



TRANSCRIPTS  
FOR  
CASE #:

DC 1 2006-00070

LEE COUNTY  
HEARING EXAMINER

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LEE COUNTY HEARING EXAMINER MEETING

RE: DCI2006-00070

IN RE: Win-Del Prado, LTD in ref to Win-Del  
Prado CPD

Transcript of Proceedings

Before Richard Gescheidt, Hearing Examiner, held  
at the Hearing Examiner's Hearing Room, 1500  
Monroe Street, Fort Myers, Florida, on August 1,  
2007.

PRESENT:

Mr. Matt Uhle, Attorney for the Applicant  
Mr. Tony Palermo, for Staff  
Mr. Andy Getch for DOT  
Mr. Rob Spickerman, Assistant County Attorney

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**ORIGINAL**

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1 HEARING EXAMINER: My name is Richard Gescheidt.  
2 I'm a Lee County Hearing Examiner.

3 I'm here this afternoon to hear Case  
4 DCI2006-00070. The applicant is Win-Del Prado, Limited.  
5 This is a request to rezone 31.7 acres from Agricultural,  
6 Residential Planned Development and Commercial Planned  
7 Development to a Commercial Planned Development for the  
8 property located at 17540 through 17800 North Tamiami  
9 Trail.

10 Before we begin, I believe the County Attorney  
11 has some comments for you.

12 MR. SPICKERMAN: Thank you.

13 Good afternoon. My name is Rob Spickerman. I'm  
14 an Assistant County Attorney representing the Board of  
15 County Commissioners. I'm also here today to assist  
16 staff, the Hearing Examiner and the applicant to ensure  
17 that the record in this case is complete.

18 If you'd like to participate in today's hearing  
19 or obtain a copy of the Hearing Examiner's recommendation,  
20 please fill out one of the white forms on this table to  
21 the side of the room. Once completed, please leave the  
22 form next to the Hearing Examiner or bring it up at the  
23 public participation portion of the hearing.

24 After staff's presentation, the Hearing Examiner  
25 will open the floor for public comment. It is at that

1 time you'll have an opportunity to address the Hearing  
2 Examiner. All public comment will come from the podium in  
3 the front. When you approach, please state your name and  
4 address for the record and please also state if you own or  
5 live near the property that is the subject of today's  
6 hearing.

7 The hearing today is not the final action on this  
8 matter. The Hearing Examiner's recommendation will be  
9 considered by the Board of County Commissioners at a final  
10 public hearing in a few weeks. If you would like to have  
11 your thoughts considered in this matter, you will need to  
12 speak here today. Also, if you wish to speak at the  
13 hearing before the Board of County Commissioners, you will  
14 need to speak here today to preserve your rights.

15 At this time we will go around the table with  
16 introductions starting to my right.

17 MR. GETCH: Andy Getch, Lee County Department of  
18 Transportation.

19 MR. PALERMO: Good afternoon. I'm Tony Palermo  
20 with the Lee County Department of Community Development.

21 MR. UHLE: I'm Matt Uhle, attorney for the  
22 applicant.

23 MR. SPICKERMAN: That's all.

24 HEARING EXAMINER: Okay. Thank you.

25 Ladies and gentlemen, how we're going to proceed

1 is the applicant will be making a presentation through  
2 their witnesses and exhibits. As each witness comes  
3 forward, when they finish, they'll be subject to  
4 examination by the county staff and/or the County  
5 Attorney.

6 Following the applicant's presentation, the  
7 County Attorney will in a similar fashion make a  
8 presentation with their witnesses and their exhibits.  
9 During that time they will be subject to examination by  
10 the applicant or the applicant's attorney.

11 Following those presentations, I will open it up  
12 to the public portion of this hearing at which time the  
13 public can come forward and make a statement or ask  
14 questions and give their comments with regard to this  
15 application. That's the only time that the public can  
16 participate in this proceeding.

17 Following the public presentation, we may have  
18 some rebuttal and certainly some answers by the applicant  
19 or staff to questions posed by the public and then the  
20 hearing will close.

21 At this point in time I'm going to ask anyone who  
22 has a cell phone or pager to turn it off so that we're not  
23 interrupted during these proceedings. I would ask that  
24 there be no food or drink in this hearing room except for  
25 water.

1           And, finally, everybody that testifies or says  
2 anything before me today has to do so under oath.  
3 Consequently, I will be swearing everybody in en masse and  
4 request that when you come forward,, you give me your name,  
5 your address and indicate whether or not you've taken an  
6 oath.

7           With that, everybody that's going to testify  
8 before me this afternoon, including attorneys who may be  
9 testifying to factual matters, please raise their right  
10 hand.

11           (All witnesses were sworn.)

12           HEARING EXAMINER: Okay. Thank you all.

13           With that I'll turn it over to Mr. Uhle.

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

16           We sent the 24-hour notice well in advance of 24  
17 hours this time, so I assume everybody got one.

18           The list of issues is not particularly  
19 extensive. However, we will be putting on a reasonably  
20 lengthy presentation in order to provide context for these  
21 and other issues.

22           Basically, what's going to happen is I'm going to  
23 give you some historical background for this case that I  
24 think you have trouble understanding parts of the Staff  
25 Report unless you understand the history, so I'm going to



1 do that because I probably have more personal knowledge of  
2 those events than anybody.

3           Following that I'm going to put on a series of  
4 witnesses. The first one will be Robert Pierro from Avid  
5 Engineering. He'll be testifying on issues relating to  
6 engineering. We will ask that he be qualified as an  
7 expert in civil engineering. He will walk you through the  
8 site plan, talk about Deviation No. 2 and talk about  
9 briefly some surface water management utilities issues.

10           Following that we will have traffic testimony  
11 from Jane Caldera. All of these experts other than Rae  
12 Ann Boylan are from outside the community so they'll all  
13 have to be qualified. Jane is a transportation engineer,  
14 and she'll be addressing the Traffic Impact Statement and  
15 also providing a justification for Deviation No. 1 which  
16 is probably the single biggest thing we have in dispute  
17 with the staff right now.

18           Following that, Rae Ann Boylan will be providing  
19 testimony on environmental issues, particularly with  
20 regard to the enhancement, preservation and restoration  
21 plan that's referenced in Condition 15 of the Staff  
22 Report.

23           Following her Peter Cowell will be testifying as  
24 an expert on planning, on the Lee Plan consistency of this  
25 plan.

1           And then to conclude I'll just be highlighting a  
2 couple of items in the Staff Report that we agree with but  
3 we think need some emphasis and then talking about the 24-  
4 hour notice. That won't take long since there's not much  
5 in it.

6           By way of background, we've provided an exhibit.  
7 This is the large version. I don't think you really need  
8 the record to include that one so we have a smaller  
9 version for the record.

10           HEARING EXAMINER: The applicant has tendered to  
11 me an aerial photograph entitled Sabal Springs/Crane  
12 Landing Rezoning History. If nobody has any objection,  
13 I'm going to admit that as Applicant Exhibit 1.

14           That's -- yes, thank you.

15           (Applicant's Exhibit No. 1 was marked for  
16 identification.)

17           MR. UHLE: As the first page of the Staff Report  
18 points out, the property is actually currently in three  
19 different zoning classifications. A portion of the  
20 property is zoned AG-2. A portion of it is zoned CPD and  
21 that CPD is vacated. But a portion of it is zoned RPD and  
22 therein lies a story that sort of winds its way through  
23 the Staff Report.

24           Again, if you don't have the full context, I  
25 think it's going to be difficult to understand exactly

1 what we've been through and what we're asking for. And  
2 this exhibit will help me explain.

3 The history of this project in a sense goes back  
4 to 1986 when Sabal Springs was initially rezoned. The  
5 boundaries of the Sabal Springs rezoning in 1986 are shown  
6 in the slanted red lines. The Hearing Examiner will note  
7 that there's overlap in here and the overlap is part of  
8 the point as you'll see as I go along.

9 The '86 rezoning includes this property here  
10 (indicating) which is a wetland subject to considerable  
11 discussion in this process.

12 It also includes this developed parcel here  
13 (indicating) as well as this undeveloped property over  
14 here (indicating).

15 The staff has provided you with the resolution  
16 that shows that in that 1986 rezoning, the initial one was  
17 done to RPD for a mobile home park. And, again, by way of  
18 reference, this area right in here (indicating) is the  
19 section line, so when you look at the Master Concept Plan,  
20 you'll see that it's a fairly easy dividing point between  
21 the two areas.

22 Subsequent to that 1986 zoning -- things happened  
23 faster in '86 than they do now. The Board of County  
24 Commissioners amended their regulations. When we did the  
25 '86 rezoning, we just did it to RPD even though it was for

1 mobile homes because there was no Mobile Home Planned  
2 Development district, but they changed the regulations to  
3 provide for an MHPD district and they legislatively  
4 changed all Mobile Home Planned Developments that had been  
5 RPDs to MHPDs. So when you read the paper trail, that's  
6 why you'll see the next resolution refers to it as being  
7 MHPD.

8 So later in '86, there was another rezoning in  
9 which this portion of the property was changed to RPD for  
10 conventional homes. This portion of the property here  
11 (indicating) remained in its MHPD zoning.

12 This property clearly was never developed for the  
13 purpose that it was described in 1986, but this property  
14 was used and developed for conventional homes.

15 There is another resolution in the Staff Report  
16 that is included as an attachment that shows that in '89  
17 there was a relatively minor amendment to the Sabal  
18 Springs RPD that doesn't really affect this request or  
19 require any explanation.

20 The next significant thing that happened was in  
21 '89 and 1990, the property that's shown in orange on this  
22 graphic was rezoned from AG-2, I believe, to CPD.

23 Now, for the Hearing Examiner's edification, the  
24 road that you see, Del Prado Extension to the north of  
25 this property, didn't exist at the time that the rezoning

1 was filed. If you weren't aware of that, some of what's  
2 going on here probably doesn't make a lot of sense.

3 It's of some significance that the southern  
4 boundary of that rezoning was designed to coincide with  
5 the northern boundary of this wetland here so the CPD did  
6 not include any of that wetland property. That rezoning  
7 was, in fact, approved in 1990. The resolution is  
8 included in your package, but nothing was ever built  
9 except Del Prado Extension ultimately was built with  
10 right-of-way that came from this property. I believe it  
11 was conveyed in exchange for impact fee credits.

12 But as a result of the lack of activity, the CPD  
13 vacated and so it's a vacated CPD today.

14 The exciting part comes in 2003 and 2004 when the  
15 property owner filed a request for an RPD on a project  
16 that was to be known as Crane Landing. And that would  
17 include property -- initial application included this  
18 property here (indicating), the MHPD portion of Sabal  
19 Springs that was never built, along with property to the  
20 south that was not related to that particular project.

21 That represents the boundaries of the property as  
22 it was initially proposed. However, relatively late in  
23 the process, it came to the County Attorney's office  
24 attention that not only were we rezoning property, but we  
25 were amending effectively the Sabal Springs RPD. So the

1 County Attorney's office took the position that we were  
2 required in our rezoning to include all of Sabal Springs  
3 in the rezoning application so we had to refashion the  
4 application not just to include this property and this  
5 property but this portion of Sabal Swings as well and this  
6 is where the trouble begins.

7 As far as I know, it wasn't the county's intent  
8 or the applicant's intent to make any substantive changes  
9 to Sabal Springs such as it was, but when the legal  
10 description was done for Sabal Springs as part of the  
11 Sabal Springs/Crane Landing rezoning, the legal  
12 description was done in such a way as to exclude the  
13 wetland that had previously been included in the 1986  
14 approval.

15 Either I wasn't aware of that or its significance  
16 didn't dawn on me and the county didn't catch it either,  
17 so that's the way it went through the system and that's  
18 the way it got approved.

19 While it was going on, there were also changes  
20 made to the 1986 approval for Sabal Springs which had  
21 prescribed a certain number of acres that were required to  
22 be preserved for wetland purposes, so that because the  
23 wetland was being deleted from that particular portion of  
24 the project, the preserve area went down. The 2004  
25 resolution that got approved was internally consistent,

1 but the problem then was this wetland area here was not  
2 included in this resolution. Geographically, that meant  
3 it was still included within the 1986 Sabal Springs  
4 resolution.

5 Now, a few points that you need to be aware of  
6 with regard to the 1986 Sabal Springs resolution. One of  
7 them is that if you look at the Master Concept Plan and  
8 you look at the various conditions that prescribe acreages  
9 for wetlands, it was absolutely crystal clear that the  
10 plan in 1986 was that the wetland was to be preserved.  
11 And so that's something that we've had to deal with in  
12 this project from the beginning.

13 The other thing is that we showed the county  
14 during the process that in 1986 there was no county  
15 requirement either in the resolution or in the county's  
16 underlying Land Development Code for indigenous vegetation  
17 as such. For example, today we have specific requirements  
18 in the Code. There were no such requirements in the Code  
19 at the time. So the significance of that will be apparent  
20 in a minute.

21 So the bottom line is after 2004, what we've got  
22 now is an RPD that has a 2004 resolution that has this  
23 property here (indicating) and this property here  
24 (indicating) but does not include this property here  
25 (indicating). This property here (indicating) is now

1 subject to a 1986 resolution which requires the  
2 preservation of the wetland but it makes no sense because  
3 there's no plan that's in any meaningful sense attached to  
4 it because it has been superseded by all of this.

5 So that's the situation that we came into when we  
6 started to rezone this property and it created both  
7 procedural and substantive issues.

8 From a procedural perspective, our position was  
9 that all we needed to do for this project was to rezone  
10 the subject property, which includes the wetland, includes  
11 the CPD and includes the AG-2 property. And that that  
12 didn't entail any changes to the 2004 resolution because  
13 the 2004 resolution was totally internally consistent.

14 We made that argument, and we did not persuade  
15 the staff completely on that point, so in order to move  
16 the application forward, they made us provide a sketch and  
17 a legal description of both Sabal Springs and Crane  
18 Landing. We were also required to write up a letter to  
19 all the residents of Sabal Springs and the owner of Crane  
20 Landing that would be sent out advising them of the nature  
21 of the application and making them aware what was going on  
22 in general, and that particular letter is included as an  
23 attachment in the package. So we ultimately did this.

24 Now, what you're going to find when you read the  
25 Staff Report is that the Staff Report is framed so that it



1 only impacts the 31.87 acres that we're actually planning  
2 to change in this case, and the reason for that is, as we  
3 pointed out from the beginning, because we weren't  
4 planning to borrow any acres from Sabal Springs or Crane  
5 Landing for any purpose, we weren't affecting them in any  
6 way, we didn't think we really needed them to be involved.  
7 But the Staff Report makes a reference to superseding the  
8 1986 resolution for this property which is necessary and  
9 appropriate, but there are no conditions that are attached  
10 to Crane Landing or the rest of Sabal Springs which we  
11 agree with.

12 From a substantive perspective, there were two  
13 issues that we had to work out with staff as well. One of  
14 them had to do with the wetland and whether we were,  
15 quote/unquote, double dipping on indigenous if we included  
16 that wetland in our property since it had initially been  
17 included in the '86 Sabal Springs' approval. And we  
18 showed that the 1986 regulations didn't have any  
19 indigenous requirement, so it was not legally possible for  
20 us to be double dipping. So I think it's quite clear that  
21 that is not an issue today and it shouldn't be.

22 But over and above that, there is a question of  
23 what we're proposing to do relative to the preservation  
24 requirement that undoubtedly exists on the property today  
25 by virtue of the 1986 resolution.

1           We've conceded that it's definitely our burden to  
2     prove that what we're proposing from an environmental  
3     perspective is as good as or better than the preservation  
4     requirement in the '86 resolution.

5           That was the subject of extensive discussion  
6     between the county staff and our consultants throughout  
7     the process. But, ultimately, we did persuade the staff  
8     that what we were proposing was, I think, as good as or  
9     better than the previous approval, and so that's the basis  
10    for the staff approval subject to Condition 15.

11           So that's really the bottom line of where we've  
12    come from and why we're here today. There are a number of  
13    exhibits that you'll find in the Staff Report and a number  
14    of factual statements that I think you would find  
15    difficult to understand if I hadn't told you that.

16           If you have any questions, I'll be happy to  
17    answer them. Otherwise, I'll call my first witness.

18           HEARING EXAMINER: I don't have any questions.  
19           Anything by applicant or staff?

20           MR. PALERMO: No questions.

21           HEARING EXAMINER: Thank you, Matt.

22           MR. UHLE: First witness is Mr. Pierro.

23    Thereupon,

24                               ROBERT H. PIERRO,  
25    called as a witness by the Applicant, having been

1 previously duly sworn, was examined and testified as  
2 follows:

3 MR. PIERRO: Good afternoon. My name is Bob  
4 Pierro. I'm with the firm of Avid Group, a civil  
5 engineer. I'm here for the applicant.

6 MR. UHLE: Would you please identify this  
7 document?

8 MR. PIERRO: It's my current resume.

9 MR. UHLE: We would like to introduce this as an  
10 exhibit.

11 Mr. Pierro, can you please generally describe  
12 what your qualifications are in the realm of civil  
13 engineering, site design?

14 MR. PIERRO: Yes. First of all, I am a civil  
15 engineer, registered professional engineer in the state of  
16 Florida. I graduated from the University of South Florida  
17 in 1973. I have been practicing civil engineering in the  
18 greater Tampa Bay, Florida, area since 1973. My current  
19 expertise is commercial site development with the firm of  
20 the Avid Group, and I have been doing this work for  
21 approximately 20 to 30 years.

22 MR. UHLE: We need to ask that he be accepted as  
23 an expert in civil engineering and site design.

24 HEARING EXAMINER: Okay. I'm going to ask County  
25 Attorney or staff if they have any questions of the

1 witness by way of voir dire as to his expertise.

2 MR. SPICKERMAN: We have no objection.

3 HEARING EXAMINER: Do you have any objection to  
4 the introduction into evidence of Mr. Pierro's resume?

5 MR. SPICKERMAN: No objection.

6 HEARING EXAMINER: There being no objection I'll  
7 admit into evidence and mark as Applicant Exhibit 2 that  
8 resume.

9 (Applicant's Exhibit No. 2 was marked for  
10 identification.)

11 HEARING EXAMINER: And hearing no objection from  
12 anybody, I will designate the witness as an expert witness  
13 in civil engineering matters. Specifically what areas?

14 MR. PIERRO: General civil engineering but my  
15 specific expertise is commercial site development.

16 HEARING EXAMINER: Okay. Witness is so  
17 designated.

18 You can continue, Matt.

19 MR. UHLE: Please proceed.

20 MR. PIERRO: Thank you.

21 I'll be referring mostly to the Master Concept  
22 Plan. I believe it's been submitted at the upper left.

23 HEARING EXAMINER: Okay. Does staff or County  
24 Attorney have any objection to the introduction of the  
25 Master Concept Plan --

1 MR. PIERRO: And also the next exhibit as well,  
2 sir.

3 HEARING EXAMINER: Okay. -- the Master Concept  
4 Plan into evidence and, secondly, a document entitled  
5 Shops of Del Prado Cross Section?

