as well as restore those areas that have
3 been impacted as grazing land to try and create as
4 much of a contiguous -- or continuous wetland through
5 the property, as you can see here. This will be
6 restored and provide a continuous wetland, as well
7 as this portion being contiguous to the Babcock
8 conservation area to the west.

9 without going through all the detail of
10 environmentally sensitive lands as defined in the
11 future land use -- or the -- excuse me, the Lee
12 Plan, Policy 107.1.1, Sub 4, B, staff has again
13 tried to preserve as much of that as possible. The
14 applicant has been willing to preserve as much as
15 possible as well.

16 Policy 5.1.7 of the Lee Plan directs that staff
17 maintain development regulations that require community
18 facilities in residential developments, that they are
19 functionally related to all dwelling units and easily
20 accessible via pedestrian and bicycle pathways. With
21 the proposed development providing for the equestrian
22 connections as well as pedestrian connections
23 throughout the property, and the private recreational
24 facility which is equestrian related in the center of
25 the property, these pedestrian and equestrian

1 connections throughout the internal portion of the
2 property provide for easy access to this facility for
3 the residents.

4 Also, as we discussed briefly, the northern
5 portion of the property will have a ten-foot mixed
6 use easement along -- a mixed use trail easement along
7 the northern portion to provide access to the Babcock
8 Ranch in the future.

9 Now, the reason we have the ten-foot connection
10 on the north at this point is it's a result of the Lee
11 County Greenways map, which promotes trail facilities
12 that will interconnect throughout the entire county.
13 The Greenways map does show a connection in this area
14 from southern Lee County -- or, excuse me, southern --
15 the State Road 31 -- excuse me, I can't even talk --
16 the Alva area --

17 THE HEARING EXAMINER: Okay.

18 MR. PHILPOTT: -- through this area and to
19 Babcock to provide for passive recreation in the
20 Babcock preserve area. The applicant has agreed to
21 provide this ten-foot connection.

22 Parks and rec will be working with future
23 applicants, potentially Florida Citrus, to provide
24 for additional space to expand for that facility as
25 well as using existing facilities to provide potential

1 connections as well.

2 There is an access easement extending along
3 the eastern portion of the property; however -- this
4 property, to allow for connection to the north.
5 However, that is an access easement and has certain
6 restrictions that aren't yet determined as far as
7 the extent of how much area can be used.

8 So as outlined in the memo from parks and rec --
9 I believe it's Attachment D --

10 THE HEARING EXAMINER: D, yes.

11 MR. PHILPOTT: -- discusses a ten-foot easement
12 along this portion of the property. As illustrated
13 by the applicant -- or illustrated by the master
14 concept plan and agreed to by the applicant previously,
15 applicant has volunteered to include that ten-foot
16 easement as well, which will provide for connectivity
17 to the general public to the passive recreational area
18 to Babcock.

19 This allows for the applicant to integrate his --
20 or the applicant's pedestrian and equestrian access
21 to Babcock into one single location, which provides for
22 easier maintenance and management of the conservation
23 area of Babcock rather than several single access
24 points throughout the development. It basically
25 gathers -- the area gathers all the pedestrian and

1 equestrian mixed use trail activity to a single access
2 point.

3 THE HEARING EXAMINER: Would it not have been
4 easier just to have that ten-foot-wide trail easement
5 come along the south boundary?

6 MR. PHILPOTT: Well, I'm glad you mentioned that.

7 THE HEARING EXAMINER: Okay.

8 MR. PHILPOTT: I will discuss that.

9 THE HEARING EXAMINER: All right. Thank you.

10 MR. PHILPOTT: Since you asked.

11 THE HEARING EXAMINER: It looks like it would just
12 be more convenient to everybody.

13 MR. PHILPOTT: Absolutely. Just as discussion's
14 sake, that was something we discussed -- a pretty
15 lengthy discussion as far as this access along here.

16 The reason that we have a concern about using this
17 access point is due to the crossing of environmental
18 features. North here, this is an existing wetland
19 which has flow which would be -- have to be crossed.

20 THE HEARING EXAMINER: Just put a humped bridge,
21 a nice big humped bridge.

22 MR. PHILPOTT: Well, Lee County Parks and Rec
23 felt that it was more important to preserve that and
24 without impacting the wetland, to have the equestrian
25 or the mixed use trail along the north to where it can

1 be integrated into some of the uplands which extend
2 into Babcock.

3 Also, this is a very impacted area along the
4 north. As you can tell, the Florida Citrus has a
5 drainage canal that basically has a big berm on the
6 southern portion of this, which would provide for
7 additional space in the future for expansion of that
8 trail facility; and environmentally that was not a
9 choice that they were looking to use.

10 The other portion -- the other option, as I
11 mentioned briefly before, was using -- I'm sorry, I
12 forget the name of this road.

13 THE HEARING EXAMINER: Parkinson.

14 MR. PHILPOTT: (Cont'g.) -- Parkinson Road and
15 looking into potential easements or access from this
16 corner. However, that's still in the planning phases
17 and --

18 THE HEARING EXAMINER: But, Josh, doesn't the
19 ten-foot-wide corridor going -- you know, walkway,
20 whatever, going east, going up the east boundary,
21 isn't that going to have an effect on part of the
22 wetland there, the recreated portion?

23 MR. PHILPOTT: And I think that's something that
24 parks and rec is interested in. However, due to the
25 extensive impact that is currently existing or that

1 currently exists, it was more of a concern to preserve
2 the area where it narrowed down.

3 Again, this is a parks and rec design issue.
4 Unfortunately, I have my parks and rec hat on; but
5 I'm not employed by them.

6 THE HEARING EXAMINER: All right.

7 MR. PHILPOTT: So we did -- just to, you know,
8 give you a heads up, we did have extensive discussions
9 relating to the design of that facility; and that is
10 the memo, Attachment D, as a result of those
11 discussions.

12 THE HEARING EXAMINER: Okay.

13 MR. PHILPOTT: And the applicant may be able
14 to provide additional testimony as far as further
15 design, but I am not aware of any.

16 THE HEARING EXAMINER: Okay. I understand the
17 environmental concerns on the south boundary; but
18 you've got environmental concerns on three different
19 boundaries of this property, the east, the south and
20 the north. And, I mean, it seems that any way you
21 go here, unless you're going up the west boundary,
22 you're going to step in a wetland or a preserve area
23 somewhere.

24 MR. PHILPOTT: And, again, there may be changes
25 to the design that doesn't require that connection

1 along the eastern boundary. It is something that I
2 believe we're in agreement of a condition relating
3 to -- at the time of development order. At the time
4 of development order, should that not be required,
5 should we have had access off Parkinson or worked
6 through that design issue, it may not be of a concern.

7 THE HEARING EXAMINER: Okay.

8 MR. PHILPOTT: However, the north boundary I
9 think is something that parks and rec would like to
10 see as we move forward for Florida Citrus' potential
11 additional access there; but, again, that's down the
12 road.

13 So staff finds that the proposed rezoning is
14 consistent with Policy 5.1.7 of the staff -- of the
15 Lee Plan.

16 Moving on to water and sewer, as outlined on
17 Page 8 of 12 of the staff report.

18 The subject property does not have access to
19 potable water and sanitary sewer facilities from a
20 public service or public utilities. Water and sewer
21 will be provided through well and septic systems.

22 The proposed development does not meet the
23 minimum requirements that require for the installation
24 of sewer and water, and extending them to this area
25 would be quite excessive and would have many, many

1 impacts.

2 Staff does find that the proposed rezoning is
3 consistent with the Standard 11.1 and 11.2 of the Lee
4 County Comprehensive Plan.

5 One thing that we haven't discussed is the
6 planning community and allocation table.

7 THE HEARING EXAMINER: Uh-huh.

8 MR. PHILPOTT: Policy 1.7.6 provides an allocation
9 table for both planning communities and future land use
10 designations within Lee County.

11 The subject property is located in open lands
12 future land use category in the Alva planning
13 community. The Lee Plan has allocated a total of
14 175 acres for residential development in this category.
15 A total of 83 acres are currently developed, which
16 leaves a remainder of 92 acres.

17 As illustrated on the master concept plan, a
18 breakdown of land use allocation or land use -- a
19 land use table, it breaks down the allocation between
20 residential, recreation rights-of-way, et cetera, et
21 cetera. The residential allocation or the residential
22 acreage is 152 acres.

23 THE HEARING EXAMINER: Uh-huh.

24 MR. PHILPOTT: Given that five acres of this
25 property has already been taken into account under the

1 Lee Plan allocation table, that would leave -- or
2 that would increase that allocation to 157, so there
3 would be 152 new acres of residential development
4 from this property or from this project.

5 Now, that includes residential lots, none of
6 the open space or recreation facilities, buffering,
7 et cetera.

8 With the existing 92 acres of development,
9 the proposed 157 acres does not have a sufficient
10 allocation; however, the -- I'm just trying to go
11 through here real quick, and I may be misstating
12 some of the numbers.

13 THE HEARING EXAMINER: Assuming that they have
14 to come up with the additional acreage before they
15 can get their permits and whatnot, that means a Lee
16 Plan amendment.

17 MR. PHILPOTT: And that's where I was going.

18 THE HEARING EXAMINER: Okay.

19 MR. PHILPOTT: The Lee Plan amendment process
20 is currently -- there is a Lee Plan amendment that is
21 currently being processed to increase that allocation
22 to 157 acres, which the proposed development would
23 exhaust.

24 THE HEARING EXAMINER: Okay. So it's only
25 increasing it to exactly what this development needs.

1 MR. PHILPOTT: Absolutely.

2 THE HEARING EXAMINER: Okay.

3 MR. PHILPOTT: So here's a concern that may
4 arise; but, again, this is a condition of the rezoning.
5 Allocation is determined at the time of development
6 order. At this time there is a Lee Plan allocation --
7 or Lee Plan amendment to increase the allocation to
8 provide for sufficient allocation for this development.
9 It just happened that way. It was not anticipated and
10 put together that way.

11 As a matter of fact, I think that some of the
12 design had been changed to allow for -- to reduce the
13 proposed residential use.

14 THE HEARING EXAMINER: Okay. Is the -- or should
15 I ask Russ?

16 Is the Lee Plan amendment your client's or is this
17 something being sponsored someplace else?

18 MR. PHILPOTT: No. It is a county-initiated Lee
19 Plan amendment.

20 MR. SCHROPP: County sponsored.

21 THE HEARING EXAMINER: And the county can't add a
22 little more to the pot here?

23 MR. PHILPOTT: At this point, no, ma'am, the
24 reason being that we have transmitted -- from my
25 understanding, we have transmitted to the state and

1 the state has issued the ORC report. From discussions
2 I think that were held this morning, the ORC report --
3 or the information from the state has been received.
4 I believe the hearing date is sometime in April --

5 MR. SCHROPP: That's my understanding.

6 MR. PHILPOTT: -- for adoption by the Lee County
7 Board of County Commissioners.

8 THE HEARING EXAMINER: All right.

9 MR. PHILPOTT: So to increase it further would
10 require an additional Lee Plan amendment; and that
11 process, the deadline for submitting applications, is
12 September, from my memory. September.

13 THE HEARING EXAMINER: Okay.

14 MR. PHILPOTT: So there is a potential that
15 additional allocation increase could be done prior
16 to development order.

17 THE HEARING EXAMINER: All right. Is it your
18 opinion then, looking at Condition Number 12 on Page
19 4 of 12, because -- well, if the applicant is not
20 sponsoring the Lee Plan amendment, he's still going
21 to have to comply with the planning community and
22 acreage allocation table. So Condition 12 will take
23 care of the potential deficit or your inability to --
24 your ability or inability to get permits.

25 MR. SCHROPP: Correct.

1 MR. PHILPOTT: Correct.

2 THE HEARING EXAMINER: So we don't need a special
3 condition in there then. But what I am going to do
4 is remove the last part of the sentence where it talks
5 about the retail commercial standards and floor area
6 and all that other stuff. That's coming out.

7 MR. PHILPOTT: Yes, ma'am.

8 THE HEARING EXAMINER: There's no residential.

9 MR. FREDYMA: This morning we had a similar
10 issue with Richard Gescheidt, with the other Hearing
11 Examiner; and he changed it or suggested changing
12 where it picks up in the middle of the table --
13 allocation table, comma, Map 16 and Table 1-B --

14 THE HEARING EXAMINER: Comma, and then as well
15 as other Lee Plan provisions, and just mark the rest
16 of that out where it talks about tenant mix.

17 MR. FREDYMA: Well, it still has to be reviewed
18 and found consistent with --

19 THE HEARING EXAMINER: It can't be.

20 MR. FREDYMA: -- all other Lee Plan provisions.
21 So what he deleted is the retail commercial standards
22 for site area, including range of gross floor area,
23 location, tenant mix and general function. So he
24 deleted that other part, I believe.

25 THE HEARING EXAMINER: All right.

1 MR. FREDYMA: And I guess -- if I could ask a
2 question.

3 If somebody else comes in with a development
4 order request --

5 MR. PHILPOTT: Sure. I was getting there.

6 MR. FREDYMA: Okay.

7 MR. PHILPOTT: Should another development order
8 or certificate of occupancy be issued for residential
9 development, that would reduce -- depending on the
10 type of development, the type of agricultural uses,
11 et cetera, et cetera, that could adjust those numbers
12 negatively and therefore allow for a lesser allocation
13 available to the applicant. Should that happen, only
14 that portion available of the development would be
15 permitted through the development order and approved.

16 So should between now and the time the development
17 order is approved, several homes are permitted in this
18 area, the allocation would be reduced and therefore
19 reduce the overall amount available for the applicant.

20 THE HEARING EXAMINER: Unless they got another
21 amendment.

22 MR. PHILPOTT: Yes, ma'am.

23 THE HEARING EXAMINER: Uh-huh. Unless they
24 requested a small plan amendment or something.

25 MR. PHILPOTT: Absolutely.

1 So currently staff does find that the proposed
2 rezoning will have sufficient allocation and does
3 recommend approval; however, as it states in the last
4 paragraph under that heading, this finding is not a
5 guarantee that there will be sufficient allocation
6 for residential development in the future and a
7 determination will be made at the time of local
8 development approval.

9 Just to briefly discuss neighborhood
10 compatibility.

11 THE HEARING EXAMINER: Briefly.

12 MR. PHILPOTT: On neighborhood --

13 THE HEARING EXAMINER: I think the audience is
14 going to sleep here.

15 MR. PHILPOTT: On neighborhood compatibility,
16 the major concern for staff was the residential use
17 and the density that's proposed in relation to the
18 residential and agricultural uses that currently
19 exist in the surrounding area.

20 The applicant has complied with all the buffering
21 requirements of the land development code, also has
22 included a Type C -- is that a Type C buffer?

23 THE HEARING EXAMINER: No. That's a Type B buffer
24 on the west.

25 MR. PHILPOTT: Type B buffer, and I believe that

1 was 30 feet.

2 MR. FREDYMA: Uh-huh.

3 MR. PHILPOTT: Thirty-foot-wide Type B buffer
4 along the western portion of the property.

5 THE HEARING EXAMINER: Right.

6 MR. PHILPOTT: And one of the -- another concern
7 was the option of a 30-foot-wide landscape buffer or a
8 25-foot-wide landscape buffer as required by Section
9 10-416, Sub (d)(6), of the Lee County Land Development
10 Code, which is required whenever a road is within 125
11 feet of a residential use.

12 Along this eastern portion of the property, two
13 road sections will be constructed within that 125 feet.
14 Staff worked with the applicant to make sure that that
15 was a 30-foot landscape buffer with larger vegetation
16 than is required by the land development code at the
17 time of planting to help relieve some of the concerns
18 with this roadway. Staff did not find that the 25-foot
19 buffer with a wall was appropriate in this rural area,
20 and then only for a section, a short section having a
21 wall.

22 As far as the lot size and density of the
23 property, this is somewhat of a function of the
24 future land use -- of open lands future land use
25 category. It does allow for one unit per five acres;

1 however, some of the lot sizes are smaller due to
2 the preservation.

3 The area will be developed in a residential
4 nature, which will allow for equestrian facilities,
5 which are normally accepted in rural areas such as
6 this portion of Lee County.

7 Again, the lot sizes are a function of the
8 environmental preservation that is required of the
9 open lands future land use category. Should this
10 property be developed in a nature not through the
11 residential planned development, it would allow for
12 agricultural lots of one unit per -- or one unit per
13 ten acres, with agricultural zoning, which provides
14 absolutely no protection of the environmental features
15 of the site and could be potentially impacted greatly.

16 Staff finds that the proposed environmental
17 conditions of the site and the site design and the
18 preservation provided does allow for the increased
19 density.

20 Transportation. Mr. Treesh briefly discussed --
21 or discussed that pretty extensively.

22 The proposed access road, Persimmon Ridge Drive,
23 is a local road. It does not have traffic counts
24 maintained by Lee County. However, two of the --
25 North River Road as well as Broadway Road were

1 analyzed as far as level of service. Currently North
2 River Road functions at a level of service B and
3 Broadway Road operates at a level of service C.
4 Postdevelopment, with the build out year of 2011,
5 both North River Road and Broadway Road are projected
6 to operate at a level of service C, again which is an
7 acceptable level of service per the Lee County Land
8 Development Code.

9 Given that, no deviations were requested as part
10 of this rezoning.

11 Staff does recommend approval with conditions.
12 I believe the applicant is in agreement with the
13 conditions of rezoning.

14 And if there are any questions, I'd be more than
15 willing to answer.

16 Kim Trebatoski is also here to answer any
17 environmental questions that may arise.

18 MS. TREBATOSKI: I have a few things to say.

19 THE HEARING EXAMINER: Okay. Good.

20 Questions of this witness by the County Attorney?

21 MR. FREDYMA: I've got two questions, if I may.

22 Josh, looking at the master concept plan and
23 in particular the east side, you have two areas where
24 there's shown a 30-foot-wide landscape buffer along
25 what appears to be -- what would be the new roadway

1 constructed. At this point they appear to overlap.

2 THE HEARING EXAMINER: I'm sorry. What appears
3 to overlap?

4 MR. FREDYMA: The road and the buffer area.

5 MS. TREBATOSKI: I can answer that during my
6 testimony.

7 MR. FREDYMA: Okay. That's fine.

8 MR. PHILPOTT: Okay.

9 THE HEARING EXAMINER: She's going to answer it
10 for you.

11 MR. FREDYMA: Let Kim answer that. That's fine.

12 And then affiliated with that, again -- I hate
13 to go back to the subject; but, again, the possible
14 future ten-foot trail easement in relation to the
15 roadway and the buffer --

16 MS. TREBATOSKI: I'll address that.

17 MR. FREDYMA: And that's fine, we'll let Kim.

18 THE HEARING EXAMINER: I do have questions about
19 that of Kim.

20 MR. FREDYMA: Thank you.

21 THE HEARING EXAMINER: Anything else?

22 MR. FREDYMA: No, ma'am.

23 THE HEARING EXAMINER: Questions by the applicant
24 of this witness?

25 MR. SCHROPP: No. I have none. Thank you.

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

2 MR. PHILPOTT: Wow.

3 THE HEARING EXAMINER: Josh, thank you. I asked
4 the one question I had regarding the allocation.

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1 Thereupon,

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

5 MS. TREBATOSKI: For the record, I'm Kim
6 Trebatoski, principal environmental planner.

7 I am sorry I had to come and go between here,
8 but I had a meeting over at the water management
9 district that I had to get to that had some people
10 from Tallahassee down.

