LEE COUNTY HEARING EXAMINER

CASE NO. DCI2013-00003

APPLICANT: GreenPointe Communities, LLC
in reference to River Hall

Transcript of proceedings before Laura B. Belflower, Deputy Hearing Examiner, 1500 Monroe Street, Fort Myers, Florida, on January 14, 2015, commencing at 9:00 a.m.

VOLUME I

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JANUARY 14, 2015, DAY ONE OF HEARING

MS. BELFLOWER: Okay. Good morning, my name is Laura Belflower. I'm the hearing examiner for today's hearing. This is the hearing for DCI 2013-00003, a planned development amendment for River Hall.

A few rules to go over. If you have a cell phone, please turn it off or put it on the silent position.

If you need to have any sort of discussion amongst yourselves, please take it out in the hall so it won't disrupt the hearing.

When you speak, those at the table, please point the microphone pretty much toward your face and then try to leave it alone. It's not as omnidirectional as the old ones used to be, so you have to pretty much talk into them.

We are scheduled for this to go all day. It may actually go into multiple days. We will be taking a break about every hour and a half and then try to take an hour to an hour and a half for lunch around noon, so you can prepare yourself accordingly.

This is a request for an amendment to an existing RPD/CPD zoning, and the only topic for

discussion today is the rezoning application itself.

There is a Lee Plan amendment that is pending, and that will be heard by the board of county commissioners on the same day as the zoning request will be heard by the board of county commissioners, but that plan amendment is not before me. I do not have a role in making a recommendation on the plan amendment, so the plan amendment is a completely separate issue.

The only role that the plan amendment has in this process is to consider whether or not the zoning request that is before us meets the plan amendment if the plan amendment was to be approved, and if the planned amendment is denied, I'm going to need to know from the applicant what, if any, portion of the zoning would go forward in some sort of revised form. So the only role that the plan amendment has in my mind, and I'm going to ask others to speak for that, on that, is whether or not this rezoning request would meet it if it was approved and what would happen if it was denied, so when you get up to speak, the applicant, staff, and the public speak, try to keep your comments on the rezoning application.

Otherwise, it's pretty much a waste of everybody's time, because I don't have any role on that.

You can certainly make your arguments on the plan amendment before the board of county commissioners. That's the place to make it, I'm assuming. The plan amendment hearing would be held first before the board, and that is a full public hearing before the board, and that's your place to make those comments.

Before I go on, I want to ask if there is anyone who disagrees with that assessment of how the role of the plan amendment plays in this zoning process? Seeing no one, that's what we're going to act under then.

Okay. We will be following the Administrative Code 2-6 presentation order. The applicant will go first, explaining what they are requesting and providing the evidence and the witnesses that they believe proves that the application should be approved. This is, again, the zoning application.

The applicant and the applicant's witnesses may be questioned by staff or by me. If members of the public have questions of the applicant's witnesses, please write them down and note them. You will get the opportunity to ask them during

the public's portion of the hearing.

There will be no per se cross-examination of each witness as they speak by the members of the public. You will have the opportunity to ask your questions in the public portion. I have asked the applicant and the staff to have all their witnesses here throughout the hearing so that they can hear the questions that the public may have. If the question is easily answered, we will try to get an answer immediately, or if it would not be disruptive to the process, we will try to get an answer immediately. Otherwise, the applicant or the staff will provide answers to the questions in their rebuttal portion.

If there is a question you need to ask that you need to know the answer to before you decide what other questions you're going to ask as a follow-up, you can indicate that to me at the -- at that portion.

For the applicant and the staff, I also -- cross-examination as it is in a courtroom is not particularly helpful to this process because I don't think anybody's going to have a Perry Mason moment where they're going to confess that they lied on the stand, so I think -- and it's not

helpful to me to have disjointed questions that it's hard for me to figure out where you're going with your questions and the points that you're going to make, so I really think that for all the witnesses and all the -- what is called cross-examination that is going to occur, it's really just questions.

The point is we're trying to get all the relevant facts out and understood so that I can respond to those and make my recommendation to the board.

After the applicant finishes their presentation, staff will make their presentation presenting their evidence and witnesses, and it will be the same questions opportunity between staff and applicant, and I will ask questions, and then the public can hold their questions for staff until their time.

Okay. After the applicant and the staff presentation, I will open the hearing to public participation. There are forms back on the wall. If you will complete the form, and there is a tray right here that you can put them in. I have two forms and a business card, and Mr. Brookes, I would appreciate if you could fill out the form

because we keep that as part of the record.

MR. BROOKES: I'm sorry, I wasn't paying attention to which form it was.

MS. BELFLOWER: It's the one on the wall.

MR. BROOKES: I'd like to enter a notice of appearance, and I filled out that form, and I left it on the table right there.