6 Hearing no objection I'll admit those two  
7 documents as Applicant Exhibit 3 and 4.

8 (Applicant's Exhibits Nos. 3 and 4 were marked  
9 for identification.)

10 HEARING EXAMINER: Okay. Want to continue, sir.

11 MR. PIERRO: Okay. In general, the overall  
12 project is the commercial site development, consists of  
13 eight parcels bordering both US 41, Tamiami Trail, which  
14 is a DOT road, and Del Prado Boulevard, which is a county  
15 road.

16 The landscaping buffers complied with all the  
17 county landscaping buffers around the perimeter. Some of  
18 the things specific we want to call attention to is all  
19 the landscaping is 100 percent native landscaping, and the  
20 irrigation will be supplied through a reclaimed water  
21 system from the county.

22 Storm water will be addressing all the South  
23 Florida Water Management District storm water  
24 requirements. In addition, because this is in a sensitive  
25 drainage area, Lee County has specific criteria for this

1 and we've fully complied with the Lee County storm water  
2 requirements that apply to this particular project and  
3 area.

4 Utilities. Water is going to be supplied by Lee  
5 County. That water is available on Del Prado. Sanitary  
6 sewer by North Fort Myers Utilities and that sewer is also  
7 on Del Prado.

8 The next question I want to go over is the  
9 request for a deviation from LDC Section 10-285, which  
10 requires an excavation setback of 50 feet from the  
11 property line. You have the second exhibit we passed  
12 out. It is showing you what we propose. We are proposing  
13 a 31.94 foot setback from the property line. We have met  
14 with staff and because we are going for reduced distance  
15 we have added a six foot opaque high wall and additional  
16 landscaping within this area to provide a suitable buffer.

17 MR. UHLE: Would you please show the Hearing  
18 Examiner where this deviation is being requested on the  
19 Master Concept Plan?

20 MR. PIERRO: Yes. That's along this area, which  
21 is the very northwest quadrant of the property.

22 HEARING EXAMINER: Northwest quadrant?

23 MR. PIERRO: I'm sorry, I'm looking at it upside  
24 down. Yes, it is northeast. I'm sorry.

25 HEARING EXAMINER: Okay. And when you say

1 "northeast", are you really referring to the easterly  
2 boundary line up there or the northern boundary line?

3 MR. PIERRO: It's actually the eastern boundary  
4 line between our project and the single-family project  
5 immediately to the east and it's the -- it looks like it  
6 affects one, two, three, four, five -- about five lots  
7 immediately east of our project.

8 It extends from Del Prado to about several  
9 hundred feet, about 300 feet south of Del Prado.

10 HEARING EXAMINER: Okay. I don't know that it's  
11 marked on the Master Concept Plan, but is the width of  
12 that what I'll call a peninsula, is the width of that land  
13 31.94 feet?

14 MR. PIERRO: Actually, the 31.9 feet --

15 MR. UHLE: You can move that.

16 MR. PIERRO: -- from the property line to the  
17 water. The distance from the property line to where the  
18 residential development is is approximately 100 feet, so  
19 the 50 foot setback only applies to the edge of the  
20 water. It's not a setback for buffers.

21 HEARING EXAMINER: What's the width of that? I  
22 don't see it on the Master Concept Plan. But what is the  
23 width of that peninsula, for lack of a better word,  
24 peninsula?

25 MR. PIERRO: From here to here (indicating) is

1 approximately 100 feet.

2 HEARING EXAMINER: Okay. All right. Thank you.

3 MR. PIERRO: That's all I have if anybody has any  
4 questions.

5 MR. UHLE: Could you please explain, first of  
6 all, what the existing condition is in this area,  
7 particularly on the residential side, and then secondly  
8 what the rationale is for the deviation request?

9 MR. PIERRO: The existing condition as shown here  
10 is really undeveloped property. And what we're doing is  
11 for the development in general is trying to maximize the  
12 storm water mitigation areas to be used for storm water  
13 mitigation and also as buffers. Then you'll notice on the  
14 plan there is no commercial development immediately  
15 adjacent to a residential product. We've included storm  
16 water mitigation to provide in buffer areas in those  
17 cases.

18 MR. UHLE: Will there be any public health,  
19 safety or welfare issues associated with this deviation?

20 MR. PIERRO: No, there will not. All the storm  
21 water management facilities will be constructed according  
22 to Lee County and South Florida criteria.

23 MR. UHLE: Is there any danger of vehicles  
24 running into this area since it's less than 50 feet from  
25 the property line?



1 MR. PIERRO: There should not be. There are no  
2 immediate access points in this area and there's no access  
3 from the residential areas that I'm aware of. And the 50  
4 foot area is not next to the commercial development. It's  
5 on the other side.

6 MR. UHLE: No further questions.

7 HEARING EXAMINER: Questions by staff?

8 MR. PALERMO: Yes. Tony Palermo for the  
9 Department of Community Development.

10 One of the exhibits you gave me, this is the  
11 first time I've had a chance to take a look at it, but  
12 just a general question about in the middle here.

13 MR. PIERRO: Yes.

14 MR. PALERMO: I'm presuming that's water. Is  
15 that going to be wet all the time or most of the time?

16 MR. PIERRO: It will vary. It's designed to be  
17 wet during really most of the year. The water levels need  
18 to vary in a mitigation area so they have different type  
19 of plant life that provide different levels of water. And  
20 the actual depth of that area will actually be controlled  
21 by the environmentalists and the permitting agencies to  
22 create an area that sustains the type of vegetation that  
23 they want for a mitigation area.

24 MR. PALERMO: Right. And if I could just work  
25 from right to left, the right being where the property

1 line is for Sabal Springs, it's showing a six foot opaque  
2 wall. It's showing trees. It's showing some plantings  
3 and vegetation --

4 MR. PIERRO: Yes.

5 MR. PALERMO: -- as stuff that's required by the  
6 Land Development Code. Then you go through and there's  
7 the drainage area and then there's -- looks like there's  
8 more vegetation and trees on the other side also; is that  
9 correct?

10 MR. PIERRO: That is correct.

11 MR. PALERMO: And I just wanted to make sure that  
12 we had some assurance that the vegetation would occur on  
13 both sides because that sounds quite desirable to buffer  
14 this commercial area from this residential area.

15 MR. PIERRO: That's correct.

16 MR. PALERMO: So that's the intent of the  
17 application?

18 MR. PIERRO: Yes, it is.

19 MR. PALERMO: Okay. That's all I have. Thank  
20 you.

21 HEARING EXAMINER: Questions by County Attorney?

22 MR. SPICKERMAN: No questions.

23 HEARING EXAMINER: Since there are members of  
24 the public present, can you describe how -- I understand  
25 it but can you describe for the public, how the water

1 management in that area occurs? I mean, I think they're  
2 probably going to want a little reassurance with regard to  
3 the flooding on their property or possible flooding on  
4 their property.

5 MR. PIERRO: Okay. I guess I agree with the  
6 residents' concern about drainage, it's a concern  
7 throughout most of the state of Florida.

8 In this particular area, the county has also  
9 agreed with that request, that there are some unusual  
10 criteria for drainage and Lee County has determined this  
11 is what's called an area of peak sensitive basins.  
12 Because it is in this particular classification, we are  
13 required to design to a 100 year, three day storm event.

14 That type of storm event is in excess of the  
15 requirements by South Florida Water Management District,  
16 and it recognizes what both the state and the county have  
17 that in order to allow development in these type areas to  
18 occur and to occur safely, the additional requirements for  
19 the 100 year, three day event must be met, and that's our  
20 test, we will meet that criteria.

21 HEARING EXAMINER: Okay. Now I'm going to get a  
22 real simple question. Where does the water go?

23 MR. PIERRO: Basically, it goes along the  
24 historic, where it's always gone but basically from our  
25 site it basically drains to the east and then to the

1 south.

2 HEARING EXAMINER: Okay. I have no further  
3 questions.

4 Anyone else? Thank you, sir.

5 MR. PIERRO: Thank you.

6 HEARING EXAMINER: Next witness.

7 MR. UHLE: Next witness is Ms. Caldera.

8 Thereupon,

9 JANE CALDERA,

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

13 MS. CALDERA: Jane Caldera, Avid Engineering,  
14 2300 Krueger Road, Palm Harbor, Florida, and I've been  
15 sworn.

16 MR. UHLE: Would you please identify this  
17 document?

18 MS. CALDERA: This is my current resume.

19 MR. UHLE: We'd like to introduce this as an  
20 exhibit.

21 Would you please briefly explain your background  
22 and expertise in transportation engineering?

23 MS. CALDERA: I'm a degreed civil engineer, also  
24 a registered professional engineer in the state of  
25 Florida. Been practicing the specialty within the civil

1 engineering field of traffic engineering services since  
2 1988 in the Tampa Bay area and throughout the state of  
3 Florida.

4 My area of expertise that I currently focus on is  
5 looking at traffic operations, traffic impacts on  
6 surrounding roadways and dealing with access management,  
7 safety in operations on both commercial and residential,  
8 industrial, all types of projects.

9 MR. UHLE: Based on that and her resume, we would  
10 ask that she be accepted as an expert in transportation  
11 engineering.

12 HEARING EXAMINER: First I'm going to ask the  
13 staff and the County Attorney if they have any objection  
14 to the introduction of Ms. Caldera's resume in evidence.

15 MR. SPICKERMAN: No objection.

16 HEARING EXAMINER: There being no objection that  
17 resume will be admitted and marked as Applicant Exhibit  
18 5.

19 (Applicant's Exhibit No. 5 was marked for  
20 identification.)

21 HEARING EXAMINER: Does staff or the County  
22 Attorney have any questions of Ms. Caldera related to her  
23 desiring to be declared an expert witness?

24 MR. GETCH: No, sir.

25 HEARING EXAMINER: Okay. Do you have any

1 objection to declaring Ms. Caldera an expert witness?

2 MR. SPICKERMAN: No objection.

3 HEARING EXAMINER: Hearing no objections, I'll  
4 declare the witness to be an expert witness in traffic  
5 management matters. Please proceed.

6 MS. CALDERA: Okay. Thank you.

7 If I may, I have a package to hand out that is  
8 what I'd like to go through in my presentation.

9 HEARING EXAMINER: Okay. I'm going to ask if the  
10 county staff or County Attorney have any objection to the  
11 introduction into evidence of a document entitled Win-Del  
12 Prado Evidence For Driveway Waiver Support, Waiver No. 1.

13 Hearing no objection, I'll admit that document  
14 into evidence to be marked as Applicant Exhibit 6.

15 (Applicant's Exhibit No. 6 was marked for  
16 identification.)

17 MS. CALDERA: Thank you. Can I continue?

18 HEARING EXAMINER: Yes.

19 MS. CALDERA: I'll try to be as brief as  
20 possible, but there's two items I'd like to cover this  
21 afternoon is the information that I have provided to staff  
22 as we've gone through this process over the past little  
23 over 12 months is related to the Traffic Impact Statement,  
24 to look at the review for traffic impacts and concurrency.  
25 The other information is related to site access, access

1 management information and reviewing those issues.

2 We are in agreement with the information that  
3 we've supplied to staff and their findings that the  
4 impacts of the project on their area roadway system and  
5 that there is adequate capacity and level of service  
6 standards to proceed with the project so that's pretty  
7 simple.

8 The one I wanted to spend the majority of the  
9 time on this afternoon is to discuss a little bit of the  
10 history on our site access plan and why we're requesting  
11 what we're requesting and go through a little bit of the  
12 evidence I've provided in my handout today. And there's  
13 some materials in there just backup for previous  
14 information, don't need to review in detail but may help  
15 you as you review the case in the upcoming weeks.

16 The history is that we -- this site we were  
17 originally trying to design the site access plan in  
18 serving all the eight parcels with a total of four  
19 driveway connections, two to the State Road US 41 and two  
20 to Del Prado.

21 Very early on we always like to go talk to the  
22 agencies about how they feel about driveway cuts in both  
23 the state and the county. So in June, about 14 months ago  
24 in June of 2006, we got together with Lee DOT staff to  
25 talk about our request to Del Prado and at that time we

1 were informed that the access planned to Del Prado asking  
2 for two driveways was not in compliance with their spacing  
3 standard of 660 feet.

4 And this is mainly due to the access  
5 determinations and driveway spacing as the staff can  
6 correct me if I'm wrong, but the way the code is written,  
7 that it's based on its future designations. So Del Prado  
8 on the trafficways map is planned as an arterial in the  
9 future so we're to comply with the future standards of 660  
10 feet or request a deviation. So at that time we were  
11 informed that we would need a deviation to get more than  
12 one driveway connection to Del Prado and we moved forward  
13 with going through some engineering and traffic operations  
14 reviews to support that.

15 Shortly after that, we went and talked to DOT  
16 about our driveway connections to US 41 and had some  
17 resistance from DOT on allowing two cuts also.

18 MR. UHLE: Just to clarify that, that's FDOT.

19 MS. CALDERA: Yes, sorry. The Florida Department  
20 of Transportation in Bartow.

21 And their process would be to review it at the  
22 staff. If there's a denial at the staff level, you have  
23 to go to their Access Management Review Committee, which  
24 is -- there's a vote taken by a group of committee members  
25 and that's the final say at DOT unless you go to an



1 administrative hearing.

2 So in September of 2006 we went before all the  
3 directors at the Florida Department of Transportation in  
4 Bartow to request two access cuts to US 41.

5 Long story short is in October 13th, and there's  
6 a letter in this package in Section C, that the Department  
7 determined that they could not support a variance for more  
8 than one driveway on US 41 and permitted us one driveway  
9 as shown on the plan that is in compliance with their  
10 access Class 3 spacing standards. US 41 is their most  
11 restrictive access class at a Class 3 at 50 miles an hour.

12 The reason for that -- one of the reasons for  
13 that as you'll see in the letter I present later is that  
14 they stated they had discussions with Lee County and that  
15 they felt reasonable access could be obtained through one  
16 connection to US 41 and two full connections to Del  
17 Prado.

18 That as it may, we proceeded with DOT with the  
19 one driveway and got back with Lee DOT in January of '07  
20 to look at the operational information further and feeling  
21 if we had staff support for the two driveway connections  
22 and the exception of a waiver.

23 With that behind us, the current position by  
24 staff is that they don't support more than one driveway  
25 connection to Del Prado and we are here today to try to

1 get a little more evidence and make yourself and staff  
2 comfortable with our plan for two driveways and how it can  
3 work. If I could --

4 HEARING EXAMINER: Excuse me one minute before  
5 you go on.

6 Matt, I presume that your witness when she refers  
7 to waiver means deviation.

8 MR. UHLE: Yes.

9 MS. CALDERA: I'm sorry, Deviation No. 1.

10 HEARING EXAMINER: I just want it clear for the  
11 record.

12 MS. CALDERA: You're correct.

13 HEARING EXAMINER: Okay. Thank you.

14 MS. CALDERA: Okay.

15 HEARING EXAMINER: I'm sorry to interrupt, go on.

16 MS. CALDERA: The plan as requested in the  
17 submittal of the Master Plan is for one connection at a  
18 location that exceeds the 660 feet from 41, and at this  
19 time I know zoning doesn't approve how the median would be  
20 designed but we're hoping we've done enough work on our  
21 Development Order review and operations that that would be  
22 a full access connection.

23 The original request was to have a second full  
24 access connection that does not meet the 660. It's  
25 approximately 620 or 606, a few different measurements,

1 but it is short of the 660. And then the next measurement  
2 goes over to your existing driveway connection to the  
3 Sabal Springs community which is also short of the 660.  
4 So the reason we're in a deviation request is that the  
5 second driveway, no matter where you put it, will not meet  
6 both spacing standards.

7 Or the alternative that we wanted to pursue today  
8 and we presented to staff within the recent months is to  
9 try to compromise and ensure that there's operations on  
10 the Del Prado corridor that don't jeopardize the motoring  
11 public and safety and operations and protect that corridor  
12 to the future would be to have the second driveway, the  
13 more easternly driveway closer to Sabal Springs, be  
14 permitted at its location but restricted to right in,  
15 right out operations. And that would be achieved through  
16 the design of extending the landscape island further east  
17 so it operates with right turns in and right turns out.

18 So that is our current request which is not  
19 reflected on the formal application. It's something we  
20 would be asking to be considered today and that's how  
21 you'll see my exhibits in here.

22 MR. UHLE: Just to clarify, is what you're saying  
23 consistent with the graphic identified as Alternative No.  
24 2 in Subsection F of this?

25 MS. CALDERA: Yes, that is correct. And that was

1 a transmittal that we sent to Lee County DOT for further  
2 consideration last month.

3 MR. UHLE: Thank you.

4 MS. CALDERA: Okay. I'm just going to take you  
5 through some of the evidence and facts that we found out  
6 about, you know, the best available information on the Del  
7 Prado corridor as it relates to traffic, traffic  
8 projections and what standards, industry standards and  
9 FDOT standards are.

10 The first Section A is three pages of experts  
11 from your approved Del Prado corridor extension study, and  
12 that is Lee County. My understanding is as I received it  
13 from Lee County that was approved in September '06.

14 And the reason I put this in, because one of the  
15 comments from staff on their concerns with allowing more  
16 than one driveway and their denial of our deviation is  
17 that they are trying to protect this corridor because  
18 there are intentions of having it potentially connect up  
19 to I-75 and there's some scenarios. So in reviewing what  
20 the county has at this point as their best available  
21 information on this corridor study, the scenario that  
22 would run Del Prado along its current alignment and then  
23 turn north to interchange at I-75 would generate the  
24 highest traffic projections because once it interchanges  
25 with 75, you would feel it's going to draw more traffic.

1           At this point the best available information  
2 shows a traffic projection of 8,300 vehicles a day. To  
3 try to put that in laymen's terms, what that means, is  
4 that's the amount of cars on the road at a certain  
5 section, which is our section, projected in that design  
6 year of the project, what does that mean? Is that good or  
7 bad? At this point you would go to Section B to what are  
8 the Lee DOT standards on capacity thresholds which then  
9 refers you to -- for daily information which we're talking  
10 about, this 8,000 number is a daily number, to FDOT's  
11 criteria. So FDOT's criteria says that to meet a level of  
12 service D requirement, you have to be at 35,700 vehicles  
13 or less.

14           So in looking at this number of 8,000, it's not  
15 anywhere close and, in fact, it's ranging between level of  
16 service A and B as it's currently projected. And I think  
17 that's very important to point out because a roadway  
18 that's at a very high level of service considering a  
19 driveway that is slightly short of spacing standards in my  
20 professional opinion wouldn't create an adverse impact to  
21 the operations. The roadway is not expected to be  
22 anywhere close to capacity based on the current  
23 information, assuming it does convert to an arterial and  
24 connect to I-75. So that's the reason behind some of the  
25 technical information in Sections A and B.

1 MR. UHLE: Before you go on, I'd like to make it  
2 clear that the red markings on this particular exhibit, I  
3 assume that you created those, those are not part of the  
4 original document?