11 I will keep my testimony as brief as possible.

12 I wanted to more testify to some specifics
13 regarding the buffers and the proposed potential
14 Greenways and such.

15 First of all -- they want me to be tendered as
16 an expert witness. I was just kind of going right over
17 it.

18 THE HEARING EXAMINER: Okay. You've been accepted
19 here before in environmental --

20 MS. TREBATOSKI: Matters for the land development
21 code and Lee Plan, yes.

22 THE HEARING EXAMINER: All right. Any objections
23 from the applicant?

24 MR. SCHROPP: No objection.

25 THE HEARING EXAMINER: All right. Accepted.

1 MS. TREBATOSKI: I just wanted to note that
2 actually the master concept plan is going to need
3 just a slight revision on the west property line.
4 That should be a Type F buffer, not a Type B; and
5 it should be outside of all the lot lines. That's
6 a standard for the land development code along the
7 Babcock property that the county owns.

8 THE HEARING EXAMINER: I think they've got the
9 30-foot width requirement.

10 MS. TREBATOSKI: It's labeled as a Type B and it
11 goes through the lot lines. It needs to be outside the
12 lot lines.

13 THE HEARING EXAMINER: I see what you're saying.
14 Have you looked at this one, Kim? Because this
15 is a new one. This is one that was put up today.

16 MR. PHILPOTT: It still reflects B.

17 THE HEARING EXAMINER: Still reflects it? Okay.

18 MS. TREBATOSKI: And the one from -- I'm sorry.
19 There were plans coming in right up to the last minute
20 and I had a couple of different projects that I've been
21 juggling the due dates on them, and the March 14th one
22 that was submitted does have the buffer through the lot
23 lines and that needs to be adjusted. That needs to be
24 common open area. Otherwise, it leads to problems.

25 THE HEARING EXAMINER: And there was a condition

1 that set that out, though.

2 MS. TREBATOSKI: Hopefully I caught that,
3 because I was writing my staff report as this March
4 14th one was being produced.

5 MR. SCHROPP: Condition 3-C addresses this.

6 MS. TREBATOSKI: I just wanted to make sure
7 that we know anything that goes forward in final
8 master concept plan, that that's a revision. The
9 applicant's been real good at meeting with us and
10 being -- adjusting the site plan as we discuss
11 different issues.

12 The master concept plan along the roadways,
13 the east line, when you build a new road adjacent
14 to existing single family, you need to buffer that
15 existing single family to protect their -- it usually
16 is in their back yards and stuff, to protect some of
17 their privacy and stuff from the lights.

18 This piece of property is really big, so trying
19 to get it on the master concept plan and showing where
20 it is -- it will have to be a 30-foot buffer outside
21 of the right-of-way at the time that development order
22 site plan is submitted for review. It cannot overlap
23 the right-of-way. They did not ask for any such
24 deviations.

25 The potential pedestrian/ bike, whatever it comes

1 up to be, recreational access, our parks and rec
2 department is really trying to link our different
3 preserve conservation areas that are open for passive
4 recreation through a trail system; and that's why they
5 became interested and involved in this project.

6 The small -- even though it looks like a smaller
7 width of wetland across along the south property line,
8 which it is a narrower width of wetland, but it's a
9 forested wetland system that's in good quality versus
10 on the east property line the wetland that that would
11 have to cross is right now a hydric pasture.

12 When parks and rec designs these projects, it's
13 like when DOT does stuff, they're like -- kind of like
14 along 41 down in Estero where they had to put a
15 boardwalk through part of the trail and then the
16 sidewalks pick up on the other side, they would have
17 to do similar type designs here.

18 The north property line -- and I'm sorry, I
19 missed Parke's discussion, so I may be repeating him
20 a little bit; but the north property line does have
21 some existing berm that we believe the trail would be
22 able to fit in there.

23 THE HEARING EXAMINER: On top of it?

24 MS. TREBATOSKI: Yeah.

25 And, now, you do end up coming into the

1 conservation lands in an area that would be wetland;
2 but they would do the same thing, similar to the
3 walkways in Six Mile Cypress Preserve. You design
4 them to have the lowest amount of impact and it's
5 that balancing act between allowing public access to
6 even -- or in the case of a private preserve, private
7 access to preserves.

8 There's a value in allowing minor impact in
9 order to have a walkway so that people get exposed
10 and experience the natural world and then they care
11 more about it than standing back on the outside and
12 saying why can't we see anything in there and then
13 not -- and then their value to them personally drops
14 when they can't actually go into it.

15 So there are many ways to design projects to
16 be able to weave through in a low impact manner, to
17 do that; and there was quite a bit of discussion over
18 where the access would be best. And like Josh said,
19 the final plan -- management plan for the Babcock
20 property that the county has purchased is not finalized
21 yet and there may be some change in the plan on how
22 that property provides an access to the public.

23 quickly, they preserved the majority of the
24 areas with the existing vegetation. There are a
25 couple of hammock areas that are not slated as separate

1 preserves and that's because there's already existing
2 home sites under them. And one extremely nice one that
3 I was like, "You're not taking that house out, are
4 you," that's next to the larger system; and it's
5 planned to remain that. It's planned to remain
6 someone's yard.

7 If those hammock areas did not have homes
8 associated with them already, county staff would
9 have required them to be preserve areas even without
10 the understory, because hammocks are one of the other
11 areas -- if you go through the whole environmental
12 sensitive and follow it through in the Lee Plan,
13 hammock areas are one of the areas to be looking at
14 for preservation; but because both along this lot
15 that you can see here and then --

16 THE HEARING EXAMINER: Kim, do me a favor. Come
17 over to this one. It's bigger.

18 MS. TREBATOSKI: I know, but this one's got it
19 overlaid where I can show it.

20 THE HEARING EXAMINER: But I can't see it over
21 there.

22 MS. TREBATOSKI: I see another issue there.

23 But it's this -- this home, so it would have
24 been hard to take the preserve out there because this
25 is already someone's home site and lawns and stuff.

1 There actually is an existing home in amongst this
2 hammock. We had asked them to design the project to
3 go around the outside of that, which they may need to
4 adjust this a little bit. The one before this had the
5 road over.

6 THE HEARING EXAMINER: Okay.

7 MS. TREBATOSKI: And I see the road looks like
8 it's going through, so I don't know if you want to
9 condition that or not. We were trying to keep it
10 outside of that oak and palm area.

11 THE HEARING EXAMINER: Okay.

12 MS. TREBATOSKI: Even though it's going to be on
13 a private person's property, we were hoping that they
14 would see the value in retaining that.

15 But I did just want to note, because if questions
16 come up later from the board, why weren't those areas
17 preserved, it's because there are existing homes there.
18 Otherwise, we would have looked at it as being common
19 area for the development under the open lands criteria
20 for density.

21 And one last quick thing is if you go on the
22 site -- when you do go out on this site, you'll notice
23 some of the palm trees are very overly trimmed. On
24 agricultural land we don't have jurisdiction over
25 that, so that would not be allowed on other properties.

1 Just so you know that I am aware that that --

2 THE HEARING EXAMINER: That has happened?

3 MS. TREBATOSKI: That has happened out there.

4 THE HEARING EXAMINER: And it's not a code
5 violation on ag land.

6 MS. TREBATOSKI: No.

7 THE HEARING EXAMINER: Okay.

8 MS. TREBATOSKI: So that's really -- I was
9 trying to clarify some of the questions that I had
10 heard previously.

11 And, again, I apologize for having to run back
12 and forth. That doesn't typically happen. But when
13 people come all the way from Tallahassee, I need to
14 juggle right now without having another person.

15 THE HEARING EXAMINER: Questions, if any, by the
16 County Attorney?

17 MR. FREDYMA: To follow up on -- you answered a
18 couple of the questions that I had, Kim; but one part
19 that I -- maybe you can explain.

20 what happens if they leave the ten-foot-wide
21 strip along here? what happens where it gets along
22 the buffer areas that are shown? would it then jump
23 into the roadway and travel there?

24 MS. TREBATOSKI: There's a certain percentage
25 of your buffer that can be a sidewalk or trail, so

1 they could meander it through or alongside of it.

2 THE HEARING EXAMINER: So it actually could
3 coincide or overlap?

4 MS. TREBATOSKI: Yeah. Yeah, we actually have
5 some projects that are like that. Moody Ranch has
6 their bike trail that actually is very nicely snaked
7 through. So they could design it in a manner that in
8 the future, as the trees grow and stuff in the buffer,
9 that you'd actually have a shaded walkway. But we do
10 allow a certain percentage of a buffer to be a walkway
11 or trail, so that's okay.

12 MR. FREDYMA: So within the 30-foot width that's
13 shown on there, that would be enough to provide for
14 that?

15 MS. TREBATOSKI: Yeah. Ten feet. Because you
16 need a minimum 15-foot plantable area for the buffers.

17 MR. FREDYMA: All right. Thank you.

18 MS. TREBATOSKI: Sorry about that, John.

19 MR. FREDYMA: No. That's fine. Thank you.

20 THE HEARING EXAMINER: Questions of this witness?

21 MR. SCHROPP: No.

22 THE HEARING EXAMINER: Kim, hang on a second.
23 Don't go anywhere now.

24 All right. You've talked with parks and rec
25 about this Greenways, this walk trail, whatever you --

1 the path, whatever. Where is that going? I mean if
2 this applicant preserves the trail up the side and
3 across the top, where's it going to the south? What's
4 it going to lead to? Do you have any idea?

5 Josh?

6 MS. TREBATOSKI: I don't.

7 MR. PHILPOTT: I do.

8 MS. TREBATOSKI: Parks and rec is being pretty
9 diligent about making sure there are connecting trails
10 along the way.

11 THE HEARING EXAMINER: Is there another trail out
12 there already?

13 MS. TREBATOSKI: I'm sorry, I don't know. I was
14 hoping they would be here.

15 THE HEARING EXAMINER: All right.

16 MR. PHILPOTT: Just --

17 THE HEARING EXAMINER: Josh, do you know?

18 MR. PHILPOTT: Just as general discussion --

19 MS. TREBATOSKI: I could go and get the Greenways
20 trails map. The plan might help us.

21 MR. PHILPOTT: Specific locations at this time
22 aren't determined. This is a countywide project that
23 we work on as we have rezonings or as we have funding
24 to acquire locations.

25 Currently, a trail doesn't exist in this area.

1 However, as this trail moves forward over time, we
2 plan to connect these trails together.

3 One of the areas that we intend to connect it
4 to is the county-owned facility here. I also believe
5 there's some county conservation areas in this general
6 area. I don't specifically remember which property.

7 But through county parks, through -- along
8 roadways, when pedestrian connection is provided,
9 those type of things, that we try and integrate the
10 entire system together. So it's one of those things
11 that we try -- we're going to have to start somewhere
12 and we're starting somewhere and we're starting from
13 Babcock, and we want to integrate this south and this
14 is the -- I guess the first leg of this development.

15 THE HEARING EXAMINER: All right. So if the
16 county doesn't have any problem with them putting
17 the walkway, the pathway, in the -- within the 30 or
18 40-foot buffer requirement and whatnot, that makes it
19 a little easier for me.

20 I just have a problem with seeing a development
21 come in and all of a sudden saying, hey, guys, guess
22 what I want for Christmas, you know, I mean -- and
23 give me this and give me that and I may use it and
24 I may not. I have a problem with that kind of a,
25 you know, let's get ours up front.

1 MR. PHILPOTT: Sure.

2 THE HEARING EXAMINER: I mean especially since
3 there's no real plans on where this is going and what
4 this is going to do.

5 MR. PHILPOTT: Well, in general there are plans
6 that are approved. Unfortunately, I didn't bring my
7 copy of the Greenways plan that has been approved by
8 the Lee County Board of County Commissioners.

9 THE HEARING EXAMINER: But does it encompass
10 this entire area out here or is it just the Babcock
11 Ranch?

12 MR. PHILPOTT: No. It's a general, countywide
13 locational -- location of -- I can get that plan if
14 you would like.

15 THE HEARING EXAMINER: I'd like to see it.

16 MR. PHILPOTT: Absolutely.

17 THE HEARING EXAMINER: I'd like to see a copy of
18 that.

19 I realize that the applicant has agreed to this;
20 and, you know, I don't want to throw a wrench in the
21 works here, but I do have a concern about the county
22 doing this to applicants when they come through the
23 door, all of a sudden saying, hey, we think it would
24 be nice if, so why don't you give to us or let us use,
25 you know; and what's the applicant going to say most

1 of the time? Uh-huh, okay, fine, not a problem, you
2 can have whatever you want.

3 All right.

4 MR. PHILPOTT: I understand your concern.

5 THE HEARING EXAMINER: I do wish somebody from
6 parks and rec had been here on this one.

7 All right. Do we have any other witnesses from
8 the county? Any other county staff?

9 MR. PHILPOTT: No.

10 THE HEARING EXAMINER: No? All right.

11 All right. Folks, what we're going to do now
12 is start taking public input. I don't have any white
13 forms, so I need you when you come up one at a time,
14 please, to bring your white form to me as you come up
15 so I can mark off that you spoke. All right?

16 So who wants to be the first person to talk?

17 MR. MATHISEN: I'll be first.

18 THE HEARING EXAMINER: All right, sir.

19 And remember, folks, please keep your comments
20 germane to the issues at hand, what effect this is
21 going to have on you, your property or your community.
22 Please don't talk about personalities because that does
23 not have any bearing on my decision.

24 All right, sir. State your name, please, for the
25 record.

1 Thereupon,

2 JIM MATHISEN,

3 having been previously duly sworn, testified as follows:

4 MR. MATHISEN: Ma'am, my name is Jim Mathisen.

5 I live on Werner Drive in Alva and I have a couple of
6 questions to ask about the development.

7 THE HEARING EXAMINER: Okay.

8 MR. MATHISEN: I'm not a novice, I'm not an
9 expert.

10 I have a problem with the one end where they
11 said there's a buffer with Babcock because there's
12 a conservation area there and the term was used, "I
13 assume it is."

14 Now, I met with Mr. Kitson and Mr. Kitson hasn't
15 made any commitment to the Alva, Inc., group out there
16 when we met with him. So I have a problem with that,
17 because why are we making an assumption at this point.

18 Do we have a commitment or don't we?

19 MS. TREBATOSKI: That's the portion of the
20 property that Lee County monies went to purchase.

21 THE HEARING EXAMINER: Lee County owns that, so
22 Lee County clearly has already designated that as a
23 conservation area. They probably have not adopted the
24 formal paperwork and whatnot, but it clearly is in the
25 plans. As long as Lee County owns it, they can say

1 what happens with it.

2 MR. MATHISEN: The other thing I have, it's
3 agricultural and cattle ranching. My experience --
4 and I don't have a lot of it in cattle ranching, but
5 I know there's a thing called dip tanks and arsenic.
6 Has the ground been tested for that environmentally
7 out there? Because it's totally cattle out there.

8 MR. SCHROPP: I don't know. I can ask my client
9 whether he obtained an environmental audit prior to
10 purchasing the property, but I'm not aware of one.

11 THE HEARING EXAMINER: All right. Would that
12 be something that the health department would require
13 before they'd allow you to put down wells? Russ, do
14 you know?

15 MR. SCHROPP: I do not know.

16 THE HEARING EXAMINER: Okay. Stephanie, do you
17 know?

18 MS. CALDWELL: Apparently not. Carl is shaking
19 his head no.

20 MR. MATHISEN: I have done environmental work
21 with the Coast Guard. I'm an oil and pollution
22 investigator. And I know in Florida there's a lot of
23 problems with arsenic on the soil from cattle ranching,
24 from dip tanks and spraying.

25 MR. FREDYMA: It may have more to do with the due

1 diligence for the acquisition of the property and
2 development than it does the zoning at this point.

3 THE HEARING EXAMINER: Is your client a contract
4 purchaser?

5 MR. SCHROPP: No. He's acquired the property.

6 THE HEARING EXAMINER: He has acquired it. Okay.
7 He is the property owner.

8 MR. SCHROPP: Yes.

9 And I'll note in passing -- and I'm sensitive
10 to the issues and we generally handle those as part
11 of the acquisition of the property and you're required
12 to do due diligence, or it's always a good idea to do
13 due diligence to inquire as to the prior use of the
14 property; and with these ag properties, yes, you're
15 correct, one of the concerns generally is what kind
16 of herbicides, pesticides and similar materials have
17 been used on the property.

18 To the extent that there was an environmental
19 audit prior to purchase, that would have answered the
20 question. I do not know whether one was acquired prior
21 to purchasing the property.

22 MR. MATHISEN: Because I have property down --
23 40 acres down the street from me that has arsenic on
24 it and the person can't get rid of it. The person
25 bought it and they did not do an environmental study on

1 it. It's just one of the issues.

2 And the other one I have was with wildlife with
3 the tortoises and all. Did the state give us any kind
4 of documentation to that yet of the wildlife?

5 You submit in your report, you said something
6 about there was -- in the year 2006 and 2007, you said
7 there was a three-month study done on tortoises?

8 MR. LEWIS: No.

9 THE HEARING EXAMINER: Parke, go ahead.

10 MR. MATHISEN: And you said that there was another
11 thing that they were going to come back with a report,
12 you were going to get a statement from the Fish and
13 wildlife people. Have you gotten that yet?

14 MR. LEWIS: No, sir. To satisfy Lee County,
15 we have to conduct what's called a protected species
16 assessment to meet their criteria, so that was
17 conducted in June of 2006.

18 There was a species of listed bird out there
19 known as the Audubon's crested Kira Kira (phonetic),
20 which not nesting on the site but observed on the site,
21 required us to follow not the county's guidelines but
22 the guidelines of the U.S. Fish and Wildlife Service,
23 using their methodology to come back January, February
24 and March and survey the properties to see if they were
25 there.

1 We know that they exist somewhere on the Babcock
2 Ranch, they have a large range; but to head that off
3 at the pass, conduct that study in the spring when
4 it's allowed.

5 So in regards to permitting, we cannot move
6 any gopher tortoises or impact any burrows until
7 we have a permit from the Florida Game and Fish
8 Commission.

9 MR. MATHISEN: Have you applied for that?

10 MR. LEWIS: No. We're not at a point where
11 it's -- the studies will have to be updated, because
12 tortoises move around. They go here and there, so
13 it has to be updated.

14 THE WITNESS: So my question is then, if this
15 is approved now, what happens later on if it comes
16 back negative?

17 THE HEARING EXAMINER: I'm sorry. If what comes
18 back negative?

19 MR. MATHISEN: If the report comes back negative
20 on your behalf.

21 MR. LEWIS: I think he's saying we've got a
22 preserve area, does the preserve area stay or does it
23 go away?

24 The preserve area is being required by Lee County
25 as part of the site plan, so it stays -- even if the

1 tortoises -- if a house or a driveway never ends up,
2 it's still there.

3 MR. MATHISEN: The other question I have here,
4 because you did say that it's a very -- you're very
5 environmentally concerned about the area. Who's going
6 to take care of it when your developer's gone? Where
7 does that go then? Is there some kind of agreement
8 you have or are the people going to maintain all these
9 sensitive areas?

10 MR. SCHROPP: Typically, the common areas and
11 protected areas are placed into conversation easements
12 and/or deeded to the homeowners' association, which
13 becomes the controlling entity and responsible
14 maintenance entity for any common areas, including
15 the water management system or conservation areas
16 within the property.

17 That's a requirement of the environmental
18 agencies, primarily, who like to have a single
19 homeowners' association entity responsible for
20 maintenance of those entities rather than one
21 homeowner, one entity or the developer, because
22 the developer, you're correct, ultimately comes
23 in, develops, sells out and is gone.

24 MR. MATHISEN: Been there.

25 MR. SCHROPP: So ultimately, yes, the requirement

1 of the district -- water management district and the
2 county is to have a homeowners' association for the
3 project be the responsible maintenance and conservation
4 entity.

5 MR. MATHISEN: It's my experience once the
6 developer leaves, the homeowners' association gets
7 stuck with all the bills.