MS. BELFLOWER: Okay. I saw a business card too, but you already have filled out the form.

MR. BROOKES: Yes. I represent the East Lee Community Council, the River Hall Ad Hoc Committee, The Concerned Citizens of Bayshore Community, Steve Brodkin and Paul and Karen Asfour as residents of this River Hall Community, and I would ask to be able to do cross-examination as adversely affected parties in this quasi-judicial hearing.

MS. BELFLOWER: You will be able to ask as many questions as you want of the witnesses at the time of the public presentation. There will not be interruption of the presentations at the time.

MR. BROOKES: I think in the past, I was able to ask cross-examination along with staff and the applicants of expert witnesses.

MS. BELFLOWER: I understand that, and it is

within the hearing examiner's discretion to allow that, and in the past, we have allowed attorneys to do cross-examination, but not allow members of the public, and if there is any due process right, and I'm not saying that there is, but if there is any due process right for the members of the public to do cross-examination, that would apply to all members of the public, and I think everyone would agree it would be absolutely impossible to have a hearing where every single person at the hearing had the opportunity to cross-examine every witness.

The due process that is due in this process is for you to be able to ask questions and to gather -- to have all the information appropriate put out there and available for my consideration, so --

MR. BROOKES: I did also want to point out there's another attorney for another governmental entity, the CDD, Dan Cox, who's here, who's also put in a form. He's from the panhandle, so he's not normally from here and doesn't participate in the process. I don't know if you wanted to hear from him.

MS. BELFLOWER: It's going to be the same situation. We have two parties. We have the

county and we have the applicant, and they are the parties, and they are the ones that have the established due process right to cross-examine, and as I indicated, it's not truly cross-examination, it's questions, and one of the main goals in doing this is we're going to let the applicant put on their full presentation.

We're not going to take public because they can't be here or whatever. If somebody cannot be here through the entire process to the public hearing process time, please put, excuse me, put your comments or questions in writing, and you can have someone submit that on your behalf. I'm sorry, it -- the stretch out into seven, eight, ten-day hearings when things get disruptive.

I know I'm guilty for asking questions in the middle of presentations. I'm going to try my best not to ask questions till the end of each witness speaking, and I think we want to get the -- all the information out and allow it to flow as smoothly as possible, and I know it is different from what we've done in the past.

Our office has been looking at it. We've talked to the county attorney's office about due process arguments and those sorts of issues, and

it is especially in larger hearings, it is not practical for people to have cross-examination of the witnesses in the middle of each person's presentation.

Okay. So that if you filled out a form, you'll be called up at that time as I'll take the forms and call the public participants up at that time. This is the time to present your evidence and any relevant information you have, to ask any questions that you have. If they are not questions that will be answered immediately or could be quickly answered, we will note them.

I would ask staff and the applicant to please try to make a very careful measure of writing down the questions, and I will as well, so that we can make sure we get all the questions answered and so that we can have the public's full participation in this.

The public participation portion is the only time the members of the public will be heard. As I said, please limit your testimony to the issues before us today. I want to hear factual testimony on the issue before us, and when you do have questions, if you would ask the questions through me, and I will direct whether it's appropriate to

answer it then or to indicate that it is noted. Let's not get any back and forth between the witnesses and the people asking questions.

Okay. After you have testified, the applicant or county staff or I may have questions of you as well, so if you'll hang around at the podium for just a minute and see if there's any questions.

Then after the public presentation, the applicant is allowed to rebut the testimony and evidence that was presented. The rebuttal is limited only to rebutting the presented testimony and not to present any new evidence.

The staff may have rebuttal of their own about the applicant's rebuttal, and if that happens, the applicant gets the final rebuttal to address what the staff has raised.

Then the staff and the applicant get a closing statement, but usually those are please do what we are asking you to do, but they do have that opportunity.

This is the only hearing in this forum on this issue. After this hearing is closed, I will consider everything in the record. I will go out and do a site visit on the site. We'll take everything into consideration and prepare a

written recommendation to the board of county commissioners that will be sent to the board. If you fill out one of the forms, you will get a copy of that recommendation, and you will get notice of when the hearing will be scheduled before the board.

The fastest way to get a copy is to put an e-mail address. If you don't want to put an e-mail address, you can provide your mailing address, and we'll get a copy for you.

At this point, I'm going to swear everyone in at once. If you think you will testify, if you might testify, if you will raise your right hand.

(The hearing examiner administered the oath to the participants.)

MS. BELFLOWER: Okay. When you speak for the first time, please state your name and indicate whether or not you were sworn in.

Okay. Any questions about any of that process?

MR. SCHROPP: Yes, ma'am. I don't want to inadvertently with regard to the comp plan pending amendment, I don't want to stray from your direction because I agree with it, and I don't want to inadvertently open it up.