5 MS. CALDERA: Yes. Anything handwritten, and I  
6 believe I did it all in red except maybe some of the later  
7 exhibits, is information that I just tried to go through.  
8 So in going back to Section A, 5-1, which is the expert  
9 from the county's corridor study, the information written  
10 on the bottom represents my calculation on what's called  
11 the level of service and capacity. So the .23 number  
12 represents the amount of capacity projected to be used at  
13 the time this corridor is developed as proposed.

14 The reason I have Section C in here is the  
15 Florida Department of Transportation, you know, throughout  
16 the state and many years ago, in the late '80s, developed  
17 their access management -- late '80s, early '90s developed  
18 access management standards for all their roads, so state  
19 wide they classify roadways anywhere from a Class 1 to a  
20 Class 7.

21 Class 1 is absolutely the most restrictive and is  
22 basically interstate highway facilities and regulate where  
23 interchanges can go. So the opposite side of the  
24 spectrum, a Class 7, would be a roadway that's already  
25 developed in a downtown area and driveway spacing and

1 access management is probably too late and they go to that  
2 and say do the best you can.

3 Now, in between there what the DOT, the Florida  
4 DOT did was say, well, we're going to try to plan our  
5 roads better and the roadways we know we need to protect  
6 and plan better in the future we're going to put in this  
7 access Class 3 or 4 category and the ones that are in  
8 between that will be a 5 or 6. So the reason I put this  
9 in is that what I want to talk about is what access Class  
10 3 requirements are for DOT and show you that we're meeting  
11 those requirements on our deviation request.

12 Understand this isn't anything that Lee DOT has  
13 adopted. You have your rules of 660, but I think this is  
14 additional evidence to consider.

15 I won't read you the access Class 3 definition,  
16 but the areas I've underlined, you know, basically say  
17 that it's a controlled access facility and they're going  
18 to limit access to all abutting lands and developments to  
19 try to protect the capacity of the roadway.

20 The table that is contained in Section C and is  
21 labeled Page 10 is the current DOT minimum requirements on  
22 spacing standards and DOT has a little more detail than  
23 Lee DOT does.

24 They base it on, number one, the class, number  
25 two, the speed, and then they look at different criteria

1 depending on the function of the driveway, whether it's  
2 right in, right out or full access.

3 So the situation Del Prado is in, if we assume  
4 it's the highest DOT class, the most restrictive DOT class  
5 for purpose of comparison, would require a right in, right  
6 out driveway at 440 feet. That's what I've circled in  
7 red.

8 The point of this is that the second driveway  
9 we're requesting, as we've presented the alternative, does  
10 meet the 440 feet spacing between the other site driveway  
11 to its west and it exceeds the 440 feet to the existing  
12 driveway to Sabal Springs.

13 MR. UHLE: Before you go on, if I can ask you a  
14 question about the Figure 2 when it says 660/440 and you  
15 have 440 circled, is that -- the two different numbers,  
16 are those intended to identify a right in, right out as  
17 opposed to a full movement?

18 MS. CALDERA: No. Both of those numbers  
19 represent your minimum connection spacing for a right in,  
20 right out. The difference in the numbers is there's a  
21 little legend that's underneath the thick black line on  
22 the lower right that says greater than 45 miles an hour  
23 and then after the slash is less than or equal to 45. So  
24 the condition on Del Prado is 45 miles an hour so the  
25 criteria would then be after the slash of 440. Del Prado



1 is posted at a higher speed. They would look for the  
2 additional spacing.

3 The last DOT design exhibit in here which folds  
4 out, and I've also marked in red, is what DOT wants to  
5 have as their minimum requirement for a vehicle to exit a  
6 travel lane, slow down to make a right turn into a project  
7 or a left turn in some cases.

8 What I've circled at 240 feet would be the FDOT  
9 requirement on spacing on deceleration lanes to access  
10 driveways and our current proposal can provide 240 feet.  
11 In fact, we could exceed it if it was necessary, but our  
12 current proposal meets the DOT standard on decel.

13 And the reason I think that's important is that  
14 if you're putting driveways on roads and you don't have an  
15 adequate design, then you may have an impact on capacity  
16 at certain times when there's a lot of volume on the  
17 road, so the fact that we can design these to meet  
18 standards supports our case that there would not be  
19 adverse impact.

20 The last page in Section C is the letter from  
21 Director Deborah Hunt in Bartow on their decision and why  
22 they made their decisions to only allow one access  
23 connection to US 41. Specifically, what I've underlined  
24 in red is what they informed us was their discussions with  
25 Lee County.

1           Okay. Real quick, Section D is the plan we're  
2 currently requesting. I put a couple of colors on here  
3 for you. The red areas up along Del Prado represent where  
4 we'd be building these deceleration lanes into the two  
5 driveways we're requesting. The driveway further east,  
6 you will see a green area up to the right and that is our  
7 proposed extension of the landscape traffic separator that  
8 would actually ensure that you wouldn't have the left turn  
9 movements there and any kind of conflict created by a left  
10 turn, I think we all drive, we know left turns can be more  
11 difficult to make than right turns, would ensure that that  
12 operational problem would not occur.

13           The other information on here represents the  
14 spacing from center line to center line as we currently  
15 have in our plan. So I may have been off a little bit  
16 when I said the spacing. We've got 603 to the east on  
17 Sabal Springs and 468 to the current proposal at our main  
18 driveway.

19           MR. UHLE: If you were to reduce the 750 foot  
20 figure to 660 feet, would that eliminate the need for a  
21 deviation?

22           MS. CALDERA: Well, yes, it would. We could  
23 shift everything, but from a design perspective, it's in  
24 the best interest to have your driveways as far away from  
25 a traffic signal at a major intersection as possible. So

1 in my professional opinion, shifting it would probably  
2 have the potential to have operational problems that you  
3 wouldn't have if you can keep it as far away from the  
4 intersection as possible.

5 That isn't a scenario that we've tested at this  
6 point because of the need for sizes and things on out  
7 parcels.

8 MR. UHLE: But, in your opinion, there would be a  
9 health, safety and welfare issue if you moved that major  
10 intersection close to the intersection of Del Prado and  
11 41?

12 MS. CALDERA: I wouldn't say there will be a  
13 health, safety and welfare issue, but if there is  
14 operational problems that develop along the Del Prado  
15 corridor in the future, because there isn't any health,  
16 safety and welfare problems today, the closer it is, the  
17 more likelihood it would occur, if that's an adequate  
18 answer.

19 MR. UHLE: It is, thank you.

20 MS. CALDERA: Last section to run you through.  
21 There was some discussion in staff's comments back on  
22 their concerns with allowing more than one driveway and  
23 the denial is -- you know, this isn't anything that the  
24 engineer document, I want to say that, but it's just  
25 reflective of the best aerial photography we could get,

1 and the actual observations from myself driving up and  
2 down the Del Prado corridor over the past couple of months  
3 to understand how access is being controlled to the  
4 segment to both the east and the west. And I don't need  
5 to go through this in detail, but, you know, generally  
6 speaking, you can see how many driveways are along the  
7 corridor and look at the mileage and say, okay, to the  
8 west at this point their driveways average between Kismet  
9 and US 41 about three driveways per mile.

10           The next page will show you that the corridor  
11 between 41, which I define to go to Mellow, currently has  
12 seven driveways, which gives you about two driveways per  
13 mile. So with our proposed addition of two driveways,  
14 should you approve the second driveway deviation, would  
15 put us at about 2.5. So it just -- generally speaking,  
16 it doesn't appear to be as an average along these  
17 corridors out of line with maybe what's been planned out  
18 there.

19           The reason I didn't measure the section all the  
20 way up to the potential I-75 interchanges, most of the  
21 information I've reviewed says that that will be limited  
22 access, almost zero access, in the future. I believe it  
23 runs along the corridor that's developed on the east and  
24 is preserved or reserved on the west side.

25           I don't need to take you through the last

1 section. It was just some copies of some information,  
2 some letters and some e-mails we've provided back and  
3 forth to staff over the past few months to try to provide  
4 the additional support and evidence to be in favor of the  
5 requested deviations.

6 In summary, I feel that the request for the  
7 second driveway to Del Prado as a right in, right out  
8 connection with whatever conditions will be appropriate,  
9 though it is in compliance with FDOT standards for their  
10 access Class 3 restrictive facility, we feel that is -- my  
11 professional opinion that is a valid evidence to support  
12 it.

13 Secondly, you know, in doing access management  
14 work over the past 19 years, their understanding it's  
15 quite a balance between what's best for protecting the  
16 motoring public, planning for the future of roadways and  
17 trying to have reasonable access to serve development  
18 activity and have development function as it should.

19 In allowing the second driveway to Del Prado  
20 would shift about 28 percent, which is in the peak hour  
21 about 110 cars to this other driveway, and, you know, we  
22 feel it's in benefit of good site planning and traffic  
23 circulation to distribute traffic as evenly as possible,  
24 not to try to put all the traffic to one point and getting  
25 frustrated drivers and drivers that may make bad decisions

1 because of delays they could experience at one location  
2 that could be alleviated at another location.

3 So my professional opinion adding a right in,  
4 right out drive to this corridor based on all the  
5 information available would not adversely impact your  
6 operations or capacity of Del Prado as it exists now or in  
7 the future.

8 Lastly, is that we can meet proper design  
9 standards for the driveway design and appropriate  
10 deceleration lanes to it.

11 Thank you.

12 MR. UHLE: Just a couple of questions. First of  
13 all, do you agree with the conclusions in the Staff Report  
14 regarding the level of service on US 41 and Del Prado?

15 MS. CALDERA: Related to their findings in the  
16 Traffic Impact Statement, yes, I do.

17 MR. UHLE: And can you please just tell me  
18 briefly how much frontage does this project have on Del  
19 Prado and US 41 combined?

20 MS. CALDERA: It's about 1,700 feet on Del  
21 Prado. I didn't bring my scale up, but I want to say it's  
22 about 1,100 on US 41. So 2,800, 2,700, roughly.

23 MR. UHLE: So a little over half a mile total?

24 MS. CALDERA: Yes, correct.

25 MR. UHLE: No further questions.

1 HEARING EXAMINER: Questions by staff?

2 MR. GETCH: No.

3 MR. PALERMO: I have one.

4 Tony Palermo, Lee County Department of Community  
5 Development.

6 Go to Page 8 of the Staff Report, it's the  
7 Deviation 1. I just wanted to get this nailed down  
8 because the requirement is for 660 feet of separation on  
9 an arterial road, and I put the request as a connection  
10 separation of about 473 feet and 620 feet. And in two of  
11 the exhibits that you gave us, there's some slightly  
12 different figures. They're in the same ballpark but I'm  
13 showing 468 feet, 603 feet, and on this last one here, 462  
14 feet, approximately, and 610 feet. I'm just wondering if  
15 the applicant can just nail down precisely what's the  
16 deviation for and that would make your job a little  
17 easier.

18 MS. CALDERA: And you're correct, your  
19 measurements were different than my measurements. The way  
20 I measured was I projected the center of the driveway  
21 connection out to the center of Del Prado and tried to  
22 measure that distance, and we did it in the computer and  
23 maybe -- I'm not sure how you did yours, but I can tell  
24 you we haven't moved either driveway anywhere besides a  
25 few feet since anything you've looked at, so I think the

1 discrepancy is how we're measuring center line to center  
2 line to tell you. I think my numbers are as accurate as I  
3 could get them.

4 HEARING EXAMINER: I think what Tony is saying,  
5 they've got two numbers.

6 MR. PALERMO: Yes, I need a couple of numbers,  
7 that's what I need.

8 MS. CALDERA: Okay. Let me give you the two  
9 numbers.

10 Okay. Assuming we're talking about the driveway  
11 that is the eastern driveway connection, based on our  
12 current measurements and our center lines, we feel 603  
13 feet is the separation between the requested driveway and  
14 Sabal Springs center line and the connection between the  
15 requested driveway and the main access to the center is  
16 468 feet.

17 MR. PALERMO: Just one more question or  
18 observation. If this deviation is not approved, it looks  
19 like you would have an access approximately 750 feet from  
20 US 41 and the next access would be Sabal Springs  
21 Boulevard, looks like it's around 1,100 feet away, and I  
22 just want to confirm this is --

23 MS. CALDERA: Right. According to these  
24 measurements, I would add 468 plus 603 and come up with  
25 1,071.



1 MR. PALERMO: Okay. I appreciate it.

2 HEARING EXAMINER: Any other questions by staff  
3 or County Attorney?

4 MR. SPICKERMAN: No.

5 MR. PALERMO: No.

6 HEARING EXAMINER: Let me ask you one question.  
7 If you'd to this aerial photo where you have the overlay  
8 of the project that's in your report and it's under D.

9 MS. CALDERA: Yes.

10 HEARING EXAMINER: What would be the effect if  
11 you moved that westerly access further west and made that  
12 a right in, right only and then the eastern access, if you  
13 made that a full access?

14 MS. CALDERA: From a site planning perspective,  
15 it changes how we've planned to circulate our trucks  
16 through the site so at this point we've had a lot of  
17 difficulty getting trucks to be able to service the back  
18 of the main center and things without having to try to do  
19 U-turn movements and things because of the limitations on  
20 US 41, so it would be challenging on the site plan to flip  
21 those.

22 HEARING EXAMINER: Okay. You've answered my  
23 question. Thank you.

24 I have no further questions. Anyone else?

25 Okay. Thank you.

1 Matt, your next witness.

2 MR. UHLE: Next witness is Ms. Boylan.

3 Thereupon,

4 RAE ANN BOYLAN,

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

8 MS. BOYLAN: For the record, my name is Rae Ann  
9 Boylan. I'm with Boylan Environmental Consultants. We are  
10 the environmental consultant for the applicant.

11 MR. UHLE: She's been accepted as an expert on  
12 numerous occasions in environmental sciences, and we would  
13 ask that she be so accepted again today.

14 HEARING EXAMINER: Any objection?

15 MR. SPICKERMAN: No objection.

16 HEARING EXAMINER: The witness is declared an  
17 expert witness in environmental sciences matters.

18 MS. BOYLAN: The first exhibit I'd like to refer  
19 to is a vegetation map. It's consistent with the map that  
20 is contained with the species survey document in your  
21 Staff Report, but this is a color copy and a little bit  
22 easier to read.

23 HEARING EXAMINER: Okay. If there's no  
24 objection, I'm going to admit this document into evidence  
25 as Applicant Exhibit 7.

1 (Applicant's Exhibit No. 7 was marked for  
2 identification.)

3 HEARING EXAMINER: Do I hear any objection?

4 Okay. Go on.

5 MS. BOYLAN: The project site encompasses about  
6 31.87 acres of which about 17.84 acres are uplands. The  
7 uplands include some disturbed land, some Melaleuca areas  
8 and about 14.47 acres of pine flatwoods.

9 The site also contains 14.03 acres of wetlands,  
10 primarily a willow wetland, with areas of Melaleuca  
11 infestation and a small area of wet prairie.

12 In general, the site is bounded to the north by  
13 Del Prado, to the west by 41 and to the east and part of  
14 the southern boundary by Sabal Springs development.

15 Exotics have invaded both the wetlands and  
16 uplands on site. Most of the exotics on site are  
17 Melaleuca.

18 Boylan Environmental Consultants conducted a  
19 listed species survey. We found no signs of listed  
20 species. Lee County DES staff has confirmed that and  
21 there is a note in the Staff Report and the species survey  
22 is included as Exhibit Q.

23 Matt has provided a discussion of the history of  
24 the site and more specifically the wetland on the project  
25 site. And it was a question how do we deal with it, what

1 do we do. And from our standpoint, the best thing to do  
2 is to look at this wetland under existent current  
3 regulations.

4 As a note, there is an existing water management  
5 permit, and that is attached in the Staff Report as one of  
6 the exhibits. This permit was issued by the district in  
7 August of '04, and this permit did authorize over five  
8 acres of wetland impacts to the subject wetland on the  
9 parcel.

10 So in light of how do we treat the wetland, what  
11 we looked at is the do nothing scenario. If we do nothing  
12 with this wetland, we just leave it as it is and develop  
13 around it, and there is a procedure that the state has  
14 adopted to review impacts to wetlands, it's called the  
15 Unified Wetland Mitigation Assessment Procedure.

16 Well, we worked with county staff significantly  
17 on this issue because it was an issue. And we prepared  
18 the UWMAM analysis is how we referred to that document,  
19 and it looks at the functional value of the wetland if we  
20 develop around it, if we do no management, if we do no  
21 exotic removal, if we discharge away from the wetland and  
22 cannot improve the hydrology. And this analysis gives a  
23 functional value of the wetland.

24 We then looked at the same scenario with the  
25 wetland impacts as proposed by the applicant with the

1 management, with incorporation of this system into the  
2 water management system, allowing water to get into the  
3 wetland and continue to in the future, and there is  
4 actually -- in looking at this analysis, there is a net  
5 improvement in the functional value of the wetland even  
6 though there are wetland impacts proposed. And this  
7 methodology is currently adopted by the State of Florida,  
8 and it is the method that is used by all of the water  
9 management districts as well as DEP.

10 So we did not ignore the wetland issue. We  
11 looked at it with regards to what our project was doing to  
12 the wetland and the benefit that our project could provide  
13 to that wetland.

14 We then looked at providing an indigenous  
15 preservation plan that would address the project site.  
16 And I have to refer you to an exhibit in the Staff  
17 Report. This would be Attachment H, which is Kim  
18 Trebatoski's memo, and actually it would be the drawing  
19 that is attached to her memo. It's entitled Proposed  
20 Indigenous Preserve. And outlined on this plan are the  
21 various different preserve areas that we will have as a  
22 part of the proposed development.

23 We will have .46 acres of indigenous preservation  
24 upland and we will have another .68 acres of indigenous  
25 upland restoration. We will have indigenous wetland.

1 restoration where that portion of the wetland that's  
2 invaded with exotics will be restored and replanted. That  
3 acreage is 2.69 acres.

4 And then also we will have wetland enhancement in  
5 the remaining wetland which is 5.77 acres, plus we will be  
6 providing replanting within the retention and water garden  
7 areas.

8 We've also proposed indigenous monitoring to  
9 ensure the success of the indigenous restoration plan.

10 I would then like to refer to the Staff Report,  
11 special Condition 15, where they have briefed all of the  
12 Environmental Sciences conditions.

13 The first condition deals with the 9.6 acre  
14 wetland/upland preserve restoration plan. The second one  
15 deals with the 1.19 acres of water garden creation area.  
16 Those are the areas that are depicted on that drawing  
17 attached to Lee County Environmental Sciences staff memo.

18 And the rest of the conditions basically deal  
19 with details of the overall replanting plan. We are in  
20 agreement with those conditions. We believe that our  
21 project as proposed will provide no net loss of wetland  
22 function. As indicated, we have an existing water  
23 management permit for the northern wetland impact area.  
24 This permit is currently under modification with the  
25 district to reflect the current site plan. And the

1 indigenous preserve and management plan that we proposed  
2 we believe meets and exceeds the requirements of the LDC.