8 The bridge -- there was mention of a bridge in
9 the property?

10 MR. SCHROPP: There is a bridge over the wetland,
11 one wetland crossing that exists.

12 MR. MATHISEN: Is that maintained by the developer
13 or the county?

14 MR. SCHROPP: I believe it's a
15 developer-maintained --

16 MR. LEWIS: Russell?

17 MR. SCHROPP: Yes.

18 MR. LEWIS: It's a culvert crossing --

19 MR. SCHROPP: Culvert crossing.

20 MR. LEWIS: -- for a grade.

21 MR. SCHROPP: And yes, that's maintained by the
22 present developer.

23 MR. MATHISEN: The other thing I have was on
24 the fire hydrants. It was mentioned that the Caloosa
25 shores approved it?

1 MS. CALDWELL: No. When we go through our
2 development order process, which will take place
3 after the rezoning, I had mentioned that we can have
4 further conversations with Alva Fire to --

5 MR. MATHISEN: Okay. You've got to go through
6 the fire district in Alva, not Caloosa Shores? You
7 mentioned Caloosa Shores.

8 MS. CALDWELL: Oh, no. I'm sorry. I think
9 you misunderstood. Caloosa Preserve was a project
10 in which we used the same type of hydrants, which is
11 located not too far from this project.

12 MR. MATHISEN: And the only other problem I had
13 was with the traffic situation. For expert testimony,
14 the individual didn't know the direction, north, south,
15 east or west or how far the roads -- how wide the roads
16 were; and that's important to me.

17 If you don't know the size of the road, how can
18 you give an expert testimony on it?

19 THE HEARING EXAMINER: Can you do me a favor and
20 tell me approximately where you live on that --

21 MR. MATHISEN: I live over by the water plant in
22 Alva.

23 THE HEARING EXAMINER: I don't know where the
24 water plant is.

25 MR. MATHISEN: It's off of State Road 80.

1 THE HEARING EXAMINER: Oh, it's over by State
2 Road 80?

3 MR. SCHROPP: So you're south of the river?

4 MR. MATHISEN: Right. I'm on the river.

5 And the thing of it is, too, with all the traffic
6 coming, because we're working right now with Bonita
7 Bay and Kitson and 78 and everything else, it's just --
8 very concerned about traffic in that area. We're
9 losing the rural -- the open land concept out there.
10 And Bonita Bay is talking about 2,500 to 3,000 homes
11 on that road, too.

12 Thank you for your time.

13 MR. SCHROPP: If I could.

14 MR. MATHISEN: Sure.

15 MR. SCHROPP: The Bonita Bay project, you're
16 talking about the one that's farther west on --

17 MR. MATHISEN: North River Road.

18 MR. SCHROPP: -- 78. That's North River Road,
19 over by 31.

20 MR. MATHISEN: Right. And that road is traveled,
21 78, for people that go to work in LaBelle.

22 MR. SCHROPP: And one other question. I
23 apologize. I didn't get your name when you --

24 MR. MATHISEN: Jim Mathisen.

25 MR. SCHROPP: Mathisen. Thank you very much.

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MR. MATHISEN: M-A-T-H-I-S-E-N.

MR. SCHROPP: Thank you very much.

THE HEARING EXAMINER: Thank you, sir.

MR. MATHISEN: Okay. Thank you very much for
your time.

1 Thereupon,

2 KEITH DEAN,

3 having been previously duly sworn, testified as follows:

4 MR. DEAN: Thank you very much. My name is Keith
5 Dean. I actually live right next door, due east of the
6 proper, at 19251 Persimmon Ridge Road.

7 Unfortunately, I'm not an expert in any of these
8 categories; but also I'm not being paid as an expert
9 either, as all these other experts are being paid to
10 be here today.

11 It's interesting that we talked about the use
12 of the property, being it's better environmentally to
13 have 45 lots than it is 25 lots, where in essence I
14 could take my pen and erase half the lot lines and it
15 would be 25 lots instead of 45. I haven't impacted
16 the environment at all, actually made it better for
17 the environment because I've got less roofs, less
18 people, less traffic.

19 The access that we talked about, the 60-foot
20 access just east of that property, was actually bought
21 by Florida Citrus from the previous owner so he would
22 have access to Persimmon Ridge Road to get to develop
23 his property. So now if you go in and you develop one
24 unit for two acres, what do you think those guys are
25 going to do with their high-priced attorneys and

1 high-priced engineers? They're going to want to also
2 dump their people on Persimmon Ridge Road right next
3 to my property.

4 THE HEARING EXAMINER: All right, sir. Can you
5 show me where your property is? You said it's due
6 east.

7 MR. DEAN: I'm right there.

8 THE HEARING EXAMINER: You're right there.

9 MR. DEAN: I'll come here closer.

10 THE HEARING EXAMINER: Okay.

11 MR. DEAN: That's me right there.

12 THE HEARING EXAMINER: And that 60-foot easement
13 runs up alongside your property, doesn't it?

14 MR. DEAN: That 60 feet, that driveway right
15 there is actually my neighbor behind me, but it's on
16 my property. My property goes over actually just a
17 little bit past this driveway. So that 60-foot
18 easement is from that driveway to right there.

19 THE HEARING EXAMINER: And then northward.

20 MR. DEAN: It goes all the way to right there.

21 So, I mean, technical, Lee County Plan, you
22 cannot have a local road connection on this 60-foot
23 easement and a local road connection on their driveway
24 coming in here. Too close together. No way that would
25 work. But there's no plan, no future plan for that.

1 Nobody cares about what happens down the road. Nobody
2 cares about what happens to that neighbor that lives
3 right next door to him. They want to make sure they
4 get paid to develop, expert witness, do everything
5 you're going to do for your piece of property. Get the
6 most bang for your buck. It's not about what's best
7 for the environment, what happens to the turtles. You
8 know what? Turtles travel across those roads every day
9 and they're not going to stay in a little two-acre
10 preserve. They're going to travel. And when their
11 development's done and the barriers are gone, the
12 turtles are going to still be there, somewhere
13 traveling on that property.

14 It's not been accommodated and there's one house
15 for every two acres.

16 And again, expert. Persimmon Ridge Road, that's
17 the name of the road. It's not Persimmon Road. It's
18 20 and a half foot wide, barely wide enough for two
19 cars to travel. Matter of fact, Matt comes down the
20 road with his travel -- with his trailer on his
21 equipment or David Rice does or Rojo, I have to pull
22 off the road for them to get by. There's no way trucks
23 can travel up and down that road.

24 Construction impact on the area. I have two
25 young kids. They ride their bicycles on the edge of

1 the road, you know, sometimes they weave around the
2 road. That traffic impact, whether they say it's 35
3 cars or 55 cars, it's going to impact my life, the
4 quality of life that I paid for to live there.

5 Now, the applicant and Josh in his wisdom --
6 he does this for a living. Hard job. Talking to
7 attorneys and experts all day, beating on him, beating
8 on him, beating on him to get more. Do you want to
9 have a project that's environmentally sensitive or do
10 you want to have a project where you can get 45 lots
11 instead of 25 lots? What is it all about? It is
12 about money.

13 In his wisdom he says that they met the Lee
14 Plan; but if you were to actually go back to the Lee
15 Plan, it's actually kind of subjective. It's got
16 some objective parts in it when it talks about numbers
17 and criteria, but then in the very vision statement
18 it says, "The Lee Plan should reflect the community's
19 vision of what is or will be by the end of the planning
20 horizon," which is 2020.

21 Shouldn't the community have a say-so, you know,
22 in what the vision is for our community? Not just a
23 bunch of experts that haven't even been up and down the
24 road? Don't know whether that road's paved, 20-foot
25 wide, goes north or south, east or west; whether those

1 turtles are going to stay in a preserve or whether
2 they actually cross from county-county -- 2020 property
3 to the other 2020 property. The county actually owns
4 two pieces of property there on Persimmon Ridge Road.
5 Conservation 2020 bought it because they thought that
6 area needs to be preserved. It doesn't need to be
7 built up.

8 The Lee Plan also states that the population in
9 Alva was 4,260 people in 1996. It should grow to 4,818
10 in 2020. That's only six hundred people. Now, if you
11 put 45 homes in that one spot and if you've got two and
12 a half people per home, that's over a hundred people
13 in that one development. And then, of course, you talk
14 about your land allocation plan -- tables, all these
15 numbers we come up with; and they've exceeded that in
16 that one development.

17 So now Frank Green has 120 acres down the road
18 from me. He's thinking, man, I can get one house per
19 20 acres. He can't. He can't build another home.
20 Rojo's got 20 acres. He wants to split his and build
21 a house on it. He can't because you've already
22 allocated everything to one development. Unless, now,
23 of course, there was another amendment, which means
24 more attorneys, Russell gets more money -- I know
25 Russell. I know Carl Barraco. Me and Carl are friends

1 for a long time. And like I told Carl coming up in t
2 he elevator, it's not personal, bud, this is business.
3 But this is my life. This is the quality of life that
4 me and every person in this room paid to be here.

5 UNIDENTIFIED SPEAKER: Amen.

6 MR. DEAN: How much water will 45 wells draw?
7 My well is 20 feet deep. It actually draws from 11
8 feet deep, because underneath that is salt water.
9 So unless I get one of the newer homes that has the
10 reverse osmosis, which I heard a number like ten
11 thousand, twenty thousand it costs to run one of those
12 things -- you know, I don't have ten, twenty thousand
13 just to spend because they drew all my water out.

14 And if water was such a problem or such an issue
15 to Lee County in their wisdom and planning, why come up
16 with a DGR, you know, the DRGR?

17 It actually states the maximum density is one
18 house per ten acres. The purchase -- the individual
19 when he bought this property, it was one house per
20 ten acres. He bought it with that assumption. There's
21 actually three pieces of property were broken up, one
22 house in ten acres. It's not like it's anything new
23 to the individual that bought the property.

24 Ground water resource analysis made by natural
25 resources for Lee County says that the aquifer we draw

1 water from is recharged 7.8 inches per year by
2 agriculture. That's how much water draws back
3 into the ground in an agricultural area. Now if
4 it's residential, it's only 4.76 inches per year
5 that recharges back into the ground because it's
6 residential. Now, if you put a lake, it is a minus
7 5.99 inches per year, because my groundwater goes
8 into that lake, which evaporates. It's no longer in
9 the ground.

10 So everybody thinks, oh, let's dig a bunch of
11 lakes because we're going to store all this water in
12 there. You're not storing a drop of water. You're
13 adding another place for the water to evaporate; and
14 that water actually comes from the groundwater that
15 I'm trying to draw my well from.

16 what's really bad, though, is in the dry season
17 when the water table is usually around four and a half
18 foot below ground. It goes down to eight foot below
19 ground. I draw my water from 11 foot below ground,
20 so I only have a couple feet to play with. And a lake
21 in the dry season will have a negative recharge of 17
22 inches of water evaporated out of that lake in the dry
23 season. So do you really think this development is
24 good for our natural resource and our environment?

25 The approval of this development will certainly

1 place a great burden on Persimmon Ridge Road by Highway
2 78.

3 THE HEARING EXAMINER: You're going to have to
4 slow down because I know I didn't hear that and she's
5 got to take it down, so talk a little slower.

6 MR. DEAN: I'm originally from South Carolina.
7 I'm a country boy. I was born and raised in the
8 country. When I come down to Fort Myers, I wanted to
9 live in the city and I found out that the city's not
10 for me. I moved back to Alva, where I'm from.

11 So, back to Highway 78.

12 The traffic impact study done. There's no way.
13 You know in the paper back six months ago when we
14 finished State Road 80, the fatalities they had on
15 Broadway and 80 because there's no traffic light.
16 You sit there any time peak season or peak hour and
17 you tell me there's only going to be 35, 55 people
18 there? You just try to make a left turn on 80. I
19 have witnessed two fatalities, which is bad enough;
20 and I bet there's a wreck once a week, once or twice
21 a week in that area.

22 Now, there's no way you can put all these more
23 cars on there. And it's a type C road. Studies may
24 say one thing or another. You know what? As experts,
25 come out to our area and spend some time and then you

1 tell me that putting all those cars on that road
2 won't impact me or the quality of life for anybody in
3 this room or yourself. Fatalities, people getting
4 hurt, losing my water well. My kids on the road now,
5 playing. Have more cars, more impact. Everything
6 impacts us.

7 And not just this development. Because once you
8 approve this development -- and, again, what's going
9 to happen to that guy behind you? What's going to
10 happen if he decides he wants to develop his piece of
11 property? Or anybody else in this room that says, you
12 know what, hey, the money's there.

13 We have to establish a quality of life, which
14 Lee County did in its wisdom in making the DGR, in
15 making the Conversation 2020, where we're going out
16 to spend our tax money to buy property to conserve it
17 for the public and for our environmental use. Let's
18 not lose it in developer use.

19 Thank you.

20 THE HEARING EXAMINER: Thank you, sir.

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1 Thereupon,

2 BRIAN WATTS,

3 having been previously duly sworn, testified as follows:

4 MR. WATTS: My name is Brian Watts.

5 THE HEARING EXAMINER: Okay. Can I have your
6 white form, please?

7 MR. WATTS: I'm neither an expert or whatever;
8 but I live right here, right about down here somewhere,
9 on the corner of Walker Farm Court and Persimmon Ridge
10 Road.

11 And I came here, what, three years ago, drove
12 over the Alva bridge, saw property -- saw the school,
13 first of all, made the turn around on River Road,
14 drove out to the lot that I purchased, which is two
15 and a half acres, and found it was one of the most
16 beautiful places I've ever moved to in my life. And
17 I'm a city guy. And what's sad about what's going on
18 here is I believe they were supposed to have ten-acre
19 parcels here, which we can't stop growth, no matter
20 where we are; but I think to go on Persimmon Ridge
21 Road and the way you've got it mapped out with the
22 roads, everything exits on Persimmon Ridge Road.

23 Like he said, it's like 20 feet across. No
24 room for all this traffic. And the traffic expert
25 back there made his comments, and he's absolutely

1 right. Everything's backed up on State Road 80.
2 You can't get over there when the school buses are
3 going over. There's no traffic lights. Nobody paid
4 attention to that. We have all kinds of critters, we
5 have all kinds of kids that go up and down that road
6 with bicycles and pedestrians; and we're going to have
7 a nightmare out there on Persimmon Ridge.

8 Now, what I want to know is, if and when this
9 happens, who's going to pay for that road to be
10 widened? Are we?

11 THE HEARING EXAMINER: See, and I can't answer
12 that and I don't know that anybody can answer that.

13 MR. WATTS: Well, it's a serious matter. I
14 think that the person that builds should bear the
15 total expense of widening and protecting our community
16 where we live today. We're going to have to have
17 sidewalks, everything.

18 I'm dead against it because I moved there
19 because I liked the peace and quiet, I like the country
20 atmosphere; and that's why I moved here.

21 Thank you.

22 THE HEARING EXAMINER: Thank you, sir.
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1 Thereupon,

2 DALE MAST,

3 having been previously duly sworn, testified as follows:

4 MR. MAST: I'm Dale Mast, and I live in South
5 Fort Myers right now and I bought some property on
6 Persimmon Ridge. Live in Fiddlesticks. And to give
7 you an idea of what it's done to lakes, when they ran
8 the canal from the new airport behind us into the Ten
9 Mile Canal, our lakes dropped on the average of five
10 to six feet just by digging that. So when we're going
11 to dig lakes out there, what's it going to do to our
12 wells out there?

13 I'm also in the water business, so I know what
14 it does to the wells. It's going to drop your water
15 level. You're going to have to go to deeper wells.

16 I bought ten acres out there. My son bought ten
17 acres out there. He's in here for permitting right
18 now. I'm going to come in for permitting because I
19 want to get out of South Fort Myers and all the traffic
20 and I'm not buying out there because I want all this
21 traffic coming up and down Persimmon, Persimmon Ridge.

22 And it is a small road. The expert said he didn't
23 know how wide it is. We got a motor home we keep out
24 there in the barn. It's pretty narrow when you go down
25 there with a motor home.

1 So I'm saying why do we want to ruin life out
2 there when it's all ten acres and that's what it set
3 out to be? And if you look at the 2020 plan, it
4 doesn't have any of that kind of stuff in it in Alva.
5 So I just -- I'm telling you what it's going to do to
6 your water and your lakes and everything else.

7 I hope you turn it down.

8 Thank you.

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

1 Thereupon,

2 FRANK GREEN,

3 having been previously duly sworn, testified as follows:

4 MR. FRANK GREEN: I hope I can remain as calm as
5 my --

6 MR. FREDYMA: I think most of these folks have
7 been sworn, but I'm not entirely sure.

8 THE HEARING EXAMINER: Folks, do remind me,
9 please, if you've not been sworn and you've decided
10 to talk so I can make sure you're sworn in.

11 MR. FRANK GREEN: My name is Frank Green. I
12 live on Persimmon Ridge Road, 19370.

13 My grandfather came to Persimmon Ridge in 1895
14 and my family has been there ever since as farmers.

15 I know you are all aware that in the mid-'80s
16 our Commissioners wanted a two-mile buffer zone south
17 of the Charlotte County line, which includes all of
18 this area that we're talking about here. They wanted
19 one unit per ten acres. The idea behind this was have
20 an area that would replenish the aquifer and protect
21 the very sensitive environmental area that we're
22 dealing with here.

23 Everyone's talked about the sensitivity of the
24 environment, but they haven't addressed these aquifers
25 and that all of the water out there that most of the

1 people on Persimmon Ridge use is in the 20-foot zone.

2 The state put down six wells on our property in
3 the '80s to test the water, how much was there; and
4 the results was very little water. There was water at
5 ten feet -- or ten to 20 feet. At 80 to 120 feet was
6 the next aquifer, which results into about 3,000 parts
7 per million salt. From there on out, it's downhill.

8 The people who live on Persimmon Ridge and have
9 bought property there want the ten acres. They have
10 embraced this one unit per ten. This developer, when
11 he bought the 250 acres, I'm sure he was well aware of
12 the one and ten.

13 I can't help but believe that anybody else that
14 buys property out there is going to want to come
15 before you and want the same type of treatment here,
16 where they can drop their density from one to -- one
17 to ten to one for five or one for two, whatever we've
18 got here. I'm not real sure what it is.

19 These roads that we have out there, as have
20 been alluded to already, they're very narrow. They
21 cannot stand up to the construction equipment and
22 the -- creating another dangerous intersection here.

23 This Persimmon Ridge --

24 THE HEARING EXAMINER: Over the other way. Over
25 to your right.

1 MR. FRANK GREEN: Oh, excuse me. Persimmon Ridge
2 is here, comes this way.

3 When this traffic comes off of Persimmon Ridge,
4 headed into here, I know from the previous owner
5 they're hell bent for election when they come through
6 here; and when there's traffic coming around here,
7 it's a very dangerous intersection. We have the same
8 intersection type situation at 78 and Persimmon Ridge,
9 where traffic is crossing. Better pay attention or
10 you'll get run over.

11 I guess one of the things that upsets me the
12 most about this is the developer made no attempt to
13 familiarize himself with what's going on out there.
14 They make comments about the gopher tortoise, or Keith
15 calls them turtles. Well, he didn't eat them like we
16 did before, so they're all gophers.

17 THE HEARING EXAMINER: I hope you're still not
18 eating them.

19 MR. FRANK GREEN: No. There's not that many of
20 them left. We are smart enough to know that we can't
21 take away our food supply.

22 We cannot let this attempt to take this property
23 and change it from one to five and not be concerned.

24 We've asked that there be no berms. Of course,
25 I don't know what a Type F berm is. I'm not sure.

1 THE HEARING EXAMINER: Buffer. Type of buffer.

2 MR. FRANK GREEN: Type F buffer. Is that dirt?

3 THE HEARING EXAMINER: No. That's a 30-foot-wide
4 strip with a certain number of trees and a double
5 hedge, okay? Generally maintained at five feet, but
6 it can be allowed to grow taller.