You sent out a memo asking for information pertaining to the transmitted plan amendment, the changes that have been suggested since transmittal, and we were prepared to go through them, and I am -- it is part of my presentation not only to provide that documentation to you but also to go through the genesis of this briefly to explain what was transmitted, number one, and number two, what changes are being suggested at this point so that we lay the predicate for Mr. Depew also to testify as to consistency with the pending plan amendment --

MS. BELFLOWER: Okay.

MR. SCHROPP: -- and the suggested changes. I don't want to go through all that if that's inconsistent with what you're directing me to do. I'm perfectly content to provide you the documentation, but I would suggest some explanation of what was transmitted and what is now suggested would be helpful.

MS. BELFLOWER: And I agree with that. When I sent out the memo, what I was asking for was to be sure that I completely understand what the zoning application is to be compared against.

MR. SCHROPP: Yes.

MS. BELFLOWER: The why it's been asked and the form that it got into is perhaps not relevant in terms of leading up to the transmittal. I know that there is a lot of history with this plan amendment. I don't know the details of it because I have deliberately stayed out of the details of it, but I do want to understand what the board transmitted, how it has changed from what the board transmitted, and what that means to this zoning application.

MR. SCHROPP: And that's the intent of what I'm going to present, and if I stray, please reel me back in.

MS. BELFLOWER: The only thing about the plan amendment is whether the plan amendment should be adopted. I don't need to hear arguments from you why it should. I don't need to hear arguments on why it shouldn't. We have to accept it as it is. I just need to understand what it is. Okay.

MR. SCHROPP: I agree. Thank you.

MR. BROOKES: One thing was not addressed was my expert witnesses. Would you like them presented during public argument?

MS. BELFLOWER: Yes, yes, I'm sorry, I didn't indicate that. The public will have the

opportunity to present all their witnesses that they have. There are no time limits on the public's participation, on the applicant, or staff's presentation. The only limit is please keep it relevant to the subject at hand and try not to be repetitive. Hearing it 16 times won't make it anymore impressed in my mind than hearing it once.

Okay. Thank you.

MR. SCHROPP: Are you ready?

MS. BELFLOWER: Yes.

MR. SCHROPP: Thank you.

Good morning, and for your record, my name is Russell Schropp. I'm an attorney with the Henderson Franklin law firm here in Fort Myers, here today representing the applicant in this matter which is GreenPointe Communities, LLC.

Before I get into our presentation in chief and explain where we're going today, just a housekeeping matter. As part of the pre-hearing procedure here, I submitted to the staff a list of exhibits as well as copies of the exhibits. I also submitted that list of exhibits to your office. It included ten exhibits.

Subsequent to submitting that, I realized that

the updated traffic impact statement prepared by our -- prepared by our consultant had not been included in the materials. I thought they were included. It was included in the materials that was submitted by staff, so I asked Mr. Block and Mr. Jacob if they had any objection if I also include that as the 11th exhibit on my exhibit list today, and so we actually have 11 exhibits that we would posit today on the exhibit list.

I have copies here for you. Would you prefer to receive them as we go through them or at the very beginning of the hearing? At this point, I can provide them to you. Some of them are covered during my presentation, others during other consultants' presentations.

MS. BELFLOWER: I think presenting them up front, if you have them to do that, would be fine.

I will -- let's see how we did our list here. The applicant's 48-hour letter has been listed as Applicant's Exhibit 1, but you've already got yours numbered.

MR. SCHROPP: They're already pre-labeled, but you can certainly --

MS. BELFLOWER: That's fine. We can -- we'll make the 48-hour letter Applicant's Exhibit A.

MR. SCHROPP: Okay.

MS. BELFLOWER: And then we will follow the list that is in the 48-hour letter of the ten exhibits. Number ten is corrections to the TIS. You have additional corrections?

MR. SCHROPP: No. Exhibit 11 will be the actual TIS --

MS. BELFLOWER: Okay.

MR. SCHROPP: -- which the Exhibit 10 applies. There were two corrected pages.

MS. BELFLOWER: So then we will take the numbering that is in this 48-hour letter and number them and then add the TIS as number 11.

MR. SCHROPP: Thank you. Just if I may for the record, Exhibits 1 through 5 are resumes of our consultants.

Exhibit 6 is the copy of the PowerPoint presentation that will be presented today.

Exhibit 7 is a copy of the Resolution Z-05-051 which you requested which is the current zoning resolution for River Hall.

Exhibit 8 is the transmitted plan amendment document that was transmitted by the county to the Department of Economic Opportunity and other state agencies which was also a document you requested.

Exhibit 9 is the -- is a copy of the revisions to the transmitted comp plan amendment suggested by the applicant which you also requested, and I will cover those documents in detail during my presentation.