3 One thing I would like to try to get straight on  
4 the record is Exhibit R is titled in the Staff Report Lee  
5 County Indigenous Preservation Enhancement Plan. That is  
6 dated January 12th, 2007, and it includes three pages of  
7 text and two drawings.

8 I would like to offer into the record and suggest  
9 as a replacement to the existing Exhibit R a package that  
10 I am going to hand out that is entitled The Win-Del Prado  
11 RPD Amendment Discussion, Last Revised June 11, 2007, and  
12 a Preliminary Lee County Indigenous Preservation  
13 Enhancement Plan, Last Revised May 24, 2007.

14 This text discussion I believe accurately  
15 reflects what we have worked out with Lee County  
16 environmental services staff and the acreages in the  
17 documents I have here are reflected in the conditions and  
18 Lee County Environmental Sciences assessment memo or staff  
19 memo.

20 I think it's just a matter of getting the correct  
21 exhibits with the correct acreages in the Staff Report if  
22 I'm not making that too confusing.

23 HEARING EXAMINER: I understand what you're  
24 doing. Unless staff has any objection to the introduction  
25 of that document, I don't have any objection to its

1 introduction into evidence. I do have a problem in its  
2 substitution to the existing document that's part of the  
3 Staff Report because the Staff Report is not written by  
4 you. It's written by staff and that's their report.

5 MS. BOYLAN: If I could clarify, I believe that  
6 the information that I'd like substituted, staff is aware  
7 of and I just don't know that it made it into the Staff  
8 Report. I don't think it's any new material.

9 HEARING EXAMINER: Tony, you want to respond to  
10 that?

11 MR. PALERMO: Yes. Tony Palermo for the record.

12 She is providing an updated document. I'm aware  
13 of the documents and in support of her submitting it as  
14 part of the record, but I think you're right. You should  
15 have both exhibits so you can basically see the evolution  
16 from one to the next, but pay attention to this one.

17 MR. UHLE: I think if I could summarize this, we  
18 obviously don't have a right to write the Staff Report so  
19 we can't tell them what to put in the Staff Report. But  
20 this we believe correctly encompasses the agreement that  
21 we have with Environmental Sciences.

22 HEARING EXAMINER: I understand what you want to  
23 do. My comment, and I think Tony agrees with me, is it  
24 ought to be tendered as evidence as opposed to a  
25 substitution of documents which is in the Staff Report And



1 the Staff Report is sort of a done document.

2 MR. PALERMO: That's all right with me.

3 HEARING EXAMINER: I'll accept that if you'd  
4 bring it forward, please.

5 I take it from Tony's comments that staff -- and  
6 I take it the County Attorney has no objection.

7 MR. SPICKERMAN: No objection.

8 HEARING EXAMINER: So I will admit this Win-Del  
9 Prado RPD Amendment Discussion as Applicant Exhibit 8.

10 (Applicant's Exhibit No. 8 was marked for  
11 identification.)

12 HEARING EXAMINER: Okay. You want to continue,  
13 please.

14 MS. BOYLAN: I think with that I have finalized  
15 my testimony and I'm open for questions.

16 HEARING EXAMINER: Matt.

17 MR. UHLE: No questions.

18 HEARING EXAMINER: County staff have any  
19 questions?

20 MR. PALERMO: No questions..

21 HEARING EXAMINER: Okay. County Attorney doesn't  
22 have any questions?

23 MR. SPICKERMAN: No.

24 HEARING EXAMINER: I don't have any questions.

25 Thank you.

1 MR. UHLE: Next witness is Mr. Cowell.

2 Thereupon,

3 PETER COWELL,

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

7 MR. UHLE: Please state your name for the record.

8 MR. COWELL: Pete Cowell with Avid Group, 2300  
9 Krueger Road, Tampa, Florida.

10 MR. UHLE: Will you please identify this  
11 document?

12 MR. COWELL: That is my resume.

13 MR. UHLE: I'd like to introduce his resume.

14 Would you please, in general terms, describe your  
15 qualifications in the field of land use planning?

16 MR. COWELL: I graduated college from the  
17 University of Central Florida in 1987. And in 1980  
18 started work in special services and urban planning in a  
19 private, not for profit. And in 1980 went to government,  
20 starting in the City of Winter Springs, then with Citrus  
21 County and then with the City of Tampa where I was with  
22 the City of Tampa for 18 1/2 years doing both current  
23 planning and long-range planning. And in 2005 I retired  
24 from the city and began work with the Avid Group, also  
25 doing current and long-range planning both for commercial

1 and residential developments.

2 MR. UHLE: What do your responsibilities entail  
3 typically in these projects?

4 MR. COWELL: Review of Comprehensive Plans,  
5 review of zoning codes, review of the site plans once  
6 they're developed to ensure compliance and consistency  
7 with both the Comp Plan and the zoning code.

8 MR. UHLE: And do you typically testify as an  
9 expert in land use planning in any forums other than this  
10 one?

11 MR. COWELL: I've done it here and I've done it  
12 in court as well.

13 MR. UHLE: We would ask that he be accepted as an  
14 expert in land use planning.

15 HEARING EXAMINER: Did you say you previously  
16 testified here before?

17 MR. COWELL: Not here in front of this body but  
18 in front of other bodies such as this.

19 HEARING EXAMINER: Okay. Does the county staff,  
20 County Attorney have any objection to the introduction of  
21 Mr. Cowell's resume into evidence?

22 MR. SPICKERMAN: No objection.

23 HEARING EXAMINER: There being no objection, it  
24 will be admitted as Applicant Exhibit 9.

25 (Applicant's Exhibit No. 9 was marked for

1 identification.)

2 HEARING EXAMINER: Are there any questions of Mr.  
3 Cowell with regard to his expertise?

4 MR. SPICKERMAN: What areas are you going to be  
5 disciplined as an expert?

6 MR. COWELL: Land use planning.

7 MR. SPICKERMAN: Specifically for Lee County  
8 or --

9 MR. COWELL: In general.

10 MR. SPICKERMAN: Have you had any experience in  
11 Lee County with the Comprehensive Plan and land use  
12 planning in Lee County?

13 MR. COWELL: With review of the plan, yes.

14 MR. SPICKERMAN: You have never testified  
15 pursuant to that?

16 MR. COWELL: No.

17 HEARING EXAMINER: What's your expertise with  
18 regard to land planning matters under Lee County  
19 ordinances?

20 MR. COWELL: Excuse me? I didn't understand the  
21 question.

22 HEARING EXAMINER: What experience do you have  
23 with regard to land planning in Lee County?

24 MR. COWELL: Experience with this plan and for  
25 another plan that we're reviewing at this time that will

1 be coming before this body at some point in the future,  
2 those are the two plans that I've done in Lee County so  
3 far. I've reviewed the plan with --

4 HEARING EXAMINER: Okay. How familiar are you  
5 with Lee County ordinances?

6 MR. COWELL: I've read the zoning code, I've  
7 read the Comp Plan.

8 HEARING EXAMINER: Okay. Any comments from  
9 County Attorney or county staff?

10 MR. SPICKERMAN: No comments.

11 HEARING EXAMINER: I don't have a problem with  
12 his qualifications as far as land use planning goes, but I  
13 don't know if they're that specific with respect to Lee  
14 County.

15 MR. UHLE: Well, they're not but he's just going  
16 to agree with Tony anyway.

17 HEARING EXAMINER: On that basis I'll declare him  
18 an expert in general land use planning.

19 MR. PALERMO: I'll make note that his resume  
20 isn't as thick or impressive as the traffic engineer's.

21 HEARING EXAMINER: Go on, sir.

22 MR. COWELL: Thank you.

23 Basically, I'm going to start with your  
24 Attachment C, it's part of your document, and I do feel  
25 guilty because my case has been made all afternoon and it

1 does agree with Tony's interpretation which is the same as  
2 mine.

3 We are talking basically about the 31.87 acre  
4 parcel. Mr. Pierro, you know, talked about the  
5 compatibility issues, the width of the buffers, both the  
6 wetland and the roughly 100 foot buffer that's being  
7 provided as a divider between our development and the  
8 commercial development that we're proposing.

9 Ms. Caldera provided testimony to the fact that  
10 we are at the intersection of two arterial roads and that  
11 for that reason the development of this commercial  
12 property as we're proposing meets that intent and purpose  
13 as well.

14 Between the bufferings and the rights-of way  
15 issues, we have our compatibility there. We have all of  
16 our adequate public facilities, so we meet our  
17 compatibility there.

18 And unless somebody has a real specific question,  
19 I think I'm done.

20 MR. UHLE: Bottom line is that you agree with the  
21 staff interpretation that we're consistent as conditioned  
22 with the Lee Plan?

23 MR. COWELL: Absolutely.

24 MR. UHLE: No further questions.

25 HEARING EXAMINER: Questions by staff?

1 MR. PALERMO: No.

2 HEARING EXAMINER: County Attorney?

3 MR. SPICKERMAN: No questions.

4 HEARING EXAMINER: I have no questions. Thank  
5 you, sir.

6 MR. UHLE: Matt Uhle for the record.

7 At this time I just want to briefly highlight a  
8 couple of points in the general narrative of the Staff  
9 Report, and then I want to talk about the issues and the  
10 24-hour notice which are not numerous.

11 Two things that I think are worthy of some  
12 additional emphasis. One of them is discussed on Pages 13  
13 and 14 of my version of the Staff Report. That's  
14 specifically the discussion of Policy 6.1.2.3.F.

15 That language is included in the commercial site  
16 location standards, and it's commonly known as the North  
17 Fort Myers exception. It was adopted in the mid to late  
18 '80s by the Board of County Commissioners, and a couple of  
19 things about it are noteworthy.

20 First of all, while it's included in the  
21 commercial site location standards, it provides an  
22 exception not just to the general standards but to all  
23 other portions of the Lee Plan because it says not  
24 withstanding prohibitions contained elsewhere in this  
25 plan.

1           Where that comes into play is the language in the  
2 suburban land use category which normally would prohibit  
3 anything more than a neighborhood center in that category.

4           The reason for this language is relatively  
5 obvious if you look at the Lee Plan future land use map  
6 and you look at the intersections in the area of North  
7 Fort Myers and you look at the Lee Plan categories for  
8 that property.

9           What you'll find is that the area north of the  
10 intersection of old and US 41s in North Fort Myers, from  
11 that point forward basically you find two things. One of  
12 them is all of the property that -- virtually all the  
13 property, there's a little bit of central urban to the  
14 north of that intersection, but everything after that is  
15 either suburban or outlying suburban. So without this  
16 exception, there would be no opportunity to have a  
17 community commercial shopping center.

18           The other thing of note is that there is an  
19 absence of major intersections of arterials and collectors  
20 with US 41 north of that particular location, and that  
21 actually runs all the way into Charlotte County.

22           So in the late '80s when this language was put  
23 in, it was put in with the knowledge that if we didn't do  
24 something to specifically permit community commercial type  
25 uses in this area, there was going to be a large area of



1 Lee County that simply wasn't going to be served by this  
2 kind of use.

3 Subsequent to that, Del Prado Extension was  
4 actually built, didn't exist at the time that this  
5 language was put in the plan, but what that points out is  
6 that this really is the only major intersection in North  
7 Fort Myers north of the junction of the two 41s, and so  
8 this is a uniquely appropriate place to have a community  
9 commercial center.

10 I think that's a substantial part of the reason  
11 why the staff is supporting this particular proposal. You  
12 can go all the way from this point to the Charlotte County  
13 line, you can go into Charlotte County, you simply won't  
14 find another location that's better than this. And it  
15 doesn't make sense for people to have to drive all the way  
16 to Merchants Crossing to go to a shopping center, so  
17 that's the policy and the historical basis for this  
18 particular language.

19 Of course, there is another Publix that's located  
20 to the north of this a few miles, but that was also  
21 permitted by virtue of the North Fort Myers exception so  
22 you understand how that works.

23 The other point that I think is worth emphasizing  
24 is on Page 15 of the Staff Report where the staff  
25 indicates that there was a public meeting that was held at

1 Sabal Springs on this particular project that was well  
2 attended by residents in the area. And the Staff Report  
3 also correctly points out that that's not a requirement in  
4 North Fort Myers. So we just want to point out that we  
5 are, in fact, trying to work with the community and have  
6 made efforts over and above what the regulations would  
7 require in any sense.

8 With regard to the 24-hour notice, let me just  
9 talk briefly about these items. The first item that we  
10 asked for is to add package storage for the schedule of  
11 uses for the anchor parcel. That was an inadvertent  
12 omission from our schedule of uses that I notified Tony  
13 about as soon as I discussed it with the client, and we  
14 told him that we'd be asking for this. That was probably  
15 a little over a week ago.

16 The rationale for this is that really the plan on  
17 Parcel 2 is to have a multi-tenant facility that would  
18 include a grocery store. As the Hearing Examiner  
19 undoubtedly knows, it's very customary for package stores  
20 to be associated with grocery stores, so it's important  
21 for us to be able to have a package store in connection  
22 with that kind of use only on the anchor parcel. We are  
23 not asking for it on the outer parcels. And while Tony  
24 can speak for himself, I believe he will tell you that he  
25 does not have an objection.

1           With regard to Item 2, the auto parts store  
2 should be permitted on all the lots except Lot 6. Lot 6  
3 is uniquely sensitive in that it's the one that's closest  
4 to the residential development of Sabal Springs.

5           We don't see any particularly compelling reason  
6 why we shouldn't be able to have one on Lot 4 or Lot 5, so  
7 we are asking to limit the staff proposed limitation just  
8 to Lot 6.

9           With regard to Item 3, the fast food restaurants,  
10 of course, this opens the door to discussion of my  
11 favorite subject, saturation/proliferation, whatever  
12 they're calling it today.

13           The Hearing Examiner and Tony have heard my  
14 discussion on this point so many times that I'm really  
15 reluctant to go into it in any detail except to say that I  
16 think everybody is aware of my concern about the idea of  
17 proliferation as a land use concept that's not found in  
18 any of the county codes or land use plan and so on. I'm  
19 not going to go into that in any more detail than that.

20           Assuming for purposes of argument that there is  
21 some intellectual merit to this concept, I would just say  
22 that the Staff Report goes into some detail about where  
23 you can find these uses relative to this site, but I think  
24 it's a little misleading, even though it's technically  
25 accurate, in that it doesn't really give you a flavor of

1 what the area around this particular property is like.

2 With regard to fast food restaurants, if the  
3 Hearing Examiner drives on US 41 north of the bridge,  
4 you'll find that there's a major cluster of fast food  
5 restaurants between the bridge and Pondella Road, most of  
6 which I patronize on a regular basis.

7 Then you will also find that when you get to Pine  
8 Island Road, Merchants Crossing and Wal-Mart and so on,  
9 you'll find that there is another two or three of them in  
10 that location. But you really don't find any fast food  
11 restaurants north of that. So by my measurement, there is  
12 about three miles from Merchants Crossing to the subject  
13 property, and I'm not aware of any fast food restaurants  
14 in that particular radius.

15 So if the conclusion is that in this particular  
16 area that we've got a whole bunch of them and we have to  
17 limit them, I don't think that's true.

18 We've agreed to limit them to two. We've  
19 identified the parcels that we think should be appropriate  
20 which obviously prohibits them on the other parcels.

21 I think my client would further agree that as to  
22 locations of them, Lots 7 and 8 are both on 41 frontage so  
23 I think they would be willing to live with just one of  
24 them on those two combined, so it could be either 7 or 8  
25 but not both and then one on Lot 3. So that way you'd

1 only have one on each individual major road frontage. So  
2 to the extent that there's a concern about driving by and  
3 saying, gee, there certainly are a lot of fast food  
4 restaurants in the area, that really wouldn't happen.

5 And, finally, with regard to Deviation 1, you've  
6 heard the testimony in support of that particular request.  
7 I think Ms. Caldera's testimony points out that there is  
8 no health, safety or welfare problem in her professional  
9 opinion associated with the request for the deviation.  
10 And I think she's also testified that it's appropriate  
11 site planning, it has some health, safety and welfare  
12 benefits for the site.

13 And, finally, I think there's an element of  
14 fairness that goes along with this. Her testimony and the  
15 documents indicate that the FDOT only gave us one access  
16 point because they thought the county was going to give us  
17 two. And if you look at the parcel as a whole and all the  
18 frontage on both roads, you're talking about over half a  
19 mile of frontage. And if we get only what's in the Staff  
20 Report, we only get two access points on over half a mile  
21 of frontage. I think that's probably a little bit too  
22 low.

23 We've agreed to measures in the alternative that  
24 was provided by Ms. Caldera to further limit the impacts  
25 of the request. And I guess I would note just looking at

1 the aerial, I believe there are actually two median cuts  
2 abutting this property already, so that gives you some  
3 sense of what must have been contemplated when the road  
4 was designed. Obviously that's subject to change. But it  
5 is an indication of what people probably thought was going  
6 to happen on the road.

7 So we would ask that you approve that particular  
8 deviation.

9 If you have any questions, I'll be happy to  
10 answer them; otherwise, that concludes our presentation.

11 HEARING EXAMINER: I don't have any questions.

12 Tony, before you begin -- as a matter of fact, it  
13 may be appropriate to take our mid-afternoon break right  
14 now and then when we come back, we'll begin with the  
15 staff's presentation.

16 But before we do that, Tony, do you have any  
17 objection to, on the 24-hour notice under Paragraph 1,  
18 that Condition 2-A, the package store?

19 MR. PALERMO: Condition 2-A, my only note on that  
20 would be I would want it explicitly clear that there are  
21 no stand alone package stores, but package stores within  
22 the context of a multi-occupancy building would be just  
23 fine.

24 HEARING EXAMINER: Okay. And I take it, Matt,  
25 that's acceptable to you?

1 MR. UHLE: Yes.

2 HEARING EXAMINER: And, Tony, how about your  
3 comments with regard to Paragraph 2?

4 MR. PALERMO: Auto parts store with or without  
5 installation on Lot 6, I find that acceptable. I thought  
6 that was fine.

7 HEARING EXAMINER: And I take it -- I think I  
8 know the answer to this one -- you're still objecting to  
9 Paragraph 3?

10 MR. PALERMO: Staff's position is that we are in  
11 favor of one stand alone fast food restaurant. You can  
12 have fast food restaurants other places if they're in a  
13 multi-occupancy building. But our position is still one.  
14 And on Deviation 1 our position is the same.

15 HEARING EXAMINER: Okay. Let's take a -- let's  
16 come back at quarter of the hour, ladies and gentlemen.  
17 We'll take a short recess. And when we come back, we'll  
18 begin with the staff's report.

19 (A recess was taken.)

20 HEARING EXAMINER: All right. We're back on the  
21 record.

22 When we had our recess, I believe the applicant  
23 had finished their presentation and we are now ready to  
24 hear from staff.

25 Tony.

1 Thereupon,

2 TONY PALERMO,

3 called as a witness by Staff, having been previously duly  
4 sworn, was examined and testified as follows:

5 MR. PALERMO: Good afternoon.

6 My name is Tony Palermo, and I'm a Senior Planner  
7 for the Lee County Department of Community Development.  
8 The first thing on task is to be recognized as an expert  
9 in planning, zoning and land use. I have been recognized  
10 before in this forum.