7 MR. FRANK GREEN: I would hope that if they don't
8 want us to see what's going on there that they would
9 plant native vegetation, if they're that bent on not
10 wanting the outsiders to see in.

11 I have always been under the impression that a
12 subdivision of this site needed another exit. This
13 does not have another exit. In fact, the exit out of
14 there is going to cross the little bridge they're
15 talking about there; and if this was to get washed out,
16 what are we -- how are we going to get those folks up
17 there out? Believe me, I piled palmetto roots on this
18 stuff when I was a kid growing up all out in here; and
19 if you don't think it gets wet, you got another thing
20 coming.

21 Now, what has happened is when this big grove
22 went in around here, they did cut off most of the
23 sheet flow coming across this. We want, we need this
24 to replenish our aquifers. What they're doing is
25 they're routing all the water off of the grove around

1 to the river. Now we're not -- this is not helping
2 us get our aquifers recharged, which is what the
3 Commissioners wanted. This is not going to help us
4 get it recharged because we're taking it out of ag.

5 The little environmental area there, or I guess
6 you'd call it wetlands, I've seen that thing 50, 60,
7 80 feet wide in rainy season, so I'm sure they have a
8 way they're going to handle that.

9 The main reason or the main question I have is
10 why? why do we want to redo this? why do we want
11 one for five? It's only for one reason and one reason
12 only; and that is to make this applicant here, who's
13 not going to live there, so he can make more money.

14 THE HEARING EXAMINER: Am I hearing a fluttering
15 on the sound system?

16 MR. FREDYMA: Yeah. It's the mike.

17 THE HEARING EXAMINER: Okay. Mr. Green, hang on
18 two seconds. We need to change the battery in the
19 microphone. Otherwise, it will shortly be squealing
20 everybody right out there.

21 MR. FRANK GREEN: One of the Commissioners that
22 was on the board in the mid-'80s when they wanted this
23 one per ten and the two-mile buffer zone was Porter
24 Goss. I consider Porter Goss a very smart man and all
25 of that Commission in having foresight enough to set

1 aside one per ten.

2 I know my neighbors when this happened was very
3 upset. They felt it devalued their property. However,
4 as time has rocked on, it has had exactly the opposite
5 effect. People want their privacy. People want to be
6 on ten acres or more.

7 My last comment is any time you stick a shovel
8 in the dirt -- I don't care how big the shovel is --
9 you're going to alter the environment. If a shovel
10 is small, not so much. But we got big shovels today.
11 And these big shovels are going to come into this piece
12 of property and they're going to alter our environment
13 and our way of life.

14 They have dug canals and roads and altered Cape
15 Coral, Lehigh; and the wells are going dry. They have
16 no way to replenish their water supply. We don't want
17 this to happen in our area, and this is a very small
18 area which this subdivision is going to impact
19 unbelievably.

20 These people came because they care. They're
21 not paid to be here and they're not ashamed of the
22 way we feel about our way of life out there. We love
23 being in the country. A lot of people from town, they
24 don't understand that; and that's neither here nor
25 there with what we're concerned here. But the wildlife

1 that's there we want to protect.

2 They talk about just having gopher tortoises.
3 Sandhill cranes are all over this property. What are
4 you going to do? Are they going to land on top of a
5 roof and be a wood stork? I don't know. I just hate
6 to see it.

7 We have no objections to the one for ten because
8 we've lived by that since the mid-'80s. Let's leave it
9 like that, please.

10 Thank you very much.

11 THE HEARING EXAMINER: Thank you, sir.

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1 Thereupon,

2 EARL MEREDITH,

3 having been previously duly sworn, testified as follows:

4 MR. MEREDITH: I'm kind of nervous, so if I can't
5 say my name, don't pay attention.

6 THE HEARING EXAMINER: If you can't say your name,
7 I'll read it off the paper.

8 MR. MEREDITH: My name is Earl Meredith and I
9 live somewhere up here. About here on this corner.

10 THE HEARING EXAMINER: Okay. So you're in the
11 southwest corner of the subject property?

12 MR. MEREDITH: I told my wife this morning, don't
13 use a lot of water to take a shower and wash your hair
14 because we might be like Cape Coral and need water.

15 I've got some cows, got me an old horse. Lived
16 out there for about five years now and enjoy it. And
17 it was designed at one for ten. I have 15 acres. Not
18 a lot, but I'm proud of it.

19 And the shortage of water that the last gentleman
20 just alluded to is very real. I can pour the dirt in
21 my yard out of a boot right now and you'd think it was
22 water, it's so dry. You take 45 new developments or 50
23 new developments, whatever you're trying to sneak in
24 there; and you start watering the yards, maintaining
25 that many more horses, that many more cows, that many

1 more people, you're going to run out of water.

2 water is a serious problem. Cape Coral faces
3 it right this minute and you're sitting here going to
4 say, okay, here's how we're going to do it. And these
5 experts approved Cape Coral. These experts have
6 approved a hell of a lot of things, but now we're
7 reaping the benefits of what we're not being able to
8 do. And if we don't get some water around here --
9 alluding to this sheet flow, I've been right here on
10 my back porch and watched water come down there, even
11 though it's only coming from here. It rains and it
12 rains hard. And you think it won't rain hard right
13 now; but when the rainy season comes, it rains hard.
14 And that water comes down, it doesn't come down just
15 in this little designated loop right here. It comes
16 all the way across this broad spectrum. I've seen it.
17 Been there and done that.

18 Like he said, they approved this for one to ten.
19 That's where it should be. One to ten is going to
20 still impact, because this is only the beginning.
21 There's going to be other developers that want to
22 come in, put in one to ten. And they'll get people
23 that will attest to this, it won't harm the aquifer,
24 this won't harm the quality of life; but it will.

25 when I bought that 15 acres out there, it was a

1 mess and I cleaned it up. The county hadn't inspected
2 that or let it go or paid any attention to it, but it
3 was a beautiful piece of property; and, honestly, it
4 stayed that way. I won't be here. A lot of people
5 won't be here. But this has to be maintained for a
6 way of life for generations. Don't let it go like
7 Cape Coral.

8 As far as the second access to that property,
9 Parkinson Road, Parkinson Road has a 10 to 12-foot-wide
10 trail that we have through there, not suitable for
11 access to any property as a secondary access unless
12 somebody came in there and bulldozed down a bunch of
13 big oak trees that have been there for years and years.

14 Thank you.

15 THE HEARING EXAMINER: Thank you, sir.
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1 Thereupon,

2 CHARLIE LINDSAY,

3 having been previously duly sworn, testified as follows:

4 MR. LINDSAY: My name is Charlie Lindsay. I live
5 in Alva. I live in a residential area. I don't live
6 on ten acres. But my concern is about water because it
7 affects all of us.

8 I came to Lee County ten years ago and I only
9 was here on the weekends. I was watering my yard one
10 day and I got in trouble. They said you can't water
11 your yard. We're on water restriction. What are you
12 talking about? They said, oh, no, you can't water
13 your yard, we're on water restriction. Well, that was
14 ten years ago; and I've seen nothing but development.

15 we're going to have a recreational lake, which
16 I don't know the difference between a recreational
17 lake and a borrow pit. That's because they're going
18 to fill some property -- that's my assumption -- and
19 we're not going to call it a borrow pit, we're going
20 to call it recreational and it's going to handle any
21 runoff water and it's going to provide fire protection.

22 well, I don't know where they're going to get
23 the water from; but that's my only concern.

24 THE HEARING EXAMINER: Is the water?

25 Okay, sir. You said that you live --

1 MR. LINDSAY: I live it in -- I call it the
2 downtown, theatrical section of Alva. I live on
3 Pearl Street, right across from the boat ramp, right
4 off of Broadway, right on the river.

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

2 BRENDA WRIGHT,

3 having been previously duly sworn, testified as follows:

4 MS. WRIGHT: My name is Brenda Wright and I live
5 at 18000 Persimmon Ridge Road.

6 I've been in Lee County for over 30 years, went
7 to grade school in Alva and brought my husband out to
8 Alva to enjoy the country living that we are there for.

9 I'm a little shaky.

10 The reason why we like Alva is it's low density,
11 there's not much traffic and there's more space. And
12 we built out there about three years ago; and with that
13 being said, my concern is this: We are the first house
14 on Persimmon Ridge.

15 THE HEARING EXAMINER: First off of where now?

16 MS. WRIGHT: Persimmon Ridge Road.

17 THE HEARING EXAMINER: But what's the next street?
18 What's the cross street?

19 MS. WRIGHT: North River Road. We're right there
20 at that intersection. So we're going to feel the full
21 impact of all the construction coming down the road.

22 THE HEARING EXAMINER: Uh-huh.

23 MS. WRIGHT: The construction traffic and
24 otherwise.

25 The other thing that we had a problem with is

1 when we built three years ago, we had a Cape Coral
2 builder; and the builder dug a well about a hundred
3 feet deep and we had nothing but salt water. With
4 that being said, we talked to neighbors, we talked to
5 water management, local well drillers, we talked to
6 anybody we could and found out you cannot dig a well
7 that deep. So they ended up going back and digging one
8 for about 30 feet. Okay. So now we have good water.
9 Well, if we have all these homes coming in and we have
10 to dig deeper, we can't because of the salt water. So
11 we're very concerned about that. I know you've heard a
12 lot about water so far.

13 Another concern I have is there's a lot of us
14 that walk our animals down the street, kids are on
15 bikes. We're trying to enjoy our country walk; and
16 with a minimum of extra maybe 90 cars going up and
17 down our road, it's not going to make it very safe.

18 The current zoning is there for a reason, to
19 maintain our resources; and we'd like to keep it the
20 way it is.

21 And I think that's all I have.

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

2 CHIPPER FITZ,

3 having been previously duly sworn, testified as follows:

4 MR. FITZ: Hello. My name is Chipper Fitz.

5 I'm new to the community. Me and my wife, my small
6 daughter moved out there from Lehigh Acres, where we
7 lived for 15 years. We lived on what was considered a
8 rural part of Lehigh Acres, which we were very happy.
9 It was all we could afford. We had about a half acre
10 of property, but there was nobody within probably what
11 we considered a three-or-four-block area of us, so we
12 felt like we were in a rural area. And in a period
13 of a short time, I'd say maybe a year, five houses went
14 up on our street. The construction took off. So it
15 impacted the roads greatly. Our roads were tore up.
16 It took two years for us to get the city of -- or the
17 people in charge of repairing the roads to actually do
18 something about the roads.

19 THE HEARING EXAMINER: Lee County DOT?

20 MR. FITZ: Right.

21 THE HEARING EXAMINER: Yeah.

22 MR. FITZ: So that's a big concern that we're
23 going to have here. I know these roads are going to be
24 tore up there and they're not going to be maintenanced
25 (sic) and they're not going to be repaired in what I

1 consider, you know, an adequate or timely manner. So
2 that's one unit we're going to have a big problem with.

3 we've done well in our business. We have a
4 considerable, what I would consider -- forgive me,
5 but --

6 THE HEARING EXAMINER: What type of business?

7 MR. FITZ: I'm an electrical contractor.

8 We've become one of the largest in Lee County.
9 At one time we employed over 125 people. The area has
10 suffered. It's a double-edged sword for me. If you
11 build, my business does well; if you don't build, it
12 hurts the business.

13 But we moved to this area, we've invested a
14 lot of money; and the piece of property that we've
15 purchased, we're building a nice home on the property.
16 We tried to build a home that we felt like the
17 surrounding community would welcome; and in terms
18 of that, it cost us extra money in order to reflect
19 a home that looked like it belonged in the area.

20 We have a very nice oak hammock on our property.
21 I have 12 acres. Six of my acres is water, which is
22 right on the curve. Actually, I own property that's
23 right on the -- right near the curve.

24 THE HEARING EXAMINER: Can you show me on the
25 aerial behind Josh there?

1 MR. FITZ: Where is Persimmon? Here?

2 THE HEARING EXAMINER: Yeah, that's Persimmon.

3 MR. FITZ: And where is the property?

4 THE HEARING EXAMINER: Right there.

5 MR. FITZ: See this big horseshoe right here?

6 That is all my property. All this water is my
7 property.

8 THE HEARING EXAMINER: The meat cleaver.

9 MR. FITZ: I own probably half that lake right
10 there that's governed and managed by Southwest Florida
11 Water Management, of which I have to pay taxes for but
12 I have no say over, you know, what's done on that lake.

13 We see in the short period of time during the
14 season changes that lake impacted greatly as far as
15 raising in rainy season and dropping in the dry season.

16 THE HEARING EXAMINER: Okay.

17 MR. FITZ: As far as the water goes, we drove --
18 we ended up driving a deep well, so we hit salt. We
19 have one of the most sophisticated whole house reverse
20 osmosis systems. That's what we required in order to
21 treat the water. The system cost me I think about
22 \$12,000 and it costs me about \$600 every three months
23 to maintain it. So it's a big investment in order to
24 have good quality water.

25 So if they're concerned with the shallow wells

1 drying up, it's a very big concern because some of
2 these people that have been out there don't have a
3 business, you know. They inherited their land. They
4 can't afford \$600 every three months just to treat
5 water, so that would be a big concern for them.

6 One of the big reasons we moved out there is we
7 wanted to start a family. We just have a six-month-old
8 little girl. If things go well, we're fixing to have
9 a second child. We just tested positive. Hopefully
10 the pregnancy goes well, but our hopes was to have our
11 kids go to the Alva Elementary and Alva Middle School.
12 And, like I said, that traffic runs right by my house.

13 We're out there every day, walking our children
14 up and down the road and our baby carriages and we meet
15 several of the neighbors that are jogging and walking;
16 and they're concerned about the extra traffic and the
17 road being very narrow. As it is, we show each other
18 common courtesy; but most of the people have lived
19 there all their lives, so -- I mean I've never lived
20 anywhere I felt more like home. I've been there eight
21 months and everybody here's probably pulled in my
22 driveway, you know, come up to introduce themselves.
23 If I don't go out there to see them, they're coming to
24 see me, you know.

25 And concern about this neighborhood is -- one

1 thing I have is the gate. I would like to see if
2 they're going to move in our area to leave it an
3 open area to allow us access. They're moving into
4 our community, so why not join our community instead
5 of sectioning themselves away from us.

6 I would like to see -- you know, we're not
7 obviously going to be able to travel Persimmon, so
8 maybe with the walks and the jogs would take place in
9 that dead end community.

10 The other thing is the access trails. They
11 keep referring to the access trails as general public
12 access. Is that open to us as well? And if it's open
13 to us, is it open to people outside of Persimmon Ridge
14 and, if so, how is parking to be managed or where is
15 this added traffic coming from?

16 THE HEARING EXAMINER: I think you're asking the
17 wrong people, because there's nobody here that knows
18 at this point.

19 MR. FITZ: Well, that's what general access is.
20 General access to public is just that, access to
21 everybody outside.

22 THE HEARING EXAMINER: Right.

23 MR. FITZ: And there's nowhere --

24 THE HEARING EXAMINER: I would say it would be for
25 anybody, for any member of the public, whether you live

1 in the immediate neighborhood or whether you want to
2 travel, you know, if it gets set up; but that -- parks
3 and rec did not show up for this hearing and so those
4 are questions that none of us can answer.

5 MR. FITZ: Right. Well, I just wanted to go on
6 record so that it's something that will be reviewed
7 and that question can be brought up if I'm not able to
8 attend the next hearing.

9 THE HEARING EXAMINER: Okay.

10 MR. FITZ: I did take off work today and my wife
11 took off. She wasn't able to stay because we couldn't
12 get a sitter for the child, but we do want to show some
13 concern.

14 And I know that, you know, it's a rural area.
15 I've seen community development orders go through in
16 my business where they would throw 500 homes on a
17 250-acre site. So personally, it seems like an
18 improvement; but the ten acres is what I bought and
19 that's what I'm held to and that's what I'd like to
20 see, because I did move out there for the privacy.

21 People that I bought the property from, sold
22 it to me, they had had it for 30 years, because they
23 were forced out in their mind or their wisdom or their
24 interpretation of the fact that town's getting too
25 close to them. You know, they've lived there, their

1 people -- their grandfather owned it before they did.
2 So I'm moving out there for the very thing that they
3 think is infringing on what their quality of life has
4 been, is now what I'm looking at is my quality of life.

5 And I may not have purchased had I known, you
6 know, that this -- I've got over \$2 million dollars
7 invested in my piece of property in a short period
8 of time and that's a big investment to take when you
9 think you're moving to a dead end street where you're
10 going to be able to raise your kids for 20 years and
11 have them play in the street and not be concerned
12 about the city life moving right on top of you. I
13 mean, I drive almost 45 minutes to work every day
14 just to get away from that.

15 So I understand that development is a necessity
16 of, you know, the population or area. Everybody's
17 moving to Southwest Florida, so we're not going to
18 have a choice; but my big concerns are if this one's
19 allowed, then what happens to the one behind them.
20 And there's a lot of big plots of land surrounding us.
21 And that will open the door for the next one and the
22 next one; and before you know it, they're becoming a
23 big piece of land in the middle of a small housing
24 development that has no say, you know, and has the
25 biggest investment.

1 So that's about all I have for today.

2 THE HEARING EXAMINER: Okay.

3 MR. FITZ: Thank you for hearing me. Appreciate
4 it.

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

6 (Discussion off the record.)
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1 Thereupon,

2 BURT SELLERS,

3 having been previously duly sworn, testified as follows:

4 MR. SELLERS: I don't sit down very often. I've
5 got fanny fatigue right now.

6 THE HEARING EXAMINER: I can believe it.

7 State your name, please.

8 MR. SELLERS: My name is Burt Sellers and I
9 live at 19500 Persimmon Ridge Road. My piece of
10 property backs up to this -- about a 75-acre lake
11 here. I have 21 acres.

12 I have to go around this corner -- we're talking
13 about a lot of traffic coming out, okay, a lot of
14 impact here. These are narrow roads. This road right
15 here, you cannot get two cars past it without running
16 off the road. So it's a very narrow road, Persimmon
17 Ridge.

18 THE HEARING EXAMINER: Okay.

19 MR. SELLERS: I first came to Lee County in 1970,
20 moved to Cape Coral in 1973, found the property out
21 in Alva, 2001, and left Cape Coral. I still have a
22 home in Cape Coral. The restrictions there have run
23 me out of Cape Coral. And my wife and I moved to Alva
24 to enjoy the open, rural life.

25 Lee County needs to keep some country land. Alva

1 is the lifestyle we like. It's a country lifestyle.

2 I hate to be repetitious; but we have concerns
3 about water, we have concerns about traffic.

4 I just built my house three years ago. I have a
5 20-foot well. It's adequate right now. I feel within
6 the distance of this development I'll be putting in
7 a reverse osmosis system, whole house. I'll be
8 spending ten or fifteen thousand dollars because of
9 this development, because of the change in density.
10 If you keep it at one per ten, I may still have a
11 water problem; but at least at one per ten I can't
12 complain about it. It happens with growth.

13 Please do not let these people change. It's
14 going to affect every one of us out there, our
15 children, our grandchildren. Just please don't do
16 this.

17 Thank you.

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

19 Are you fixing to bolt out the door?

20 MR. FREDYMA: We're going to switch attorneys
21 in a few minutes here because I have another commitment
22 at 5:00.

23 THE HEARING EXAMINER: Oh, okay. I was going to
24 say if you're bolting out the door --

25 All right. State your name, please, ma'am.

1 Thereupon,

2 BARBARA WATTS,

3 having been previously duly sworn, testified as follows:

4 MS. WATTS: Hi. I'm Barbara Watts. I live
5 at 21400 Walker Farm Court, which is on the corner
6 of Persimmon Ridge and Walker Farm Court. And my
7 concerns are basically the same as everyone else's,
8 the water -- probably not so much the water because
9 I can also attest, as you have, that we dug deep for
10 a well and first day there it was like can't live with
11 the salt. So we're on that same thing, so if they're
12 thinking of digging deep there, they should at least
13 let their people know and not surprise them that
14 they're not going to like it.