Exhibit 10 is the errata sheet to the TIS, and Exhibit 11 is the TIS.

A little bit out of order, but that's what you've got there, and the errors in the TIS were simply transpositional numbers, numbers got transposed, and Mr. Leung will testify that really they had no impact on the conclusions and analysis contained in the TIS, but we wanted to correct the record.

MS. BELFLOWER: Okay.

MR. SCHROPP: Thank you. As I indicated, my name is Russell Schropp, I'm the attorney for the applicant. I'm here to make the introduction part of the presentation for the applicant for this rezoning request.

My introduction will basically cover four parts. They're on the screen there. Introduce the applicant and the consulting team just briefly. We'll go through the current zoning associated with River Hall. We'll talk about the

comp plan amendment that is pending that's 2012-1, and then just briefly summarize the current zoning request, just to sort of set the stage for later testimony.

The applicant in this matter is GreenPointe Communities. It is an entity based in Jacksonville. It has been in existence since 2008. Been a home builder in Florida since 2010.

GreenPointe acquired significant underdeveloped portions of the River Hall community out of bankruptcy in 2010. They're not the original developer of this project. Original developer of the project went under during the economic downturn, and this project was scheduled to be jettisoned, simply left to the creditors. As part of the bankruptcy proceeding, GreenPointe came along and acquired it from the bankruptcy proceeding.

They are an established developer in the state of Florida, have presently eleven other projects, well, ten other projects, eleven total in addition to River Hall presently ongoing through the state of Florida. President of GreenPointe is Grady Miars, and he is here sitting in the front row in the blue tie.

Our consultant team is listed above. Many familiar faces. Myself; Ms. Ekblad and Mr. Depew are the planning consultants and the planners for the project; Carl Barraco is the project engineer; Ken Passarella, the project ecologist; and Steve Leung is the traffic analyst for the project.

The second part of my introduction here is simply to go through the existing zoning briefly for River Hall. It was approved, originally goes back to 1999. It was a smaller project then both in terms of number of dwelling units and acreage. There was acreage added in 2005, and so the current rezoning resolution that's applicable to the project is resolution Z-05-051, and that is included in the exhibits that was -- that were presented to you at the beginning of this presentation.

The project is about 1,978 acres in total size, River Hall. The current resolution limits the residential density to 1,999 dwelling units which was one under the DRI threshold at the time. There was also ancillary 45,000 square feet of commercial and office uses associated with the project scheduled in the northern portion of the site where it adjoins State Road 80.

There was a fire station approved, elementary school, golf course and clubhouse, and amenity center and town hall for the project, and there were 27 conditions of approval in Resolution Z-05-051. I'll note two of them. One of them limited density in the rural sections of the project that were designated rural in the Comprehensive Plan.

At the time the project was approved in 2005, there were essentially three land use classifications in effect over the entirety of the 1,978 acres. Rural, the rural land use classification was the largest. It also had portions designated suburban and portions designated wetlands. This condition that I pointed out here limited density in the rural classification to one unit per acre which is consistent with the rural land use classification.

The second condition that I point out mainly because it's proposed to be changed as part of the zoning is there was a requirement for a second access point associated with the project. The main access point is, of course, on the State Road 80 on River Hall Parkway. There was a requirement in the 2005 zoning to construct a secondary access

point to the south on or before the 1,598th DO issued for the project.

Community opened for sale in 2006, after the zoning was approved in '05. Timing was not the greatest as we went into the economic slowdown in 2007, 8, 9, somewhere in there. As I indicated earlier, the original developer filed for bankruptcy. GreenPointe picked it up in 2010. Picked up the significant undeveloped portions of the project.

They have maintained the amenities and the golf course, and that should say since bankruptcy, not during bankruptcy, but since they acquired it in bankruptcy and have invested over $20,000,000 in the project and also have retired a substantial add of CDD debt associated with the project. They have a significant investment in this project at this time.

As an overview of the community, River Hall essentially has three separate residential type neighborhoods included within the project boundaries. On the left or excuse me, on the west, don't mean to get political there. It's not the left.

On the west is the Cascades project which is a

55 and older community. It was initiated by a developer, Levitt, which specializes in those types of communities. Unfortunately, they also fell on hard times and are out of the project, and Cascades is being continued by another developer. There are 575 approved platted lots within Cascades, and you can see the shading or underlying of the platting in the area. That's the area shown on pink on the screen there on the site plan.

Second community is River Hall Country Club which is essentially a golf course community shown in purple on the aerial there, and it has been platted and development ordered at this point for a total of 445 dwelling units associated with it, mostly single family, but there are two pods of multi-family included within the River Hall Country Club area.

And the last community that I'll mention is the Hamilton Lakes of River Hall community. Traditional single-family neighborhood consisting presently of 883 platted units. So currently, under plat or development order for the project, there's 1,903 dwelling units. I believe slightly over 300 have been developed at this point. Three

hundred dwelling units have been constructed.