11 HEARING EXAMINER: Any objection?

12 MR. UHLE: I recognize him.

13 HEARING EXAMINER: I'll recognize him as an  
14 expert witness on planning and zoning matters. Go on.

15 MR. PALERMO: Mr. Hearing Examiner, I'll try to  
16 make this brief. We received this application for a  
17 commercial planned development on July 12th, 2006, and we  
18 scheduled for hearing here June the 6th, 2007. It was  
19 continued by the applicant today.

20 The Hearing Examiner has two documents, number  
21 one, the July 17th, 2007, Staff Report with attachments  
22 and, number two, the applicant's so-called 24-hour notice,  
23 and you've also heard my response to the applicant's four  
24 issues raised.

25 Let's put a couple of facts on the record. This



1 is a request to rezone approximately 31.87 acres to  
2 Commercial Planned Development. It is in the suburban  
3 future land use category. There is agricultural zoning.  
4 There are no agricultural uses. There's an expired  
5 Commercial Planned Development and there is a portion of  
6 the old Sabal Springs Residential Planned Development.

7 The location the applicant has described  
8 excellently, that it is on the corner of US 41 and Del  
9 Prado. US 41 being an arterial road, Del Prado being a  
10 major collector/future arterial road with four lanes.

11 The property is served by water and sewer by Lee  
12 County Utilities for the water and North Fort Myers  
13 Utilities for the sewer.

14 We've already talked about the general location  
15 of the property, so let me just go on to say that we  
16 recommend approval of this Commercial Planned Development  
17 with conditions.

18 Staff had some very serious concerns about the  
19 open space and preserve requirements as it was related to  
20 the Sabal Springs Development Orders and zoning, but  
21 we have worked out those issues after a long process,  
22 and much to our mutual satisfaction, and our  
23 environmental staff will address those issues after my  
24 presentation.

25 We also met with the Sabal Springs' residents

1 which was, I would call, above and beyond the call of  
2 duty. There was a public meeting with hundreds in  
3 attendance. And as Mr. Uhle pointed out, that was not  
4 required by the Land Development Code, but we thought it  
5 was -- we as staff thought that was a good idea and we  
6 favor this sort of communication with the community that  
7 would be most impacted by this Commercial Planned  
8 Development.

9 My general impression of this application is this  
10 is where the commercial development needs to and should  
11 go. The major issues remaining are, as we described them,  
12 some of the commercial uses we have a few issues with, and  
13 there is the issue of access to Del Prado, whether there  
14 should be one or two access points, and we recommend  
15 denial of Deviation No. 1.

16 Let me get into my presentation and there are  
17 three parts to this presentation. Number one, I'll give  
18 you just a few exhibits. Number two, I'll give you  
19 staff's analysis of the situation. And, number three,  
20 I'll give you staff's concluding thoughts.

21 Number one, I'll put in the record, is that there  
22 is a big aerial and two little aerials, and the only  
23 distinction I would make on the little aerials is that one  
24 of them shows where the water and sewer lines are and the  
25 other one doesn't, but they're pretty much just aerials

1 for the record.

2 HEARING EXAMINER: Okay. If nobody has any  
3 objection, I'm going to admit the large aerial as Staff  
4 Exhibit 1 and the two smaller aerials as Staff Composite  
5 Exhibit 2.

6 MR. UHLE: No objection.

7 HEARING EXAMINER: They will be so admitted.

8 (Staff's Exhibits Nos. 1 and 2 were marked for  
9 identification.)

10 HEARING EXAMINER: And I take it the photographs,  
11 if nobody has any objection, will be admitted as Staff  
12 Composite Exhibit 3. And those consist of eight  
13 photographs in total.

14 (Staff's Exhibit No. 3 was marked for  
15 identification.)

16 MR. PALERMO: I'll just make a note that those  
17 photographs were taken by me during my site visit to the  
18 site.

19 Going into the presentation, my analysis really  
20 has three parts. Number one, consistency with the Lee  
21 Plan; number two, compatibility with the surrounding  
22 environments; and, number three, addressing all the  
23 concurrency issues.

24 I will add a fourth part. I will make a few  
25 notations about Smart Growth principles and then I'll give

1 you staff's concluding thoughts.

2 First, on my analysis. Number one, the issue is  
3 consistency with the Lee Plan. If you'll go to Page 11 of  
4 the Staff report, that just puts on the record that there  
5 is a Lee Plan allocation table for the community of North  
6 Fort Myers and we just point out that there is no issue  
7 with allocation.

8 We'd also point out this property is in the  
9 suburban future land use category and as conditioned by  
10 staff, it is consistent with that policy, and, again, we  
11 are reluctant to recommend all commercial uses, but we are  
12 recommending some pretty intense and pretty heavy  
13 commercial office and retail uses.

14 Page 13 of the Staff Report contains Policy 6.1.2  
15 where we talk about meeting site location standards and  
16 this being a community commercial project which is 100,000  
17 square feet of retail per Policy 6.1.2.3.F, which Mr. Uhle  
18 pointed out. This is an exception that allows suburban  
19 future land use which normally doesn't have large  
20 commercial sites such as that. It has smaller commercial  
21 sites, have a pretty intense over 100,000 square foot  
22 retail facility.

23 I also asked the Board of County Commissioners  
24 and that the Hearing Examiner make formal findings that  
25 the proposed project, number one, is located on US 41, an

1 existing arterial road. Number two, is located at the  
2 intersection of that arterial with a future arterial road,  
3 Del Prado Boulevard. That it's indicated on the official  
4 trafficways map. And, number three, will provide an  
5 acceptable alignment for the future roadway which is the  
6 justification for the approval relative to both extensions  
7 of that future roadway from the point of an intersection  
8 with the existing road. That's language from the Lee  
9 Plan.

10 Number two, let me get into compatibility with  
11 the surrounding uses and compatibility with the nearby  
12 residential Sabal Springs property.

13 Staff believes that commercial uses as  
14 conditioned are appropriate and that the buffering and the  
15 large preserve area help us reach this conclusion.

16 You will also see what is referred to as our  
17 proliferation analysis on No. 16 making reference to the  
18 usual uses which are -- have been package stores, stand  
19 alone fast food restaurants, convenience stores and uses  
20 such as carwashes, auto services and auto repair.

21 I think if you look at that analysis, it will  
22 correctly indicate that Del Prado along that stretch  
23 nearby the property, there's little commercial there. On  
24 US 41, needless to say, it's very intense commercial uses,  
25 again looking -- our analysis is five miles to the north,

1 five miles to the south, five miles to the east and five  
2 miles to the west. That's where we went looking for the  
3 usual uses.

4 Our recommendation is to recommend one gas  
5 station and one stand alone fast food restaurant. This is  
6 in recognition that this is a major intersection and that  
7 those uses are generally needed in this part of North Fort  
8 Myers.

9 I would make a personal note that the nearest gas  
10 station on the east side of 41 is ten miles away in  
11 Charlotte County. I also do recognize that if you look  
12 here, there is a Hess station, but the traveling public  
13 would be wise not to try to make a U-turn at that  
14 intersection and it's generally difficult, if you are  
15 traveling to Charlotte County, to try to access that Hess  
16 station, so another gas station is a reasonable and I  
17 think a logical use.

18 Just to reiterate, we want the development  
19 regulations to be explicitly clear that there should be no  
20 stand alone package stores. There be a limitation of one  
21 stand alone fast food restaurant, one convenience store,  
22 which can have accessory carwashes, auto services and auto  
23 repair. And with that, I'll pretty much let go and just  
24 let the analysis speak for itself.

25 Issue No. 3 is concurrency. First concurrency

1 issue is transportation. There are no level of service  
2 issues according to our staff's analysis and our  
3 Department of Transportation staff can address the  
4 specific issue of access on Del Prado where there is a  
5 disagreement. And, naturally, the state will address  
6 access onto US 41 and there's a condition saying so.

7 Utilities is pretty clear cut. They have access  
8 and they have a letter from Lee County Utilities saying  
9 they're available to serve and willing to serve. North  
10 Fort Myers Utility has the capacity to serve them sanitary  
11 sewer. There's letters from those people and there are  
12 lines available.

13 Just make a few statements about Smart Growth  
14 because Lee County has taken initiatives to incorporate  
15 the principles of Smart Growth into its planning processes  
16 and its zoning processes such as this.

17 Smart Growth is an approach to development that  
18 should create good neighborhoods, promoting the right  
19 growth in the right place at the right time. We've  
20 evaluated some of these principles. And I think that some  
21 of these principles do apply to this particular case.

22 The first principle I would use would be mixing  
23 land uses, and this does place some intense commercial  
24 uses in proximity to residential uses which in the end is  
25 a good thing because these residential uses need places to

1 shop, need places to work and need places to go. This  
2 would be relatively nearby. That's a Smart Growth  
3 principle.

4 Some of the other principles are creating  
5 walkable neighborhoods. Again, this would be relatively  
6 near residents who conceivably could walk to this site,  
7 but we do have to admit this will be a pretty auto  
8 intensive, pretty -- the primary way to get to this  
9 location on two arterials will be by automobile, but  
10 that's really to be expected.

11 The last principle I would point out is that --  
12 Smart Growth principle is that we do encourage community  
13 and state stakeholder collaboration in development  
14 decisions. Again, we would recognize that this applicant  
15 has worked with staff and has worked with the --  
16 particularly the Sabal Springs community, have met with  
17 them and have tried to address their concerns about this  
18 development, pro and cons, but again that's one of the  
19 Smart Growth principles.

20 In conclusion, this requested rezoning, it does  
21 meet the criteria necessary for approval of a Commercial  
22 Planned Development, including consistency with the Lee  
23 Plan. It is compatible with neighboring properties as  
24 conditioned. As conditioned it will not adversely affect  
25 environmentally critical areas or natural resources.



1           Urban services are available, including roads,  
2 water and sewer. It is an infill commercial project and  
3 for these reasons staff can recommend approval for this  
4 project with conditions.

5           With that I'll answer any questions you or the  
6 applicant has.

7           HEARING EXAMINER: Questions by County Attorney  
8 or staff?

9           MR. SPICKERMAN: No questions.

10          HEARING EXAMINER: Matt?

11          MR. UHLE: One question I just can't help asking.  
12 On Page 10 there's a reference to the fact that Crane  
13 Landing's name was changed to the Palermo, and --

14          MR. PALERMO: I had nothing to do with that.

15          MR. UHLE: -- and I wanted to know if that was in  
16 recognition of your great Staff Report?

17          MR. PALERMO: I appreciate the reference but,  
18 again, they give me no money for this. They take my name  
19 without my permission. I'm upset and I'll put that on the  
20 record.

21          MR. UHLE: No further questions.

22          HEARING EXAMINER: I've got one. Tony, is the  
23 sole basis for your limitation on the fast food restaurant  
24 as a stand alone, is your sole basis your proliferation  
25 argument or is there any other reason?

1           MR. PALERMO: It's in the suburban future land  
2 use category. It is in relative proximity to existing  
3 residential uses. And we don't want to encourage the  
4 further proliferation of fast food restaurants. And one  
5 fast food restaurant on this property, a stand alone fast  
6 food restaurant, is plenty and they can have more fast  
7 food restaurants provided they are within a plaza, so we  
8 don't think that's too hard core a position.

9           HEARING EXAMINER: Okay. I don't have any other  
10 questions.

11           Anybody else? Okay. Thank you, Tony.

12           Staff, any other witnesses from staff?

13           MR. PALERMO: I'll introduce the special guest.  
14 Kim Trebatoski, our environmental consultant.

15           HEARING EXAMINER: Formerly with County  
16 Environmental Development, now considered by some to be a  
17 traitor, but go on.

18           MR. PALERMO: She's not being paid either.  
19 Thereupon,

20                   KIM TREBATOSKI,  
21 called as a witness by Staff, having been previously duly  
22 sworn, was examined and testified as follows:

23           MS. TREBATOSKI: For the record, I'm Kim  
24 Trebatoski with no specific title. I have testified here  
25 I guess over the last eight years and have been tendered

1 as an expert witness in Lee County Land Development Code  
2 and Lee Plan, Comprehensive Plan in environmental matters  
3 and would like to be deemed so today.

4 MR. PALERMO: The last 24 hours she might have  
5 forgotten some stuff so I'm not sure.

6 MR. UHLE: We don't know. I mean, go to private  
7 sector and you forget everything you know and you have to  
8 start from scratch.

9 HEARING EXAMINER: Are you suggesting you want to  
10 voir dire the witness?

11 MR. UHLE: No objection.

12 HEARING EXAMINER: Okay. The witness is declared  
13 an expert witness.

14 MS. TREBATOSKI: That's what I get for being kind  
15 enough to come to talk for somebody else.

16 This project as you're, I'm sure, aware from  
17 previous testimony, there's portions of it that have a  
18 long history on it. We have had numerous meetings and  
19 e-mail correspondence on the property as we tried to work  
20 through and make sure we all fully understood what was  
21 proposed and how that would fit into what Lee County Code  
22 requires, which is, I think, why the attachment to the  
23 Staff Report, it was Attachment R, that was the last  
24 submittal over the counter with the stamp on it where all  
25 the other material I have looked at but we didn't get it

1 over the counter. So I would like to say that the  
2 information that Rae Ann Boylan submitted, I did review  
3 and I reviewed it prior to my Staff Report.

4 There was a lot of discussion over the portion of  
5 the property that's being rezoned from RPD to CPD, and we  
6 really got to evaluate the long-term health and viability  
7 of that preserve area if it were to remain under the RPD.  
8 And I just need to emphasize that it -- when it was set up  
9 as a wetland area to remain on the RPD, at that point in  
10 time county regulations did not require invasive exotic  
11 removal. They did not require an indigenous preserve  
12 management plan. They did not have indigenous preserve  
13 requirements nor did they, even though there were wetland  
14 regulations, that approval did not require that the  
15 hydrology of that wetland be maintained in any certain  
16 shape or form.

17 So after reviewing the history on the property  
18 and conducting a site visit, Environmental Sciences staff  
19 determined that it made sense to have the preserve remain  
20 between the proposed commercial area and the existing  
21 residential and that through this rezoning of that portion  
22 and the remainder of the property, it allowed us the  
23 avenue to get an indigenous management plan that will  
24 include the restoration and an enhancement of areas.

25 It will have the surface water management system

1 designed to provide proper hydrology to the wetland so  
2 that it will remain in long-term health, and there will be  
3 less likelihood of invasive exotics come into it. And  
4 that there is additional planting areas up in the  
5 northeast corner of that, it's termed rain garden, I  
6 guess, by the water management district. It's kind of in  
7 between a dry detention area and a wet detention area. It  
8 will look like a marsh that may have some open water at  
9 certain times of the year but that it will be quite  
10 heavily planted. And the design also includes a lake and  
11 dry detention areas that will be between the commercial  
12 development and the preserve which is a good practice to  
13 help the health of the preserve stay better and to not  
14 have any degree or inadvertent impact from the commercial  
15 development onto the preserve area. And it also allows  
16 better use by wildlife when you have that separation. And  
17 the dry detention area is going to be planted and there's  
18 going to be some additional plantings of the littoral  
19 design that --

20 HEARING EXAMINER: Hold on. We need a battery  
21 change in the microphone.

22 (A discussion was had off the record.)

23 MS. TREBATOSKI: So environmentally with this  
24 zoning it does -- with this rezoning it does improve the  
25 health of the wetland system and will ensure long-term

1 viability of that system through a Development Order and  
2 indigenous management plan and the requirements of water  
3 management district permits. And that is the long and  
4 short of a long research and discussions and trying to  
5 come up with a positive environmental situation on this  
6 property.

7 I do want to mention that the preserve area alone  
8 entails almost 30 percent of the property and under our  
9 current regulations only 15 percent of a property needs to  
10 be preserved in an indigenous state so this commercial  
11 center actually will be in excess of the minimum 30  
12 percent open space because each of the commercial tracts  
13 or parcels is going to have to provide a minimum of 10  
14 percent and it does provide a large vegetated open space  
15 between the residents and the center, so that should help  
16 lower the impact of the center on the neighboring  
17 residents.

18 So I'm here for any questions. I do have to  
19 leave. I can't stay till the end of the hearing, but  
20 there are other Environmental Science staff members here  
21 that will take notes if there's something that the public  
22 has asked that the applicant can't answer, the staff will  
23 respond to later.

24 HEARING EXAMINER: Any questions right now by  
25 staff or County Attorney?

1 MR. SPICKERMAN: No questions.

2 HEARING EXAMINER: Questions by applicant?

3 MR. UHLE: No. Thank you for being here.

4 HEARING EXAMINER: Thank you for coming in, Kim,  
5 and good luck to you.

6 MS. TREBATOSKI: Thank you.

7 Thereupon,

8 ANDY GETCH,

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

11 MR. GETCH: For the record, I'm Andy Getch with  
12 the Lee County Department of Transportation. I have been  
13 sworn in and have been accepted as an expert in  
14 transportation engineering on many occasions in front of  
15 the Hearing Examiner. If the applicant would like, I can  
16 go through some of my background.

17 MR. UHLE: Please, no.

18 HEARING EXAMINER: I take it you have no  
19 objection then to him being declared an expert witness in  
20 transportation matters?

21 MR. UHLE: No.

22 HEARING EXAMINER: The witness is so declared an  
23 expert.

24 MR. GETCH: Thank you.

25 As Ms. Caldera stated, there's basically one

1 point of disagreement between the staff and the applicant,  
2 and that's what I'm going to focus on today. Basically  
3 it's the connection separation deviation request.

4 Before I get into the real fun technical stuff, I  
5 would first like to say that the shopping center applicant  
6 has been fairly cooperative with us not just in this  
7 project but in another project that they did meet with us  
8 on several occasions and I can appreciate their desire for  
9 what they want to achieve with the shopping center, and I  
10 understand from working with them and other retail  
11 developers what their needs are and what their desires  
12 are.

13 At the same time from the staff perspective,  
14 we're trying to balance that with the needs of the  
15 traveling public on the major roadway system, and that's  
16 the struggle here.

17 Connection separations standard is in the Land  
18 Development Code, Section 10-285(a), Table 1, and there it  
19 specifies minimum connection separation of 660 feet on an  
20 arterial and 330 feet on a collector roadway. And as Mr.  
21 Palermo pointed out and Ms. Caldera pointed out, the  
22 roadway currently functions as a major collector but is  
23 anticipated to function as an arterial in the future.

24 The future functional classification is based on  
25 the trafficways map as Mr. Palermo said. The trafficways



1 map does not specifically say Del Prado Boulevard. It  
2 has a number of east-west arterials in the North Fort  
3 Myers area, including one that's labeled 38, I believe,  
4 Northwest 38th Terrace which approximately lines up on the  
5 Cape Coral side with where this roadway is, it's kind of  
6 an extension of Jacaranda Parkway in Cape Coral.