15 I'm really concerned with the traffic area.

16 THE HEARING EXAMINER: You can pull that down a
17 little farther. I see you standing up on your tiptoes.
18 I realize you're a little short person.

19 MS. WATTS: I'm just very short.

20 I'm very concerned with the traffic. It is a
21 narrow road, and we are right on Persimmon Ridge.

22 I personally would hate to see the road widened;
23 but I also -- you know, we take walks there in the
24 evening with our dogs, my neighbors take walks. One
25 of my neighbors has some cows that sometimes get out.

1 THE HEARING EXAMINER: Oh, cows.

2 MS. WATTS: And I love looking at the cows on
3 both sides of me.

4 We moved there because it was rural. We didn't
5 want to move into Fort Myers where it was a traffic
6 nightmare, where every single home was butted up
7 against each other, where you couldn't get out and
8 walk and, you know, just be comfortable; and the
9 people in the community have greeted us, have welcomed
10 us. They're wonderful people. To have a community
11 like what they're building here, if it's all going to
12 be enclosed, it's like a separate little cut-off thing.
13 I mean they're alienating people.

14 But my main concern is the water and the traffic;
15 and there will be a lot of traffic going down there
16 and it won't be safe. And I know, even on the corner
17 right now of 80 and Broadway, I pulled out one day --
18 it wasn't during school time, it wasn't during rush
19 hour, it was like 10:30 in the morning -- there were
20 six cars making a turn either right, left or going
21 straight across at the same time in that intersection.
22 It's a very dangerous intersection right now without
23 90 more cars going down there, plus.

24 And I would hope to see it stay -- what is it,
25 one per ten -- as one per two acres or something like

1 that.

2 THE HEARING EXAMINER: Okay.

3 MS. WATTS: Yeah. Thank you.

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

5 Anyone else?

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1 Thereupon,

2 WAYNE ROWAN,

3 having been previously duly sworn, testified as follows:

4 MR. ROWAN: You all done talked about everything
5 before I get up here.

6 UNIDENTIFIED SPEAKER: We know you like to talk.

7 MR. ROWAN: No, I've got to come up here anyway
8 and get hollered at.

9 How are you?

10 THE HEARING EXAMINER: I'm fine. How are you?

11 MR. ROWAN: I'm fine.

12 THE HEARING EXAMINER: I'm hoping it's your wife
13 that's going to be hollering at you because it's not
14 going to be me.

15 MR. ROWAN: No, ma'am.

16 THE HEARING EXAMINER: All right. State your
17 name.

18 MR. ROWAN: My name -- my legal name is Wayne
19 Rowan. I live at 19550 Goin Outback Drive.

20 THE HEARING EXAMINER: G-O-I-N?

21 MR. ROWAN: Yes, ma'am. If you go around
22 Persimmon Ridge and you come on out east and you cross
23 the little bridge, you hook a left, you go all the way
24 up there to the orange grove, that's where I live.

25 That's my place right there.

1 THE HEARING EXAMINER: Okay.

2 MR. ROWAN: Nope. There's Goin Outback Drive.
3 Here I am right here. This is me.

4 Everybody's already said everything I was going
5 to ask about.

6 I worked with Bonita Bay for probably the last
7 five, six years; and I did Sandoval, The Veranda and
8 projects like that.

9 You know, they're a good company to work for.
10 They come in, they done their thing, you know, build
11 all these big lakes. I've been opposite of Kim several
12 times. Done all their big lakes and all, you know;
13 and like these people said, whenever they done it,
14 water wells, Fort Myers Shores, are started having
15 problems with water wells.

16 I've got a 13-foot well that's probably 30 years
17 old. Whenever I moved on the property, the well was
18 there. I drink the water out of it. The county deemed
19 it good. Put my house there and I live there. But I
20 live there because it's one per ten, you know. I got
21 cows, kids. I've got a lot of the land all the way
22 around leased with cows on it. What I don't have,
23 Jim's got, you know. And you're going to bring all
24 them people in there -- if I wanted to live there,
25 I'd live in Fort Myers Shores, you know. I'd move

1 in The Veranda and learn how to play golf. I've never
2 played golf. Built several golf courses, never played
3 it in my life. Can't even relate to it.

4 But Keith and them's already covered everything,
5 you know, that I had questions. You guys answered it
6 very intelligently; but I'm just opposed of it, you
7 know. I mean, where else am I going to go? There's no
8 where else to go. If you keep adding in development,
9 adding in development, pretty soon, you know, we're
10 going to have developments on top of developments.

11 It's just a shame, you know, that you put a law
12 in effect to keep things like that and then somebody --
13 I mean nothing against you all guys; but somebody
14 comes in there with a lot of money, you know, and
15 throws it down and gets all their legal stats in line
16 and everything and things can be changed, you know.

17 If I come before you and ask you to split my
18 land up, which I wanted to give my kids some, no way.
19 Couldn't do it. Couldn't touch it, you know. I was
20 told no. But then somebody comes in that got a few
21 dollars and does everything the right way and all and,
22 you know, it's considered.

23 Let's keep it one per ten.

24 THE HEARING EXAMINER: Okay.

25 MR. ROWAN: That's basically it. Thank you.

THE HEARING EXAMINER: Thank you, sir.

1 Thereupon,

2 FLORENCE DENNISON,

3 having been previously duly sworn, testified as follows:

4 MS. DENNISON: I teach five days a week, but I'm
5 nervous in front of people.

6 THE HEARING EXAMINER: State your name.

7 MS. DENNISON: I'm Florence Dennison. I live at
8 19231 Persimmon Ridge Road, which is right next door
9 to where the development's going to be.

10 THE HEARING EXAMINER: Okay.

11 MS. DENNISON: And our property has been in your
12 family a long time, since my great-grandparents, and
13 grandparents bought it a long time ago.

14 We live in Alva to get away from the noise and
15 people and we enjoy the quiet life because I work in
16 Lehigh; and when I hit Persimmon Road, I'm saying,
17 (indicating), I made it home another day.

18 And, also, there's going to be a lot of traffic
19 on the road; and this road is just small because you
20 do have to kind of move over when you see a big truck
21 coming.

22 And also the Persimmon Ridge preserve and Spanish
23 Creek preserve, they both border on Persimmon Ridge
24 Road and they have been set aside to protect the
25 species and the land, and increased traffic will

1 endanger the wildlife that travels in and out of these
2 preserves.

3 I personally have seen turkeys, deer, sandhill
4 crane, foxes, raccoons, bald eagles fly across, the
5 big woodpeckers that are rare to see, that -- I don't
6 know why they're saying that all they're seeing is
7 gopher turtles, because if they're out there and they
8 live out there, they'll see all this other stuff, too.

9 But it's really important to us to keep the
10 wildlife.

11 And I felt kind of insulted whenever they said
12 that if they don't -- if they keep it at one per ten
13 because of the environmentally sensitive land, that it
14 won't be taken care of. Well, I have environmentally
15 sensitive land, too; and we don't do anything with it.
16 We let it take care of itself. It's preserved. You
17 know, I mean it insulted me to say that it will be
18 better taken care of if they divide it up.

19 And also I think that the developer and Barraco
20 Associates should have come to the community and let
21 us know what was going on before we seen the big Z
22 sign at the property.

23 And I ask you not to change the zoning from one
24 home per ten acres for those reasons.

25 Thank you.

1 THE HEARING EXAMINER: Thank you, ma'am.
2 MS. GREEN: I'd like to say something.
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1 Thereupon,

2 NANCY GREEN,

3 having been previously duly sworn, testified as follows:

4 MS. GREEN: Hi. My name is Nancy Green and I
5 live at 19370 Persimmon Ridge Road. I'm Frank Green's
6 wife.

7 And this could end up being the worst thing said
8 today because everybody planned on speaking to you all
9 and I did not. So just sitting here listening to
10 this --

11 THE HEARING EXAMINER: Are you sworn in?

12 MS. GREEN: Yes, I did go ahead and do it with
13 you; but I thought I'm not going to say anything,
14 but I'll go along with it.

15 well, after listening to this, I agree with
16 Florence. I was offended at the comments it would
17 not be taken care of, the wetlands and so forth of
18 our land, unless it is changed from the one per ten.

19 I think that we have a lot of wetlands in the
20 back of our property which has been my husband's
21 family's property since the late 1800s. My husband
22 and I raised two sons on these properties, walking,
23 looking at the cypress knees, walking through the
24 swamps, their heads totally covered in caesars,
25 watching the trees bloom and everything; and we don't

1 do anything to it either. We let it take care of
2 itself because we like it, we like where we live.

3 And our oldest son is now married and has two
4 children, two boys, and somehow or rather I got the
5 name as Minnie, so maybe that's why I'm standing
6 here speaking; but I like our two grandsons stomping
7 through the woods and seeing the trees. They know
8 what raccoons are, they know what gopher turtles are,
9 they know hoopers, they know all of the wildlife that's
10 out there because they've seen it and they're ages two
11 and four.

12 We watched Keith's kids grow up, running down
13 the road. We wave at everybody walking, everybody
14 jogging. It doesn't matter whether you know who they
15 are or not, you just wave. It's kind of like the old
16 time wave. As Frank's mom used to say, she waves.
17 Well, it doesn't matter who you are, I wave at you
18 anyways, because that's just how we are on Persimmon
19 Ridge. We're kind of a family.

20 My husband yelled at some kids for the way they
21 were racing their four-wheelers up and down the road.
22 I think a little offense was taken to that; but he
23 meant it all in love because we had kids running up
24 and down the road on four-wheelers, too. We don't
25 want to see anybody's kids hurt. We don't want to see

1 anybody blocked out.

2 We resent, also, I think I can say, that people
3 want to live behind a wall. We're just good people.
4 We don't want anybody to live behind walls.

5 And as everybody said, the water is truly an
6 issue. I've watched my husband for the last two
7 months fret over water. We have citrus groves. Our
8 family, his family, has had citrus groves on this
9 property for a hundred years. We don't want it to
10 change. We like it like it is.

11 When people move to our road, they moved knowing
12 it was ten acres. They moved knowing they could jog
13 down our road and not worry about it. Their kids
14 could play, their dogs could run. What are these
15 people going to do when these cows get out and stomp
16 through their yards? Their well-maintained yards.
17 Happens to all of us. You just get out and help each
18 other and straighten it out or fix the fence.

19 That's all I have to say. Thank you.

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

21 MS. DANIELS: I want to testify as a
22 representative of Alva, Inc., and as an individual.

23 THE HEARING EXAMINER: All right. Miss Daniels
24 is testifying in two capacities. She's going to
25 testify as an individual property owner and as a

1 representative for Alva, Inc. She is here authorized
2 to speak for them and for herself, so I've asked her
3 to fill out two public participation forms so that if
4 someone from Alva, Inc., wants to speak in front of
5 the board, it would not necessarily be her, but she
6 would still have the right to speak in front of the
7 board as an individual.

8 MR. FREDYMA: Alva, Inc., asked -- either the
9 board or whatever asked her to come here today?

10 MS. DANIELS: Yes. I have the authorization of
11 the board of directors to speak at all public meetings
12 relating to land development decisions.

13 THE HEARING EXAMINER: All right. And you are
14 sworn in?

15 MS. DANIELS: Yes, ma'am.

16 THE HEARING EXAMINER: All right. State your
17 name, please, for the record.
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1 Thereupon,

2 RUBY DANIELS,

3 having been previously duly sworn, testified as follows:

4 MS. DANIELS: My name is Ruby Daniels. I live at
5 18100 Persimmon Ridge Road.

6 THE HEARING EXAMINER: All right. Now let me sort
7 of guide you here.

8 Give me your comments for Alva, Inc., first. All
9 right? That way we can get them over to one side. And
10 then give me your personal comments. That way we have
11 them separated, but we know what the position is for
12 each entity here. Okay?

13 So start with Alva, Inc.

14 MS. DANIELS: Okay. I'm speaking as the
15 representative of our local civic group, Alva, Inc.
16 I am the interim president of Alva, Inc. The Alva
17 in Alva, Inc., stands for A Living Vision of Alva.
18 Its mission is to preserve and protect the unique
19 historical, rural, agricultural and small town flavor
20 of Alva.

21 We in Lee County were empowered by the Lee
22 County Commission to write a community plan. We were
23 incorporated in the year 2001 and submitted a community
24 plan to the county staff for review in 2002. We now
25 have a revised community plan being reviewed by the

1 county staff.

2 THE HEARING EXAMINER: Hold it, hold it.

3 Okay. So now being reviewed by county staff.

4 MS. DANIELS: Other developers are meeting with
5 us on a regular basis to review their development
6 plans, among them Bonita Bay and Kitson and Partners.
7 We have individuals who are coming to us to review
8 their request for zoning changes before submitting an
9 application to the county because they support our
10 mission and wish to be in compliance with it.

11 These developers, Barraco and Associates, Inc.,
12 and Adar, or Adar Investments, LLC, did not give notice
13 to us and seek input. We question why.

14 We object to their planned development for the
15 following reasons and ask them to change their plan
16 accordingly.

17 Number 1: The plan deviates from Lee County
18 Plan's density reduction for groundwater recharge
19 that currently requires no more than one home on ten
20 acres. This is a very important part of the Lee County
21 Plan in order to recharge the aquifer and filter storm
22 water. We strongly feel that the groundwater discharge
23 density continue as currently designed.

24 Number 2: This development is adjacent to the
25 new Babcock state park and currently the wildlife that

1 uses the park traverse this land to feed in other
2 areas. This development would seriously impact the
3 new state park wildlife.

4 Number 3: This development proposes to scatter
5 houses across the 250 acres. This impacts land far
6 more than it would if these homes were clustered
7 together.

8 Current plans by Bonita Bay and Kitson and
9 Partners cluster homes in their developments in order
10 to have less impact on the wildlife and rural lands.
11 We want this development to do the same and cluster
12 the houses as closely as possible.

13 Number 4: I'm not sure whether I should address
14 it or not because we were going to speak to multiple
15 berms; but if there are not going to be any berms,
16 then we won't address that issue.

17 THE HEARING EXAMINER: Okay.

18 MS. DANIELS: We are, Number 5, as a civic group
19 asking that all new developments adapt the Florida
20 Green Building Coalition's Green Development standard
21 as a guide to develop their communities. Other
22 developers already mentioned are implementing those
23 standards or are tentatively in the process.

24 We have not taken a no-development position. We
25 are asking that developments that come to our community

1 be designed as Smart Green development.

2 And I would like to speak in a different direction
3 now and paint you a picture of Alva. I think some of
4 the people that have --

5 THE HEARING EXAMINER: Are we --

6 MS. DANIELS: This is still --

7 THE HEARING EXAMINER: All right. You're still
8 for Alva, Inc.?

9 MS. DANIELS: Still for Alva, Inc.

10 THE HEARING EXAMINER: All right. When you start
11 doing a different direction, I wasn't sure where we
12 went then.

13 MS. DANIELS: I apologize.

14 THE HEARING EXAMINER: That's all right.

15 MS. DANIELS: I'd like to paint for you a picture
16 of Alva. It's like no other place in Lee County.

17 Alva is the oldest settlement in Lee County. With
18 its huge oaks and cypress trees, the Caloosahatchee
19 River, citrus groves and cattle ranches, Alva has a
20 special country ambiance that is becoming very hard
21 to find in Lee County.

22 The people of Alva have always been friendly.
23 Welcoming newcomers to our community and integrating
24 them into our way of life, into our schools, our
25 churches and our lifestyle just comes naturally to us.

1 If you travel to Alva via scenic County Road 78
2 or North River Road, as it's called, you will pass
3 through a countryside that has farm animals grazing
4 in pastures and orange groves. You'll see Telegraph
5 Creek and Cypress Creeks right before they flow into
6 the Caloosahatchee River. If you want to, you can
7 camp or have a picnic lunch at the Franklin Locks
8 campground. You'll see beautiful country homes, modest
9 homes and old farmhouses. The Caloosa Regional Park
10 invites you to come enjoy its beauty. And in the small
11 town of Alva you can see a 100-year-old church, a
12 museum that tells the story of Alva's unique history.
13 The architecture of its school buildings tell a story
14 of our past and of our future.

15 If you follow 78 through Alva, you can exit just
16 north of the community park onto Persimmon Ridge Road.
17 You are greeted by large oaks that arch over the road.
18 Oak trees line the west side and Daniels Preserve at
19 Spanish Creek, a 2020 project, begins on the east side.
20 The drive continues past oak, cypress and cabbage
21 trees, houses and pastures and orange groves until
22 you come to the curve. That's where the development
23 is to be located.

24 The road narrows to one lane as you cross a wooden
25 bridge over Spanish Creek and on past Frank and Nancy

1 Green's orange groves, on to Persimmon Point, where
2 people have built estate homes on ten-acre lots. This
3 area is known by the residents as Persimmon Ridge.

4 Many residents of Persimmon Ridge had grandparents
5 who settled there in the early 1900s and passed the
6 land on to their children and grandchildren. Their
7 roots and the love of the land are deep. There are
8 newcomers who are also passionate in their love for the
9 area and have become good friends with the old timers.

10 It is the epitome of country rural life.

11 I conclude that Alva, Inc., opposes this
12 development as presented for all of the previously
13 cited reasons.

14 And now I would like to speak as an individual
15 and I have no prepared speech for that.

16 My house is the second house on Persimmon Ridge
17 Road. Those oaks that arch over the driveway, one is
18 in my front yard and the other is on the other side of
19 the road, and my cow pasture.

20 I, too, am concerned about the water. I have a
21 19-foot well. And water is an issue out there because
22 you've been told about the orange groves to the north.
23 When those groves were put in and all of the drainage
24 canals were put in, that took the water that normally
25 flowed over Persimmon Ridge -- and, by the way, that

1 area in which the development is located, plus the
2 area to the east, where we had a good sheet flow of
3 water in years past, is known as Cow Prairie Cypress,
4 a beautiful name for the area. That drainage project
5 has dried up Persimmon Ridge a great deal.

6 There are houses built out there now in areas
7 that could not be there if we had the normal sheet
8 water flow that we used to have; and the further away
9 you get from the drainage area, the drier it becomes.

10 The pasture and front of my house, there's about
11 20 acres in that one area. Twenty, 25 years ago my
12 husband and I grew lush, green grass in that pasture
13 and turned it into hay. It fed our cows all winter
14 long. Now, all I can grow in that pasture is rag
15 weed in the summer -- it grows really well when it's
16 raining -- pawpaws, which are a drought tolerant plant,
17 and prickly pear. Very little grass grows there.

18 So when we talk about digging more borrow pits --
19 and they will be borrow pits, that's what they are out
20 there, not lakes -- and we talk about the evaporation
21 rate of the water from those lakes, I have a great
22 concern that the water table is going to be lowered
23 even further than it is now and all of us who have
24 those good water shallow well systems will suffer as
25 a result of that.

1 I'm also concerned about the traffic because
2 I'm one of those people that likes to get out on
3 Persimmon Ridge Road with my dog and walk him or, as
4 the neighbors say, the dog walks Ruby. He's as big
5 as I am. And he enjoys walking on the road and
6 sniffing all the trails of the animals that have
7 wandered across Persimmon Ridge Road. Sometimes
8 they see me going in circles following my dog, but
9 that's okay because that's how my dog enjoys his life.

10 I have another issue that's very dear to my
11 heart, and that is the Daniels Preserve at Spanish
12 Creek.

13 My family -- my husband's family is one of
14 those families that's been on Persimmon Ridge since
15 the early 1900s when my husband's grandparents settled
16 there and acquired property and brought their son
17 there; and they raised children there and I married
18 one of those children and we raised our children on
19 Persimmon Ridge, so my roots go deep there also. My
20 love of the land goes deep -- and pardon me if I get
21 emotional about it, but that's just the way I feel.

