

REGULAR MEETING  
OF THE  
LOCAL PLANNING AGENCY  
 LEE COUNTY, FLORIDA

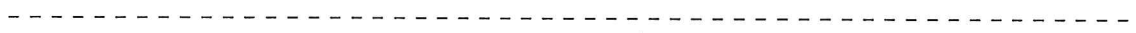
Transcript of proceedings at the public hearings conducted by the Local Planning Agency, Lee County, Florida, at Board of County Commission Chambers, Lee County Courthouse, Fort Myers, Florida, on the 23rd day of June, 2008, commencing at 1:00 p.m.

MEMBERS OF BOARD:

- Carelton Ryffel, Chairman
- Jacque Rippe
- Noel Andress
- Rae Ann Wessel

ALSO PRESENT:

- Paul O'Connor, AICP
- Matthew Noble, AICP
- Jim Mudd, Principal Planner
- Jim Lavender, Public Works Director
- Peter Blackwell, Division of Planning
- Donna Marie Collins, Assistant County Attorney
- Dawn E. Perry-Lehnert, Assistant County Attorney



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1  
2 MR. RYFFEL: North Captiva Community Plan.

3 MR. MUDD: I'm Jim Mudd. Staff's made many  
4 changes to the policy to the North Captiva  
5 Community Plan. The main issue is the amount of  
6 county resources that are appropriate to spend on  
7 a bridgeless barrier island that's mostly  
8 privately owned. Many of the staff changes are  
9 related to financial expenditures that would be  
10 required to carry out the proposed policies. The  
11 county has a budget deficit. We've had to lay off  
12 employees. There may be more to come. We just  
13 don't have the resources to spend large amounts of  
14 additional money to service the barrier islands.  
15 I want to point out Policies 25.4.4 through 25.4.8  
16 that relate to solid waste and hazardous waste  
17 removal. Currently private haulers are  
18 transporting solid waste from North Captiva to the  
19 Fisherman's Co-Op in Pine Island. At that point  
20 the county is responsible for having the waste  
21 taken to the landfill by franchise haulers. The  
22 North Captiva community would like for the county  
23 to proceed and be responsible for the transport of  
24 solid waste across Pine Island Sound. The Solid  
25 Waste Division and Public Works Department do not

1 recommend transmitting those policies. Mr.  
2 Lavender is here and would like to speak to you  
3 about that after you're done with your questions.  
4 Also, Dr. Margaret Banyan who's representing the  
5 planning panel is here; Kristie Anders, a member  
6 of the planning panel; and some others. Staff's  
7 here to answer any questions.

8 MR. RYFFEL: Do you have any questions of  
9 Jim?

10 MR. ANDRESS: I'd like to hear from Mr.  
11 Lavender. I have a bunch of questions.

12 MS. WESSEL: I have a lot of questions, but  
13 I'd like to hear from the community panel because  
14 it's really their application.

15 MR. RYFFEL: I think we should hear from  
16 staff first.

17 MS. WESSEL: Sure.

18 MR. RYFFEL: Jim, you want to talk to us?

19 MR. LAVENDER: Jim Lavender, Public Works.  
20 Many months ago our staff at Public Works had  
21 commented on the language that was in the proposed  
22 plan. We expressed our issues with it and the  
23 language remained. We had several issues and I  
24 want to say it on the record that we intend to  
25 wholeheartedly cooperate with Upper Captiva on



1 solid waste issues or public access issues or any  
2 public infrastructure issue that they say they  
3 have. We all felt that the language was not quite  
4 specific enough when it came to both solid waste  
5 and utilities being that those are enterprise  
6 funds and they simply can't go do other scopes of  
7 work without there being a revenue stream from  
8 somewhere. We met this morning with Margaret  
9 Banyan and Ms. Anders and I think we pretty much  
10 came to realize that they understood where we were  
11 coming from and that if we could take just a  
12 little more time, we can probably come up with  
13 language that works for both of us and get it back  
14 to you. I want to make sure that the Upper  
15 Captivans understand that the strike-throughs that  
16 came through lately was not just -- we're not  
17 trying to be arbitrary. We just want language  
18 that's a little more specific about what, in fact,  
19 utilities and solid waste will do on Upper Captiva  
20 and what the associated costs are. I don't want  
21 to raise the level of expectation. I also don't  
22 want to misrepresent to future owners out on Upper  
23 Captiva what the county may or may not do and  
24 that's simply our concern. I would pledge that I  
25 believe in 30 days or less we can come up with

1 language and meet with the group in case there's  
2 some back and forth that needs to happen, but  
3 that's basically our position on it. Lindsey  
4 Sampson's here today if you have any specific  
5 solid waste issues or speak to utilities or any of  
6 the other language that's in here.

7 MR. RYFFEL: I think they have some  
8 questions for you.

9 MR. ANDRESS: I'd like to ask, Jim, what was  
10 the intent when the county purchased the marina  
11 site and paid \$16,000,000 for it? What was the  
12 purpose of that purchase?

13 MR. LAVENDER: Well, there was an ongoing  
14 land base issue with where the barges were landing  
15 on Pine Island and at the time you may recall this  
16 is at the height of the boom. There was also a  
17 Pine Island-Bridgeless Island Committee that was  
18 established by Commissioner Janes. That committee  
19 met, I believe, for about three years and the  
20 culmination of it was recommendations by the  
21 Fisherman's Co-Op. The fear at the time was that  
22 that land would be bought by some developer on  
23 Pine Island who wanted water access. There was  
24 only two viable barge landings on the western  
25 shore of Pine Island and those places were

1           adamantly opposed to any kind of solid waste  
2           transfer in their neighborhood and the Fisherman's  
3           Co-op which is essentially a rural site, very few  
4           residents to be impacted there and sort of a  
5           traditional use, and I believe, if I'm not  
6           mistaken, in the zoning it was zoned for port  
7           activity so we were well within our right to use  
8           it for what it had been used for. Essentially, it  
9           was so that goods and commerce could come and go  
10          to all the outer islands from there and that it  
11          would be assured in perpetuity that those people  
12          would have a land base and, also, that solid waste  
13          material would go there and be transferred and  
14          then immediately be taken up by the Lee County  
15          normal solid waste system and it's worked very  
16          well. I haven't gotten anymore calls. We do have  
17          a parking issue there which I expressed to the  
18          folks at the meeting today that we're still  
19          continuing to work on that parking problem. It's  
20          a very narrow strip and there are a lot of  
21          commercial contractors and folks who have boats  
22          there that take up a lot of parking. We do a lot  
23          of recreational launching on the weekends when the  
24          commercial activity's not happening. It's a  
25          single lane ramp. Barges and recreational boats,

1 we didn't think that was a good mix so we  
2 restricted the recreational boaters to weekends  
3 only and, again, we still are striving to come up  
4 with off-site parking and shuttles or something  
5 that will work to help the folks that just want to  
6 park and use it as a land base for transportation  
7 out to the island so we cleaned up the site at the  
8 co-op. We pulled out the underground tank that  
9 was leaking into the ground. We rehabilitated the  
10 whole site and I think it's working well. It's  
11 safer. The gate's closed at night. It's more  
12 regulated and that's what it's intended to be.  
13 Yet, there's still more work to be done, but  
14 that's basically the purpose.

15 MR. ANDRESS: Are you still pursuing permits  
16 to mitigate some of the wetlands on the site to  
17 increase the parking area?

18 MR. LAVENDER: We had looked at that. We're  
19 not actively pursuing that right now. We may. I  
20 don't know. Some of the funding has been  
21 withdrawn from the CIP so we're -- I'm not sure  
22 how much more we can do there to tell you the  
23 truth given our funding constraints.

24 MR. ANDRESS: Where do we stand -- a while  
25 back there was a move towards assessing all of the

1 properties on the barrier island to defray this  
2 \$16,000,000 cost and if that's the case, then I  
3 would think that the residents of the barrier  
4 island need to benefit from that extra taxation so  
5 where does that stand right now?

6 MR. LAVENDER: I'm not really sure. I'm not  
7 the county's financial person. I asked that  
8 question some months ago. I don't really know. I  
9 can't answer that question.

10 MR. ANDRESS: So we don't know. We're still  
11 pursuing an MSTU out there.

12 MR. LAVENDER: I don't know. It's not my  
13 neck of the woods, frankly. You'd have to ask one  
14 of our financial folks.

15 MR. ANDRESS: Okay. Thank you.

16 MR. RYFFEL: Rae Ann.

17 MS. WESSEL: I'd like to hear from the  
18 community first. Is the staff going to remain to  
19 answer questions after?

20 MR. MUDD: Sure.

21 MS. WESSEL: That would be great.

22 MR. RYFFEL: Jacque, do you have something?

23 MS. RIPPE: No.

24 MR. RYFFEL: Okay. I have a bunch of cards  
25 here and we'll start with Dr. Margaret Banyan.

1 DR. BANYAN: Dr. Margaret Banyan for the  
2 record. I want to thank you for hearing from the  
3 community today. I appreciate the time that  
4 you're spending on this. Let me give you a brief  
5 history of my background. I'm a consultant to the  
6 plan. I'm also a professor at Florida Gulf Coast  
7 University and previously was the coordinator for  
8 the Center for Public Participation at Portland  
9 State University in Oregon. I tell you that  
10 because I want you to understand that I do know  
11 what a good process looks like. I've been  
12 involved in Lehigh's planning process, North Fort  
13 Myers, as well as several others in the area so I  
14 want to talk to you a little bit today about what  
15 the process looks like after we went through and I  
16 won't take up too much time. I want to let you  
17 know that this was a good process. The plan was  
18 created in a very open way. As you know, it's a  
19 bridgeless barrier island so residents can't  
20 always get there when we would like them to get to  
21 a meeting and there's a good number of people who  
22 do not live on the island full-time so we created  
23 a process that was very open and transparent. We  
24 had eight widely advertised community meetings on  
25 the island. We had 15 subcommittee meetings and

1 those 15 subcommittees focused on environmental  
2 issues, infrastructure, island access, public  
3 safety/code enforcement, architectural design  
4 standards, and roads. We're calling them pathways  
5 now, but we were calling them roads at the time.  
6 All of the advertising and communication was done  
7 through a Web site that we set up. We had a Web  
8 site, we had a blog, we had on island posters, we  
9 had e-mail lists, and we also had two letters that  
10 went out to each property owner using the property  
11 owners' Web site so no matter where a property  
12 owner lived -- Germany, Jamaica, Canada --  
13 everybody got a letter inviting them to  
14 participate in a survey. In fact, we did two  
15 letters like that for two different surveys. On  
16 the Web site we had everything that we could  
17 possibly have. All of the minutes, all of the  
18 subcommittee notes, all revisions to the plan, the  
19 survey links to the survey, the survey results,  
20 and contact information, and, like I said, there  
21 was a blog, as well, where people could discuss  
22 things no matter where they were. There was two  
23 online surveys that were conducted. The first one  
24 did a general what's the problem you're  
25 experiencing on the island to get a general feel

1 about what the participants wanted. Then the  
2 second survey really went into we proposed what  
3 the plan language was. When we got to a good  
4 point where we knew pretty much how this plan was  
5 going to look and the amendments, we proposed and  
6 described all those amendments and asked the  
7 respondents what they thought about it. 90  
8 percent -- and this is an average. 90 percent of  
9 the respondents to that survey supported the plan  
10 or supported the plan with minor revisions so  
11 there was a lot of input and a lot of agreement on  
12 this plan. 148 people responded to the first  
13 survey so after 23 meetings, over 250 respondents,  
14 Web mail, snail mail, e-mail, blogs, I have to say  
15 there was quite a bit of participation and those  
16 who chose not to participate did so by choice. I  
17 also want to let you know that there was a lot of  
18 public consensus built around this plan. On the  
19 island just like anywhere in Lee County, there's  
20 pro-development and anti-development interests.  
21 The plan accommodates that. There was public  
22 people who were interested in some public funding  
23 for services and there was also a group of people  
24 who said we have a spirit of independence, we  
25 don't want the public funding. The plan also



1 accommodated that. There are those who see the  
2 island as a public resource, a recreation spot,  
3 and there was people who see it as a private  
4 resource. This is my place where I live. The  
5 plan also accommodated that. There was a lot of  
6 consensus, a lot of agreement about this plan when  
7 it was created. I want to point out that the plan  
8 does not constrain development and that was  
9 something that the committee was very careful not  
10 to do. There are a couple items in the plan that  
11 do ask that developers let the community know when  
12 they plan to do a project and there's a format for  
13 that in the plan and the proper notice be given.  
14 These are not overly burdensome of the developer  
15 and provide a good communication mechanism for  
16 island residents. I want to turn briefly to some  
17 of the policies that were stricken by the county  
18 staff and point out that some of these policies  
19 that were struck through we got very late on  
20 Friday afternoon so we haven't had a lot of time  
21 to go over these, but these are things that the  
22 community has been committed to in the long run.  
23 Policy 25.2.3. There's a lot of damage done to  
24 the pathways from gas powered vehicles. This was  
25 an issue we previously discussed with the Lee

1 County Sheriff's Office. They did agree to  
2 provide law enforcement for the prohibition on gas  
3 powered vehicles when they are present on the  
4 island. Policy 25.2.4. It's also important to  
5 retain this policy as what it does is it works  
6 toward safety standards on those pathways. We're  
7 not asking the county to fund any safety  
8 improvements. We're simply asking that the county  
9 work with the committee on developing some kind of  
10 standards. For example, some of the brush on  
11 those pathways is too close for the fire trucks to  
12 get through so there needs to be some work done  
13 about how to create more safe pathways. 25.3.3 is  
14 a ban on vehicular traffic on the beaches. Again,  
15 that's preserving the wildlife and the integrity  
16 of the beaches on the island. This also was  
17 discussed with the Lee County Sheriff's Office and  
18 they did agree again to provide enforcement when  
19 they are on the island. 25.3.4 is the policy  
20 referring to invasive plant species. The reason  
21 why some of that language is there is because that  
22 allows the community to work with Lee County to  
23 get grants to fund getting rid of those invasive  
24 plants and plant species so it's important to have  
25 some things of that nature in the plan.