7 We're actually transitioning from that to using  
8 the future functional classification map in the Lee  
9 Plan. That's a Lee Plan amendment that's going through  
10 the process. Hopefully, there won't be any objection to  
11 that. We do intend to update the trafficways map more as  
12 a planning tool for the future.

13 Ms. Caldera in her handout, which was pretty well  
14 put together I must admit, there's a lot of good  
15 information in here, in fact, some of it I was going to  
16 submit as well so it will save me the trouble. She  
17 included an excerpt from the Del Prado Extension Corridor  
18 Study, I believe it's right in the beginning of Ms.  
19 Caldera's exhibit, or the applicant's exhibit, behind Tab  
20 A. And that excerpt did come from the study prepared by  
21 our consultant and as the Hearing Examiner correctly  
22 surmised, the handwriting, and as Ms. Caldera testified,  
23 the handwriting in here is not part of that study.

24 I would just state briefly that the traffic  
25 volume projections there were based on a travel model

1 run. What they will be depends on how quickly we can get  
2 that interchange implemented and how much Cape Coral  
3 develops in the northern section and how much traffic  
4 comes from the city of Cape Coral. And without going into  
5 a long winded and very detailed discussion of how the  
6 model works and why, suffice to say with the population  
7 growth in North Cape Coral, that number probably is low  
8 compared to what it's really going to be. And that's  
9 really all I'm going to say about that.

10 The applicant in their testimony did talk about  
11 their total frontage of approximately half a mile, and I  
12 don't disagree with that. Their boundary survey and their  
13 Master Concept Plan indicates those approximate  
14 dimensions. But the major intersection that is in the  
15 middle of that frontage of US 41 and Del Prado sort of  
16 splits that up and it's not really an accurate way to look  
17 at their frontage to say, well, we have half a mile, and I  
18 don't believe it's the best way to look at their frontage  
19 and say, well, we have half a mile but we're only going to  
20 get approval for two access points potentially here.

21 That's one of the challenges with the site  
22 location standards with major shopping centers being  
23 located near major intersections is they need to be on the  
24 corner of two major roadways and here's a major  
25 intersection right in the middle and they need to meet

1 connection separation standards from that major  
2 intersection.

3 A further complication which is the case here in  
4 this project is immediately to the east there's an  
5 existing driveway. So I understand the applicant's  
6 struggle with trying to develop a site plan that works  
7 here.

8 But the simple math is to meet connection  
9 separation for 660 feet for one access point, you need at  
10 least a quarter mile of frontage and for two access points  
11 you would need 660 times 3 which is 1,980 feet or almost  
12 2,000 feet of frontage on a particular roadway. And as  
13 Ms. Caldera testified, they have approximately 1,700 feet  
14 of frontage on Del Prado Boulevard.

15 Something that's certainly nothing of the  
16 applicant's doing and maybe happenstance or the county and  
17 the city's good luck, good fortune, so to speak, in the  
18 current existing access situation, I will refer to I  
19 believe it's Tab E. It's a map that Ms. Caldera had  
20 submitted as well as -- or actually there are two aerial  
21 maps that show the existing Del Prado Boulevard, and I'm  
22 surmising this is aerial photography from the county's GIS  
23 system from the year 2005, I didn't ask that as a  
24 clarification question, but just by the look of what's on  
25 the ground there, it looks similar to what's on our GIS

1 now. Perhaps the applicant would like to clarify that  
2 later.

3 MR. UHLE: Here in the corner I think it tells  
4 you.

5 MR. GETCH: Thank you, yes, it is. Aerial date  
6 2005. Thanks, Matt. Today was the first day I had seen  
7 this. I haven't had a chance to look at that in that  
8 detail.

9 I would like to point out and I was -- after  
10 seeing Ms. Caldera's exhibit, I was debating whether or  
11 not to submit this, but I think I will go ahead and submit  
12 this anyway just for -- just to provide another photo to  
13 look at because it actually is slightly different. It's  
14 without the aerial photography with the access points,  
15 with my markings in blue and the requested access points  
16 in red, and this is basically the same area but without  
17 the aerial photography.

18 HEARING EXAMINER: If the applicant has no  
19 objection, I'm going to admit this map as Staff Exhibit 4.

20 MR. UHLE: No objection.

21 (Staff's Exhibit No. 4 was marked for  
22 identification.)

23 MR. GETCH: And the main purpose of this map is  
24 just kind of an overview of the existing and to the extent  
25 that I could find in my research for this case the

1 approved access points onto Del Prado Boulevard, primarily  
2 being the existing and platted access points in the city  
3 of Cape Coral because I didn't research their records or  
4 archives, but my understanding from their staff is the  
5 access points there approved more or less are the ones  
6 that are platted or the ones that were built with Del  
7 Prado Extension by the City of Cape Coral.

8           The City of Cape Coral built the Del Prado  
9 Extension to the west of US 41. Lee County built the  
10 further extension, the extension of the extension that Mr.  
11 Uhle referenced in his testimony at a later time,  
12 approximately ten years ago.

13           The access points that Ms. Caldera has shown in  
14 the Exhibits E-1 and E-2, now they're fairly close to the  
15 access points that I had shown and rather than go through  
16 point by point to say which ones are different, the main  
17 purpose for showing this is just to kind of show the  
18 overall spacing, and it's certainly possible that the City  
19 of Cape Coral could permit additional access points within  
20 the city.

21           There is one vacant property to the north of the  
22 Crane Landing project which is the eastern half of the  
23 mobile home park north of Del Prado Boulevard that's  
24 actually platted -- it must be platted because it shows up  
25 here as lines on this map, I didn't research that, but it

1 has a very old zoning but no Development Order approval.

2 It's very possible that they could ask for an  
3 additional access point onto the county portion of Del  
4 Prado Boulevard.

5 To the south of there, Mr. Uhle made reference to  
6 the Palermo project of Crane Landing project. I'll point  
7 out where that access point is. It's approximately in the  
8 middle of the property here as well as to the east of the  
9 Crane Landing project (indicating). That's a project  
10 called Sloan's Gate that has -- both of those projects  
11 have both zoning and a Development Order approval. So  
12 that's one difference between the exhibit by Avid  
13 Engineering and submitted by the applicant and the staff  
14 exhibit is the exhibit by Avid Engineering shows some  
15 existing dirt connections whereas we're referring to the  
16 projects that have a local Development Order.

17 But the general intent was to show that either by  
18 happenstance or by what we have, there's pretty good  
19 connection spacing on Del Prado Boulevard both in the city  
20 of Cape Coral side at least down to Kismet Parkway as well  
21 as on the Lee County side.

22 Focusing in on this project, in the initial  
23 review of this project, and I believe the applicant  
24 actually had contacted staff and met with staff prior to  
25 even submitting the zoning application, they asked for a

1 preliminary inclination indication from staff of what we  
2 would think of them getting two connection points onto Del  
3 Prado Boulevard. And there was a staff member that was  
4 okay with it, there were other staff members that  
5 weren't.

6 The reason I mention that is there was some  
7 disagreement through time, but I will state for the record  
8 that during those meetings at each meeting, at least I  
9 recall a couple of times, mentioning to the applicant that  
10 staff doesn't have approval authority of access points in  
11 the zoning process. That approval authority is with the  
12 Board of County Commissioners. Staff makes  
13 recommendations.

14 The actual staff recommendation did not occur  
15 until the time of substantive comments for this case  
16 obviously. There is a concurrent Development Order  
17 application that has been submitted along with the zoning  
18 application. So Ms. Caldera's testimony along those  
19 lines, some of those meetings dealt with talking to the  
20 county's traffic engineer about whether or not they could  
21 get median openings as part of the Development Order  
22 application.

23 I don't know if the Hearing Examiner would like  
24 me to go into some of the detail or reasonings why 660  
25 feet is an important connection separation spacing.

1 HEARING EXAMINER: Yes, I would like you to if  
2 you would.

3 MR. GETCH: Okay. Essentially, on a major  
4 roadway, an arterial roadway, the primary function of an  
5 arterial roadway is to provide through traffic and  
6 mobility for people traveling from Point A to Point B. A  
7 very minor function of an arterial is to provide access to  
8 adjacent properties.

9 When you get to the collector stage, those two  
10 functions kind of balance out, mobility and access  
11 balances out and then at the local street stage, mobility  
12 is a very low issue and access to adjacent properties is a  
13 very high issue.

14 On a roadway such as an arterial, each driveway  
15 represents side friction on the road or what we call a  
16 conflict point, that can potentially impede the traffic  
17 stream. And how does that occur? That occurs when  
18 vehicles slow down to make a right turn. That occurs when  
19 vehicles pull out into the stream of traffic to accelerate  
20 to get up to the speed of the traffic flow.

21 Lee County, as well as the state, employs access  
22 management techniques to try to reduce and separate the  
23 number of conflict points on an arterial roadway. And  
24 some of the tools are access spacing such as the  
25 connection separation spacing. Providing corner clearance



1 from the major intersections. Limiting the number of  
2 access drives for each individual property and where  
3 possible consolidating existing driveways.

4 Separating conflict points is important because  
5 what that does is that simplifies the driving task. It  
6 gives drivers a longer time period to respond to any  
7 access-related events that may occur from those vehicles  
8 decelerating to make a turn or turning out into the flow  
9 of traffic.

10 Separation distance on a roadway can be a  
11 function of the speed and the complexity of the decision  
12 that a driver has to make. The complexity increases with  
13 traffic volume and the number of conflicts that are on the  
14 roadway.

15 So really to summarize why the connection  
16 separation is important, reducing and separating the  
17 conflict points is part of improving safety on a roadway  
18 for the traveling public and that's part of our job is to  
19 protect the health, safety and welfare of the traveling  
20 public.

21 I was glad that Ms. Caldera had submitted --  
22 actually, she submitted the entire chapter or section,  
23 excuse me, of the Florida Administrative Code, which is  
24 the access management rule and that's in the booklet  
25 behind Tab C, looks like that, and I'm not going to read

1 through this but essentially that's where it comes from.

2 I didn't see the reference and I don't recall if  
3 Ms. Caldera had mentioned that, but just so the Hearing  
4 Examiner would know, that's actually the source of this  
5 information, it's from the Florida Administrative Code and  
6 this is known as the access management rule.

7 There was discussion of comparison of Del Prado  
8 Boulevard to access management Class 3, and that's  
9 probably a fair comparison.

10 Access management Class 2 is what is currently  
11 being pursued on State Road 82 where we have a frontage  
12 road system somewhat in place in Lehigh Acres with Meadow  
13 Road functioning as a frontage road.

14 We don't have frontage roads here along Del  
15 Prado, but the City of Cape Coral and Lee County are both  
16 very -- Lee County DOT, excuse me, are both interested in  
17 controlling -- maintaining connection separation on Del  
18 Prado Boulevard.

19 I would like to point out a couple of things  
20 about this table which is actually Figure 2 in what Ms.  
21 Caldera has submitted.

22 Along the line of access Class 3, the second  
23 column says facility design features and under that it  
24 says, median treatment and access roads in parentheses,  
25 and it says restrictive. That essentially means there is

1 a divided median in the roadway, that there has to be an  
2 opening in that median for a vehicle to make left turns  
3 and right turns.

4 The next one is kind of important for this  
5 discussion. The minimum connection spacing in feet. The  
6 reference was made to -- in fact, a red circle was drawn  
7 around 440. If the Hearing Examiner would look near the  
8 bottom of the table, below the second black line, you'll  
9 see in parentheses greater than 45 miles per hour/less  
10 than or equal to 45 miles per hour. 45 mile an hour  
11 posted speed is the dividing point for the state in how  
12 they do their connection separation.

13 So the reason I point this out is actually the  
14 660 spacing is what the state uses on their arterials  
15 where they have a posted speed greater than 45 miles an  
16 hour. In the county's connection separation table, we  
17 don't have that distinction based on a posted speed.

18 One of the challenges with that is the posted  
19 speed on a roadway can change over time. It can go up or  
20 it can go down, depending on how it functions. And it's  
21 very possible that the posted speed on Del Prado Boulevard  
22 could go up, especially if a connection to I-75 is made.

23 Moving further to the right on the table, minimum  
24 median opening spacing directional 1,320 feet, that's a  
25 quarter of a mile. Minimum median open spacing, full,

1 that's half a mile. And minimum signal spacing, that's  
2 also half a mile.

3 We're not here to talk about whether or not and  
4 what the quality of the median openings would be, but the  
5 reason that I point this out is what's being shown and  
6 proposed as the main entrance to the shopping center is  
7 approximately 750 feet from actually the center of the US  
8 41 intersection. And the applicant is relocating a  
9 physical median opening that was constructed as part of  
10 the original Del Prado Extension extension, extension of  
11 the Del Prado Extension. That gets confusing.

12 And that's one of DOT's concerns, and that was  
13 some of -- the bases of some that internal discussion on  
14 how to handle traffic from this proposed development  
15 because Ms. Caldera is correct, that there's some merit to  
16 splitting up the traffic between different access points.

17 On the other hand, 750 feet from a major  
18 intersection, that could be a problem as traffic volumes  
19 on Del Prado Boulevard build up and they may build up  
20 beyond the design study of that interchange study, but the  
21 City of Cape Coral, I believe, does have a build-out  
22 population of approximately 400,000 residents and this is  
23 what the City of Cape Coral had lobbied for and requested  
24 of the Metropolitan Planning Organization as the main exit  
25 from I-75 to Cape Coral.

1 I would like to -- just finishing up on the  
2 connection separation theme, I would like to point out  
3 just to emphasize that the county's access management  
4 standards are different than the Florida Department of  
5 Transportation, and I may have misunderstood the argument  
6 but it sounds like the argument I'm hearing is that the  
7 state has less stringent access management standards than  
8 the county so the recommendation, the justification is  
9 being based on going with a less stringent access  
10 management standard, and that's part of our struggle.

11 And that takes me to some of the points raised in  
12 the hearing today.

13 I'll start with one actually that was mentioned  
14 by Mr. Uhle in her -- in his -- excuse me, sorry, Matt --  
15 in his closing of the applicant's testimony. There is an  
16 existing median opening right here (indicating). What's  
17 right here is actually striped out. It's not a physical  
18 barrier, but it is striped so that if there was a driveway  
19 somewhere in this vicinity, if that didn't change, it  
20 would not be legal for a driver to make a left turn in or  
21 a left turn out of that location. So by law that's not a  
22 median opening. Is there anything stopping a driver from  
23 doing that? No.

24 My recollection is I believe that that was  
25 created much like the I-75 interchanges when they were

1 first built as four lanes. Four lanes through the  
2 interchange when there was a dirt road or maybe a two lane  
3 road on the end, they had a turn around for anyone who  
4 mistakenly got off there to turn around and come back.  
5 And that seems more like what that is for me.

6 Why that configuration is as it is, the staff  
7 members -- I was not with Lee County DOT at the time that  
8 that project came through in 1986. In fact, I was still  
9 finishing college so I don't know what the original zoning  
10 approval entailed. I believe Mr. Uhle spoke of an '89  
11 rezoning and there again I was not with the County DOT.  
12 But one thing that is important to point out for the  
13 record, at this point I would like to introduce the Lee  
14 County Metropolitan Planning Organization, year 2030, long  
15 range transportation plan highway element map.

16 HEARING EXAMINER: Matt, any objection?

17 MR. UHLE: No.

18 HEARING EXAMINER: That map will be admitted as  
19 Staff Exhibit 5.

20 (Staff's Exhibit No. 5 was marked for  
21 identification.)

22 MR. GETCH: And the purpose for presenting this  
23 exhibit is to show essentially the Del Prado Extension.  
24 It's a very rough depiction of the geometry, but it gives  
25 the Hearing Examiner a picture of Del Prado Extension as

1 it connects to the city of Cape Coral.

2 I would also like to refer to it and give a very  
3 brief, I hope brief, background on why the geometry of Del  
4 Prado Extension as it exists today is what it is.

5 The original planned major east-west corridor in  
6 North Fort Myers was actually not an extension of Del  
7 Prado Boulevard in this area, it was actually an extension  
8 of another road that's depicted near the Charlotte County  
9 line at the top or the north end of the map called Nall  
10 Grade Road.

11 The county had obtained right-of-way back in 1974  
12 from the property owners for an extension of US 41 over to  
13 Nall Grade Road.

14 Then -- so probably shortly after this extension  
15 of Del Prado -- well, excuse me, I take that back. Before  
16 this extension of Del Prado was built, then it shifted to  
17 the Henderson Grade Road Extension which is actually a  
18 very small road but for the Hearing Examiner's reference,  
19 it's a road right next to the Publix shopping center Mr.  
20 Uhle referred to in his discussion of the only other  
21 shopping center north of this particular site. It's a  
22 four-lane road that just kind of dead ends into a  
23 pasture. And at one time that was planned to be the next  
24 east-west road.

25 When this project was constructed, it was

1 originally looked at as kind of a temporary connection  
2 over to Slater Road and the planning of it had moved  
3 around from Nall Grade to Henderson Grade to here, but the  
4 Del Prado Extension study that Ms. Caldera had submitted a  
5 summary of essentially shows upgrading this roadway from  
6 what it is now to an arterial. And what will the access  
7 management be on that roadway? That has not been  
8 determined because we haven't done a design yet.

9           So when this project comes in for a Development  
10 Order, it will be evaluated on its face based on what  
11 we're dealing with and dealing with our plans for the  
12 future at best, but hopefully I won't have to go into this  
13 discussion at length, but as the Hearing Examiner I  
14 believe is aware, median access control is part of the  
15 police power of the county and it's not something that  
16 staff recommends be contracted away through the zoning  
17 process.

18           I would just like to point out one thing about  
19 Ms. Caldera's testimony that I wasn't clear on what she  
20 said there, and I think Mr. Palermo actually clarified it  
21 in the question that he asked about what the spacing would  
22 be that I think Ms. Caldera was making a point that if the  
23 applicant relocated their eastern access point, they could  
24 meet 660 feet connection separation from the proposed  
25 western access point and that's true. However, then it



1 would be closer to Sabal Springs Boulevard and it still  
2 would not meet connection separation in that direction and  
3 we measure connection separation in both directions.

4 I'm still a little confused by the statement  
5 about, and it goes back to splitting the driveway and the  
6 traffic from the project, but part of the presentation was  
7 by the applicant that the traffic volume on Del Prado is  
8 projected to be a low volume. So concentrating the  
9 driveway, all the project traffic to one driveway on Del  
10 Prado Boulevard would cause more congestion internally and  
11 make some drivers antsy and anxious and there's some truth  
12 to that.

13 However, if the volume on Del Prado is low, then  
14 there's going to be a lot of gaps and some nice big gaps  
15 for people to turn out into so congestion, in my opinion,  
16 wouldn't be that big of an issue.

17 The last thing I would like to address before I  
18 put everybody to sleep is the letter from the Florida  
19 Department of Transportation and that's behind -- in Tab  
20 C. I think it's the last page in Tab C, the first page  
21 before Tab D in the applicant's exhibit that Ms. Caldera  
22 presented.