22 My husband passed away 15 years ago and I
23 struggled to keep up our cattle operation, but it's
24 always been difficult to do even with the help of
25 my son; and a few years ago back I decided to offer

1 part of my property to the 2020 program. It is a
2 beautiful, almost pristine piece of property. There
3 are three borrow pits in it that were dug in the 1960s,
4 before my husband and I got the property. Otherwise it
5 is as God made it.

6 So when I offered my property to the 2020
7 Conservation program, Roger Clark and Linda Riley
8 came out and walked the property with me; and if
9 you're familiar with the program, you know they have
10 an evaluation system for the properties that they buy.
11 This property got the highest rating that any piece
12 of property could get under this system. It is a
13 beautiful piece of property. It has oak hammocks on
14 it, it has a small cleared area for a cow pasture,
15 it has beautiful big pine trees and it has a wetlands
16 area; and it used to have a wonderful cypress head on
17 the north end, just south of where Nancy and Frank
18 live, but the cypress head has been dried up and is
19 becoming a mixed hardwood forest due to the drainage
20 project to the north and to the east of our property.

21 The reason I donated it to the 2020 program is
22 because I never, ever want to see those beautiful
23 trees bulldozed to build a house. Never. And so I
24 placed my trust in that program. Not only did I want
25 to conserve the native vegetation that's there, I also

1 wanted it to be a safe haven for all of the wildlife
2 that lives in our area.

3 And as my cousin Florence told you, I don't
4 know when the people who were doing the tallying of
5 the wildlife that's out there were there, and I'm sure
6 that you're very good at your job, but you need to be
7 there when we're there and see the wildlife that we
8 see. I know that wildlife crosses Persimmon Ridge
9 Road going out into other areas to feed, because
10 wildlife does not respect political boundaries and
11 they don't respect fences very well either. They
12 come and go where their ancient instincts tell them
13 to come and go to forage.

14 Traffic concerns me, because increased traffic
15 on this road is going to have a great detrimental
16 impact on the wildlife that comes and goes there.

17 So as an individual I also urge you not to allow
18 an increased density on this property.

19 I also love our rural country lifestyle. I have
20 wonderful neighbors, these are wonderful people sitting
21 out there in the audience; and we are like a small
22 family out there. We want that to stay that way. We
23 don't want it changed.

24 Thank you.

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

1 MS. DANIELS: If I may just add one comment that
2 I just forgot to mention about RO systems. RO systems
3 require one gallon of water to be wasted in order to
4 produce one gallon of drinkable water, which seems to
5 me like that should be a concern as well.

6 Thank you.

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

8 Can I see a show of hands, how many other people
9 wish to speak?

10 So there's two others that wish to speak after
11 this gentleman?

12 All right. Because we're going to have to start
13 wrapping this up, folks; and do let me say one thing to
14 everybody. Now, I don't have a problem with everybody
15 saying their piece; but when you get before the Board
16 of County Commissioners, they are not as lenient. They
17 give you about three minutes. So you need to keep that
18 in mind when so you get in front of the board, because
19 they will have already read the summary. All of this
20 goes into a summary and the board gets the summary, so
21 they'll know what your concerns are when they come in
22 for the hearing, the zoning hearing over in the Board
23 chambers. They will already know what everyone has had
24 to say about this, so, you know, they don't want you to
25 go through and repeat everything that you said to me.

1 They sort of want a condensed version, you know, the
2 Reader's Digest version. So just letting you know in
3 advance that you won't get the same opportunity in
4 front of the Board of County Commissioners.

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

2 WILLIAM GREEN,

3 having been previously duly sworn, testified as follows:

4 MR. WILLIAM GREEN: My name is William Green.

5 I'm Frank and Nancy Green's son. I grew up in 19370
6 Persimmon Ridge Road.

7 What I want to do is I want to shed a different
8 light on this thing, the water, the roads and all.

9 The person that's applying for this made an
10 investment. Okay, I'm in construction. I make my
11 living building homes. He made an investment on a
12 piece of property he knew what it was set up for,
13 one to ten. The market has slowed down. He got burnt.
14 If he's got the money, he can hold it out and he's got
15 a gold mine, 250 acres, 25 homes, ten-acre piece of
16 property in pristine Alva. You can't get much better
17 than that. Unfortunately, he's in a bind because the
18 market slowed down, so now he's got to get his
19 resources together and try and make up for his loss.
20 You know, because of one man's investment -- you make
21 an investment, you either win or lose. Right now he's
22 in a tight spot.

23 All I want you to do is keep in consideration
24 that this was an investment one person made, or one
25 company made, to make more money. That's fine. That's

1 how the world works. We all a work for money. The
2 world goes around by money. But don't let his bad
3 investment or bad timing, we'll say, determine how
4 this piece of property is used.

5 Not only does it affect the water, it affects
6 the traffic, it affects everyone in the community.
7 So I'm asking you, please, I grew up on Persimmon Ridge
8 Road.

9 THE HEARING EXAMINER: You don't want to see it
10 changed.

11 MR. WILLIAM GREEN: I don't want to see it changed
12 because of one guy's bad investment.

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

2 DAVID RICE,

3 having been previously duly sworn, testified as follows:

4 THE HEARING EXAMINER: All right. State your
5 name.

6 MR. RICE: I'm David Rice. I live on Goin
7 Outback Drive and I am right there where that big old
8 pond's at, on the very northeast corner of it.

9 I got no problem with the people that are over
10 there. They're nice people. They -- my daughter
11 rides with them every once in a while. But, no, I
12 don't want to see it over there neither.

13 I also talked to them about doing some work. I
14 also own Dave's Excavating, also; plus I also own C
15 and R Motor Sports, which is in Palmdale, and there's a
16 bunch of people that ride and have four-wheelers and
17 horses and whatever else they want to ride that they
18 bring.

19 But, anyhow, I ain't here to talk about that.
20 I want to talk about the water. Yeah, the water is
21 salty out there.

22 The wildlife out there. Yeah, there is some
23 wildlife out there. Jim Dennison kind of something
24 here a while back, he said, "Look out there in front,
25 there's three does going across you-all's field right

1 now." No kidding. There's coyotes running all out
2 through there. They catch a calf or two every once
3 in a while. We got some turkeys that run around out
4 through the field.

5 Every morning when I walk out my back porch, I
6 look to the left in that field and there's a beautiful
7 cypress head sitting right there and I like that
8 cypress head. That's something you see every morning
9 that don't change, and you can't change it because
10 it's something -- part of wetland material. And behind
11 us over there we got -- there's deer, there's hogs.
12 There's a little bit of everything over there. I've
13 had hogs come all the way up to the fence and pace back
14 and forth trying to get in my fence to get with our
15 hogs.

16 I got three cows and a horse and I got one little
17 girl that just loves to ride her horse. And she also,
18 you know, every once in a while, rides up and down the
19 road with her horse, see another friend or what have
20 you.

21 I don't want to see anybody else get up out
22 there. I'd like to keep the whole gall darn place
23 to myself if I could, but I can't. So my -- I'd just
24 rather not have it out there if it's any way possible.
25 It might knock me out of some work on it, but I'd much

1 rather have the peace and quiet, because it's very
2 quiet there where we are.

3 Thank you.

4 THE HEARING EXAMINER: Thank you, sir.

5 And our last speaker.

6 MR. FOSHEE: I need to be sworn in, please, ma'am.

7 THE HEARING EXAMINER: Go up to the podium,
8 please.

9 Raise your right hand.

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1 Thereupon,

2 JOHN FOSHEE,

3 having been first duly sworn, testified as follows:

4 THE HEARING EXAMINER: State your name.

5 MR. FOSHEE: My name is John Foshee. I live at
6 32141 Persimmon Point Drive, which is -- I live way
7 down here, which is directly east of the subject
8 property.

9 THE HEARING EXAMINER: Okay.

10 MR. FOSHEE: I'm going to be brief because Frank's
11 covered stuff; Ruby's -- everybody in this room has
12 covered stuff. There's passion in the room.

13 where we live is a special place. It's a special
14 place. Frank's family has been there since the 1890s.
15 Ruby's family's been there.

16 If the subject property applied for a permit of
17 25 houses, we wouldn't be here today. Right? No
18 problem. One per ten. We're moving on. Money got
19 in the way, as Frank's son said, a lot of people have
20 said; but it's more than money. It's set up as the
21 Lee Plan one per ten. They set it up this way for a
22 reason 25 years ago -- 27 years ago, to protect the
23 land.

24 Ag land, as I think Keith spoke, ag land is
25 better for the recharge of water as opposed to

1 residential land, because ag land regenerates water
2 more.

3 Okay. Touched on the wildlife, touched on the
4 traffic.

5 Again, it's a 90-degree corner. It has an impact
6 to everybody that lives east of the proposed subject
7 property. As everybody's coming in down Persimmon,
8 all of us that live here, we don't see those cars.
9 They don't stop. Previous owners don't stop. The
10 previous owners before them didn't stop. I don't think
11 Mike Sanders ever stopped when you guys, you know --
12 rolling on in, right? He can't see, we can't see.
13 Everyone's pulling equipment. Dave Rice is pulling
14 equipment. Rojo pulls equipment. Our family pulls
15 horse trailers, all of our neighbors pull horse
16 trailers. You're not driving very fast, 25, 30 miles
17 an hour speed limit, it's kind of hard to stop 15,000
18 pounds.

19 It's a concern. You can't see.

20 They talked about making this an equestrian
21 facility. The best way I counted acreage, it's 15
22 acres. How many horses? My question is how many
23 horses? If you have 45 proposed home sites, does
24 everybody get one horse? Five horses? Ten? You got
25 fifteen acres.

1 I have 40 acres where I live. We have six horses.
2 It's a drain on the resource because horses are bad
3 grazers as a general rule. Everybody would agree with
4 that. And what I mean by that, they don't -- cows
5 graze pretty evenly. Horses will go to one spot and
6 just eat it all up.

7 So what I propose is everybody -- say each person
8 has a horse. I'll make this brief. Each person has a
9 horse. There's 45 horses, we have 45 horse trailers.
10 where do they go? We only have 15 acres by your --
11 the master -- I'm sorry, I'm not familiar with the
12 terminology -- master concept plan?

13 THE HEARING EXAMINER: Concept plan, uh-huh.

14 MR. FOSHEE: There's 15 acres of recreation and
15 other. Where does that leave all these horses? In a
16 barn? It's a large barn.

17 I'm not saying this to be funny. I'm saying it
18 to be real world application. I built a six-stall
19 barn. I have six horses. As anybody here can attest,
20 how big your barn is, you have that many animals. It
21 happens.

22 If 45 is good today, what brings tomorrow? I
23 was reading these -- the plan that at any time they
24 can change their master plan, that the company can
25 come before the board again. Forty-five today. Let's

1 push this area here, let's change this, get ten more
2 houses. Or I can cut these pieces because they're not
3 selling as fast, so let's cut these back. Again, we
4 sold 20 home sites, these aren't selling, so let's cut
5 them in half again, make them more affordable.

6 If we cut this in half and let this developer
7 go beyond the one per ten, we're asking then for future
8 development, whether it be Florida Citrus, Bonita Bay,
9 whoever it may be, that's in a one per ten area, to
10 say you let him do it, why not me. He got cut in half,
11 why not me. I have 3,000 acres. I'm zoned one per
12 ten. That's 300 houses, right? I want 600 houses and
13 I'm going to come down your road.

14 That's going to end it with country living.

15 we live out there for the reason; the rural
16 lifestyle, the quiet lifestyle, the country lifestyle.
17 When I turn the corner on Persimmon Ridge off of State
18 Road 78, which is North River Road, I'm coming home.
19 You go across 78, make the left turn and it's almost
20 like peace sits over you. You wave to Ruby, she's in
21 the ditch, her dog is dragging her down the road. True
22 story. Miss Brenda that spoke, the lady in the black
23 shirt, she walks her dog. I see Keith's kids riding
24 their bicycles, you know, and occasionally the
25 equipment.

1 We'll address the road traffic. Again, the
2 road is narrow. Dave Rice is coming, there's a horse
3 trailer coming, you're going to have to inch off. The
4 road is not ready for an additional potential 90 plus
5 cars.

6 So please keep it one per ten.

7 Thank you.

8 THE HEARING EXAMINER: Thank you, sir.

9 All right. Folks, anyone else wish to speak who
10 has not spoken? This is your last opportunity. If
11 you do not speak to me, you do not speak to the Board
12 of County Commissioners.

13 All right. Russ, you need a few minutes?

14 MR. SCHROPP: Yes. If we could. How late are we
15 willing to go?

16 THE HEARING EXAMINER: Well, I need to be out of
17 here before 6:00.

18 MR. SCHROPP: I doubt it.

19 THE HEARING EXAMINER: It's 5:25 now. You don't
20 think so?

21 MR. SCHROPP: I don't think so.

22 THE HEARING EXAMINER: All right.

23 MR. PHILPOTT: Not with the amount of rebuttal
24 and issues that need to be addressed for the general
25 public.

1 THE HEARING EXAMINER: All right. Well, then I
2 need to make a phone call.

3 All right. Let's take ten minutes, folks,
4 because we are not even supposed to be up here after
5 5:00. Let's take ten minutes and can you get our stuff
6 together in ten minutes?

7 MR. SCHROPP: Possibly. Is the idea to continue,
8 to go later tonight or to continue to another date?

9 THE HEARING EXAMINER: No. No, I don't want to
10 continue it to another day. I want to finish it up
11 tonight if at all possible. I just need to make a
12 phone call because I have a meeting at 6:15 I've got
13 to see if I can set back a little bit.

14 MR. SCHROPP: Okay.

15 THE HEARING EXAMINER: All right. Ten minutes.
16 (Proceedings in recess.)

17 THE HEARING EXAMINER: Okay. We're back on the
18 record.

19 All right. Now, at this point in time, I'm going
20 to -- hang on just a second, Russ.

21 I want to offer one more time. Anybody in here
22 who has not spoken that wants to speak on this matter?
23 Because once we start in with the applicant's responses
24 to your questions and concerns, there will be no more
25 testimony from the public.

1 So nobody else wants to speak?

2 All right. Russ, let's do it.

3 MR. SCHROPP: Thank you. Russell Schropp for the
4 record.

5 As part of our rebuttal, I think we're going to
6 hit about three main issues; and the recurring issues
7 that we heard from the testimony were the road, the
8 quality of the road along Persimmon Ridge Road, number
9 one; well field or well concerns, water concerns
10 expressed by the residents, which we'll address; and
11 also the comp plan, one unit per ten acre versus one
12 unit per five acre change, as many of the residents
13 phrased it.

14 The rest of our consultant team is available.
15 If there are issues that you think we need to address,
16 we're certainly available to address them beyond that
17 scope; and we'll be happy to do so if you'd like.

18 But I think first of all I would call Carl
19 Barraco. He did not testify as part of our case in
20 chief; but he is, as you know, a civil engineer, has
21 previously been accepted in this forum as an expert
22 in civil engineering; and I would offer him at this
23 point and he's going to address primarily the road
24 issue.

25 THE HEARING EXAMINER: Carl, you are sworn in?

1 MR. BARRACO: Yes, ma'am.
2 THE HEARING EXAMINER: All right.
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1 Thereupon,

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

5 MR. BARRACO: For the record, Carl Barraco. I'm
6 a professional engineer with Barraco and Associates
7 and I have been involved with this project since the
8 beginning.

9 I'll talk about the roadway first, because that's
10 I think the simplest issue to take care of.

11 THE HEARING EXAMINER: Russ, did you want to
12 qualify him?

13 MR. SCHROPP: Yes. I asked if he could be
14 accepted as an expert in civil engineering.

15 MR. BARRACO: I thought we had done that. I'm
16 sorry.

17 THE HEARING EXAMINER: All right. I was waiting
18 for him to make any additional statements.

19 All right. Any objections from staff or the
20 applicant -- I'm sorry, staff or the County Attorney
21 to this witness being accepted as an expert in civil
22 engineering? He has been in the past.

23 MR. PHILPOTT: Right. No objection.

24 THE HEARING EXAMINER: No objections?

25 MR. SPICKERMAN: No objection.

1 THE HEARING EXAMINER: All right. Accepted then.

2 MR. SCHROPP: Thank you.

3 MR. BARRACO: I'll continue on with the road, and
4 that's the off-site road issue.

5 This has come up in several other cases in the
6 past, and the way it is typically handled is through
7 the Land Development Code. We have not asked for any
8 deviations. There are standards for public roads in
9 order for a project like this to occur, so I really
10 don't see any need to go into any more detail because
11 that roadway is the subject of Land Development Code
12 and the standards in the code.

13 Second, I really want to address -- I think
14 there were two comments regarding the way the wetlands
15 and the preserved areas would be maintained with our
16 statement that they would be better maintained through
17 this project, and I think was some misinterpretation
18 there.

19 What we were trying to say is this project right
20 now without zoning could be developed at one unit
21 per ten acres. In that case, there would probably
22 be more rectangularly-shaped lots. As you can see on
23 the aerial, that's what's been done in the past. In
24 that case, there is much less protection given to the
25 wetlands, so in fact there theoretically could be no

1 wetlands there to maintain.

2 The reason we went forward with this site
3 plan -- and we did think we were staying with the
4 rural character, because many of the lots are four
5 and five acres and there are probably some as large
6 six. But what that did is it allowed us to maintain
7 and preserve all of the wetlands in perpetuity through
8 a homeowners' association and conservation easements
9 and still provide the rural setting and the lots.

10 So the maintenance is there and is afforded by
11 the association because the wetlands will still be
12 there. If it's not going through the zoning, the
13 wetlands and the preserve areas would be subject to
14 much more change.

15 And I hope I -- was I clear in that?

16 THE HEARING EXAMINER: Uh-huh. I understood that.

17 MR. BARRACO: Thank you.

18 They're the only two issues I wanted to speak
19 about. If you have any questions, I'd be happy to
20 answer them.

21 THE HEARING EXAMINER: Questions of your witness?

22 MR. SCHROPP: No.

23 THE HEARING EXAMINER: Questions by staff?

24 MR. PHILPOTT: No, ma'am.

25 THE HEARING EXAMINER: All right. Thank you.

1 You know what? Before you have him do that, I
2 do want to ask a question here; and this really -- I
3 should have thought about this earlier.

4 This is -- one of the folks brought up the fact
5 that, you know, a development of this size should
6 have a second access; and you all did not ask for a
7 deviation, Carl. And looking at the site plan, which
8 is what I just pulled out, the master concept plan
9 here, to get a better look at it, it seems like the
10 area that's going to be the most constricting is over
11 the slough area. So if you all are not planning to
12 widen that roadway in that particular area, are you
13 planning to have a double entrance? Are you going to
14 have a double wide entrance onto Persimmon Ridge Road?
15 Are you planning for a double wide?

16 MR. BARRACO: No. Just the single entrance. And
17 I'm going off of memory -- I would have checked it had
18 I known this was going to come up, but I believe it's
19 50 or more units requires two means of ingress and
20 egress.

21 THE HEARING EXAMINER: I think it's anything -- is
22 it 50 more? I think it's over five acres, isn't it?
23 Or ten acres?

24 MR. PHILPOTT: It's a two-fold criteria, and I
25 don't remember the section right off the top of my

1 head so I'm trying to find that real quick. But I
2 think it is two standards in one. Let me find that
3 section real quick.

4 THE HEARING EXAMINER: I thought it was anything
5 over ten acres required -- any development over ten
6 acres, residential development, required --

7 MR. BARRACO: It could be. I'm going off of
8 memory and the number 50 units sticks in my head, so
9 there may be a dual criteria.

10 THE HEARING EXAMINER: Because if that's the
11 case, then we may need a -- and I don't remember where
12 it --

13 MR. PHILPOTT: Can you give me --

14 MR. SCHROPP: Is your question whether there's
15 a divided entrance on the median road or a divided
16 median on the entrance road?