Project also consists right now of an 18-hole golf course and clubhouse facility, an amenity center, and a town hall, sale center, and an elementary school. River Hall Elementary School has been constructed within the boundaries of the project. Fire station has not yet been constructed.

The third part of my introduction here is to discuss the pending plan amendment that's being processed in conjunction with this zoning or vice versa. I guess the zoning is intended to implement the plan amendment that's pending before the board of county commission.

Just some brief history as might be helpful. We originally filed this, we started talking with staff about it in 2012. We originally filed the application in September of 2012. The purpose of the request was to increase the density associated with River Hall from 1,999 units to 2,999 units, one below the DRI threshold. The increase in the thousand units was desired by the applicant to continue the development pattern that's already been established at River Hall through the projects that I just mentioned, the neighborhoods

that I just mentioned.

The current land use classifications, as I mentioned, predominantly rural as well as some suburban, do not allow the achievement of the density that is being sought by the developer at this time. So the plan amendment, 2012-01, was initially considered for transmittal by the board in September of 2013, about a year after we applied.

At that point in time, there were three elements associated with the plan amendment request, and they're listed in the bullet points there. There was a future land use map amendment to reclassify 1,287 acres from rural and wetlands to sub-outlying suburban, conservation lands upland, and conservation lands wetland. There was a text amendment, a proposed new policy for the plan which would be Policy 5.1.11, and that policy, and I'll put it up for you in a minute so you can read it, but basically allowed for the transfer of density from conservation lands classification to contiguous uplands, and it would be transferred at rates commensurate with the contiguous uplands.

And the third part of the amendment as

originally considered for transmittal by the board was an amendment to Table 1(b) which is the 2030 allocations table which I believe you're probably familiar with it. Basically was intended to increase the allocation of sub-outlying suburban and decrease the allocation for rural commensurate with the land use map change, and if you want a more detailed explanation of that, Mr. Depew will have to provide it to you.

The transmittal hearing in September of 2013 ended in a tie vote, two to two, on a couple of motions, and the plan amendment failed to be transmitted as it, of course, needs an affirmative vote. At that point, the county commission consisted of only four members, as you may recall, that being later remedied by the appointment by the governor of Commissioner Hamman.

The applicant, not satisfied with the two-to-two vote, requested mediation under the statutes that's in Section 163.3184(4) which is a little used provision of the statutes, but basically allows an applicant to request pre-suit mediation in the event the plan amendment request is denied, and not being satisfied with the two-to-two vote, we requested the ability to

mediate and requested really one thing, and that was the ability to come back to the county commission, a full five-member county commission for a revote on the transmittal.

We entered into an agreement with the county to do just that. We were required as part of that agreement to go back through the process which required us to have an additional public meeting out in the community.

We actually had two on the same night, one internal for the community and one for those around the community. That meeting was probably held, I want to say, in April of 2014, May or April of 2014. I think it was April. And out of that meeting, one of the things that we discovered was a concern or heard was a concern from the community was that the plan amendment, the future land use map amendment and the policy amendment, Policy 5.1.11, actually allowed a significantly greater number than 2,999 dwelling units to be considered for zoning.

We had always anticipated that this zoning running concurrently would serve as the limitation for the project in 2,999 units, so the fact that the plan amendment technically would have allowed

more than that was going to be addressed as part of the zoning.

But we heard that was a concern, and so we started considering placing an expressed limitation in the plan amendment that would limit the dwelling unit count, total dwelling unit count in River Hall, and at the same time, we did some additional planning and determined that we really didn't need 2,999 units, that the number was closer to 2850 or 2,850 dwelling units.

So after the public meeting that we held in the community, we suggested a fourth element to the plan amendment, the pending plan amendment request, and that was inserting a density cap for River Hall of 2,850 into Policy 21.1.5, which was the best place that we could figure to put it in.

So those were the four elements of the transmitted -- if you could go back just a minute. The four elements of the plan amendment request that ultimately came back for a transmittal hearing to the board in -- it was October of 2014. And the four elements being the four bullet points there. Although they're separated, you can see it involved a future land use map amendment, addition of a text policy, an amendment to Table 1(b), and

then finally an amendment to policy 21.1.5 that would place a cap on River Hall, limiting the total density.

Let me talk about each of these elements of the trans -- of the plan amendment specifically in a little more depth so you understand because this was what was actually transmitted.

Okay. Now if you could switch to the next one.

This is the future land use map amendment as transmitted and as heard by the board at transmittal of October of 2014. The future land use map amendment area is shown in the crosshatching, and as you can see, it covers a wide and varied area and covers areas that would be proposed to go from rural and wetlands to sub-outlying suburban, conservation uplands, and conservation wetlands classifications.