23 I would like to state for the record that today  
24 is the first that I've seen this letter. However, I have  
25 heard about it and there was some discussion with other

1 staff members at the time that there was this disagreement  
2 going on internally over -- actually, it was prior to the  
3 disagreement, at the time that the early indication was  
4 that, okay, we might be okay with this.

5 Just to clarify and reiterate, I think there was  
6 some misunderstanding somewhere along the way because, as  
7 I just stated, staff can't approve access points as part  
8 of our zoning process. That's only the Board of County  
9 Commissioners. Should the Board of County Commissioners  
10 approve two access points, then staff does have the  
11 administrative leeway to determine whether or not they  
12 would be full access points.

13 I'm still scratching -- I wasn't present at any  
14 of the proceedings. I've discussed it with some of the  
15 members of the Florida Department of Transportation staff,  
16 not with Ms. Deborah Hunt who wrote this letter, but I'm  
17 still a little bit confused on what a right in -- a second  
18 access point on US 41 and a right in that was actually  
19 requested at this location, what that has to do with  
20 multiple access points on Del Prado Boulevard.

21 I don't understand that part of it. Unless the  
22 rationale had to do with splitting up the traffic, that's  
23 the only thing I can think of.

24 And I believe that's -- I think probably the most  
25 important thing to point out about this letter, it is

1 dated almost a year ago and it was at a time when the  
2 staff leaning was to support the deviation. And I have  
3 apologized to the applicant in meetings if there was a  
4 misunderstanding about that and how we got to where we  
5 are, but what changed, I can put it rather simply for the  
6 Hearing Examiner.

7 What changed is what we were looking at in the  
8 initial meetings was this is the picture and what we  
9 looked at as part of the substantive comments that went  
10 into the Staff Report was the bigger picture on Del Prado  
11 which has to do with this overall area and the number of  
12 access points.

13 And with that I will be willing to answer any  
14 questions by the Hearing Examiner or the applicant or  
15 staff.

16 HEARING EXAMINER: Staff or County Attorney?

17 MR. SPICKERMAN: No questions.

18 HEARING EXAMINER: Matt.

19 MR. UHLE: Just a few. Andy, this map that you  
20 put in the record here, 2030 LRTP Highway Element Map, is  
21 that a Lee County government map?

22 MR. GETCH: It is not a Lee County government map  
23 at this time. What it is, just to clarify for the sake of  
24 the record, I'm glad you asked that, it's generated by the  
25 Lee County MPO, which stands for the Metropolitan Planning

1 Organization, and that's part of the ongoing development  
2 of a long range transportation plan that is ultimately  
3 adopted into the Lee Plan as map 3-E.

4 However, it's not the map that's in the Lee Plan  
5 right now because there's typically a time lag between the  
6 MPO updates and the Lee Plan maps that the county puts  
7 into the Comprehensive Plan amendments.

8 MR. UHLE: Has this map actually been voted on  
9 and approved by the MPO?

10 MR. GETCH: This map actually is a refinement  
11 change of the graphics that are reflected on the current  
12 Metropolitan Planning Organization website. The current  
13 website has some different graphics. And if the Hearing  
14 Examiner would like, I can certainly provide a copy of the  
15 map that is adopted because Del Prado Extension is shown  
16 just the same on that. This map is a little easier to  
17 read in that the map that's currently on the website has a  
18 very dark green background and it shows the future  
19 roadways that are on the plan in two colors, one that  
20 represents projects that are on what's called the  
21 financially feasible plan and one color that's what's on  
22 what's called the needs plan, highway needs plan where  
23 they're not currently funded but they're just numbers with  
24 them and it doesn't have the names of the roadways on it.

25 HEARING EXAMINER: I don't see any need for that

1 map.

2 MR. GETCH: But I will testify there's no change  
3 in the Del Prado area. There might be a few other minor  
4 changes in other parts of the county.

5 MR. UHLE: If this is their improved map, I'm  
6 glad I don't have the other map in front of me because I'm  
7 having trouble figuring out exactly what category in the  
8 legend the Del Prado Extension is in. It does not appear  
9 to be one of the financially feasible --

10 MR. GETCH: No, it's not and that is in my  
11 substantive comments, that it's on the needs plan as a  
12 toll, to be tested with tolls.

13 MR. UHLE: So this isn't in a capital improvement  
14 program anywhere?

15 MR. GETCH: No.

16 MR. UHLE: This is a wish list?

17 MR. GETCH: Well, I wouldn't call it a wish list.  
18 It's what we plan to join hands with Mr. Palermo and Mr.  
19 Rauls (ph), our planning.

20 MR. UHLE: I think you testified in the beginning  
21 that the analysis that was provided under Tab A, that the  
22 scenario C, in your opinion, was conservative?

23 MR. GETCH: Yes, sir.

24 MR. UHLE: Isn't it fair to say that even if this  
25 is conservative, that these numbers are so low relative to

1 the available capacity, that the level of service really  
2 wouldn't change very much even if traffic was  
3 significantly higher than this?

4 MR. GETCH: The disagreement was not with the  
5 characterization that the road would not fail, no, sir.

6 MR. UHLE: But even if it, say, doubled, you  
7 wouldn't even be close to level of service B?

8 MR. GETCH: That's a fair statement. It would  
9 increase the number of conflicts the vehicles that would  
10 have to compete with making the turns to the driveways,  
11 but it would not affect the roadway level of service, no,  
12 sir.

13 MR. UHLE: Most of the access points you show on  
14 your graphic here are residential accesses, aren't they,  
15 particularly in the county portion of the graphic?

16 MR. GETCH: The Crane Landing project, the Sloan  
17 Gate project are residential projects. Barbie Lane is the  
18 north connection that actually was built as part of the  
19 Del Prado Extension. Sun Coast Estates, those are all  
20 residential developments. The access on the north is the  
21 North Fort Myers Utilities plant.

22 MR. UHLE: So whatever accesses -- well, let me  
23 ask you this first. Would you agree that the access needs  
24 for a shopping center are typically going to be somewhat  
25 different than they for residential projects?

1 MR. GETCH: Yes. And that's probably part of the  
2 happenstance on why we have such good connection  
3 separation between the preserve areas and residential  
4 projects that desire to have gated communities.

5 MR. UHLE: No further questions.

6 HEARING EXAMINER: I take it your responses are  
7 the same whether or not that -- or your comments would be  
8 the same whether or not that easterly access was a full-  
9 service access or right in and right-out access?

10 MR. GETCH: Yes, sir.

11 HEARING EXAMINER: Is there a significant  
12 difference as far as you're concerned?

13 MR. GETCH: Well, the difference being, and this  
14 is actually looking at the current Development Order  
15 stage, and the Hearing Examiner actually asked a very good  
16 question about what if the project had its full access --  
17 proposed full access further away from Del Prado Boulevard  
18 -- excuse me, from US 41 on Del Prado Boulevard. That  
19 would actually give the full median opening a better  
20 chance to function and a longer life expectancy, so to  
21 speak.

22 In terms of the initial alignment, I can  
23 understand from talking to retailers how the retailers  
24 like to have main driveway line up with the entrance to  
25 the anchor parcel and why the applicant is asking for it

1 where they are. But in terms of the roadway function, in  
2 terms of whether we recommend the deviation from  
3 connection separation or not, no, sir, it doesn't change  
4 our answer.

5 HEARING EXAMINER: Would your answer be different  
6 if the westerly access point was right in, right out and  
7 the easterly access was a full-access point?

8 MR. GETCH: We still would be opposed to the  
9 deviation there for reasons that I stated.

10 HEARING EXAMINER: Okay. I have no other  
11 questions. Anybody else?

12 Thank you, Andy.

13 MR. GETCH: Thank you.

14 HEARING EXAMINER: Staff have anyone else?

15 MR. PALERMO: No, I have no other witnesses. I  
16 did want to put three more statements on the record. I'll  
17 be really brief.

18 Number one, that staff did -- I just failed to  
19 mention this in my report. Staff did share this Staff  
20 Report and Master Concept Plan with the City of Cape  
21 Coral, received no comments. And staff did share the  
22 Master Concept Plan and the Staff Report with at least  
23 half a dozen residents of the Sabal Springs community, and  
24 I did receive a number of phone calls and a number of  
25 e-mails and those e-mails I put in the record as part of



1 my attachments. And the last thing I'd say is that public  
2 input is next, and I thank everyone for their patience  
3 because this has been pretty long. So I'll just end  
4 there.

5 HEARING EXAMINER: Okay. Thank you.

6 All right. Ladies and gentlemen, at this point  
7 in time I'm going to open the hearing up to the public  
8 portion. As I indicated before, I need a public  
9 participation form from you if you intend to speak. This  
10 matter, whatever I do results in a recommendation to the  
11 Board of County Commissioners and they have a separate  
12 hearing on that recommendation. If you desire to speak to  
13 the Board at the time that they have the hearing on my  
14 recommendation, you can only do so if you've made an  
15 appearance and commented in this proceeding. In other  
16 words, if you make some sort of presentation before me.

17 Okay. And that's something more than getting up  
18 there and giving me your name and address and telling me  
19 you've been sworn in. Okay.

20 But you must do that. If you don't speak here,  
21 you will not be afforded the opportunity to speak before  
22 the Board of County Commissioners.

23 I would ask that when you come forward, that you  
24 give me your name, your address and indicate whether  
25 you've taken an oath. You may be asked to show us where

1 any real estate you own or your home is located in  
2 relation to the property, and we'll be referring to the  
3 aerial photographs. And, of course, you're subject to any  
4 questions that the applicant or staff has. So hang around  
5 up there after you've made a statement to make sure they  
6 don't have any questions of you.

7 Then, finally, please confine any questions or  
8 comments to the matter before me, okay. I can't discuss  
9 other properties. I can't discuss other issues. I'm  
10 interested only in input with regard to the application  
11 that's before me today.

12 I'm going to start with the bottom of the pile  
13 because I presume they submitted their forms first. Right  
14 now I'm going to call Alan Mylan.

15 UNIDENTIFIED PERSON: He had to leave.

16 HEARING EXAMINER: Okay, he's not here?

17 UNIDENTIFIED PERSON: No.

18 HEARING EXAMINER: Okay. Next individual is --  
19 it looks like Debbie Jackow.

20 Thereupon,

21 DEBBIE JACKOW,  
22 called as a witness, having been previously duly sworn,  
23 was examined and testified as follows:

24 MS. JACKOW: Hi. My name is Debbie Jackow. I  
25 live at 19450 Meredith Road, North Fort Myers.

1 I don't know whether to read you my notes or the  
2 letter. I was just ready to leave you because I have to  
3 go to work.

4 Alan Mylan was also here and he is the  
5 chairperson of the Land Use Subcommittee of the North Fort  
6 Myers Community Planning Panel. And I am the  
7 Environmental Subcommittee chairperson of the North Fort  
8 Myers Community Planning Panel.

9 Unfortunately, we have made requests that when  
10 zonings come before the zoning board that we are notified  
11 because we have a design and review board. Since we are  
12 forming the comprehensive plan for North Fort Myers, we  
13 are in the process of forming that, and we like to meet  
14 with all rezonings and zoning cases so that we can discuss  
15 our vision and what they plan on doing and it goes before  
16 our design review board, which this did not happen.

17 I noticed and heard that they had met with the  
18 Sabal Springs people, which would have been nice, but we  
19 didn't know about that. The North Fort Myers Civic  
20 Association didn't know about that. So there was a grand  
21 opportunity here that was missed that could have been  
22 presented and should have been presented considering we  
23 are forming the comprehensive land use plan for North Fort  
24 Myers and that did not happen.

25 A big part of our plan is to preserve the mature

1 native heritage trees, as many as possible, for numerous  
2 reasons, both being aesthetic, global climate change,  
3 because of their ability to absorb so much carbon. And  
4 coming before the Commissioners shortly, since they  
5 postponed it until August is a change in the land use  
6 where they're requesting a 50 foot buffer of native mature  
7 trees on all arterial and collateral roads which I would  
8 suggest gets added into this plan to keep the mature trees  
9 in place and not to bulldoze down everything and put in  
10 nursery stock.

11 As for the gas stations, 104 pumps within this  
12 five mile radius either way to me sounds sufficient and I  
13 have had no trouble going north on 41 and turning and  
14 going into the Hess station or going farther up and going  
15 into the Circle K and don't think we need any more gas  
16 stations there.

17 I also go along with what Tony said about one  
18 fast food because there are a lot of them down south  
19 further on Route 41.

20 And I suggest that any other things that come up,  
21 since this was a request of this -- with the Commissioners  
22 also, that we are notified of these zoning things which we  
23 just basically found out about this so that we can meet  
24 with these people and this can be incorporated into our  
25 comprehensive plan that we're making and the county is

1 footing the bill for. And this element of surprise does  
2 not go over very well.

3 Thank you.

4 HEARING EXAMINER: Hold on a minute. Is where  
5 you live on any of these aerial photographs?

6 MS. JACKOW: No, no.

7 HEARING EXAMINER: Are there any questions of  
8 this individual by staff or the applicant?

9 MR. UHLE: You ask the question I was going to  
10 ask.

11 MS. JACKOW: No. I'm a representative of that  
12 group that is forming the comprehensive plan for North  
13 Fort Myers.

14 HEARING EXAMINER: You're a representative of  
15 that group.

16 MS. JACKOW: Yes.

17 HEARING EXAMINER: Have they voted --

18 MS. JACKOW: Yes.

19 HEARING EXAMINER: -- for you to appear here?

20 MS. JACKOW: Yes. And there was a second person  
21 here that was also going to speak that could not stay.  
22 Yes, sir.

23 HEARING EXAMINER: But you're here on their  
24 instructions?

25 MS. JACKOW: Absolutely.

1 HEARING EXAMINER: Is it the Board of Directors  
2 that voted for you to be here or someone else?

3 MS. JACKOW: The subcommittee -- all the  
4 subcommittee chair people that met last night, including  
5 the president.

6 HEARING EXAMINER: All right. I have no further  
7 questions.

8 Okay. Thank you.

9 I have a public participation form here from a  
10 Celia Benson but she slipped me a note that she has to go  
11 to the airport and I take it she's not here?

12 Okay. Next individual is Albert Lindstrom.

13 MR. LINDSTROM: Yes, sir.

14 HEARING EXAMINER: Come forward, please.  
15 Thereupon,

16 ALBERT LINDSTROM,  
17 called as a witness, having been previously duly sworn,  
18 was examined and testified as follows:

19 HEARING EXAMINER: Sir, why don't you go to one  
20 of those aerial photographs and show me where you live if  
21 it's on there?

22 MR. LINDSTROM: I have this home right here  
23 (indicating), the first one on the north end. Sabal  
24 Springs at the exit/entrance.

25 HEARING EXAMINER: Okay. Thank you, sir.

1 Can I have your address, sir?

2 MR. LINDSTROM: My address is 3794 Sabal Springs  
3 Boulevard.

4 HEARING EXAMINER: And you took an oath?

5 MR. LINDSTROM: Yes.

6 HEARING EXAMINER: Thank you, sir.

7 MR. LINDSTROM: My biggest concern is when --  
8 first of all, I've got all this information from my local  
9 neighbor. I never had anything in the mail delivered to  
10 me in any way, shape or form. And as far as the gentleman  
11 here saying that Sabal Springs was -- they met with Sabal  
12 Springs and they more or less looked at it as a positive  
13 way. Well, this may be true to a certain point, but its  
14 impact -- it greatly impacted about I'm going to say at  
15 least six homes. The rest of Sabal Springs could care  
16 less. But we as neighbors that back up to that  
17 development is quite concerned about a substantial buffer  
18 zone of existing foliage that's in the area is my biggest  
19 concern.

20 HEARING EXAMINER: Did you hear the testimony of  
21 what's going behind your house?

22 MR. LINDSTROM: Yes, I have. I have seen  
23 drawings, sketches, and I also seen section drawings on  
24 it. It's better than I thought it would be, but I don't  
25 think it's enough to help us out there in those five homes

1 at all. And it's a wetlands, it's an excavated retention  
2 pond, about 100 feet wide from east to west, and I think  
3 that they could do a better job with that land of leaving  
4 it as is if possible.

5 It would be nice to leave it that way, just like  
6 the wetland, leave the wetlands alone. If they need the  
7 material to build a table for the construction site, maybe  
8 then can take it -- either go excavate deeper or move into  
9 an area which is a wetlands, reshape it a little better.  
10 They need the spoil in order to fill the table.

11 I was informed verbally that they were going to  
12 import a lot of material.

13 HEARING EXAMINER: Am I correct that that area  
14 behind your house is designed for storm water retention?

15 MR. LINDSTROM: That's true. That's excavated  
16 substantially deeper than the wetlands itself the way it  
17 looks to me as far as I can see. It's a topo drawing.  
18 There's not much elevation shown on these drawings here,  
19 the sketch that I have acquired.

20 HEARING EXAMINER: Did you take a look at the  
21 cross section?

22 MR. LINDSTROM: I've seen one --

23 HEARING EXAMINER: Okay. Anything else, sir?

24 MR. LINDSTROM: -- earlier today.

25 HEARING EXAMINER: Anything else?



1 MR. LINDSTROM: No, that's all I have. I'm  
2 looking at the Planning Department. Being in construction  
3 myself where I'm from, the Planning Department, the  
4 village and the county Planning Department made sure that  
5 commercial developments are neighborhood friendly. And  
6 I've been in construction where they had to do a  
7 substantial amount of berm improvements, whatever it takes  
8 to help the local people, the residents.

9 HEARING EXAMINER: What are you suggesting should  
10 be done differently?

11 MR. LINDSTROM: Sir?

12 HEARING EXAMINER: What are you suggesting that  
13 should be done differently?

14 MR. LINDSTROM: Well, they could come up with a  
15 proposal of showing what can be -- how it can be improved  
16 or how it can help us in a way to give us -- from  
17 pollution. I mean, like I say, there's site pollution,  
18 there's noise pollution and so forth. There's pollution  
19 from automobiles, so forth.

20 HEARING EXAMINER: Anything else?

21 MR. LINDSTROM: No, that's all I have.

22 HEARING EXAMINER: Okay. Questions by staff or  
23 the applicant?

24 MR. UHLE: No questions.

25 MR. PALERMO: No.

1 HEARING EXAMINER: Okay. Thank you, sir.

2 Adele, is it Edebohls?

3 MS. EDEBOHLS: The name is Edebohls and I'd  
4 prefer you to call my husband first, please.

5 HEARING EXAMINER: You want your husband to go  
6 first?

7 MS. EDEBOHLS: Yes.

8 HEARING EXAMINER: Why, are you going to correct  
9 what he says?

10 MS. EDEBOHLS: Could be.

11 HEARING EXAMINER: Okay. Mr. Edebohls, you seem  
12 to be --

13 MS. EDEBOHLS: We had agreed upon this.

14 HEARING EXAMINER: Good. We see who controls  
15 this vote.  
16 Thereupon,

17 JOHN EDEBOHLS,  
18 called as a witness, having been previously duly sworn,  
19 was examined and testified as follows:

20 MR. EDEBOHLS: My name is John Edebohls, and my  
21 wife and I reside at 3798 Sabal Springs Boulevard.

22 HEARING EXAMINER: Okay, sir, could you just go  
23 up to -- and you took an oath?

24 MR. EDEBOHLS: Yes, sir, I did.

25 HEARING EXAMINER: Okay. Could you just go up to

1 the map and show us where you live?