1 Otherwise, it's much more difficult to get grants  
2 from the state or the feds around mitigation. Mr.  
3 Lavender talked about the solid waste policies and  
4 we did meet with them this morning. I want to  
5 make sure that it's clear why the community --  
6 this is so important to them. They have a very  
7 big problem with illegal dumping, the pests that  
8 come along with household garbage and construction  
9 waste sitting around for a long time, and there's  
10 a lot of health risks that arise from mishandling  
11 of solid waste. This was something that virtually  
12 all of the island residents supported. Through  
13 all the comments I did not find one that disagreed  
14 with the county's involvement in solid waste so I  
15 was happy to hear this morning that Mr. Lavender  
16 was willing to work with the community on those  
17 issues. We're hoping to come back again to the  
18 LPA possibly in August to work through that  
19 language again. Finally, Policy 25.5.1 is  
20 regarding recreational areas and beach access.  
21 Again, that was written so that the community  
22 could apply for grant funding. There's several  
23 grants for the state that require that Lee County  
24 acknowledge the need for public or beach access  
25 and recreational areas. The community wanted to

1 open up to the possibility of providing that. It  
2 doesn't commit the county to any funding. Just  
3 for a little context, the original draft of the  
4 plan -- I'm going to exclude solid waste language  
5 for now -- is very reasonable and it provides for  
6 a mechanism for the county to collaborate with the  
7 community. That's a very positive outcome  
8 hopefully of this plan, that collaboration. I  
9 want to provide a little context, though, for  
10 funding. Upper Captiva property owners pay to the  
11 county every year in their capital improvement  
12 general revenue all hazards, library, and  
13 unincorporated MSTU funds, Upper Captiva residents  
14 pay \$1,666 per parcel. Now, that's quite a bit.  
15 When you compare that to an area like Lehigh  
16 Acres, it's not a fair comparison, but, yet, we  
17 can compare communities in the area. Lehigh pays  
18 \$284 to those same five funds. The residents  
19 realize that they do pay more taxes than other  
20 areas in the county. They also realize that  
21 they're not going to get the same benefit. They  
22 are a barrier island. Some consideration,  
23 however, of staff time, though, I think is what  
24 the committee's asking for. We're not asking for  
25 lots of funding income. We realize this is a

1           tight budget season. Staff time is really, I  
2           think, where the community would appreciate some  
3           assistance from the county. It's for all those  
4           reasons that the community respectfully requests  
5           of the LPA retain the original language prior to  
6           the strike-throughs from the Upper Captiva  
7           Community Planning Panel. I want to thank you for  
8           your time and I'll sit and wait for any questions  
9           that may arise later or now.

10           MS. WESSEL: Just that last statement you  
11           made, retain the original language, I probably  
12           have four or five versions in front of me. Which  
13           original language are you --

14           DR. BANYAN: The last set of plan amendments  
15           that was sent out by Mr. Noble on Friday, that's  
16           the language I'm referring to. The community had  
17           a meeting in March or was it April? It was April.  
18           We had a meeting in April where we did revise some  
19           of the language so that's the language that the  
20           community agreed to aside from the  
21           strike-throughs.

22           MS. WESSEL: So without the strike-throughs.

23           DR. BANYAN: Correct.

24           MS. WESSEL: Thank you.

25           MR. RYFFEL: Any other questions for Dr.

1 Banyan? Thank you.

2 DR. BANYAN: Thank you.

3 MR. RYFFEL: Okay. Next on the list is Mr.  
4 Fox.

5 MR. FOX: My name is Rick Fox. I'm the  
6 general manager of the Safety Harbor Club on North  
7 Captiva Island, I'm a community association  
8 manager, and I'm also a certified public  
9 accountant. I've been working out on North  
10 Captiva Island now for over five years. I just  
11 want to reemphasize one of the points that was  
12 just made by Margaret Banyan and that is the  
13 wording in the plan that we -- I call it the  
14 negotiated plan we finally ended up with after our  
15 April meeting was developed through surveys and  
16 input from island residents, many meetings, and  
17 much dialogue and then through a compromise  
18 meeting with county staff during which each item  
19 was discussed, debated, and voted on. An  
20 amendment to suggest the changes to the revised  
21 plan that we were given to look at last week which  
22 changed the meaning of the negotiated plan put  
23 most of the responsibility back on the island  
24 residents and take it away from Lee County which  
25 we think is against the best interest of the North

1 Captiva residents who already contribute heavily  
2 in the county tax base. That's my comment.

3 MR. RYFFEL: Any questions for Mr. Fox?  
4 Thank you, sir. Next is Robert Cousar,  
5 C-O-U-S-A-R, Jr.

6 MR. COUSAR: No, thank you.

7 MR. RYFFEL: Thank you, sir. Next is John  
8 and Marion Fuller and Marion's going to talk for  
9 them.

10 MS. FULLER: For the record my name is  
11 Marion Fuller. Although I'm a member of the Upper  
12 Captiva Civic Association Board, UCCA, I'm  
13 representing myself and my husband, John Fuller.  
14 We are full-time residents of the island. Members  
15 of the Lee Planning Committee, thank you for this  
16 opportunity to comment on the North Captiva  
17 Community Plan as submitted to your committee as  
18 proposed amendments to the Lee County  
19 Comprehensive Plan. We greatly appreciate your  
20 willingness to review our island's plan and to  
21 consider comments submitted both orally and in  
22 writing on the plan's proposals. We are grateful  
23 for all of our community's involvement in  
24 developing and interpreting the plan and we  
25 especially want to recognize Margaret Banyan for

1 her steady-handed guidance, patience, and  
2 knowledge of the community planning process she  
3 has so ably demonstrated during the past two years  
4 as our plan has been drawn and delivered to you.  
5 My husband John and I are relative newcomers to  
6 North Captiva. After purchasing our home in 2000  
7 we became full-time residents of the island in  
8 late 2006 after recovering from a nearly knockout  
9 blow from Hurricane Charley. Today we are fully  
10 settled into a lifestyle that is at once peaceful  
11 and stimulating. Rarely has a day gone by without  
12 some thoughtful conversation with fellow islanders  
13 about the current state of our beloved island or  
14 our visions for its future. We are constantly  
15 astounded at the wide range of talent,  
16 accomplishments, and varied life experiences our  
17 neighbors bring to North Captiva. The comments  
18 you have received from many of them regarding the  
19 North Captiva Community Plan reflect that same  
20 diversity. Although some of those comments may  
21 stress less than wholehearted satisfaction with  
22 the plan, the point you must keep in mind when  
23 reviewing them is that there is a common thread  
24 that runs through all of them, a sincere affection  
25 for the island and a deep passion for preserving



1 it for our and future residents' environment. The  
2 North Captiva Community Plan presented to you is  
3 just that, a plan. It's not perfect, nor is it  
4 complete, as many of the items described in the  
5 plan may take decades to achieve, but it's a  
6 serious start. Although there might be some  
7 disagreement with the plan, I'm certain that we  
8 are all grateful for the process of developing it.  
9 It brought us together to talk to our neighbors.  
10 Together we forged a vision for the long-term  
11 survival of the riches Florida barrier islands can  
12 provide to people, animals, and floral inhabiting  
13 them. We dare say that the many conversations  
14 triggered by the planning process were more  
15 discussions than any of us have ever had with  
16 neighbors in our home towns or previous  
17 communities. This is a good thing. We are  
18 exceedingly proud of the difficult planning  
19 process we tackled and the product that resulted  
20 from that difficult, sometimes tedious, sometimes  
21 argumentative process and we strongly support the  
22 plan as it was initially submitted in April for  
23 approval. Now it is up to you. We are asking  
24 your support for what we have presented in our  
25 plan. There are serious concerns listed among the

1 plan's provisions such as the need for solid waste  
2 removal and a point on mainland for access and  
3 egress to enable safe and efficient transport to  
4 and from the island and during times of emergency  
5 evacuation. We desire future opportunities to  
6 discuss these and other items of importance with  
7 you. However, for now we respectfully request  
8 your approval and acceptance of our plan as an  
9 amendment of the greater Lee County Comprehensive  
10 Plan. We stand ready to work with you just as we  
11 have learned to work together through difficult  
12 times such as cleaning up after Hurricane Charley  
13 and through our plan's developmental process.  
14 Please give our plan your full consideration. We  
15 are willing to meet with you and/or your staff at  
16 any time to discuss ways of achieving a balance  
17 between the plan's provisions that may be readily  
18 achievable and those that may need negotiation  
19 over time and budgetary restraints. In the  
20 meantime we were recently struck by the many  
21 similarities between what North Captiva is trying  
22 to accomplish with its plan and the growing pains  
23 that Marco Island withstood nearly 100 years ago  
24 when Tommy Barfield lobbied government officials  
25 hard to make that island's needs be heard. We,

1 like Mr. Barfield, understand that we live on a  
2 barrier island, an island with unique needs and a  
3 growing citizenry of over 300 homes. We  
4 understand the allure of an island and we  
5 understand the hazards. However, somewhere  
6 between the amenities and the inconveniences of  
7 living on a barrier island we should be able to  
8 come together to find a practical balance that  
9 meets most of our needs. Please join us in  
10 achieving that balance. Thank you.

11 MR. RYFFEL: Thank you, Ms. Fuller. Any  
12 questions of Ms. Fuller? Okay. Thank you, ma'am.  
13 The next speaker is Kristie Anders.