You can see underneath the crosshatching, there's some shading of coloring. The orange basically would go to sub-outlying suburban, and if I may, the large area down here in the south, bits and pieces of already platted areas throughout the project in through here and here, and then up here at the northwest part of the --

thank you, northwest part of the project would also go to sub-outlying suburban.

The wetlands on the site would be -- were proposed to be converted from wetlands to conservation lands, wetlands, and there's a large number of conservation uplands, upland areas that are in conservation, a lot of them being on the west side or east side here of the project along there, and then a large area here, and then a few other areas scattered throughout the project, but those uplands that are in conservation designation would go to the conservation uplands land use classification. That's the future land use map amendment.

And this is essentially summarizing the transfers or conversions that would occur as part of the future land use map amendment, 1,287 acres total affected by the future land use map amendment, and you can see the present breakdown is a mix of rural and wetlands, and that acreage would be converted to 870 acres of sub-outlying suburban, 264 acres of conservation land upland, and 153 acres of conservation land wetland.

Now, at this point, the land under the future land use map amendment that was authorized to be

submitted as part of the amendment was owned by GreenPointe entities, which are River Hall Venture II and River Hall Venture III. They're GreenPointe owned or controlled lands.

Part of the land was also owned by the River Hall Community Development District which submitted an authorization or provided an authorization for the plan amendment to include their property or its property, and also small portions of the property were also owned by the River Hall Country Club Home Owners Association, primarily roadways and areas that connected up areas, development pods.

So that's the summary of the future land use map amendment that was pending.

The second part of the plan amendment that was transmitted, presented for transmittal and actually transmitted was an addition of a policy to the Lee Plan, Policy 5.1.11, and I can go through it and read it to you, but the gist of the policy is to allow lands that are placed voluntarily by an owner into the conservation lands land use classifications to be eligible as part of the plan development process to receive density off of those lands that can be transferred

into contiguous uplands at the contiguous upland density rate.

So in other words, the lands that were being placed into conservation lands upland and conservation lands wetland could have their density transferred into the areas that were being designated as sub-outlying suburban, so that the density could be increased on those lands above the 2.0 allowed on the sub-outlying suburban land use classification.

That was the intent, and it also required that a conservation easement be dedicated to the county over the conservation lands that were being designated as conservation lands upland, and that maintenance had to be provided by a CDD or homeowners association, and that had to be provided prior to any development orders authorizing the transfer of density.

That's how the density was being increased on the areas that were to be developed in the future that are controlled by GreenPointe through this transfer, first of all, to the conversion of the future land use map, part one, and then this part two which is the policy allowing transfer from conservation lands upland and wetland.

The third part of the plan amendment was, as I mentioned, a text amendment to Policy 21.1.5 which expressly added at the very end there a density cap of 2,850 dwelling units for River Hall. This was in direct response to concerns that hey, the plan amendment actually allows much greater than what you're seeking. We don't -- this is the community, what we heard from the community, we don't believe that the zoning is sufficient to safeguard that you'll never go above this. We'd rather see some limitation or ratcheting back of the comp plan amendment so we make sure the comp plan can't come in later and claim the density that's being approved or would be approved as part of the future land use map amendment and the policy change.

And then the fourth part of the plan amendment request, again, was Table 1(b) allocations table change, and as you can see, the main intent was to increase the amount of sub-outlying suburban available for development, decrease the amount of rural available for development, that being done simply to reflect the conversion accommodated on the future land use map amendment, and then also some adjustments to conservation lands, upland

wetlands because there are no lands shown there, although technically I'm not quite sure, and maybe Brandon or Dave can address why we need to even show anything for those lands because there's not going to be development in those lands. They're going to be subject to a conservation easement. Nonetheless, that was what was transmitted.

The plan amendment has been reviewed. Went up for review from the State. We received -- the plan amendment received no substantive comments or objection from the one, two, three, four, five, six agencies listed there. There were comments received from the Fish and Wildlife Conservation Commission and the Department of Education that had been addressed as part of the zoning, and we'll discuss them at a later point.

Now, during the pendency of the state agent's review after transmittal but before the comments had come back, I think, Chip, correct me if I'm wrong, I think immediately prior to Thanksgiving, we had done internally some additional planning to determine, you know, a little more precisely the number of dwelling units that might be needed to fulfill the development scheme anticipated by the developer.

So I met with Chip, Mr. Block, Mr. Dunn, and I believe Ms. Gibbs immediately prior to Thanksgiving and said, "Hey, look, we've done some refinement here. In reality, I don't -- we don't even think we need 2850. I think the number that we can live with when this comes back for zoning and ultimately comp plan amendment adoption is more in the nature of 2,695 dwelling units."