17 THE HEARING EXAMINER: What the county has
18 allowed in the past on a larger project is if you've
19 got a double wide -- if you've got two incoming and
20 two outgoing or you've got a divided entrance so if
21 that one side gets blocked, the other side can still
22 be used. The county has allowed that in lieu of a
23 second access point, but I think you still have to
24 have a request for a deviation for that. So I do
25 believe it's ten acres, and so -- Josh is hunting

1 frantically for it right at the moment.

2 MR. PHILPOTT: Yes. It's a Chapter 10
3 requirement.

4 THE HEARING EXAMINER: No, it is not. It's a 34
5 requirement. It's Chapter 34. It's a Chapter 34
6 requirement.

7 MR. SCHROPP: We had one in the case we had this
8 morning, Josh.

9 MR. PHILPOTT: Right, and that's why I have it on
10 my desk right now.

11 THE HEARING EXAMINER: I think it's a 34
12 requirement.

13 MR. PHILPOTT: If you would like me to run, I
14 can quickly find it --

15 THE HEARING EXAMINER: If you can find it on your
16 desk, go ahead and get it.

17 MR. PHILPOTT: I don't have that section.

18 THE HEARING EXAMINER: But if the -- go ahead.

19 If the requirement is ten acres, then we still --
20 you all are going to need to do a deviation.

21 MR. BARRACO: And the entrance road, now that I
22 understand the question a little bit better, does have
23 a median with two lanes on each side.

24 THE HEARING EXAMINER: Right. And that typically
25 has been accepted by county staff, but I think they

1 still require a deviation to allow that configuration.

2 Josh will go and find it.

3 All right. Well, let's go ahead with whoever
4 else you've got and, Carl, we'll come back to you on
5 that one or Russ can decide whether or not -- what you
6 all need to do about that.

7 MR. SCHROPP: All right. To keep things moving,
8 we'll call Kirk Martin with CDM, who's a hydrology
9 groundwater expert.

10 MR. PHILPOTT: 10-291.

11 THE HEARING EXAMINER: 10-291. Okay. I'm sorry.
12 I thought it was 34 something.

13 So 10-291 says -- oh, you didn't get there yet.

14 MR. PHILPOTT: I don't even know if I can state
15 it. I'm so out of shape, I just ran there and --

16 It's 10-291. Of course, I'm in Section 14.

17 All right. 291, Sub (3): "The director will
18 determine whether any residential development of
19 five or more acres or any commercial or industrial
20 development of more than ten acres must provide
21 more than one means of ingress or egress for the
22 development. Additional access points may be needed
23 for a continuation of an existing street pattern."

24 You want me to stop?

25 THE HEARING EXAMINER: That's fine. We got what

1 we needed.

2 All right. So a deviation is needed from that
3 set provision then, even with the double wide entrance
4 here. Deviation is needed from that, so you all are
5 going to have to work on that one.

6 MR. BARRACO: We can work on that with staff and
7 look into it further.

8 THE HEARING EXAMINER: All right. When the
9 gentleman brought it up earlier, you know, I mean,
10 it just suddenly hit me that, oh, yeah, we don't have
11 a second access point here.

12 Okay. Thank you, Carl.

13 MR. SCHROPP: Next we'd like to call Kirk Martin.
14 He's a hydrology -- hydrogeology expert.

15 I would like him to just give about 30 seconds
16 of background and experience and then I'd seek to
17 qualify him as an expert.

18 THE HEARING EXAMINER: Kirk, you've been here
19 before and qualified as an expert, have you not?

20 MR. MARTIN: Yes, Ma'am.

21 THE HEARING EXAMINER: Okay. Go ahead and give
22 some of your experience and education for me.
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1 Thereupon,

2 KIRK MARTIN,

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

5 MR. MARTIN: I actually only have a Bachelor's
6 degree, but I have 25 years of real world experience
7 kicking dirt and drilling wells here in Lee County.
8 I was the primary author of the Cape Coral Water Supply
9 Plan. Not the drainage that somebody's referred to,
10 but the deep well stuff. I'm currently the hydrologist
11 for all of Collier County's work. I did Bonita
12 Springs; also was the lead hydrologist for the Lee
13 County Water Supply Authority when that entity was
14 in place. Most recently I was involved -- I was the
15 quality assurance manager for a major data base review
16 that was done by the Army Corps of Engineers and water
17 management district.

18 I've been doing this a long time here in Lee
19 County.

20 MR. SCHROPP: And you are presently employed
21 where?

22 MR. MARTIN: Vice president, CDM.

23 MR. SCHROPP: Thank you.

24 I would -- based on his qualifications and his
25 previous appearances here, I'd like to qualify or seek

1 to qualify Mr. Martin as an expert in hydrogeology,
2 geology and groundwater modeling.

3 THE HEARING EXAMINER: Okay. why geology?

4 MR. MARTIN: I'm a geologist by training and
5 trade. The -- I mentioned those three -- those are the
6 three things that I have been qualified for in this
7 forum before, geology, hydrology --

8 THE HEARING EXAMINER: But is geology going to be
9 something involved with the water?

10 MR. SCHROPP: Potentially.

11 MR. MARTIN: Yes.

12 THE HEARING EXAMINER: I need to qualify you
13 in --

14 MR. MARTIN: Let's do this. Hydrogeology. That's
15 really the term that takes care of how water moves
16 through the ground and that's what we're going to be
17 talking about.

18 THE HEARING EXAMINER: Okay. So hydrogeology
19 and what was the other one?

20 MR. SCHROPP: Groundwater modeling.

21 MR. MARTIN: That's not at issue at this point.
22 That's just something I've been qualified before at
23 this forum, so --

24 THE HEARING EXAMINER: Okay. Let's keep your
25 qualifications to what we're doing here in this

1 hearing.

2 MR. MARTIN: Yes, ma'am.

3 THE HEARING EXAMINER: Okay. So hydrogeology.

4 Any objections from staff or the County Attorney
5 to this person being accepted as an expert in
6 hydrogeology?

7 MR. PHILPOTT: No, ma'am.

8 MR. SPICKERMAN: (Shook head negatively.)

9 THE HEARING EXAMINER: Okay. Accepted.

10 MR. MARTIN: Thank you.

11 Yeah, I was just here -- I guess the applicant
12 heard that there were some issues on water, so I
13 was invited to come and listen and I did very well.
14 There's a lot of very good comments. Some of them --
15 I don't necessarily agree with all of them, but there's
16 some very good comments brought to bear here.

17 Let me start off by saying the Alva area has
18 historically been known as a water resource poor
19 area. As has been testified earlier, everything below
20 the water table aquifer, the water table being the
21 surficial, shallow stuff, is brackish. There's some
22 unique hydrologic reasons for that. I won't go into
23 that, but the result is there's very limited resources
24 here.

25 Even the water table, if I may just characterize

1 it a little bit, it's what's known as an unconfined
2 aquifer. What that means is it's open to atmospheric
3 pressure. Rainfall goes into it. Evaporation and
4 transpiration comes out of it. It's open to the
5 atmosphere.

6 All the other aquifers are called confined
7 aquifers. What that means is they have some sort of
8 impervious or low permeability sediment between them
9 and the atmosphere. So the sandstone aquifer and the
10 Lower Hawthorne all have clays, very tight clays that
11 overlie them.

12 There are essentially three sources that we
13 would consider. The water table, as I mentioned,
14 would extend from ground surface to maybe 30 feet
15 below ground surface, depending on where you're at.
16 The sandstone would extend from about 80 feet to maybe
17 120, and the Lower Hawthorne would extend from 450 to
18 800, something in that ballpark.

19 The water table I would characterize as having
20 moderate yield. Again, it varies, depending where
21 you're at; but for the most part it's a moderate yield
22 formation. It's essentially fresh, although there are
23 some other water quality issues with the water table,
24 especially here in the Alva area.

25 Typically, in a confined aquifer, as the water

1 table is, the impacts from wells are of limited aerial
2 extent.

3 what happens in wells in an unconfined system
4 is the draw downs don't extend very far away. Most
5 of the lowering of the water table is due to drainage;
6 and as a matter of fact, some of the testimony here
7 would attest to that.

8 Lehigh Acres was brought up, Cape Coral, the
9 Alico canal was brought up. Those are all major
10 drainage activities that lowered the water table, in
11 many cases as much as ten feet. Golden Gate Estates
12 is another one.

13 And even some of the specific sites brought
14 up here, the orange grove, and somebody mentioned
15 something to the east, had created a lower water level
16 condition. That's very typical. In the water table
17 aquifer, drainage effects will have impacts and will
18 lower the water table. wells, unless it's a major
19 well field, typically do not have a large aerial
20 extent.

21 Contrastingly, a confined aquifer, such as the
22 sandstone and the Lower Hawthorne, because they have
23 this clay overlying it, those draw downs will be seen
24 further out; but you'll see draw downs impact more
25 laterally.

1 This is to characterize the difference in the
2 water table and the sandstone.

3 Most of the wells out here -- I did a little
4 well inventory. Most of them are water table. There
5 are some sandstone. It looked to me like maybe a 70
6 percent/30 percent ballpark. There are a handful of
7 Lower Hawthornes.

8 Get my glasses on.

9 At this point there is no commitment that I
10 know of as to what aquifers would be tapped by this
11 proposed development. It is my recommendation, I'd be
12 proposing that they tap one of the confined aquifers.

13 It would require RO treatment, as some folks
14 testified; but what I would suggest is that impacts
15 to the water table would be minimal because of what
16 I talked about with that limited aerial extent. Even
17 with 45 homes, you're talking ten to twenty thousand
18 gallons a day, which is not a big number. You look at
19 well field impacts such as Lee County's well field,
20 where they pump ten million gallons a day out of the
21 water table, they have impacts in the order of two to
22 four feet, depending on where you are at. This is
23 20,000 gallons a day at this site, so --

24 THE HEARING EXAMINER: Are they pumping out of --
25 you said the water table.

1 MR. MARTIN: Yes, ma'am.

2 THE HEARING EXAMINER: Are they pumping out of
3 the surficial?

4 MR. MARTIN: Yes, ma'am. Water table, surficial,
5 the same thing.

6 The point being here is that the amount of water
7 that's going to be drawn from these homes is not that
8 great and it should not have a large aerial extent
9 that would create lower water table very far away from
10 this site.

11 On the other hand, if they went to the sandstone,
12 which I think is a good idea, actually, those draw
13 downs would extend further laterally; but the impacts
14 aren't as great because there's a whole lot more room
15 to draw down in that aquifer.

16 THE HEARING EXAMINER: Now, you've got your
17 surficial, you've got your -- the middle one.

18 MR. MARTIN: Sandstone.

19 THE HEARING EXAMINER: Sandstone. Which one --
20 they said they went down 90 feet and it was salty.

21 MR. MARTIN: Yes, ma'am.

22 THE HEARING EXAMINER: Is that the sandstone is
23 the brackish?

24 MR. MARTIN: That's the sandstone. Yes, ma'am.

25 THE HEARING EXAMINER: So they'd have to go down

1 450 feet to get to the --

2 MR. MARTIN: No. The sandstone is what I would
3 recommend. Matter of fact, I would characterize the
4 sandstone as mildly brackish. The Lower Hawthorne is
5 brackish. Typical -- we use chloride content as a
6 measure of salinity. In sea water, chloride is around
7 19,000; drinking water, chloride is 250. Typically,
8 in the sandstone aquifer, you'll look at anywhere from
9 400 to a thousand chloride, very common.

10 Lower Hawthorne will have more on the order of
11 a thousand or -- a thousand to 1,500 chloride, so the
12 sandstone is mildly brackish, very treatable with RO
13 technology.

14 THE HEARING EXAMINER: So then your recommendation
15 would be that they go to the sandstone and use the
16 reverse osmosis?

17 MR. MARTIN: If it was my home, that's what I
18 would do.

19 THE HEARING EXAMINER: Per house. Okay.

20 MR. MARTIN: There was a couple of thoughts --
21 just along the same lanes, there was a couple comments
22 about -- and very good comments, folks have done their
23 homework -- on the Lee County natural resources DRGR
24 report and there was some follow-up comments about ag
25 being better for recharge. I just wanted to correct

1 that if I could.

2 It depends. Many times, open ag lands are great
3 for recharge; and that report suggests something on
4 the order of seven inches. However, that's looking
5 at a composite agricultural condition. Most people
6 in the agricultural industry know that there are many
7 times when you're looking at major drainage, too;
8 you're trying to get water off your site. There are
9 other times you're trying to get water on your site.
10 So the recharge that occurs in ag lands depends on what
11 you're doing. Certain ag lands do better than others.

12 The main thing I want to say about the recharge,
13 though, is also the report points out that lakes have
14 a negative recharge, essentially a discharge, a water
15 loss to the system; and in my opinion, my professional
16 opinion, that's one of the flaws in that report.

17 The assumption is that they're just looking at
18 a lake, which has an evaporative draw. Evaporation
19 goes up there, creates more losses, or potentially
20 more losses, than recur under natural land cover.
21 The problem with that is it doesn't really apply to
22 the kind of lakes that are proposed for this site.

23 There was discussion of borrow pits. The old way
24 of doing things was draining. Cape Coral, Lehigh were
25 mentioned. Absolutely right. Ditch, get it out of

1 here as quick as possible. As a matter of fact,
2 there's probably some of that out here, too. Get the
3 water off the land as quickly as possible.

4 Modern developments are not allowed to do that
5 by law. The lakes in fact do create fill, do create
6 aesthetic features; but one of the primary purposes
7 is compensating storage, that being that all the
8 impervious surfaces on the site, houses, roofs,
9 driveways, roads, are required to take that water
10 and instead of draining it, running it off somewhere
11 to put it into these lakes to create compensating
12 storage and retain that water on site.

13 So in fact the old way of doing things, of
14 ditching things and getting rid of it, is no longer
15 allowed and would not be allowed on this site.

16 THE HEARING EXAMINER: But one of the comments
17 that was made now, though, is that you dig the lake
18 and the water comes in and fills it up, but the water's
19 coming from the other properties. So now if you take
20 your lake and you build your 45 homes and you're
21 running -- you're putting your runoff into your lake,
22 all right, are you still not going to cause -- I mean
23 it's not going to send the water back out into the
24 other area, it's just going to keep your lake full.

25 MR. MARTIN: That's true. And I need to make sure

1 I understood the first part of your question, too. It
2 sounded like there was an assumption that if you dig a
3 lake and water flows into it, you're drawing that water
4 from somewhere else.

5 THE HEARING EXAMINER: Uh-huh.

6 MR. MARTIN: Essentially, water seeks its own
7 level; and so even though during construction --
8 construction activities could include dewatering,
9 but not necessarily.

10 Think about the fact that in the natural ground,
11 water's already there. Instead of being a big hole
12 in the ground, it's just filling all the little spaces
13 between the sand grains and rock and so forth; so by
14 removing that, you haven't necessarily lowered the
15 water table by any means, unless you create a drainage
16 feature.

17 Somebody referred to the Alico ditch. You create
18 drainage, you take water off your site somewhere, yeah,
19 you can lower water levels. Just by digging a hole you
20 don't lower a water level.

21 THE HEARING EXAMINER: So then what you're telling
22 me is that if you've got a 20-foot-deep hole here and
23 the water is two feet from the ground's level, you're
24 going to have -- the water table's going to be two feet
25 from the ground level all the way out?

1 MR. MARTIN: That's correct.

2 THE HEARING EXAMINER: It's not going to be
3 sucking up the water from anywhere else to fill in
4 the hole?

5 MR. MARTIN: That's correct.

6 THE HEARING EXAMINER: Interesting. Would not
7 have thought of it that way.

8 UNIDENTIFIED SPEAKER: What about evaporation?

9 MR. MARTIN: Evaporation -- should I respond?

10 THE HEARING EXAMINER: Go ahead.

11 MR. MARTIN: Evaporation is -- if you look at
12 total what they call potential evaporation, PET, it's
13 always higher than transpiration. Transpiration is
14 the water that comes from plants. Depending on the
15 type of land cover, that may or may not be true. Most
16 cases, evaporation is higher than transpiration.
17 Certain cases, a very high water table, a wetland,
18 you could have as much water moving through those
19 plant leaves as you would through evaporation.

20 But my -- the point I'll make is -- and all things
21 being equal, evaporation is a higher draw of water than
22 transpiration.

23 In this case, though, what I tried to characterize
24 is that when we look at the Lee County DRGR report, it
25 characterizes all lakes as being five inches of loss a

1 year. What I'm saying is that that is for -- if it's
2 correct at all, it's for lakes that are not for
3 compensating storage. The lakes at this site are
4 for compensating storage. All water that hits all
5 the impervious areas goes to the lake, so we're not --
6 so any evaporation losses are overcompensated by the
7 water that's going into those lakes from the impervious
8 areas.

9 THE HEARING EXAMINER: Yeah, but that's -- the
10 water's only going into the lakes during the rainy
11 season or during a rain event.

12 MR. MARTIN: That's correct.

13 THE HEARING EXAMINER: You know, so I mean during
14 the four or five months out of the year where we have
15 very little rain, that means the water's still going --
16 the water's going up, so it's got to be coming from
17 somewhere because it's not being fed back in from the
18 houses.

19 MR. MARTIN: Again, when you start looking at
20 your high evaporation season, you're also looking at
21 your high transpiration season, so you've got a lot
22 of -- water's going up all the time.

23 THE HEARING EXAMINER: In both directions?

24 MR. MARTIN: Depending on the land cover,
25 the amount of water that's going up greater than

1 transpiration is not that great. It is -- on the large
2 scale it is greater.

3 Again, I can take you to a number of natural
4 plant communities that have a higher loss rate than
5 an open water body does.

6 THE HEARING EXAMINER: Okay.

7 MR. MARTIN: I guess to conclude to some degree,
8 unless -- I'm assuming there's going to be some
9 questions -- if the residents at this particular
10 location, this proposed site, were to use a sandstone
11 or Lower Hawthorne, there would be absolutely no impact
12 whatsoever on any of the shallow well users. If there
13 are people using the sandstone, there could be an
14 impact of a foot or two. In most cases, those folks
15 use what's called a submersible pump, which is set
16 well below ground surface and they'll never see that
17 difference in water level.

18 So that would be my recommendation to the
19 developer and to the residents here, is to tap into
20 that confined aquifer, avoid those impacts that the
21 folks are concerned about.

22 MR. WILLIAM GREEN: Any questions available?

23 THE HEARING EXAMINER: No, no, no questions.

24 You guys can corner him after the hearing. As long as
25 you don't beat him up, you can corner him after the

1 hearing.

2 MR. WILLIAM GREEN: I just wanted it on the
3 record, is all.

4 THE HEARING EXAMINER: You can corner him after
5 the hearing and ask.

6 MR. MARTIN: That's really all I had, and I'm
7 sure I missed something because this was very
8 disorganized for me to pull all these nice comments
9 together, but I'm trying to address them.

10 THE HEARING EXAMINER: Anything?

11 MR. SCHROPP: Yes. Thank you. I think you did a
12 good job. I appreciate it.

13 THE HEARING EXAMINER: Staff, questions of this
14 witness?

15 MR. PHILPOTT: (Shook head negatively.)

16 MR. MARTIN: And please do corner me. This is
17 something I enjoy talking about.

18 MR. WILLIAM GREEN: I just wanted it on the
19 record, that's why.

20 THE HEARING EXAMINER: Kirk, I need to ask you a
21 couple of questions before you walk away.

22 You indicated that Alva is known to have water
23 problems because --

24 MR. MARTIN: Limited resources.

25 THE HEARING EXAMINER: Limited resources, yes,

1 is what you said.