14 MS. ANDERS: Hello, Kristie Anders. I live  
15 at 4550 Schooner Drive on Upper Captiva Island.  
16 I've been a resident for 15 years. I am the vice  
17 chair of the Community Planning Panel and have  
18 been part of the process from its very beginning  
19 two years ago when Commissioner Bob Janes  
20 suggested that we go through this process to  
21 assist us in planning some of our future. We  
22 recognize after Hurricane Charley that we were  
23 basically on our own and we requested the attorney  
24 for our fire board to place an MSTU upon ourselves  
25 to remove the debris from Hurricane Charley. We

1 were willing to tax ourselves, we knew we were on  
2 our own, so there is some demonstration of  
3 willingness for our island residents to pay for  
4 the services that they are requesting. Our fire  
5 board bill is about the fourth or fifth highest  
6 millage in our entire property tax bill right up  
7 there with the school taxes. Some of the language  
8 that you saw in the original submittal in April  
9 have been questioned by county staff and they were  
10 inserted deliberately because we had hoped of  
11 applying for grants to perhaps the, Department of  
12 Community Affairs, Department of Agriculture, and  
13 Department of Forestry particularly when it came  
14 to removal of exotic species when it came to  
15 re-vegetation of the island after hurricanes such  
16 as the community of Captiva had received a grant  
17 from the Department of Agriculture and, also, the  
18 removal of exotic pests such as black rats and,  
19 also, nuisance raccoons. You will see some  
20 sentences in there that have been stricken by  
21 county staff, but are specifically in there  
22 because my experience with the Department of  
23 Community Affairs grant says where in the Lee  
24 County plan does it say you are satisfying a need  
25 or a goal of the plan and so there are specific

1 inserts there for North Captiva and past plans  
2 particularly and those are for acquisition of open  
3 land. This has been a legal process under the  
4 Sunshine. It's really difficult relying on 60 or  
5 70 people to have five of us not talk to each  
6 other, but that has been the process all along  
7 because we are using public money. We're asking  
8 for nothing more than something fair, equitable,  
9 and consistent. We understand that it's hard for  
10 county staff to follow up on some of the code  
11 infractions that are witnessed on the island. For  
12 instance, we have had repetitive problems with  
13 beach lighting in the sea turtle nesting areas.  
14 Photographs were sent in. The county staff can't  
15 travel out at night in order to witness that for  
16 themselves and so the code goes without  
17 enforcement. There are other county staff that  
18 aren't able to make the trip due to constraints.  
19 We've had failure for follow-up on inspection of  
20 well permits and in one instance in particular a  
21 well permit was pulled, the well was drilled, it  
22 wasn't cased, it pierced through the aquifer, and  
23 there was pollution of hypersaline water into the  
24 potable water source 320 feet down at a cost of  
25 over \$22,000. When he investigated, there was a

1 permit issued by Lee County, but it was never  
2 inspected after the well was drilled. We  
3 recognize that North Captiva's an economic engine.  
4 It's ironic to me when I (inaudible) development  
5 council meetings and three of the twelve  
6 photographs on the wall are actually photographs  
7 of North Captiva Island. The Lehigh island coast  
8 tourism economic engine, North Captiva is a viable  
9 part of that and what we're asking is that North  
10 Captiva be part of Lee County and we're sort of  
11 stuck out there by ourselves and we understand  
12 that we're independent, self-reliant people. We  
13 don't have enough of us to have a critical mass of  
14 yes or no on anything, but we came together and we  
15 worked this out. I wanted to point out in Policy  
16 1.4.2, it's a definition of the outer islands,  
17 they're sparsely settled, it says there are not  
18 expected to be programs to receive urban type  
19 capital improvements in the time frame of this  
20 plan. We aren't asking for urban type  
21 improvements. We're not asking for streetlights,  
22 we're not asking for paved roads, but we do  
23 believe that there are some improvements to our  
24 island that Lee County can assist us with. It's  
25 an anticipated continued level of public services

1 below that of other land use categories, but it  
2 does say in the time frame of this plan and the  
3 Lee Plan was written 30 years ago so there was a  
4 window of opportunity open when they wrote this  
5 plan that there may in the future be an  
6 opportunity to revisit North Captiva Island and  
7 what kind of infrastructure was available to its  
8 islanders so I point that out in the policy that  
9 when that plan was written, there was some idea  
10 that things may need to change in the future.  
11 Under Goal 62 of the Lee County plan it says to  
12 ensure the health, safety, and general welfare of  
13 the citizens of Lee County by protecting the  
14 quality of the environment through proper  
15 management of disposal of solid waste. We are a  
16 part of Lee County and we do believe that we need  
17 some insurance of protection for the health,  
18 safety, and welfare of the citizens that we are of  
19 Lee County. There are also goals in the Lee Plan  
20 that talk about community parks and community  
21 recreation centers and we have some elements  
22 within the plan that we sent forward to you in  
23 April that ask that we have some support from Lee  
24 County if we were to apply for grants to acquire  
25 open space or perhaps use some of the beachfront

1 lots owned by Lee County for a beach access point.  
2 In Policy 95.1.3 there is a minimal acceptable  
3 level of service standards. That LOS will be the  
4 basis for planning the provision of required  
5 public facilities within Lee County. Some of  
6 these standards will be the basis for determining  
7 the adequacy of public facilities for the purpose  
8 of permitting new development. The minimal  
9 acceptable level of service will be the basis for  
10 facility design, setting impact fees, and that  
11 there are two classes of standards established,  
12 regulatory ones which are applied to facilities  
13 identified in the state law. Well, if there are  
14 regulatory level of services standards, we believe  
15 that we as part of North Captiva have a legitimate  
16 access to those certain levels of service as  
17 defined by the state law. I'm going as quick as I  
18 can. On Policy 25.1.1 we would like to have a  
19 posted document clearinghouse and we recognize  
20 that we don't have the same access to a library  
21 such as Captiva or a library on Boca Grande for a  
22 document clearinghouse that is a physical  
23 presence, but we are asking that there be an  
24 electronic document clearinghouse so that all the  
25 residents and all of the stakeholders on North



1 Captiva have access to information about meetings  
2 with county staff and about special variances and  
3 about meetings with folks as yourself, the LPA,  
4 and with the Board of County Commissioners so that  
5 our stakeholders from around the world are able to  
6 stay informed if they choose to. As I mentioned,  
7 we have trouble right now -- Policy 25.1.4. We  
8 have trouble right now with commercial lighting  
9 and lighting on the beach by rental units that are  
10 not aware of the sea turtle protection laws and  
11 there have been repeated violations written up for  
12 one particular house and, yet, there's been  
13 nothing that has resolved that issue. It's also a  
14 point of light pollution to houses next door when  
15 spotlights stand straight out and we notice that  
16 some of that work with Lee County and using the  
17 expertise of the staff, its experience, in helping  
18 us formulate a plan for that is what we're asking  
19 for and that part, Lee County will work with the  
20 community, has been stricken and we're asking you  
21 to allow us to have access to county staff who  
22 have the expertise to help guide these decisions  
23 for us. We'd also like their experience to help  
24 us decide what to do about heavy equipment and  
25 with our pathways and internal combustion powered

1 engines. We know that there's now state laws that  
2 say you can't operate unless you're 16 on public  
3 roadways and 14, I believe, if that law is still  
4 in place for golf carts driving and, yet, we do  
5 still have those challenges on North Captiva of  
6 underage driving in an unsafe manner. Policy  
7 25.2.4 says that the North Captiva community will  
8 collaborate with Lee County to develop and enforce  
9 pathway fire and safety standards. This is  
10 nothing more than being able to maintain a fire  
11 corridor for our fire trucks to get through and  
12 when we have a volunteer road commission out there  
13 trimming, they're having trouble with debris being  
14 left along the road and posing as much of a fire  
15 hazard because trimmed debris has been left along  
16 the road as there was by not being able to put a  
17 fire truck through the road. Many people in these  
18 audiences are your volunteer fire department. You  
19 can be 70 years old and strapped to the front of a  
20 truck fighting fires and we had three last year.  
21 Part of the debris issue is that this debris is  
22 being illegally dumped and by doing so, it's  
23 concentrating the fuel source in a place that  
24 allows the fire to burn at a much more intense  
25 heat and causing more and more damage. We need

1 help with the solid waste things. Policy 25.3.4  
2 has been stricken by the county and it asks for  
3 help to stop the proliferation of exotic  
4 vegetation and nuisance plants and, again, this is  
5 because we hope to apply for grants. I mentioned  
6 a well inspection, just the failure of the Lee  
7 County staff to be able to get out there and  
8 follow up on the permit. We have had permits  
9 pulled for house pads pulled in 2002 that were  
10 bulldozed four months ago, that's six years after  
11 the permit was pulled, and I know for a fact there  
12 was a (inaudible) on that property, an endangered  
13 species, but the property was bulldozed over the  
14 weekend. There was no code enforcement to be  
15 called and there was no way to follow up on that.  
16 What we're asking for is fair, consistent, and  
17 equitable access to health, safety, and welfare  
18 issues. Is it an entitlement? Yes, but I think  
19 it's an entitlement of everyone that lives in this  
20 country, everyone that lives in the state, and  
21 everyone that lives in this county. Simply  
22 nothing more than access to safety, health, and  
23 welfare for our island. Thank you.

24 MR. RYFFEL: Any questions?

25 MR. ANDRESS: So it's my understanding that

1 the county staff has stricken some provisions that  
2 you would like to see put back into the plan if  
3 the plan is implemented.

4 MS. ANDERS: That's correct. We spent -- as  
5 Dr. Margaret Banyan mentioned, we spent months and  
6 months working on things and we have built a  
7 consensus through the items you saw in the April  
8 committal to you. There were things that were  
9 stricken because we didn't have a solid consensus,  
10 but the ones that were there in April are the ones  
11 that were whittled down, the ones that this island  
12 community is committed to, and they have been  
13 stricken by county staff.

14 MR. ANDRESS: Are there other ones other  
15 than the ones that you've delineated?

16 MS. ANDERS: Those are the major ones.  
17 We're talking about access to the island and an  
18 opportunity to perhaps develop a permanent  
19 easement on North Captiva so there's a permanent  
20 ingress and egress whether it be purchased or not,  
21 work with our community, use the expertise of the  
22 county staff to create that one spot on the island  
23 that can guarantee access. The garbage code  
24 enforcement, the environment, and in particular  
25 the staff's expertise and ability to come to our

1 island and carry out the laws that already exist.

2 MR. ANDRESS: Thank you very much.

3 MR. RYFFEL: Ma'am, you gave me a card to  
4 speak as an individual. Did you cover it all?

5 MS. ANDERS: My only comment as an  
6 individual, and this is probably counter to some  
7 of the other people in the audience, is that I  
8 personally do not believe that the North Captiva  
9 Road Commission or the Upper Captiva Civic  
10 Association are the sole sources for information  
11 to be conveyed to so I think there needs to be  
12 that larger document clearinghouse and sometimes  
13 the members of those two organizations are not on  
14 an island. We just need to have a better way to  
15 convey information.

16 MR. RYFFEL: Thank you. Okay. Let's see.  
17 David Tompkins.

18 MR. TOMPKINS: I'm Dave Tompkins. I'll make  
19 this fairly brief because I'm pretty much  
20 supporting what everybody has said. I became  
21 aware of North Captiva since we started visiting  
22 Sanibel in the '60s. In '85 when they finally  
23 brought electricity to the island or a couple of  
24 years after that we bought a lot, in '97 we built  
25 a house, and my wife and I have lived there

1 full-time. I've been active during that time on  
2 the Civic Association Board and I'm also a member  
3 of the Upper Captiva Planning Panel along with  
4 Kristie. She and I can't talk to each other.  
5 During the past 10 years North Captiva has had  
6 meetings in one form or another in one venue or  
7 another with Lee County on these issues on our  
8 island on, in this meeting room, in Commissioner  
9 Janes' office. The issues tend to be the same.  
10 They come up again and again and the  
11 recommendations have been essentially the same.  
12 The key part of it was develop a community plan so  
13 we have now invested in some cases three years of  
14 effort, at least two, and the formal process has a  
15 year of work in it. There's about \$50,000 in tax  
16 money invested in this. As Kristie said, we have  
17 developed a plan that we felt was workable. North  
18 Captiva is not asking for a fairy godmother  
19 solution to these problems. If Lee County could  
20 come in and shake fairy dust, that would be  
21 incredible, but we recognize that you can't do  
22 that. All we are asking for is a joint effort and  
23 help in lending expertise, lending guidance, as to  
24 what is the best route to solve these problems. I  
25 can reiterate, as Margaret said, that the majority

1 of North Captiva supports the plan and the Civic  
2 Association is behind the plan. The Civic  
3 Association represents about 150 people on the  
4 island who are owners and/or residents so we  
5 really would like your support on this. Thank  
6 you.