So that is the number that I suggested to them at that point that would be the most appropriate number to include as part of the zoning, and then if the board wanted to change the limit from 2850 to 2695, 2,695 units, that would be acceptable with us. That would accommodate what we reasonably anticipated doing with the remainder of the undeveloped lands in River Hall that GreenPointe controls.

After Thanksgiving and virtually on the same day that the Department of Economic Opportunity transmitted its "no comment" letter, the River Hall Community Development District passed a resolution withdrawing its authorization for its lands to be included in the plan amendment zoning applications. The action of the CDD, as I indicated earlier, they had previously authorized

the lands to be included, and now authorization was being withdrawn.

That caused some concern, obviously, amongst the applicant at this point, late point in the game. It caused some concern with the applicant as well as the county, and I visited with the county attorney's office, visited with the community development staff, but we analyzed what the withdrawal of the CDD lands would mean for the plan amendment and the density attainable under the plan amendment, and that's -- obviously is, if you haven't picked up by now, that's the main concern or the main objective for the developer is to increase the density of the project for the undeveloped portions of the property.

What we discovered was that if you withdrew, if the CDD lands are withdrawn from the plan amendment zoning application, what happens is, first of all, all lands that were intended to go into the conservation lands upland and conservation lands wetland classifications are essentially eliminated from the plan amendment request. Those were CDD lands. So there's no lands that are slated to go into the conservation lands classifications.

The other thing we discovered was that it reduced the amount of acreage being converted from rural to sub-outlying suburban, and the amount of acreage that we came up with to proceed forward with the plan amendment was 585.6 acres of land that would need to be converted from rural to sub-outlying suburban that is still under the control of GreenPointe Communities.

So after withdrawing the CDD land, the future land use map amendment that I previously showed you that covered 1,287 acres would now cover 585.6 acres, and the density permitted, the interesting thing was that the density that is permitted by the lands that are still remaining in the future land use map amendment, we haven't added any lands to the future land use map amendment, just subtracted what was withdrawn.

The density permitted by the future land use map amendment as shown there on the table, and I say density, the unit count that would be permissible under the future land use map classifications is shown on the table, and it's a straight mathematical calculation taking the density in each land use classification times the acreage of each land use classification, and the

numbers allowed in each classification are shown in the right-hand column, and when you add them up, they come up to 2,749 units; below the density cap that was transmitted, but still slightly above the density that we had discussed with staff a few weeks prior to this of 2,695 dwelling units.

Our conclusion was that the removal of the CDD lands still accommodated the density increase in conformance with the now current parameters being sought by the developer of 2,695 dwelling units.

So after considering all this and reviewing it with the county attorney's office, the county staff, what we suggested is that the transmitted amendment essentially can and should change to the following.

We believe that the text amendment proposed in Policy 5.1.11 that allows the transfer of lands from conservation lands to adjoining uplands is no longer necessary. In fact, it can't even be applied to this policy because there are no lands going to conservation lands, uplands or wetlands, so if the board wants to adopt it for future projects, that's fine, but it has no applicability here, so it could be withdrawn as far as we're concerned.

You can withdraw the density cap of 2,850 because it's not even supported by the revised calculations that I've just shown and really isn't necessary at all to have a density cap in the plan amendment we would submit. We're asking for 2,695 units. Maximum allowed is 2,749. The difference is 54 units. So it's essentially the same as being accommodated by the future land use map amendment as amended with withdrawal of the CDD lands.

And then we suggest maintaining the transmitted amendment to Table 1(b), although again, I don't think the conservation lands acreage is necessary, but the changes to the rural and sub-outlying suburban in Table 1(b) would be appropriate to accommodate the additional development.

And then the last change --

MS. BELFLOWER: Wait a minute. Let me ask. The change to Table 1(b) is the 500 plus acres, not the thousand acres that it previously was; correct?

MR. SCHROPP: If you can go back to -- yeah. Yeah, that's it. That's what was transmitted.

MS. BELFLOWER: Right.

MR. SCHROPP: This change would accommodate the change from sub -- the future land use map amendment.

MS. BELFLOWER: You're still asking for this --

MR. SCHROPP: Yes.

MS. BELFLOWER: -- in the plan amendment that is going forward?

MR. SCHROPP: Yes, yes.

MS. BELFLOWER: These same numbers?

MR. SCHROPP: Yes.

MS. BELFLOWER: Okay.

MR. SCHROPP: If you can go back. Thank you.

And then the fourth part of the plan amendment request could be changed, should be changed obviously to amend the future land use map amendment to remove all of the CDD lands since their authorization has been withdrawn, and the amendment that we would now propose does not add any lands that were not transmitted in review, and the revised future land use map would be shown on the next slide. There it is.