2 How far does that extend? Is that just in this
3 particular area or is that over the --

4 MR. MARTIN: There's a couple of things going
5 on there. In the Alva area there's a unit in the
6 shallow system called the Buckingham marl that has
7 some water quality issues. That's one thing. More
8 importantly is those confined aquifers below us,
9 particularly the sandstone, for almost all of eastern
10 Lee County and a good part of Hendry County, the
11 sandstone is the primary source of water. It's
12 also the primary source of water for Lee County
13 utilities. It's a very, very good fresh water source.
14 Unfortunately, right around the river -- and it's
15 not -- people like to think it's associated with the
16 river itself, but it's not. It's a confined system.
17 But right around the river, typically within one or
18 two miles from the river, all the sandstone aquifer
19 is brackish; and this goes all the way up to LaBelle.

20 The issue there is -- if you think about it,
21 every unit, every geologic unit in this area was
22 under salt water at one time. Most of them are marine
23 depositions. You look at the fossils that are there,
24 these are sea water-deposited sands, limestones, et
25 cetera. So the only reason we have fresh water at

1 all is because of all the rain that's hit there and
2 here and pushed all the water out.

3 Right around the river, and this is true of
4 the Imperial River, it's true of the Cocohatchee,
5 it's true of the Caloosahatchee, what you have is a
6 reverse gradient. You don't have the water driving
7 head downward and outward. So the sandstone was never
8 fully flushed of brackish water. That's why it's still
9 there. I call it relic sea water. It's not sea water,
10 it's much milder than that; but it's essentially poorly
11 flushed water, whereas all the rest of Lee County, that
12 aquifer got flushed very well and it's a very nice,
13 pristine fresh water source.

14 THE HEARING EXAMINER: All right. Thank you.
15 Your next witness.

16 MR. SCHROPP: That would be me.

17 THE HEARING EXAMINER: Okay.
18
19
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1 Thereupon,

2 RUSSELL SCHROPP,

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

5 MR. SCHROPP: For the record, Russell Schropp
6 again.

7 I'd like to address, I guess just in closing,
8 some of the comments that were made directed to the
9 land use classification of the property, historically
10 and presently, that affects this property.

11 There were some comments to the effect that this
12 is part of the DRGR or density reduction groundwater
13 resources classification and that the maximum density
14 has been set at one unit per ten acres.

15 Take a little historical perspective on this
16 property, the part that I've been involved in in the
17 20 years or so that I've been practicing here in the
18 county; and I have been actively involved in the DRGR
19 classification on numerous projects.

20 If you go back to the mid-1980s, the Lee County
21 Comprehensive Plan I believe designated this area as
22 open lands originally. I could be wrong there. If it
23 wasn't open lands, it was rural.

24 If it was open lands, it was designated under
25 that classification at the time as a density of one

1 unit per acre to one unit per five acres, so you
2 had -- and it actually said that. It was a range of
3 one unit per one to five acres. If it was rural, it
4 was designated as one unit per acre.

5 In 1989, when the comprehensive plan amendment
6 or the new comprehensive plan was required to be
7 adopted by the county, the county got involved in a
8 rather large dispute with the Department of Community
9 Affairs regarding the amount of density that their
10 comprehensive plan permitted under the previous
11 classifications; and out of that was born the density
12 reduction groundwater resources area, or DRGR.

13 It was in my opinion a politically crafted
14 solution to the density problem, but basically
15 resulted in placing DRGR on the large area of the
16 county in the southeast part of the county, which
17 we're all familiar with because of the activities that
18 have gone in there in more recent years; as well as
19 placing it in large areas of the northwest part of the
20 county which has historically been referred to as the
21 Yucca Pen property or the Zemel property; as well as
22 large portions of the county in the northeast part of
23 the county where this property is.

24 That political settlement was established between
25 DCA and Lee County and basically resulted in those

1 areas being reclassified to DRGR, with a density of
2 one unit per ten acres. And that was in 1989 and
3 I think the final adoption of the plan amendment
4 occurred in 1990.

5 In the ensuing three to four years, the county
6 engaged in a number of studies, spurred in part by some
7 litigation that was generated on the Zemel property,
8 as to whether these properties were properly classified
9 as DRGR. In other words, did they meet the groundwater
10 characteristics that were scientifically necessary to
11 support the classification. And the county hired a
12 consultant, Hennigar and Ray, to conduct this land
13 use hydrogeological study.

14 Divided the county into essentially the three
15 areas that I just described, an area down in the
16 southeast part of the county, the area up in the
17 northwest part of the county and the area up in the
18 northeast part of the county.

19 The area -- and I have the plan amendment that
20 was the Lee Plan evaluation and appraisal report from
21 1994 adopted by the Board of County Commissioners
22 pertaining to this study and the plan amendments that
23 were generated out of it.

24 And the plan amendment and study looked at these
25 three areas; and with regard to the area that we're

1 dealing with today, the northeast part of the county,
2 it was an area that they designated in the study as
3 Area C on various maps and referred to it as Area C.

4 Area C was identified in that study as the
5 area considered to have the least potential for water
6 supply development and the best potential for increased
7 development. That would be contrasted with areas down
8 in the southeast part of the county and a smaller area
9 in the northern part of the county to the west of this
10 area that were deemed appropriate for DRGR from a
11 hydrogeologic and land use standpoint.

12 So out of this study came the movement and
13 the plan amendment to reclassify various lands,
14 particularly in the northern part of the county,
15 from DRGR to something else; and these areas were
16 primarily the Zemel property in the northwest part of
17 the county and this property area up in the northeast
18 part of the county, the Alva area.

19 The scenarios that the consultant went through
20 at that point -- as I indicated, they identified this
21 Area C as an area that had limited groundwater
22 development potential for well field purposes and also
23 had probably increased potential for development; and
24 I'll just read a part from the study.

25 The final area in this scenario, and they're

1 talking about selective density increases for these
2 various areas, is Area C. "Area C is the most suitable
3 from a groundwater protection viewpoint for urban,
4 suburban type development. Based on available data,
5 the hydrogeologic conditions in this area, located
6 along the northern county boundary, are generally
7 much less desirable for development of the water table
8 and sandstone aquifers as a future water supply for
9 public well fields. Areas identified as Area C will
10 yield only small quantities of water from either
11 aquifer," again talking about public well field
12 development. And went on to recommend that perhaps
13 a development scenario of up to one dwelling unit per
14 acre would be appropriate, with no postdevelopment
15 standards beyond existing standards, and also proposed
16 perhaps additional standards that could be used if the
17 county deemed fit.

18 The point being, I guess, the study came back
19 to where the county's plan originally was, which is
20 this area up in the northeast part of the county was
21 originally cited at one unit per acre or one unit per
22 one to five acres at the very least.

23 Out of this study came the comprehensive plan
24 amendment that was adopted in 1994 and it reclassified
25 this property from DRGR to open lands. Now, this is

1 not the same open lands classification that existed
2 in the original comp plan. They created a new open
3 lands classification and it's the policy that we have
4 been talking about, Shellie and I and others, that is
5 found -- and staff -- in the staff report. It's Policy
6 1.4.4.

7 But I go through all of that background to let
8 you know historically what has evolved in terms of
9 the comprehensive plan for this area. It was once
10 viewed as a potential for well field, public well
11 field development; and that's why it was originally
12 designated with the one unit per ten acres restriction.
13 However, subsequent study by the county verified in
14 fact that there was no hydrogeologic basis for this
15 classification and so it was targeted for an amendment
16 in the 1994 time period.

17 I'll note parenthetically that that also applied
18 to the Zemel property as well, which is not at issue
19 in this proceeding.

20 which brings me to Policy 1.4.4, which is the
21 policy that we're dealing with; and the policy
22 recognizes that the maximum density in this category
23 is one dwelling unit per ten acres except, as we stated
24 before, except that a maximum density of one dwelling
25 unit per five acres is permitted if the planned

1 development process is used to prevent adverse impacts
2 on environmentally sensitive lands.

3 Now, environmentally sensitive lands is a term of
4 art that's defined elsewhere in the plan; but basically
5 that's the exception that allows you to get from one
6 to ten to one to five in this -- under the current
7 land use policy.

8 We viewed it, quite frankly, as the carrot; and
9 I think that's how it was intended.

10 It was intended to promote environmentally
11 sensitive, cognizant development of these lands in
12 the northeast part of the county as well as the
13 northwest part of the county, and to provide a carrot
14 in the form of, if you will, doubling your density.
15 Even though we're talking about in terms of the
16 densities allowed under the comprehensive plan for
17 this county, you're talking about extremely small
18 densities in the first place; but going from one unit
19 per ten acres to one unit per five acres, that's
20 the carrot to encourage environmentally sensitive
21 development and not to encourage development of
22 simply ten-acre or 15-acre ranchettes that would not
23 have the protections that this type of project is
24 proposing.

25 We think it fits with the intent and the overall

1 background of the comprehensive plan for this area and
2 historical background and treatment of this area under
3 the Lee County Comprehensive Plan, and that's why we
4 pursued it in this manner.

5 The testimony from Mr. Lewis, Ms. Trebatoski
6 and Ms. Johnson I think indicates clearly that the
7 project is seeking the one unit per five acres and is
8 preventing any adverse impacts to environmentally
9 sensitive lands that are on the property as those
10 lands are defined under the Lee Plan; and we believe,
11 in accordance with the policy that was adopted in 1994,
12 that that would entitle the project to a density of
13 one unit per five acres.

14 Sorry to be so long-winded, but I think
15 historically I think it was important to bring that
16 out as to how this property came to be designated as
17 open lands and what we believe the meaning and the
18 intent of the plan amendment that put it in the open
19 lands classification was.

20 So with that, I will conclude; and if there's any
21 other questions that either I or the consultant team
22 can address, I'd be happy to do that at this point.

23 THE HEARING EXAMINER: Okay. Any questions of
24 this witness?

25 MR. SPICKERMAN: Is that study an exhibit?

1 MR. SCHROPP: Oh, yes. If I --

2 THE HEARING EXAMINER: You need to identify
3 yourself for the record.

4 MR. SPICKERMAN: Rob Spickerman, Assistant County
5 Attorney.

6 MR. SCHROPP: Thank you, Rob. If I could -- but
7 this is my only copy.

8 THE HEARING EXAMINER: If you'll leave it with
9 me, I'll see that it gets put in your -- I'll have my
10 secretaries make a copy of it and they can put the
11 original back in your --

12 MR. SCHROPP: It's an ancient document at this
13 point.

14 THE HEARING EXAMINER: I'll leave them a note to
15 do that in the morning.

16 MR. SCHROPP: Thank you.

17 THE HEARING EXAMINER: Okay. I do need to know
18 one thing about the deviation for the 291, 10-291.

19 You going to address that, Josh?

20 MR. PHILPOTT: Yes. I was getting to that when
21 I was reading that section of the Land Development
22 Code.

23 THE HEARING EXAMINER: Okay.

24 MR. PHILPOTT: Section 10-291, Sub (3). We've
25 read the first few sentences of it. I will start -- I

1 guess I'll start with the second sentence.

2 "Additional access points may be needed for a
3 continuation of an existing street pattern to provide
4 access to adjoining properties or where additional
5 access is needed to provide alternative -- alternate
6 access for emergency services. Where feasible, these
7 alternative access points should not be on the same
8 roadway."

9 And here's the good part.

10 "For planned developments: The determination of
11 the director should be requested concurrent with the
12 application for sufficiency. A deviation or variance
13 will only be required in cases where a determination
14 of the director is sought to be changed or overturned."
15 Through sufficiency, this issue was not raised by
16 the director of development services or his staff
17 regarding --

18 THE HEARING EXAMINER: Was it brought to him?

19 MR. PHILPOTT: Reviewing sufficiency, their staff
20 is actively involved in review of this application.
21 His staff was aware of the conditions of the --

22 THE HEARING EXAMINER: And the "he", we're talking
23 about Pete Eckenrode?

24 MR. PHILPOTT: His staff.

25 THE HEARING EXAMINER: Okay. Pete's staff.

1 MR. PHILPOTT: And as a responsibility of their
2 staff, a director's discretion call should be brought
3 forward to him.

4 Not specifically reviewing this for development
5 services, I am unaware of whether Pete made that
6 determination or not.

7 THE HEARING EXAMINER: Made that determination.

8 MR. PHILPOTT: However, it was not addressed to
9 myself.

10 THE HEARING EXAMINER: All right.

11 MR. PHILPOTT: So I --

12 THE HEARING EXAMINER: Well, I think adding a
13 deviation at this point won't -- doesn't mean that
14 the case will have to be readvertised. I can add a
15 deviation myself.

16 MR. SPICKERMAN: As a planned development, yes.

17 MR. PHILPOTT: It may be a prudent call to do
18 that.

19 MR. SPICKERMAN: Just to be on the safe side, I
20 think we would request the deviation.

21 THE HEARING EXAMINER: All right.

22 MR. PHILPOTT: During the full process of
23 reviewing this application, all along it was intended
24 to have one access point. A concern was never
25 addressed or related from development services as

1 that being a safety concern for the proposed
2 development.

3 THE HEARING EXAMINER: Yes.

4 MR. PHILPOTT: So just to touch on that issue,
5 I just wanted to elaborate with the later portion of
6 that section of the Land Development Code.

7 To discuss some of the issues that were brought
8 up from the public, first off, I want to thank the
9 members of the public for staying for such a long
10 time. That's one of the reasons that makes America
11 great is the public involvement that is promoted.

12 THE HEARING EXAMINER: Are we running for office?

13 MR. PHILPOTT: No.

14 THE HEARING EXAMINER: I was just wondering.

15 MR. PHILPOTT: It's always good to see public
16 involvement.

17 So, anyway -- and taking all their time out of
18 their day.

19 Road width. Section 10-296 of the Land
20 Development Code requires that any development have
21 access to a road that is -- I'm sorry, that a road
22 meets county standards. That will be required at
23 the time of the development order. That is an issue
24 that will be resolved at the time of the development
25 order.

1 The comprehensive plan, as we discussed -- and
2 Mr. Schropp gave an excellent history of the open
3 lands category and the requirements that -- or the
4 policy that does allow for increased density. As
5 outlined and discussed extensively throughout the
6 hearing, staff does recommend approval of that one
7 unit per five acres based on the environmentally
8 sensitive areas which are to be preserved.

9 Just to touch on that.

10 The other thing that was brought up was the
11 Alva community plan, and Ms. Daniels -- I'm not sure
12 if she's still here -- actively involved in the
13 development of that. That is under review by Lee
14 County Development -- or Lee County Community
15 Development.

16 The Alva community plan, the boundaries of that
17 Alva community plan, although not -- I don't have a
18 legal description. The general boundaries are within
19 the urban --

20 THE HEARING EXAMINER: The theater area I think
21 somebody called it?

22 MR. PHILPOTT: Downtown -- the more urban area of
23 Alva. It does not encompass policies or protections
24 that relate specifically to this property.

25 THE HEARING EXAMINER: Okay.

1 MR. PHILPOTT: And, again, that is under review
2 but has not been incorporated to the Lee Plan as of
3 today.

4 THE HEARING EXAMINER: Okay.

5 MR. PHILPOTT: Traffic. We discussed traffic
6 previously; and as outlined in the transportation
7 section of the staff report, Persimmon Ridge is a
8 local road, does not have specific traffic counts
9 due to the limited amount of traffic on there.

10 Lee County DOT does monitor traffic on Broadway
11 as well as North River Road. Postdevelopment,
12 the -- those two roadways will operate at a level of
13 service C and as outlined in the traffic -- traffic
14 impact statement. Again, level of service C is an
15 acceptable level of service through the Lee Plan.

16 And just to briefly touch on the comment relating
17 to wetland protections in AG-2 or agricultural land
18 use, those were not intended to be insulting. However,
19 the point of the comment was not that people can't
20 protect wetlands in agricultural lands; but the zoning
21 requirements do not require that agricultural lands --
22 or do not provide the protection of agricultural or --
23 excuse me, of environmentally sensitive lands and
24 therefore can be cleared and eliminated. People do
25 provide protection to them and --

1 THE HEARING EXAMINER: That's for individual
2 property owners.

3 MR. PHILPOTT: Right. That is not all people
4 value that the same and they can be cleared.

5 Again, staff does recommend approval with
6 conditions as outlined in the staff report and provided
7 with the testimony today.

8 Any other questions?

9 THE HEARING EXAMINER: Okay.

10 MR. SCHROPP: (Shook head negatively.)

11 THE HEARING EXAMINER: Questions?

12 MR. SPICKERMAN: No questions.

13 THE HEARING EXAMINER: Thank you, Josh.

14 Okay. Russ, anything else?

15 MR. SCHROPP: No. Thank you. I appreciate your
16 patience.

17 THE HEARING EXAMINER: All right. Folks, I will
18 do a site visit out in your area. I'll drive all the
19 way out to the bitter end out there, provided I can
20 turn around and get back. I want to look the entire
21 area over.

22 MR. SCHROPP: Do you want to get on the site?
23 Because it is locked.

24 MS. TREBATOSKI: There are dirt roads you can
25 drive, but the gate's locked. But it's drivable.

1 THE HEARING EXAMINER: All right. Why don't I
2 have Suzanne call you and make arrangements to have
3 the gate unlocked. I assumed there were people living
4 there, so I figured you could just drive on. But,
5 yeah, I'd like to drive on the site, get a look at
6 the site as well as the area around it.

7 I don't know yet what I'm going to do. I
8 understand what Kirk's testimony is and recommending
9 that you all go to the sandstone aquifer and the whole
10 bit; but I understand these folks' concern about their
11 wells, too. And looking at what has happened over in
12 the -- oh, dear, Black Wells -- Blairstone -- no.

13 MR. SCHROPP: Briarcliff.

14 THE HEARING EXAMINER: Briarcliff. I knew it was
15 in there somewhere.

16 Okay. What had happened over in the Briarcliff
17 area, you know. These folks live this every day. So
18 I understand that experts say X, Y and Z; but this is
19 testimony from them. They know what the situation is
20 on a daily basis and I have to give it a little more
21 weight than just generally lay testimony, so I do have
22 some concerns about it from that standpoint.

23 I don't have a problem with an RPD out there. I
24 just don't know about the density and I don't know yet
25 about the water, so I need to go and look. I also want

1 to look at the roadways and stuff. I understand that
2 if the roadways are substandard that you all will have
3 to fix them or whatever; but I need to look the area
4 over before I make a final decision on this one.

5 All right. At least four to six weeks for my
6 decision and then from my decision, once my decision
7 is issued, it can be anywhere from two to four weeks
8 before it gets scheduled in front of the Board of
9 County Commissioners.

10 You will be notified. You will receive a copy of
11 my recommendation to the Board and then zoning staff
12 across the way over here will set it in front of the
13 Board of County Commissioners and you will receive a
14 notice from them on the day and the time that you need
15 to be here. But I will tell you typically it's the
16 first, third and fifth Monday of the month. The Board
17 holds their hearings the first, third and fifth Monday
18 of the month, if there's a fifth Monday in that month.

19 The Board meets -- where the nice big trees are
20 over here, the old courthouse building, you know, I
21 mean that's the Board chambers over in there. You
22 go in, go up to the second floor. Those are the
23 Commissioners' offices and that's the Board hearing
24 room is where those nice big trees are out there in t
25 he back half of the Federal Building.

1 But, anyway, six weeks -- four to six weeks for
2 my decision, my recommendation, and then another
3 probably two to four weeks after that for it to go
4 before the Board of County Commissioners.

5 All right. Folks, it's been fun. This hearing
6 is closed.

7 (Proceedings 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
9 numbered 1 through 239, inclusive, is a true record.

10 Dated this 16th day of April, 2007.

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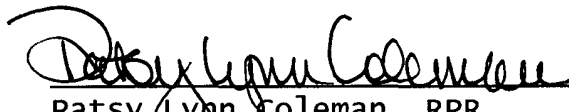
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Patsy Lynn Coleman, RPR
Notary Public, State of Florida