7 MR. RYFFEL: Any questions of Mr. Tompkins?  
8 Thank you, sir. The next speaker is Marsha  
9 Andrews.

10 MR. TOMPKINS: If I may?

11 MR. RYFFEL: Yes, sir.

12 MR. TOMPKINS: The plan as originally  
13 written, not the plan as stricken on Friday.

14 MR. RYFFEL: I think we understand that.

15 MS. ANDREWS: I'm Marsha Andrews and he  
16 stole my thunder, but I do appreciate your time.  
17 I appreciate the Lee County staff worked hard with  
18 us and the taxpayers' money. I do support the  
19 plan as crafted before Friday. I thought we had a  
20 good plan. I liked the new emphasis on zoning and  
21 code enforcement which is one of my pet peeves. I  
22 think our quality of life will be a lot better if  
23 we just were kept as straight as most of Lee  
24 County on some of these quality issues. I like  
25 the idea of having a voice in land development

1 regulations, but I don't have any new rules I want  
2 imposed. I'm very glad for the document  
3 clearinghouse idea because in this day and age and  
4 with our very mobile bunch out there, it's a good  
5 way for us to understand things and get together  
6 better and we can through a fair bid through our  
7 own efforts. We understand that. I was pretty  
8 amazed that after all the process and the working  
9 with staff that our biggest concerns were ripped  
10 out of the plan, but I think everybody else has  
11 talked about that. We had a good plan process.  
12 We pared down a long list. We stayed civil to  
13 each other. In the meetings I never heard anyone  
14 called a personal bad name despite some concerns  
15 lately. If you read the recent e-mails, I know  
16 there are people who are angry about what they  
17 call island friendliness and some of that is out  
18 of the little neighborhood few that won't go away.  
19 Some people are very peeved at DOT and DEP and  
20 they've just been too busy to pay attention to  
21 what this plan is about. Others are hostile  
22 toward any government, not the plan. I think  
23 maybe the latest cut in the plan inspired a lot of  
24 sort of knee jerk reaction that we've all had to  
25 read about, but in general I want this plan, I



1 support it, and I will work some more for it, but  
2 I want it the way it was Friday morning. Thank  
3 you.

4 MR. RYFFEL: Any questions of Mrs. Andrews?  
5 Thank you, ma'am. The next speaker is SueAnn  
6 Cousar.

7 MS. COUSAR: Kristie Andrews has expressed  
8 all of the things that I would have said so I'll  
9 just do a ditto.

10 MR. RYFFEL: Thank you, ma'am. Barry  
11 (inaudible)?

12 A PARTICIPANT: I have no comment at this  
13 time.

14 THE COURT: Thank you, sir. Ray Morreale?

15 A PARTICIPANT: He's got no comment. He had  
16 to step out.

17 MR. RYFFEL: Is he coming back?

18 A PARTICIPANT: I believe he will, yes.

19 MR. RYFFEL: Okay. I'll just hold him for a  
20 minute. Vicki Lewis.

21 MS. LEWIS: No comment at this time.

22 MR. RYFFEL: Thank you. Karen Lewis?

23 MS. LEWIS: No comment.

24 MR. RYFFEL: Thank you, ma'am. Leslie  
25 Morreale?

1 MS. MORREALE: We live at 181 Mourning Dove  
2 Drive on the island and I am not going to say very  
3 much because it's mostly been said. Again, we  
4 very much are interested in receiving a fair share  
5 of support from the county for things that we need  
6 to be able to live. We recognize and I think all  
7 the homeowners who bought barrier island property  
8 that things weren't going to be living like in  
9 town. We don't want that. We don't want tons of  
10 regulations and bureaucracies. We do want to be  
11 able to have basic things like trash and getting  
12 on and off the island taken care of. We do feel  
13 like we help support the county with services that  
14 we don't expect to receive that they're getting  
15 our share of the taxpayer dollars there so there  
16 should be some give and take.

17 THE COURT: Thank you, Ms. Morreale. Is  
18 (inaudible) out there?

19 A PARTICIPANT: Whatever she said I agree  
20 with.

21 MR. RYFFEL: That sounds fair. That's the  
22 last card I have. Is there anyone else that would  
23 like to speak? If you do, I'd ask you to fill out  
24 one of these little blue cards. I don't see  
25 anyone.

1 MR. ANDRESS: This would be your last  
2 opportunity because once it comes back to the LPA,  
3 we don't take any further public comment so if you  
4 want to speak, you need to do it now.

5 MR. RYFFEL: Anyone that hasn't spoken?  
6 Okay. Seeing none, questions for the staff?

7 MR. ANDRESS: Mr. Lavender just stepped out.

8 MR. RYFFEL: Is Jim coming back?

9 MR. ANDRESS: I have some questions for --  
10 do I need to address them to you, Matt, or are  
11 you --

12 MR. NOBLE: Sure.

13 MR. RYFFEL: I think he's walking in the  
14 door. Sorry, Jim.

15 MR. ANDRESS: The first question I'd like  
16 to -- maybe if you would clarify one of your  
17 earlier comments that you're willing to work with  
18 the island to propose some additional language for  
19 waste management or waste removal; is that  
20 correct?

21 MR. LAVENDER: That's correct. I didn't  
22 really intend for all the strikeouts to appear.  
23 That wasn't our direction. We were not intending  
24 to be arbitrary or obstruct and I think earlier  
25 today we understand that we're probably both going

1 in the same direction. We've always been  
2 supportive. Lindsey's been dealing with solid  
3 waste on the upper island for a number of years.  
4 We're intimately aware of what the ups and downs  
5 are. I'll caution the Upper Cativans be careful  
6 what you ask for from us about hauling garbage  
7 across the island because we're the government and  
8 we're going to make sure -- you know, it might be  
9 more costly. We're going to specify things and  
10 have insurance and bonds and things so I cautioned  
11 them about that out on the island when we met out  
12 there, but, no, we intend to still be as  
13 cooperative as we can. We wanted to clarify the  
14 language so that everybody understands and that  
15 they don't have their level of expectation raised  
16 and that future people who are going to build out  
17 there don't need a document that says wow, look at  
18 all this we're getting from the county, and then  
19 not have it happen so I want to be very clear  
20 about that language.

21 MR. ANDRESS: Do you have any objection  
22 to -- like you said, you weren't responsible for  
23 the stricken language, but it seems to me some of  
24 the stricken language are points that really need  
25 to be worked out. Number one at the top of the

1 list is the access and the parking problem because  
2 it concerns the people on Pine Island, as well,  
3 because we need to have a designated area where  
4 people can expect to go through, have the proper  
5 zoning on the property to park their vehicles, and  
6 to have a place where water taxis can operate out  
7 of other than -- some of the places where they're  
8 operating out of right now really aren't the best  
9 places for them to be operating and, also, if the  
10 county owns some lots out on Upper Captiva, what  
11 is wrong with the county lending its time and  
12 expertise to work with the community to try to  
13 designate some of the county property or maybe  
14 move towards acquiring some property so we could  
15 have a good terminal facility for people to go on  
16 and off the island because we do have a  
17 substantial tax base on Upper Captiva. It is a  
18 substantial destination for tourists and it would  
19 seem like it would be something that would be in  
20 all of our interests to try to work that out once  
21 and for all. I had thought that that was one of  
22 the primary objectives of the Fisherman's Co-op  
23 site and I still think that if we were to move  
24 forward and get permits so that we could improve a  
25 large area there for parking, that would answer it

1 on this end and on the other end I think that if  
2 we all work together as a community, we can solve  
3 that so I'm not sure why these different proposals  
4 are stricken from the plan that just asks for the  
5 county to work with them.

6 MR. LAVENDER: Again, that's -- we just want  
7 to clarify the language. Our intent is still  
8 there to work with everyone. We were on a plan  
9 and it sort of goes in fits and starts. When the  
10 barges had a problem before, Lindsey and I were  
11 working on it. We were ready to go with an  
12 advertisement for barge hauling, we did  
13 specifications. That was before we bought the  
14 co-op we were down that road and then when things  
15 get cleared up out there and somebody else comes  
16 in and starts hauling, then they don't want us to  
17 get involved so we stop, say okay, it's being  
18 handled. We don't really want to insert ourselves  
19 into the open market unless that's basically the  
20 last resort, but, no, our intent is still there to  
21 keep working on it and I've been actively involved  
22 in continuing to try to solve the problem with the  
23 co-op so our intent is still there and always will  
24 be I would say.

25 MR. ANDRESS: Do you think it would be

1 fruitful to continue this for an additional month  
2 to allow staff time to work so we actually come in  
3 here to the LPA with one proposal?

4 MR. LAVENDER: Absolutely. I think it's  
5 important and I don't think it will take that  
6 long. I don't think we're that far apart, but in  
7 this day and time the county government with the  
8 financial situation we're under, we just need to  
9 be clear. We've all been through negative budget  
10 situations and we were trying to do the best we  
11 can with limited resources and I just don't want  
12 to commit ourselves to things that we can't  
13 deliver on and have somebody say well, look, this  
14 is what you said and you're not doing it. We need  
15 to be clear.

16 MR. RYFFEL: Paul, if we go with a  
17 continuance on this, does it put them in a  
18 different cycle?

19 MR. O'CONNOR: No, it will not, and I think  
20 we can continue until August because I think July  
21 would only give us like maybe a week, two weeks,  
22 before we'd have to have something back in front  
23 of you so I think we need the extra time.

24 MR. RYFFEL: It sounds like that's the way  
25 the train's going.

1 MS. WESSEL: I have some comments I wanted  
2 to make. I wanted to thank all the public that's  
3 here that's taken the time to write to me and the  
4 other members and to show up. I know having to  
5 get into a bridgeless barrier island is a problem  
6 in itself so this is exactly the kind of situation  
7 that I think the community plans were designed to  
8 assess and this is an excellent example of the  
9 small community that needs to have that structure  
10 established, especially when the county puts  
11 itself in the position of asking landowners to  
12 come in and acquire permits for different  
13 activities. There is then an obligation on the  
14 county's part to provide the services. I don't  
15 think that there's ever been any anticipation that  
16 the issuance of homes out on these islands and  
17 commercial properties would come without trash,  
18 that they would not be requiring drinking water,  
19 that they would not be developing recyclables, and  
20 whether we want to see those in the ocean or we  
21 want to see them productively recycled into mulch  
22 and parking benches and such, I think there's a  
23 big obligation that has apparently been left to  
24 languish for the past 10 years. I heard a number  
25 of things that I think are critically important



1 both today and through the comments about access.  
2 I cannot stress strongly enough how important it  
3 is to have access. If you don't think it's  
4 important that -- some of the comments in the  
5 staff report said something like it's all  
6 privately owned land, but that privately owned  
7 land comes with needs for protection when we have  
8 emergencies, when you have evacuations, when you  
9 have rebuilding, any of those things. It is a  
10 benefit to the entire county to have that  
11 addressed so having a point of access is just  
12 simply a basic right that needs to be established.  
13 Enforcement, waste hauling, the internal network  
14 of roads, and how exotic species are dealt with,  
15 communication and cooperation I think is really  
16 fundamental. These folks are paying their taxes  
17 and they've taken an effort to do what they can  
18 internally, but I think that the issues of access  
19 and waste and enforcement are fundamental. Now,  
20 if the county wants to stop issuing permits and  
21 obligate themselves to any responsibility, that  
22 would be another thing, but I think as long as we  
23 set ourselves up as an issuer of permits for the  
24 public health, safety, and welfare, we have to be  
25 looking at the entire human experience so I would

1 really like to see this come back next month or  
2 August if it needs to be that long. I wouldn't  
3 like to see it delayed any further. Folks have  
4 been trying to come in for a couple months now. I  
5 think that it also would help if the county could  
6 provide those kinds of support guidance. I think  
7 Dr. Banyan's been there to help the community.  
8 I'd like to see the county more present in that  
9 because we do have the expertise, we do have the  
10 regulations and the authority to require them. In  
11 addition, I think that there is an obligation that  
12 we make sure that there's public health, safety,  
13 and welfare and that we protect a tourist  
14 destination so I really would not want to hear the  
15 kinds of comments that I read in the staff report  
16 about not having the responsibility because it's  
17 private property or I guess the essence that be  
18 careful what you ask for because I think they're  
19 asking for very basic services. The other thing  
20 that I did want to say is I don't think it is a  
21 pattern I want to see continue that at the very  
22 last moment I got the comments on Sunday, but they  
23 were sent I thought Saturday, maybe Friday, for  
24 this committee to review when the public had no  
25 way -- the public which is the applicant, the

1 Community Planning Panel -- had no way of having  
2 any input. These kind of strikeouts or changes is  
3 almost like dive bombing their efforts and I think  
4 that's just uncalled for and I don't want to see  
5 that happen again so I'd like to see this come  
6 back as soon as possible and I'd like the staff to  
7 be able to work closely with the community to come  
8 up with some very basic and fundamental requests  
9 that I think need to be addressed.