2 MR. EDEBOHLS: The second house in (indicating).

3 HEARING EXAMINER: Okay. Thank you, sir.

4 MR. EDEBOHLS: Okay. And I was fortunate enough  
5 to speak with Mr. Bettis this morning; he came to our  
6 house, and we are concerned about the natural environment  
7 that is behind our property. I know it's native material  
8 and it may not mean anything to a majority of the people  
9 who live in Sabal Springs, but to us one of the selling  
10 points or when we purchased the property was natural  
11 material.

12 The developers have indicated that they will  
13 plant some material, they're going to have a berm and a  
14 fence, and so forth. I don't have anything in writing,  
15 and I'd like to know what the variety of plant material is  
16 going to be.

17 I understand from the conversation that you're  
18 planning on using native type of material. I have no  
19 objection to that.

20 The size of the material, we're -- in Sabal  
21 Springs we're a little on the older side and we're not  
22 going to have 20 years to live to see these plants come to  
23 maturity, so I would like to see some larger plant  
24 material.

25 HEARING EXAMINER: Okay. I'm going to ask the

1 applicant to address that right after the public portion.  
2 And have you seen this cross section?

3 MR. EDEBOHLS: Yes, sir, I have.

4 I might be disjointed in my comments, but I would  
5 like to know what the developers are planning to do to  
6 keep down the construction dust as the project goes  
7 forward, not only -- but on a daily basis also.

8 The other thing is the developer's plan,  
9 according to their drawing, a six-foot fence and I know  
10 it's not going to be a concern with them, but the higher  
11 the fence, the better I feel it should be.

12 Secondly, if they can provide a fence that has  
13 sound absorbing materials, that would be an advantage.

14 Like I said, we need to get something in writing  
15 as to the size, quantity, placement and density in height  
16 and also what controls what the fence will be.

17 Basically, that's what I have to say. As a side  
18 light, it was mentioned that Merchants Crossing, which is  
19 just down the road, they're not even 100 percent of  
20 capacity at present and it's been like that for a while.  
21 And the way things seem to be going for the next couple of  
22 years, construction wise, I'm not so sure that they're  
23 going to fill up but that's just a private opinion.

24 The other comment I have is on Del Prado, right  
25 in and right out. I understand that. However, once they

1 turn right and they want to go back to the left, go west  
2 on Del Prado, how do you intend to turn that around? You  
3 can't really have -- and I believe when they had that  
4 public meeting at Sabal Springs a while back, you feel  
5 that there should not be a traffic light. So supposing  
6 there's a -- say a tractor-trailer, whatever have you, has  
7 to exit to the right, where are they going to exit to turn  
8 around for the left. I'm sure you've got an answer for it  
9 but I'd like to know what you feel.

10 HEARING EXAMINER: I think it's kind of obvious,  
11 aren't they going to use the left-hand turn lane?

12 MR. EDEBOHLS: Yeah. But a tractor-trailer,  
13 let's just say the tractor-trailer is 50 foot total,  
14 bumper to bumper, okay, so they turn out and they're going  
15 to start heading east on Del Prado but they want to make a  
16 U-turn. You've got to go across a couple of lanes to  
17 begin with. I know the traffic may not be that great, but  
18 getting off it is. You know, at certain times of the day  
19 when construction people are going home, say 3:00, four  
20 o'clock, five o'clock, it's quite heavy, the rest of the  
21 time it isn't.

22 I mean, my biggest concern again is what  
23 developers are going to do. They've told me and I have  
24 faith in what they've said, but I want to see something in  
25 writing, okay, as far as to protect the natural plant

1 material or to replace it with materials that are of a  
2 large enough size.

3 HEARING EXAMINER: As far as in writing, I'm  
4 going to tell you that you're going to have to rely on the  
5 conditions that are set forth in the Staff Report or  
6 ultimately my recommendation, okay, because you're not  
7 going to get separate written conditions from the  
8 applicant.

9 MR. EDEBOHLS: Right.

10 HEARING EXAMINER: Okay. And I'd ask you to look  
11 at the conditions contained in the Staff Report, but I'm  
12 going to have them address some of your comments right  
13 after the public portion.

14 MR. EDEBOHLS: Excuse me, sir, will their  
15 comments be put into your record so that we know exactly  
16 what is coming forward?

17 HEARING EXAMINER: That's why this lady is  
18 sitting here.

19 MR. EDEBOHLS: I understand that. And we will --  
20 as a public, we will be able to see that section of the  
21 report?

22 HEARING EXAMINER: You mean in a transcript?

23 MR. EDEBOHLS: Just of the portion I'm referring  
24 to. The rest of the project is none of my concern.

25 HEARING EXAMINER: The conditions are contained

1 in the recommendation, okay.

2 MR. EDEBOHLS: Okay.

3 HEARING EXAMINER: That's what's contained in --  
4 I don't know that you'll get a copy of the transcript,  
5 you'll get a copy of my recommendation.

6 MR. EDEBOHLS: That's fine.

7 HEARING EXAMINER: Anything else, sir?

8 MR. EDEBOHLS: No, sir.

9 HEARING EXAMINER: Questions by staff or  
10 applicant?

11 MR. UHLE: No questions.

12 MR. PALERMO: No.

13 HEARING EXAMINER: Okay. Mrs. Edebohls.

14 MS. EDEBOHLS: Yes, I do have one question.

15 HEARING EXAMINER: You can come forward and tell  
16 me what's wrong with what he said, too.  
17 Thereupon,

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

21 MS. EDEBOHLS: Just an addition. My name is  
22 Adele Edebohls. I reside at 3788 Sabal Springs, the  
23 second -- the same house my husband showed you.

24 My question is, as I understand that the whole  
25 area, proposed development, will be cleared and that

1 concerns me greatly because the lady that spoke, I didn't  
2 get her name here prior to my husband speaking, that's  
3 going to work on a future plan, she mentioned that, too,  
4 about the natural environment, the trees, and that's what  
5 I'm concerned about. They clear it all off, that could be  
6 years and all we have is just dirt.

7 HEARING EXAMINER: I'm going to ask the applicant  
8 to respond to that along with the other environmental  
9 questions.

10 MS. EDEBOHLS: The next question is, I understand  
11 that they have to put quite a bit of fill in in the new  
12 development to come up to four feet, I believe that's what  
13 they said. So then as a result, they're going to be  
14 higher than our property and we could have a runoff  
15 problem.

16 HEARING EXAMINER: That's what the detention area  
17 is for.

18 MS. EDEBOHLS: Okay, I understand what detention  
19 is, I do. But I'm still concerned.

20 HEARING EXAMINER: Okay. All right. Any  
21 questions by applicant or staff?

22 MR. UHLE: No questions.

23 MS. EDEBOHLS: Thank you.

24 HEARING EXAMINER: Thank you, ma'am.

25 Any other individuals wishing to speak because I



1 don't have any more public participation forms? Any other  
2 individuals?

3 Okay. At this point in time I'm going to close  
4 the public hearing.

5 Matt, you need any time or --

6 MR. UHLE: Yes, I need a couple of minutes.

7 HEARING EXAMINER: Okay. Ladies and gentlemen,  
8 we're going to reconvene at -- don't go far -- at 15  
9 minutes after the hour. Is that enough time?

10 MR. UHLE: Yes.

11 HEARING EXAMINER: And we'll get answers to your  
12 questions and have some rebuttal from the applicant.  
13 Thank you.

14 (A recess was taken.)

15 HEARING EXAMINER: All right. Ladies and  
16 gentlemen, back on the record.

17 When we recessed, we had concluded the public  
18 participation portion of this hearing. And I believe the  
19 applicant may have something and staff by way of rebuttal.

20 MR. PALERMO: I'll make one statement based on  
21 the public testimony and then it's Matt's turn to give his  
22 rebuttal.

23 For the record, Tony Palermo, Lee County  
24 Community Development.

25 I just needed to respond to Debbie Jackow's

1 statement regarding the North Fort Myers community in that  
2 staff does make a conscientious effort to communicate with  
3 the appropriate planning and community organizations.

4 For the record, I'll state that we on a regular  
5 basis do two things or at least I do two things on a  
6 regular basis when cases are in the North Fort Myers and  
7 the Bay Shore community and other communities.

8 Number one, during our sufficiency review, we  
9 often encourage the applicant to set up meetings with  
10 affected communities or with their planning groups just  
11 because it's appropriate, not necessarily because it's  
12 required by the Land Development Code or the Lee Plan.

13 And, number two, I, on a regular basis, send  
14 copies of plans and copies of Staff Reports to  
15 organizations in North Fort Myers and in Bay Shore. I,  
16 including, Mr. Scott Brenner, which I've done on a regular  
17 basis with other cases. So I didn't want leave the  
18 impression that the appropriate planning communities  
19 weren't communicated with because they were communicated  
20 with in the past and they will be communicated with in the  
21 future.

22 HEARING EXAMINER: Okay. Thank you.

23 Matt.

24 MR. UHLE: I have a couple of witnesses, very  
25 short, and then just a couple of comments.

1 Ms. Caldera.

2 Thereupon,

3 JANE CALDERA,

4 called as a witness by the Applicant, having been  
5 previously duly sworn, was examined and testified further:

6 MS. CALDERA: Jane Caldera, Avid Group.

7 MR. UHLE: Mr. Getch provided some testimony  
8 about the possibility of a change in the speed limit on  
9 Del Prado Extension which he tied to his analysis of the  
10 FDOT standards. Can you please tell us what the design  
11 speed was in the Del Prado corridor study and what the  
12 likelihood is of a change to that speed limit in the  
13 future?

14 MS. CALDERA: Answer to your first question, the  
15 designed speed in the Del Prado corridor study, and I just  
16 looked it up to confirm, for the segment is designed speed  
17 of 45 miles an hour. And to add to that, you would  
18 typically not want to post speeds above what the designed  
19 speed was for because you can get into safety conditions.  
20 So it would be unusual for a speed limit to be raised  
21 above a designed speed.

22 MR. UHLE: No further questions of her.

23 HEARING EXAMINER: Any questions by county staff?

24 MR. GETCH: No.

25 HEARING EXAMINER: County Attorney?

1 MR. SPICKERMAN: No questions.

2 HEARING EXAMINER: Okay. Thank you. I have no  
3 questions.

4 MR. UHLE: Next witness is George Alexandris who  
5 has not testified.

6 Thereupon,

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

11 MR. ALEXANDRIS: Good afternoon. George  
12 Alexandris with the Win-Del Prado, LTD representing the  
13 owner.

14 HEARING EXAMINER: Did you take an oath, sir?

15 MR. ALEXANDRIS: Yes, sir.

16 MR. UHLE: George, could you please answer the  
17 question about what's being proposed on the property  
18 that's behind these residents' site?

19 MR. ALEXANDRIS: What's being proposed is along  
20 lines of the section that's been referred to throughout  
21 the hearing. I can elaborate on the type of vegetation  
22 and the density on -- within the, I believe, nine feet  
23 between the property line of the homeowners adjacent to us  
24 and the proposed six-foot fence.

25 Let's talk about the vegetation first. It's a

1 variety of five different species, southern magnolia, bald  
2 cypress, those are the tree species, canopy type trees.  
3 Of the low shrub variety would be Simpson stoppers, fire  
4 bush and cocoa plum.

5 This is what has been worked on between ourselves  
6 and our consultant and our landscape architect by any  
7 means, but this is what's being proposed currently. The  
8 type of vegetation as far as the trees, the canopy trees,  
9 they're going to be ten foot high, three inch caliper. We  
10 would be open to increasing that caliper and that height  
11 just in the vicinity where it corresponds to the  
12 landscaping in that nine foot area between the fence and  
13 the adjacent homeowners. I may be jumping ahead but the  
14 next topic of discussion --

15 HEARING EXAMINER: Wait a minute. Are you  
16 intending on increasing the height and caliper of those  
17 trees and if so, to what height and --

18 MR. ALEXANDRIS: That I would have to discuss  
19 with our landscape architect which is not present here.  
20 I'm not really in a position to talk on that.

21 HEARING EXAMINER: What is currently proposed?

22 MR. ALEXANDRIS: Currently is a three inch  
23 caliper, ten foot height on those trees behind the fence.

24 HEARING EXAMINER: Okay. Thank you, sir. Go on.

25 MR. UHLE: Before you go on, let me ask you

1 something. Do you have a problem with the Hearing  
2 Examiner writing a condition that specifically requires  
3 you to comply at the Development Order stage with both the  
4 comments that you've just made and with the section that's  
5 been submitted as an exhibit?

6 MR. ALEXANDRIS: No, I have no issue with that.

7 MR. UHLE: I have nothing further. Go ahead.

8 MR. ALEXANDRIS: Another issue that was to  
9 clarify as far as the wall between our property and the  
10 adjacent property owners, the type of wall that would be  
11 proposed is a pre cast concrete decorative wall,  
12 decorative meaning it could look like stone, it could  
13 look like brick, it could look like wood such as the  
14 existing fence that surrounds the rest of the Sabal  
15 Springs property or portions of the Sabal Springs  
16 property.

17 We would be amenable to increasing that and put  
18 that in as a condition in the zoning to increase that to  
19 an eight foot high above the ordinance to help aid in a  
20 buffer between us and our neighbors.

21 Were there any other specific --

22 MR. UHLE: What's going to be done to limit the  
23 impacts of construction on adjacent neighbors?

24 MR. ALEXANDRIS: As far as the impacts to our  
25 adjacent neighbors, obviously a steel fence, typical

1 practice, as is required by the South Florida Water  
2 Management District and by Lee County. You know,  
3 construction means and methods to maintain all erosion  
4 and silt off of our adjacent properties. That would be  
5 the first and foremost measure that we would take in order  
6 to limit impacts to our neighbors.

7 MR. UHLE: There was a questions raised about  
8 clearing the site. There will be some clearing that's  
9 necessary; is that not true?

10 MR. ALEXANDRIS: Yes, that is true.

11 MR. UHLE: But that will have to be done in the  
12 context of a plan that requires indigenous preservation  
13 well in excess of what the code normally requires?

14 MR. ALEXANDRIS: That is what we're proposing.

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

16 HEARING EXAMINER: Any questions of this witness  
17 by staff or County Attorney?

18 MR. SPICKERMAN: No questions.

19 HEARING EXAMINER: Thank you, sir.

20 MR. ALEXANDRIS: Thank you.

21 MR. UHLE: I guess I'll just conclude by  
22 responding to one item that was brought up about the  
23 pending legislation with the 50 foot landscape, 50 foot  
24 basically indigenous buffer along US 41. It is true that  
25 there is a regulation that's pending that does that, and

1 it's also true that that regulation is extremely  
2 controversial. Whether that regulation will ultimately be  
3 adopted or what form it will take is impossible to tell at  
4 this point. You can be certain there will be plenty of  
5 public testimony opposing that particular provision. So  
6 to the extent that there might be some suggestion that  
7 that should be imposed as a condition in this case,  
8 obviously we would oppose that.

9 HEARING EXAMINER: Well, I'm not going to pose  
10 any condition based on a contingent ordinance.

11 MR. UHLE: Right. We're just making it clear  
12 that that's where it stands.

13 HEARING EXAMINER: That's like tax planning  
14 before the Congress amends the Internal Revenue Code.  
15 It's dangerous.

16 All right. Anything else, Matt?

17 MR. UHLE: Well, I'll just summarize by saying a  
18 couple of things. One of them is I think to the extent  
19 that we have a dispute about uses and, you know, for a  
20 commercial project I think we'd agree it's a fairly  
21 limited scope of dispute here, but you need to view that  
22 in a context of the fact that the staff has recommended  
23 limitations on a wide range of uses in here that we didn't  
24 propose in our schedule of uses but we have not objected  
25 to that. So while we are objecting to a couple of them,



1 we're actually rolling over on 90 percent of them. That's  
2 something that the Board of County Commissioners needs to  
3 understand.

4 With regard to the deviation issue, I think the  
5 record is fairly clear on that topic, but I think when you  
6 get to the bottom line there are a couple of different  
7 questions you need to ask yourself. The first is not in  
8 general terms about whether it's a good idea or a bad idea  
9 to have lots of access points, but specifically relative  
10 to this project is there going to be a safety or a level  
11 of service problem associated with our deviation request.

12 Our expert has testified that there will not be,  
13 and I believe Mr. Getch's testimony has been much more  
14 generic than that, so I don't believe there's any  
15 testimony from the staff that would support any conclusion  
16 that there would be a level of service problem or a safety  
17 problem with this specific request.

18 Then the other side of the coin is, does it  
19 enhance the planned development to have the multiple  
20 access points. There is testimony from our expert on that  
21 point.

22 And then finally there's the issue that I've just  
23 presented that I would describe as an equity argument.  
24 And that is given the size of this parcel, given the  
25 amount of frontage that it has, given the history that we

1 have with the Lee County DOT and the FDOT, is it likely  
2 that -- is it fair for us to be able to have two access  
3 points on Del Prado rather than one. And I think the  
4 answer is yes.

5 And I think, furthermore, to the extent that the  
6 staff is relying on conditions on Del Prado Boulevard  
7 being different than what the analysis was done when the  
8 corridor study was done, I think that the likelihood of a  
9 speed limit increase has not really been established and I  
10 think it's quite clear that there is no immediate plan to  
11 build the extension and the interchange and even if there  
12 were, the corridor study, the scenario that was discussed  
13 by Ms. Caldera assumed that, and it still wasn't an  
14 increase in traffic of any magnitude that created a level  
15 of service problem. So you're still talking about a  
16 relatively low amount of traffic on that road.

17 So when you consider all of those points  
18 together, we think that deviation should be approved.  
19 That's really all I have to say.

20 HEARING EXAMINER: I'm going to give the staff  
21 the last word if anybody wants one. I take it from your  
22 silence --

23 MR. GETCH: We haven't changed our position.

24 HEARING EXAMINER: Okay. I didn't expect you  
25 did.

1           Okay. I take it -- is there any other issues  
2 with regard to this matter that have to come before me  
3 today?

4           MR. UHLE: Oh, yes. We want to expedite the  
5 transcript.

6           HEARING EXAMINER: Okay. Court reporter, take  
7 note of that.

8           Anything else? Okay. I'm going to conclude  
9 these hearings and thank you all for attending.

10           (Hearing concluded.)

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1 STATE OF FLORIDA )

2 COUNTY OF LEE )

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4 I, Roberta June Bishop, Registered Professional  
5 Reporter, do certify that I was authorized to and did  
6 stenographically report the foregoing proceedings, and  
7 that the typewritten transcript, consisting of pages  
8 numbered 1 through 138, is a true record.

9 Dated this 9<sup>th</sup> day of August, 2007.

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Roberta June Bishop  
Roberta June Bishop, RPR

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