10 MR. RYFFEL: Thank you, Rae Ann. I'm going  
11 to let Jacque speak.

12 MS. RIPPE: I just wanted -- my questions  
13 have already been asked, but it just seems like  
14 there's some language that needs to be cleared up.  
15 We do know that certain language legally ties the  
16 county so it seems like we just need that extra  
17 time to get the language right so that the county  
18 isn't totally bound by that because we don't have  
19 the funding for certain things, but it seems like  
20 the county is still committed to look at all the  
21 different things and probably the biggest thing is  
22 the access, parking, the garbage waste, yard  
23 waste, and environmental issues with enforcement  
24 and I look forward to seeing what comes back in  
25 August because I think it's just tiny words that

1 have to be changed.

2 MR. RYFFEL: Thanks, Jacque. Noel.

3 MR. ANDRESS: I just wanted to make a  
4 comment regarding Policy 25.1.4. I heard several  
5 people comment on that particular provision and  
6 what I wanted to tell you is that Lee County  
7 currently has one of the best ordinances around  
8 for lighting and if you were just to adopt Lee  
9 County's ordinance which is already on the books  
10 for your area, that would be all you would need  
11 and you just need enforcement of the current  
12 county policy regarding outdoor lighting is your  
13 light cannot cast a shadow on your neighbor's  
14 property and that is very good because you'll go  
15 out and look at anybody's light and if you're  
16 standing on your property and you can see your  
17 shadow, then you can call code enforcement and the  
18 current county policy is that that is in  
19 violation, that light.

20 MS. WESSEL: I agree, but I think that one  
21 of the problems is enforcement --

22 MR. ANDRESS: Sure.

23 MS. WESSEL: -- and that's where it is  
24 incumbent upon the panel to step forward.

25 MR. RYFFEL: I share a lot of your concerns.

1 I live on a barrier island, too, but, fortunately,  
2 I have a bridge that gets to it, but I recognize  
3 the unique problems of islands and they are very  
4 special and we all choose to live on the island so  
5 I think it's worth taking the extra time, as well.  
6 I'm not going to belabor it any further. Can I  
7 have a motion for continuance?

8 MR. ANDRESS: I move that CPA2007-00050,  
9 North Captiva Community Plan, be continued until  
10 the August LPA meeting.

11 MS. WESSEL: Second.

12 MR. RYFFEL: Any discussion? All in favor?

13 (All Board members aye.)

14 MR. RYFFEL: Opposed? Let's move on. Thank  
15 you very much, folks, for coming.  
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1 MR. RYFFEL: We'll let the crowd clear and  
2 then we'll take up CPA2006-00014, Raymond Lumber.  
3 Okay. It's all yours.

4 MR. BLACKWELL: For the record I'm Peter  
5 Blackwell with the Lee County Division of  
6 Planning. This is CPA2006-14, the Raymond Lumber  
7 proposed amendment. CPA2006-14 is a privately  
8 initiated amendment. The applicant proposes to  
9 change the future land use designation on a 14  
10 acre parcel from suburban to the industrial  
11 development category. The subject property is at  
12 the southeast corner of the intersection of -- I'm  
13 sorry. It's about 1.1 miles west of the  
14 intersection of Bayshore and I-75. Just to sum up  
15 a few of the bullets points, the western border of  
16 the subject property is Chapel Creek. There are  
17 several active gopher tortoise burrows on the  
18 north side of the subject property. No gopher  
19 tortoise preserve has been depicted on the site  
20 plan proposed by the applicant and the applicant  
21 has proposed to relocate the on-site gopher  
22 tortoises off-site. There's no capacity to  
23 relocate gopher tortoises within Lee County. The  
24 applicant would have to export them out of the  
25 county. The proposed development has the

1 potential to negatively impact Chapel Creek as  
2 well as the area inhabited by the gopher  
3 tortoises. Although the applicant has provided a  
4 site plan that shows preserve areas that will be  
5 proposed during the rezoning process, there are no  
6 measures in the proposed amendment to conform with  
7 the environmental definitions of the Lee Plan.  
8 Planning staff recommended that the Board of  
9 County Commissioners not transmit the amendment to  
10 redesignate the future land use on the subject  
11 property from suburban to industrial development.  
12 As an alternative, planning staff recommends that  
13 the amendment be transmitted with the conservation  
14 lands future land use category as depicted on the  
15 attached Exhibit 3 in your packets.

16 MR. RYFFEL: Any questions? Noel.

17 MR. ANDRESS: I understand that you're  
18 asking the applicant to set aside some  
19 conservation lands as depicted on Exhibit 3.

20 MR. BLACKWELL: Yes, sir.

21 MR. ANDRESS: What is the county's incentive  
22 to the applicant to do that? Are you going to  
23 give him bonus density or you just want him to do  
24 this?

25 MR. BLACKWELL: We would like him to do

1 this. I mean, it's not a matter of incentive.  
2 It's a matter of saving the environmental  
3 integrity of the site. We have no problem with  
4 being industrial in that area. We proposed -- you  
5 know, prior amendments from '96 to '97 established  
6 Raymond Lumber in that area and we approved both  
7 of those.

8 MR. ANDRESS: How did you come about  
9 delineating the setback that you've delineated on  
10 this Exhibit 3 from the creek itself and how did  
11 you go about calculating the size of the gopher  
12 tortoise preserve at the northern end of the  
13 property?

14 MR. BLACKWELL: Well, the part that runs  
15 along the creek we took from the proposed map that  
16 the applicant supplied. As far as the gopher  
17 tortoise part on the north end, we chose the part  
18 from the bend in the property where the eastern  
19 line of the subject property intersects the  
20 right-of-way for the railroad and we went and made  
21 that the main area that was chosen for ease of use  
22 and the fact that it encompassed the bulk of the  
23 area that was critical to gopher tortoises.

24 MR. ANDRESS: Does this setback cause any  
25 type of a hardship in terms of the applicant's



1 development plan for this property?

2 MR. BLACKWELL: It does restrict the usable  
3 area, but as far as their economic use, you would  
4 have to ask the applicant.

5 MR. ADDRESS: Okay. Well, that's a question  
6 I'll save for the applicant then.

7 MS. WESSEL: I just had one question.

8 MR. RYFFEL: Yes, Rae Ann.

9 MS. WESSEL: I was reading about Chapel  
10 Creek, but I didn't see anywhere that it was  
11 labeled.

12 MR. BLACKWELL: It's basically the western  
13 border of the subject property.

14 MS. WESSEL: Okay. I guess I'll have some  
15 questions later about that.

16 MR. RYFFEL: Do you have something, Jacque?

17 MS. RIPPE: Because we're asking them to set  
18 aside a large piece of property for the gopher  
19 tortoises, and this may have to go to Rae Ann,  
20 whether in that area would it be an incentive to  
21 them to be a location for additional relocated  
22 gopher tortoises? I mean, will the site that they  
23 have to set aside for the gopher tortoises hold  
24 additional gopher tortoises or just the ones that  
25 are there?

1 MR. BLACKWELL: I believe it only has to  
2 hold the ones that are there.

3 MS. RIPPE: But would it be an incentive for  
4 them to be able to use that site, say some other  
5 development has gopher tortoises that need to be  
6 located?

7 MR. BLACKWELL: I'm not sure that the  
8 holding capacity of the property would hold all  
9 the gopher tortoises. We have some members of our  
10 environmental staff, but from what I understand  
11 the -- if that's the number of gopher tortoises  
12 that are there, that generally means that's what  
13 it will support.

14 MR. ANDRESS: How many acres is this  
15 conservation piece? 3 point something?

16 MR. BLACKWELL: I don't have that offhand.

17 MR. RYFFEL: We'll get that from the  
18 applicant. Anything further? Okay. Ready for  
19 the applicant. Mr. Uhle.

20 MR. UHLE: For the record Matt Uhle  
21 representing the applicant. Obviously, we do not  
22 agree with staff's recommendation in this case and  
23 we will put on a presentation accordingly. What  
24 I'm going to do is just give you some essential  
25 historical and other background for this

1 application. Following me I'm going to ask Rae  
2 Ann Boylan to go through the staff report and  
3 address the environmental points, following her  
4 I'm going to ask Duane Swanson who's a very well  
5 respected member of the business community to come  
6 up and explain exactly what the staff proposal  
7 means to this particular development plan, and  
8 then finally I'll conclude very quickly when he's  
9 done. The subject property -- I put up a graphic  
10 here that I think shows very clearly what the  
11 impacts of this staff proposal are on our  
12 application, but just briefly by way of  
13 background, the property that we're proposing to  
14 be designated here is this outlined in black. It  
15 is approximately 14 acres and we've shown our site  
16 plan, the proposed Master Concept Plan, on the  
17 graphic to give you a sense of how it works. The  
18 property to the east is the existing Raymond  
19 Lumber facility which I'll describe in a minute.  
20 To the north we have a railroad line which is a  
21 matter of extreme importance to the existing  
22 proposed expansion area. To the north of that you  
23 have additional area designated industrial  
24 development. To the west of the subject property  
25 is a proposed development called Chapel Creek

1           which I'll talk about in a minute since it has an  
2           interesting history, as well. To the south we  
3           have State Road 78 and then some property that's  
4           designated suburban that's vacant. I guess I'll  
5           start by talking about the history a little bit.  
6           The history of this particular application in a  
7           way actually goes back to the mid '90s. At that  
8           time the existing what you see there, the Raymond  
9           Lumber facility, was designated suburban and was  
10          vacant and the Raymond Lumber facility at that  
11          time was located on Old 41. It was a very  
12          constrained and none too attractive facility and  
13          my client really wanted to expand in an area that  
14          was more suitable than what they had and they came  
15          up with the idea of this particular location which  
16          looked just like a wonderful place. It had  
17          frontage on a railroad which is an extremely  
18          important facility for a lumberyard, it's  
19          obviously on State Road 78, it's close to the  
20          interstate, it didn't have any major environmental  
21          problems with it, it didn't have any major  
22          compatibility issues with it, and so on and of  
23          considerable importance I think was Policy 7.1.4  
24          of the Lee Plan which directs the county to take  
25          measures to try to expand its manufacturing base

1 so we made all these arguments to the county back  
2 then and the county agreed. This is not a  
3 particularly easy process to go through, but when  
4 it was all said and done, we got two different Lee  
5 Plan amendments that redesignated what's now the  
6 Raymond Lumber facility to industrial and we got  
7 an IPD approved and the project has been built.  
8 Now, I will tell you that I live fairly close to  
9 this particular property and I've done a lot of  
10 work in Lee County over the years and of all the  
11 projects that I've worked on in Lee County, this  
12 is the one which I'm the most proud. This is  
13 definitely at the top of the list. Maybe not  
14 number one, but definitely top 10, and the reason  
15 is that it's a really attractive facility that's  
16 also very functional that provides a service that  
17 the community really needs. I mean, my client is  
18 an employer of a large number of people and so I  
19 feel really good every time I drive by this  
20 facility. To fast forward a little bit, the  
21 property to the west, as I indicated, was owned by  
22 a property owner who was in the process of putting  
23 together a predominantly residential project  
24 called Chapel Creek. They looked at this  
25 particular portion of their property and they saw

1 problems with it. You can imagine what it would  
2 be like to try to put residential development that  
3 close to an existing manufacturing facility.  
4 There were going to be compatibility issues. No  
5 question about it. In addition to that, there  
6 were going to be access issues getting over the  
7 creek. There's no way that they'd get their own  
8 access so that they're off of 78 given where our  
9 access is today so they took the initiative of  
10 talking to my client and asking them if they  
11 wanted to buy this property for future expansion  
12 and, of course, this was at the height of the boom  
13 so my client had an additional interest in  
14 expanding. We negotiated with that particular  
15 owner over a period of time. We did a due  
16 diligence that included talking to the staff about  
17 the property. The gopher tortoise issue was  
18 discussed at the time. We knew it was an issue in  
19 the overall development process, but it never  
20 occurred to us that staff would want to designate  
21 the property on the land use map, basically, as a  
22 tortoise preserve. I don't recall that ever  
23 coming up. Ultimately, we wound up buying the  
24 property. Now, there are two things about the  
25 purchase that you need to be aware of. One of

1           them is that the western boundary to this property  
2           is not Chapel Creek. The western boundary of this  
3           property is 25 feet to the east of the top of  
4           bank, the east bank of Chapel Creek. The  
5           developers of Chapel Creek maintain complete  
6           control over Chapel Creek. They had a lot of  
7           reasons for doing so and we had no problem with  
8           that whatsoever. The second thing is that the  
9           would be developers of Chapel Creek not being  
10          stupid were concerned about the potential impacts  
11          of an industrial project on their particular  
12          project so there was a private agreement  
13          negotiated that survived closing that addressed  
14          issues like buffers, hours of operation, lighting,  
15          building heights, and so on and so the  
16          compatibility of the proposed industrial project  
17          on this property with the residential project to  
18          the west has already been established through  
19          these private negotiations. That being done, we  
20          went ahead and filed the application for a plan  
21          amendment. We expected it to go forward in 2007  
22          and, obviously, it didn't because the county  
23          didn't do amendments last year and in the meantime  
24          now we're here, we're unpleasantly surprised that  
25          the staff recommendation is what it is. In the

1 meantime for what it's worth the county commission  
2 just three weeks ago denied the rezoning for  
3 Chapel Creek. That particular application was  
4 supported by the staff and the Hearing Examiner so  
5 I don't think it's going away permanently, but  
6 suffice it to say, as of now that is not a project  
7 and no development is imminent on it. I'm going  
8 to ask Rae Ann and Duane to talk about gopher  
9 tortoises and the staff proposal. Just by way of  
10 illustration, if you look at the property that's  
11 within our particular parcel that's west and north  
12 of the green line, that represents the property  
13 that the county wants us to maintain as the gopher  
14 tortoise preserve. While I was not completely  
15 surprised, although I don't agree with it, but the  
16 part that sort of, but not really abuts Chapel  
17 Creek, we were extremely surprised and  
18 unpleasantly so at the proposal for the gopher  
19 tortoise preserve because that abuts the railroad  
20 line and that's the part that's most important to  
21 the operation of the industrial development and we  
22 simply cannot live with that so I'm going to ask  
23 Rae Ann to come up.

24 MR. ANDRESS: I have a question before you  
25 do that. I just want to clarify a couple points



1 on your drawing. It looks like from what you have  
2 in terms of footprint for your buildings that only  
3 one building is affected by this request by the  
4 county staff?

5 MR. UHLE: It's probably the most important,  
6 but, yes.

7 MR. ANDRESS: Just one building, though?

8 MR. UHLE: Yes.

9 MR. ANDRESS: Do you have any problem with  
10 the buffer along Chapel Creek as the way the  
11 county staff has proposed it?

12 MR. UHLE: For reasons that I'll explain in  
13 my closing I don't think that designating this  
14 tiny strip of land as conservation is an  
15 appropriate way to deal with it. In the overall  
16 site planning process the answer is no. That  
17 particular buffer over and above the 25 feet that  
18 we don't own is incorporated in our site plan and,  
19 in fact, was discussed extensively with the  
20 previous owner of the property so that's always  
21 been intended to be an indigenous buffer for their  
22 future residential development if it takes place,  
23 but we do not agree with the notion of having a  
24 tiny strip of green on the Lee Plan.

25 MR. ANDRESS: Can you provide us a copy of

1 the private deed restrictions that are placed on  
2 this tract of land?

3 MR. UHLE: I've probably got it in the file.  
4 I haven't looked at it recently, but I know  
5 generally what's in it because I was involved in  
6 the negotiations.

7 MR. ANDRESS: Well, I think that would  
8 really help us.

9 MR. RYFFEL: Anything else?

10 MR. ANDRESS: Nothing else.

11 MR. UHLE: In any event, if I can just wrap  
12 my part of it up here initially, in my view this  
13 really is a question about priorities. What about  
14 this property makes it special. In our view the  
15 fact that this parcel is next to a railroad, next  
16 to an existing industrial development that employs  
17 a lot of people, the Lee Plan has a strong policy  
18 in favor of extending the county's manufacturing  
19 base. There are no level of service issues on  
20 this property, there are no compatibility problems  
21 with the property, it's near the interstate, it's  
22 near 78. It's a perfect location for this  
23 expansion from a variety of different  
24 perspectives. We think that's what makes it  
25 special. The staff apparently thinks the fact

1 that it has gopher tortoises on it is what makes  
2 it special. To my knowledge there are hundreds  
3 and possibly thousands of parcels in Lee County  
4 that have gopher tortoises on it so we don't agree  
5 with that particular analysis, but I will ask Rae  
6 Ann to walk you through where we stand with the  
7 gopher tortoise issue, how it would be handled,  
8 why would we handle it that way, and Duane will  
9 speak very briefly and I'll wrap up. Thank you.

10 MS. BOYLAN: Good afternoon. For the record  
11 I'm Rae Ann Boylan. I have a graphic that I'm  
12 going to be referring to in order as I go through  
13 my brief presentation. The first exhibit we have  
14 is titled Raymond Lumber Aerial Vicinity Map. It  
15 has the project boundaries highlighted in yellow.  
16 As Mr. Uhle has indicated, we have the railroad  
17 grade to our north, further north is industrial  
18 development, then we have I-75. You can see  
19 Raymond Lumber's existing development to the east  
20 of the piece as well as State Road 78 to the south  
21 and undeveloped lands to the west. The next  
22 exhibit is just a vegetation map for the project  
23 site that is subject to the land use change. The  
24 site contains about 5 acres of palmetto prairie  
25 and about 9 acres plus of cabbage palm hammock.

1           There are no wetlands or natural water bodies on  
2           this piece of property. Now, I'd just like to  
3           take some time to walk through the staff report,  
4           if I could. I would first like to refer to page 2  
5           of 13 of the staff report under basis and  
6           recommended findings of fact. The first statement  
7           is that Chapel Creek defines the western border of  
8           the subject property. The third graphic in the  
9           package I have given you is another aerial map  
10          upon which Chapel Creek has been superimposed and  
11          our property does not abut Chapel Creek. The next  
12          statement under the basis and recommended findings  
13          are that there are several active tortoises on the  
14          north side of the property. We have a total of 22  
15          active and inactive burrows on the property. No  
16          gopher tortoise preserve has been depicted on the  
17          site plan proposed by the applicant. That is  
18          correct. This is a request for a land use change.  
19          The site planning, the layout of the buildings,  
20          the design and configuration of a preserve is  
21          determined during zoning and site development  
22          process through the development order review. It  
23          is too early in the process to be designating  
24          preserve boundaries at this point in time. This  
25          is a request for a land use change. The next

1 comment is that the applicant has proposed to  
2 relocate the tortoises off-site and there are  
3 currently limited to no ability to locate the  
4 tortoises within the county. Again, that is  
5 correct. The Game Commission has a rigorous  
6 review for recipient sites. They have a rigorous  
7 review for the size, the capability, and the  
8 carrying capacity of on-site preserves. By the  
9 time we get to the development order and review  
10 process there may well be other recipient sites  
11 within the county that can receive these  
12 tortoises. Again, this is a design and site  
13 development situation, not something that should  
14 be reviewed at the time of a request for a land  
15 use change. The next comment is the applicant is  
16 not up-to-date on any permits to relocate  
17 tortoises. That's correct. You can't obtain an  
18 approval to relocate tortoises until you have a  
19 detailed site design and you can tell the Game  
20 Commission when you are moving them, where you are  
21 moving them, and what other measures would be  
22 taken for the tortoises. The next comment is  
23 Master Concept Plan issues are not typically  
24 addressed in the Lee Plan amendment process. I  
25 agree totally with that statement. This is again

1 a zoning and development order question, not a  
2 land use issue regarding the tortoises. There are  
3 a number of projects that have tortoises on their  
4 property and they are not subject to rigorous land  
5 use changes to conservation status. I would next  
6 like to refer you to page 4 of 13 of the staff  
7 report and I'll start with the second paragraph  
8 where staff indicates that our survey shows 5.74  
9 acres of palmetto prairie on the subject site.  
10 That's not correct. Our site has 5.03 acres of  
11 tortoise habitat. Again, I think staff is getting  
12 concerned with an application that was submitted  
13 for rezoning versus the land use. The rezoning  
14 application had the 5.74 because some of the  
15 tortoise area or the habitat was on existing  
16 Raymond Lumber's property. I think that's the  
17 whole problem with what we're looking at. Staff  
18 is confusing in my mind what should be reviewed in  
19 land use versus zoning and development order. The  
20 next comment I would like to make briefly is  
21 there's a statement in that same paragraph that  
22 this is prime gopher tortoise habitat. Well, the  
23 Game Commission has not got a definition for prime  
24 habitat or critical tortoise habitat. It's  
25 occupied habitat and I just have a concern with

1 giving things definitions that aren't in the state  
2 rules can lead to more rigorous review than should  
3 be warranted. It's occupied habitat for the Game  
4 Commission. The next sentence deals with the Lee  
5 Plan Policy 107.8.1 which states that the county's  
6 intent to protect gopher tortoises wherever they  
7 are found. If on-site protection is unfeasible,  
8 off-site mitigation may be performed in accordance  
9 with the Florida Game and Freshwater Fish  
10 Commission requirement. The FWC recently in  
11 September of '07 adopted the Gopher Tortoise  
12 Management Plan. The FWC in April 2008 adopted  
13 gopher tortoise permitting guidelines and these  
14 documents deal specifically with what can and  
15 can't be done with the tortoises, how much habitat  
16 is necessary and appropriate to maintain them  
17 off-site or to relocate them to a recipient site.  
18 On this particular site it's anticipated that  
19 gopher tortoise burrows will be impacted and it's  
20 anticipated an off-site relocation approval will  
21 be sought. The next exhibit I'd like you to refer  
22 to is titled Raymond Lumber CPA and it's Table II.  
23 This talks about -- this table describes the  
24 acceptable and desirable criteria thresholds for  
25 recipient site characteristics which I think goes

1 to one of Ms. Rippe's questions, you know, could  
2 we receive more tortoises. Well, the Game  
3 Commission on size acceptable to be a recipient  
4 site is 40 acres. Desirable criteria is 200  
5 acres. South of the river they have the ability  
6 to go to a lesser extent, but I can guarantee that  
7 3.45 acres is not appropriate as a recipient site  
8 for tortoises and I believe the state will say  
9 it's not appropriate to preserve even all of the  
10 tortoises on our site. It's too small. It's too  
11 fragmented. The next comment where it talks about  
12 Lee Plan Policy 107.4.4 restricts the use of  
13 protected plant and wildlife species habitat to  
14 that which is compatible with the requirement of  
15 endangered and threatened species and species of  
16 special concern. New developments must protect  
17 remnants of viable habitat when listed vegetation  
18 and wildlife species inhabit a tract slated for  
19 development except where equivalent mitigation is  
20 provided. The previous table I referenced  
21 indicates the size thresholds that the Game  
22 Commission is looking for preserving tortoise  
23 habitat. The next exhibit in your package is  
24 taken out of the Gopher Tortoise Management Plan  
25 and it is a definition of viable habitat. Viable



1 habitat; a stable, self-sustaining population with  
2 a high likelihood -- i.e., more than 95 percent --  
3 of surviving for the long term period 100 years.  
4 Again, 3.45 acres is not going to be a viable  
5 habitat for tortoises. It makes no sense to  
6 request that this land use be changed to  
7 conservation. The last sentence in that paragraph  
8 states Policy 107.4.2 mandates conservation of  
9 critical habitat of rare and endangered species  
10 through development review. Again, I go back.  
11 This is an issue we will deal with during rezoning  
12 and development review. It is not a land use  
13 issue. The next paragraph on page 4 of 13 is  
14 where staff starts talking about our particular  
15 site plan where we're saying we have a site plan  
16 showing 3.45 acres of indigenous preserve.  
17 However, this site plan would not be adopted as  
18 part of the proposed plan amendment. That's  
19 correct. I have never done a land use amendment  
20 where site details --

21 MR. RYFFEL: Can you hold on one minute,  
22 please?

23 MS. COLLINS: I'm sorry. I didn't mean to  
24 interrupt, Rae Ann. I just wanted to say when she  
25 finishes, maybe you can take a break for the court

1 reporter because she's been going for two hours.

2 THE COURT REPORTER: Let's just keep going.

3 MR. RYFFEL: Please continue.

4 MS. BOYLAN: Again, this is a site  
5 development review issue, not a land use amendment  
6 issue. Then further in that paragraph it talks  
7 about if we were to designate the 3.45 acre  
8 preserve to conservation lands future land use  
9 category, we would better conform to the Lee Plan  
10 and then it lists a number of things that this  
11 project or by doing this would be providing and it  
12 talks about a natural transition zone between  
13 residential and industrial. Again, that's a  
14 buffering issue, it's a setback issue. It's not a  
15 land use issue. They talk about the adjacent  
16 proposed Chapel Creek RPD as Mr. Uhle's mentioned.  
17 Right now that's agriculture. It talks about  
18 wildlife connection and corridor through  
19 connectivity from Chapel Creek to the river for  
20 wetland dependent wildlife. Well, none were  
21 identified on-site and, again, our boundary ends  
22 at State Road 78 to the south and the railroad  
23 grade to the north. Then it talks about  
24 connectivity from the Chapel Creek RPD indigenous  
25 preserve to this preserve. Again, the adjacent

1 property's (inaudible). It's a zoning and  
2 development order issue. Now, if I can briefly  
3 take you to page 9 of 13 of the staff report. I'm  
4 almost done. At the top of the page under  
5 conclusions it says the proposed development has  
6 the potential to negatively impact Chapel Creek in  
7 an area inhabited by gopher tortoises. I have  
8 seen no documentation in the staff report to talk  
9 about adverse impacts to Chapel Creek. I just  
10 don't understand that comment. Again, setbacks,  
11 buffering, water quality treatment, are not land  
12 use issues. They're zoning and site development  
13 review issues. Now, if we could turn to Exhibit 4  
14 on page 1 of 5 and this is kind of interesting.  
15 I'm going to read out of the staff report. Gopher  
16 tortoises are considered a threatened species by  
17 Florida Fish and Wildlife Conservation, FWC, and  
18 as such must be protected. Well, let me state  
19 that in a slightly different way. Gopher  
20 tortoises are considered a threatened species by  
21 the Florida Fish and Wildlife Conservation  
22 Commission and as such are protected under Florida  
23 Administrative Code Rule Chapter 68-A-27.004(2).  
24 It's a little bit different when you reference to  
25 the rule versus a blanket statement that they must

1 be protected. The next exhibit in your handout is  
2 the exact rule that I just referenced and I'd just  
3 like to point out a couple things. This is where  
4 they declared the gopher tortoises threatened and  
5 that no person shall take, attempt to take,  
6 pursue, hunt, harass, except as authorized by  
7 commission permit or when compliant with  
8 commission approved guidelines for specific  
9 actions which may impact gopher tortoises and  
10 their burrows. The last sentence is permits will  
11 be issued based upon whether issuance would  
12 further the management plan's goals and  
13 objectives. The next exhibit is an excerpt from  
14 the Gopher Tortoise Management Plan where it talks  
15 about the overall conservation goals for the  
16 gopher tortoises and the biological goals. The  
17 overall goal or vision for gopher tortoise  
18 conservation is to restore and maintain secure  
19 viable population of gopher tortoises throughout  
20 the species' current range in Florida. Nowhere  
21 does their conservation goal or their biological  
22 goal talk about having to save tortoises in their  
23 existing habitat. They're concerned about  
24 maintaining the future survival of the species.  
25 In the plan itself, the gopher tortoise plan,

1 under some of the goals, number 4 talks about they  
2 want to decrease tortoise mortality on lands  
3 proposed for development through a redesign  
4 permitting system, relocation of tortoises to  
5 protected managed suitable sites where their  
6 future survival and long-term population viability  
7 are very likely. Again, I don't think this site  
8 should apply for a permit to maintain all the  
9 tortoises on-site would even receive one from the  
10 Game Commission. The site is too small. It's not  
11 suitable for the long-term viable maintenance of  
12 tortoises on the property. On page 2 of 5 about  
13 the third paragraph down on Exhibit 4 in staff's  
14 comments it talks about the conservation land use  
15 categories were created to accurately depict use  
16 of lands for conservation purposes and it kind of  
17 goes through the discussion of the conservation  
18 land. Underneath that one sentence it says the  
19 conservation lands objective is to put into the  
20 public domain private lands that provide the  
21 following benefits and then it lists a whole list  
22 of benefits. I can go through them, but I can  
23 state right now that they are not benefits to this  
24 piece. The next exhibit I have is out of the Lee  
25 Plan and it's titled Objective 1.4, non-urban

1 areas, and this is the only objective I could find  
2 in the comp plan in this section related to  
3 conservation lands and it states designate on the  
4 Future Land Use Map categories for those areas not  
5 anticipated for urban development at this time.  
6 Well, we are proposing development at this time.  
7 I don't understand where staff came up with the  
8 objective that's in the staff report. I cannot  
9 find that anywhere in the comp plan and if you do  
10 read what is in the comp plan, it talks about  
11 conservation lands include uplands and wetlands  
12 that are owned and used for long-range  
13 conservation purposes and it talks about elsewhere  
14 conservation lands will include all public lands  
15 to be used for conservation purposes and then it  
16 gives some examples. Conservation lands may  
17 include wildlife preserves, wetland/upland  
18 mitigation areas, banks, parks, ancillary uses for  
19 environmental research and education, historical  
20 preservation. Nowhere in here does it talk about  
21 gopher tortoise preserves and does it talk about  
22 private lands. The next exhibit you have is just  
23 basically Lee Plan Policy 1.4.6 that just talks  
24 about the policies under conservation lands.  
25 Again, it's talking about public lands. The next

1 exhibit I have is a map that was generated from  
2 Lee County's GIS data. This map depicts the  
3 upland conservation lands designated on the land  
4 use map. If you were to try to mark on this map  
5 the 3 acre piece, it wouldn't even show up, but  
6 that's just my comment. The next exhibit and last  
7 exhibit is a list of those properties that have  
8 upland conservation designation on the land use  
9 map and I just want to direct your attention to  
10 under name that if you look under owner, there's  
11 not one single private entity on there. They're  
12 all public entities or entities for conservation.  
13 I would suggest that you recommend that the  
14 amendment be transmitted as proposed by the  
15 applicant and I'm open for any questions.

16 MR. RYFFEL: Any questions of Rae Ann?

17 MS. WESSEL: I appreciate your thorough  
18 review there. I think you cleared up a couple  
19 things. Some of these tortoises, at least half,  
20 are on the existing Raymond Lumber site, correct?  
21 They're actually on the existing -- when I tried  
22 to lay the map over the other one.

23 MS. BOYLAN: If you give me one second, I  
24 can grab a map and tell you exactly.

25 MS. WESSEL: I just took the map that was in

1 the packet and overlaid the exhibit onto Exhibit  
2 3. It appeared from the species survey that eight  
3 of the active burrows were on the existing Raymond  
4 Lumber site, the developed Raymond Lumber site,  
5 and that another ten are on the subject parcel?

6 MR. ANDRESS: In other words, they're all  
7 over the place.

8 MS. WESSEL: No, they actually span the two  
9 properties.

10 MS. BOYLAN: You are correct and I found the  
11 map. This was submitted as part of a zoning  
12 package submittal.

13 MS. WESSEL: Because I was wondering  
14 originally why the protected species survey was 36  
15 acres and the project was only 14, but I think  
16 that explains why.

17 MS. BOYLAN: I think it goes to confusing  
18 that these are the things we review at zoning, not  
19 at land use changes.

20 MS. WESSEL: What's being shown then on the  
21 plan is that this new building would affect both  
22 sides so where all the tortoises are located,  
23 those would be impacted.

24 MS. BOYLAN: I would agree with that, yes.

25 MS. WESSEL: Have you anticipated what you



1 would do with tortoises on this site?

2 MS. BOYLAN: Yes. In the preserve that we  
3 can designate we would keep those tortoises that  
4 are in those areas if we're allowed to keep that  
5 many right now. They're looking at no more than  
6 two per acre if it's suitable habitat. The  
7 remainder we would move off-site to an FWC  
8 approved recipient site. I mean, I would love to  
9 see more gopher tortoise recipient sites in Lee  
10 County and we can only move them to approved  
11 sites.

12 MS. WESSEL: Well, I think the reason that  
13 this is raised is because staff has suggested that  
14 there's this discussion. I have to agree that  
15 this is not normally something that we would be  
16 looking at at a land use change, but given the  
17 fact that gopher tortoises have been upgraded from  
18 species of special concern to threatened species,  
19 I think you have to recognize that we haven't done  
20 a good job of maintaining them in the first place  
21 and we have this idea that we can just mitigate  
22 them somewhere and that everything's fine, but we  
23 have a loss of a species and so everything that's  
24 been presented about the goal of restoring and  
25 maintaining, we haven't gotten close to restoring

1 or maintaining so I think that there is a value in  
2 looking at constraints at this stage. Not that  
3 that would be limiting perhaps, but I understand  
4 what staff was trying to achieve by raising the  
5 issue because we now have a species that's gone  
6 from a lesser category of protection to a greater  
7 category of protection and I think if we look at  
8 these things blindly, then we ignore the fact that  
9 we value these in the Lee Plan and there is a  
10 value to them established in the Lee Plan and  
11 that's the real rub that I think exists.

12 MR. ANDRESS: Well, I think today we should  
13 be looking at whether or not that piece of  
14 property is suitable for industrial use and I  
15 don't think we should be looking today that site  
16 specific as to if they have a gopher tortoise  
17 problem there, they're going to have to deal with  
18 that when they go to get their site plan approved.  
19 They have to deal with every one of those issues  
20 and if they don't have an adequate plan, they're  
21 not going to be allowed to move those gopher  
22 tortoises at that stage and they'll have to come  
23 up with a plan that's suitable in order to get  
24 their plan approved, but what we're looking at  
25 here today is we are looking at land use and is

1 that particular parcel a suitable parcel for  
2 industrial. Absolutely, it is. There's no doubt  
3 about it.

4 MS. WESSEL: And it is because of the  
5 railroad.

6 MR. ANDRESS: And that's the last place in  
7 the world you'd want to put a gopher tortoise  
8 preserve is by a railroad track. They'll all get  
9 smashed on the railroad track. If they see a  
10 female on the other side, they try to climb over  
11 there and so what we're trying to do here is -- it  
12 just doesn't make any sense to me at all. We  
13 should be looking at the land use because we don't  
14 deal -- this particular committee does not deal  
15 with all the intricate aspects of a development  
16 plan.

17 MS. WESSEL: I agree with that, but I think  
18 there's a larger -- I think there's another aspect  
19 of this that we need to just recognize and it was  
20 what staff was trying to contribute some  
21 understanding of, I think. I agree for the most  
22 part, but I think there is a point that we need to  
23 understand and we need to recognize that we have  
24 protected species and if we want to protect  
25 them --

1 MR. ADDRESS: This isn't the way to do it.  
2 I mean, if we started doing this on every proposal  
3 that starts coming in here that has gopher  
4 tortoises, we're creating a management nightmare.  
5 Staff can't even manage the preserves that they've  
6 set aside in the land already. They set aside  
7 preserves on Pine Island when developers have  
8 cleared their land to put palm groves on it. They  
9 don't go back and monitor those sites to see if  
10 those -- they don't have the time to do it. To  
11 set up a bunch of these things all over the place  
12 would just be fruitless.

13 MR. RYFFEL: Okay. I think the applicant  
14 still has a presentation to put on so I think we  
15 ought to let them do it.

16 MS. BOYLAN: The last thing I'd say and I  
17 understand your concern that something happened  
18 and now the tortoises have been upgraded to  
19 threatened. I agree. What I don't agree with is  
20 that the way to manage tortoises is on a project  
21 by project piecemeal basis and I think the Game  
22 Commission is trying to get large preserve areas  
23 set aside that can accommodate long-term viable  
24 populations. They're trying to do that and I  
25 would suggest that staff try to work more with the

1 Game Commission to find sites in Lee County that  
2 can receive tortoises that would meet their  
3 criteria.

4 MS. WESSEL: Well, with all due respect, I  
5 think that's what they've been doing for the past  
6 15 years and that has led to the tortoises being  
7 left in the condition that they are in and that  
8 doesn't necessarily have any applicability to what  
9 we're here to look at today except that staff has  
10 raised it as an alternative, but I think that it's  
11 like mitigation banking. They talk about no net  
12 loss for wetlands, but the minute that you move a  
13 wetland from one place and you restore a wetland  
14 in another, you have had a net loss. There is no  
15 such thing as no net loss so I think that's what's  
16 contributed and I think that's why staff has  
17 raised this. I think it is a concern. I think we  
18 need to a better way of dealing with species, but  
19 not necessarily at this stage.

20 MR. RYFFEL: Let's hear the rest of the  
21 applicant's presentation and then we can comment  
22 all we want to.

23 MR. SWANSON: My name is Duane Swanson. The  
24 Swanson family and I own Raymond Building Supply  
25 and we have since 1978. We've seen Raymond grow

1 from a \$6,000,000 enterprise to a peak of  
2 \$300,000,000 in '06. We are a victim now of the  
3 current situation revolving around building supply  
4 companies, but we intend to build back to that  
5 \$300,000,000 plus. I have to be very honest with  
6 you. We bought this 14 contiguous acre site for  
7 two reasons. One, it was contiguous, but, most  
8 importantly, it's on rail. In '06 we took  
9 delivery of almost 1,300 railcars of lumber from  
10 Canada, the northwest United States, down to the  
11 southeast United States. It's very important.  
12 This site gives us the ability to increase our  
13 rail usage by almost 70 percent. It's very, very,  
14 very, important, extremely important, to our  
15 viability. Prior to buying this site we looked at  
16 rail sites on Highway 17. We chose this site  
17 because it's contiguous and it's on rail right  
18 here. I'll be happy to answer any questions.

19 MR. RYFFEL: Any questions?

20 MR. SWANSON: And without the rail site this  
21 project is not viable.

22 MR. RYFFEL: Well, that's one of the  
23 questions I had, sir. That building has a rail  
24 site to it?

25 MR. SWANSON: That's the reason.

1 MR. RYFFEL: Okay. I'm with you. Thank  
2 you, sir. Mr. Uhle.

3 MR. UHLE: Matt Uhle for the record. First  
4 of all, in response to Mr. Address' question, I  
5 don't have a signed version of the contract, but I  
6 do have a version that's been handwritten on a  
7 little bit. If you want to look at it, it will  
8 give you some sense of what I'm talking about.

9 MR. ADDRESS: I just wanted to be assured  
10 that these deed restrictions you're talking about  
11 were on the deed. That's all.

12 MR. UHLE: Paragraph three of the draft  
13 agreement indicates the buyer agrees to execute  
14 and record in the public records of Lee County  
15 Florida restrictive covenant which shall  
16 memorialize the requirements of Section 2 above no  
17 later than 10 days after closing and Section 2  
18 addresses things like building heights, building  
19 colors, hours of operation, outdoor lighting,  
20 setbacks to Chapel Creek.

21 MR. ADDRESS: I would just recommend when  
22 you get to the BOCC that you provide that document  
23 to them. I think it lends strength to your  
24 argument.

25 MR. UHLE: I'll conclude just by saying that

1 I think in general I have three big problems with  
2 the staff recommendation. One of them is just  
3 from a mapping perspective I really don't think  
4 it's appropriate to have tiny slivers of this  
5 green color on the Future Land Use Map in a scale  
6 that you can't even see unless you put them just  
7 on the computer and blow them up. I'm not aware  
8 of other cases where the county did that and I  
9 don't encourage the county to do that in the  
10 future. Secondly, as Rae Ann's pointed out  
11 repeatedly, the normal sequence of development  
12 when you're starting with a property that doesn't  
13 have the right land use map designation is to do  
14 the land use map amendment, then do the zoning,  
15 and then do the permitting. What the staff is  
16 suggesting in a sense is that we mash all those  
17 together and do it at the Lee Plan amendment stage  
18 and I don't agree with that, either. That's not  
19 appropriate and we don't deal with that kind of  
20 level of detail at this particular time. You  
21 don't have a site plan that you can enforce. This  
22 is just not a workable approach in our opinion.  
23 Then, finally, there's the issue again of the  
24 prior ordinance. The county is currently in a  
25 position where we are in economic trouble and we



1 are looking to diversify our economy. What makes  
2 this property special is that it's next to a  
3 railroad and it's next to an existing industrial  
4 development and it's a perfect location for this  
5 particular use. We think that you ought to  
6 recognize that and transmit the amendment or at  
7 least recommend transmittal. Thank you.

8 MR. RYFFEL: Thanks, Matt. Any public  
9 input? Seeing none, anything further from the  
10 staff? Paul, do you have anything else?

11 MR. O'CONNOR: No, sir.

12 MR. RYFFEL: Okay. Thank you. Back to us.  
13 Do you have anything further to say, Rae Ann?

14 MS. WESSEL: I would just say in response to  
15 what Matt just said about the map units being too  
16 small that the county has long allowed for and  
17 encouraged on-site preservation options that  
18 doesn't look like a good option for this site in  
19 particular primarily because of the competition of  
20 uses, but I think it's very sad when the economy  
21 of the community is cited solely as a source and  
22 not the economy of a species which is also being  
23 attacked and I think staff has tried to approach  
24 something with an alternative which it may not be  
25 appropriate to look at it at this point, but I do

1 think that staff is trying to be responsive to  
2 other parts of the plan and not just simply saying  
3 no and I think that that's important.

4 MR. RYFFEL: Thank you, Rae Ann. Noel.

5 MR. ANDRESS: I love gopher tortoises and I  
6 think they should be preserved and I feel  
7 confident that by the time that this goes through  
8 the whole zoning and site plan process that those  
9 gopher tortoises will live a long life on another  
10 piece of property.

11 MR. RYFFEL: Jacque.

12 MS. RIPPE: Just one quick question. You  
13 said the property line is 25 feet from --

14 MR. UHLE: From the east top of bank of  
15 Chapel Creek.

16 MS. RIPPE: Just one quick question for Rae  
17 Ann. The difference in moving it up to threatened  
18 as I can recall, and I haven't been really active  
19 in this, but you used to be able to -- if you only  
20 had a certain amount of gopher tortoises on your  
21 property, you could actually just bury them; is  
22 that correct?

23 MR. ANDRESS: You can still entomb them.

24 MS. BOYLAN: When the tortoise was listed as  
25 a species of special concern, there was a process

1 called incidental take that allowed for that. I  
2 don't know of anyone in Lee County that did that  
3 even though typically we would obtain incidental  
4 take and we would still move the tortoises out of  
5 harm's way. The problem we're running into with  
6 staff now is they're thinking well, you've moved  
7 them before, can't you just do that now, and it's  
8 like well, we got the incidental take because the  
9 state was telling us we didn't have enough land to  
10 preserve them there. Now they're saying if you  
11 can't get incidental take and you don't have  
12 enough land to preserve them on-site, you need to  
13 take them to a suitable off-site recipient site  
14 and that's where developers and applicants are  
15 kind of in a Catch-22. Yes, you could do that,  
16 but that was not something that I'm aware of  
17 happens in Lee County.

18 MS. RIPPE: I didn't know if that was part  
19 of the cause of not too many on-site and actually  
20 becoming that taking.

21 MS. BOYLAN: Yes, incidental take permits,  
22 if you don't have one now, you could still get one  
23 issued if you had an application in-house, but  
24 you'd still have to relocate the tortoises.

25 MS. RIPPE: Okay.

1 MS. WESSEL: Was this survey done before the  
2 property was purchased or after? Was the survey  
3 done before or after the property was purchased?

4 MR. UHLE: I think it was done before.

5 MR. RYFFEL: I spent a lot of time reading  
6 this file over the weekend and was very intrigued  
7 by it and I had written some notes down,  
8 observations, that may help us with this. I think  
9 in a case like this you have to take a broader  
10 view of things. You can't just focus in on one  
11 thing, gopher tortoises. That's one element of  
12 the comp plan. There's hundreds and I don't know  
13 if there's thousands, but there's a lot of goals,  
14 objectives, and policies in there and I can't  
15 think of one case that would comply with all of  
16 the goals, objectives, and policies in that  
17 Comprehensive Plan and I think as the planning  
18 principle to start with it's always better to add  
19 industrial to an area that already has it,  
20 especially if it has a railroad site, and in that  
21 way you're not opening up new areas to other  
22 industrial uses spread all over the place creating  
23 sprawl. The request partially fulfills the  
24 county's objective to increase industrial uses to  
25 diversify the economy. At one time, I don't know

1 if it's still on the books, but it used to be 7  
2 percent was supposed to be industrial to diversify  
3 the economy rather than just tourism and in these  
4 financial times I think jobs are a critical part  
5 of what we ought to be doing. In reviewing the  
6 files, public services, road adequacy, lack of  
7 residential abutting uses, a buffer along the  
8 creek, all of those things support the transmittal  
9 of the amendment, tortoises aside, and as I  
10 mentioned, it would be great to have any plan use  
11 amendment meet all the goals, objectives, and  
12 policies of the comp plan. There is a provision  
13 in the regulations local and otherwise to relocate  
14 gopher tortoises in cases just like this and this  
15 is probably one of the best examples of why I  
16 would say that it should be done. I mean, if I  
17 was a turtle, I wouldn't want to live next to the  
18 railroad tracks. It would probably wake you up  
19 every 15 or 20 minutes, but it's not a great thing  
20 and the tortoises wouldn't be destroyed. They'd  
21 be relocated and I don't see anything wrong with  
22 that. Given the choice of relocating tortoises on  
23 a small site and the benefits I see to the  
24 amendment, I'd take the amendment and grant it and  
25 using a conservation lands land use category on

1 land the size of a postage stamp makes no sense to  
2 me whatsoever and I agree that gopher tortoises  
3 ought to be relocated to larger tracts. Whether  
4 they be in Lee County or elsewhere, they will  
5 survive. This is a request for a land use change.  
6 At the zoning stage staff gets a second bite at  
7 this apple if they want to and they can address it  
8 in the right place and this is not the place and  
9 at that time they can negotiate with the applicant  
10 to determine what's the best solution to this  
11 issue, but for now I go along with moving the  
12 proposal and finding it consistent with the Lee  
13 Plan. Just because a property has a land use  
14 category -- say this is changed to industrial.  
15 That doesn't mean it's going to be used for that  
16 purpose. There's other things that are required.  
17 There's open space, there's retention, there's  
18 environmental issues to take care of. Just  
19 because it has that category doesn't mean that's  
20 how it's going to end up so I think at the very  
21 least at this point in time we need to approve the  
22 land use change or recommend its transmittal and  
23 then deal with the rest of it during the zoning,  
24 but at least put it in place so that that can  
25 happen. If it's not transmitted, then it's dead.

1 As the gentleman said, the location of the  
2 property right next to another industrial park,  
3 keep it there. I mean, expand that. That's what  
4 makes sense from a planning perspective so unless  
5 somebody wants to make a motion --

6 MR. ANDRESS: I'll make a motion. I move  
7 that we transmit CPA2006-00014, Raymond Lumber,  
8 with the language as proposed by the applicant.

9 MS. RIPPE: I second that.

10 MS. WESSEL: Discussion?

11 MR. RYFFEL: Yes.

12 MS. WESSEL: I'm going to support the  
13 transmittal because I feel like the process  
14 designates that that's the proper way for this to  
15 happen. I also have done gopher tortoise  
16 relocations for 20 years and I know that moving  
17 them from a palmetto prairie to a cabbage palm  
18 hammock is not usually successful. However, I do  
19 think that staff needs to be recognized for having  
20 tried to deal with a situation and I appreciate  
21 that because I think what we've seen with this  
22 species and with others, but particularly this one  
23 has just been upgraded to threatened status, is  
24 that we haven't taken into account what the  
25 consequences are of some of these issues.

1           However, that being said, we issue permits and the  
2           Game Commission issues permits and has been for  
3           decades. I think the proof is in the pudding.  
4           The rules that the Game Commission has are not  
5           protective and that's why this has happened. It  
6           hasn't happened because of any other reason so I  
7           think we need to continue to be vigilant and I  
8           would encourage staff to continue to look for  
9           options with the applicant as they go through the  
10          process.

11           MR. RYFFEL: I didn't mean any aspersion to  
12          our fine members of staff, but I take it we just  
13          have to put this in a different perspective. We  
14          have a motion that's second. All in favor?

15           (All Board members aye.)

16           MR. RYFFEL: Opposed? Approved. Is there  
17          any other business?

18           MR. ANDRESS: We need to set our next  
19          meeting.

20           THE CLERK: July 28th at 1 o'clock.

21           MR. RYFFEL: Okay. Anything further?  
22          Motion to adjourn?

23           MR. ANDRESS: I so move.

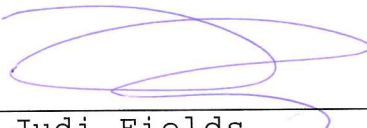
24           MS. WESSEL: Second.

25           (The proceeding was concluded.)



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3  
4 I, Judi Fields, Contract Court Reporter, do  
5 hereby 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 93, is a true record.

9 Dated this 3<sup>rd</sup> day of September, 2008.

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13 Judi Fields  
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