And if you'll recall, the original transmitted version included a significant amount of lands to the east, north, and north of those areas that are

now shown as the future land use map amendment, and the future land use map amendment, as I indicated, is simply a very simple future land use map amendment that converts land from rural to sub-outlying suburban. It's 585.6 acres.

The -- if you can stay on the map for just a minute.

What really has happened as a result of the CDD withdrawal of the -- their lands is that the plan amendment request has been and can be much more simpler than what was originally transmitted. Instead of involving transfer of density from conservation lands across to sub-outlying suburban and adding an entirely new policy, instead of including a significant amount of acreage that's already under conservation easements and under the control of the CDD, the amendment now shifts to what is essentially a simple future land use map amendment and a Table 1(b) amendment.

That's the only thing that needs to go forward, and that's what we suggested to staff, and I think that's how they analyzed the plan amendment request was simply if the plan amendment with the lands that are still authorized to be included, if the plan amendment is adopted, will

it comply, will the rezoning be consistent with that amendment.

I'm going to stop here because that was an awful lot, and if you have any thoughts or questions, I'm certainly open at any time, but if you need me to cover anything, I'll be happy to do it.

MS. BELFLOWER: Let me see if staff have any questions of this witness.

MR. BLOCK: I guess just one question, Madam Hearing Examiner.

Russell, in the discussion for Table 1(b) that you've made, is it the applicant's intent based upon what I've been seeing on the PowerPoint, is it the applicant's intent to also change lands into conservation lands whether they be uplands or wetlands now?

MR. SCHROPP: I don't think we have any need or desire or intent to do that. When I wrote the letter, I suggested just keeping that the same. Had I thought about it, I probably would have suggested to you that you can delete that portion of the plan amendment as well. What's of concern to us is the change from rural to sub-outlying suburban.

MR. BLOCK: I just wanted to make sure that that was clarified as part of your presentation so it was clear to the members of the public that that's what's happened.

MS. BELFLOWER: That was the only question?

MR. BLOCK: That's the only question we've got.

MS. BELFLOWER: Russell, were you sworn in?

MR. SCHROPP: Yes, I was.

MS. BELFLOWER: So you're testifying, not just attorney presentation?

MR. SCHROPP: Correct.

MS. BELFLOWER: I think I heard you say that the only change in the plan amendment map was to remove the CDD lands; is that correct?

MR. SCHROPP: The CDD lands and there were some small parcels that were under the control of GreenPointe that were removed as well.

MS. BELFLOWER: Okay. Because I think I saw the difference between the two maps, and the -- get your magic pointer and don't point it in our eyes.

MR. SCHROPP: There were some lands that were included in the original transmittal version I think here, and Dave, correct me if I'm wrong,

Grady. They were over here, and also, there were some over here that we decided to remove. They were already platted, existing platted lots that weren't proposed to be changed.

MS. BELFLOWER: Okay. So the ones I noticed were to the western side, just looking between the maps quickly.

MR. SCHROPP: Yes, yes.

MS. BELFLOWER: Okay. And those were owned by your client, and they just chose to take them out because they don't need them?

MR. SCHROPP: Yes.

MS. BELFLOWER: And these parcels that are being proposed for the plan amendment match what is the boundaries of the zoning; correct? Or are there differences?

MS. EKBLAD: I will address that.

MR. SCHROPP: If I can defer that to Tina.

MS. BELFLOWER: And the thought on the amendment to Table 1(b), keeping that with a larger amount of allocation for the suburban sub --

MR. SCHROPP: Sub-outlying suburban.

MS. BELFLOWER: Sub-outlying suburban rather than the 500 acres that you're actually asking to

increase or to switch from the rural classification to that category, what was the thoughts on keeping those numbers?

MR. SCHROPP: It -- Brandon and Dave and Tina are going to be much more able to explain this, but there's -- the manner in which the acreage is calculated for Table 1(b) purposes relies on a calculation, and if I butcher this, please. Relies on a calculation of what is actually developed for the residential use as opposed to the future land use map amendment which may have open space, roadways, parks, golf course associated with it, and so what the Table 1(b) really only considers is actual acreage developed for the specified purpose, in this case, residential.

MS. BELFLOWER: Okay.

MR. SCHROPP: Does that --

MS. EKBLAD: Uh-huh.

MS. BELFLOWER: So from the zoning perspective of implementing the plan amendment, if plan amendment, both the map and the table are addressed, we should -- the table should have more than sufficient allocation of the outlying, sub-outlying suburban to meet the residential that

you're asking today.

MR. SCHROPP: Yes.

MS. BELFLOWER: Okay. That's my question. Okay.

MR. SCHROPP: Coming down the home stretch here.

MS. EKBLAD: Next one?

MR. SCHROPP: Yes, please.

The fourth part of my introduction here, briefly, is just to set the table for the zoning request that others will address in more detail.

The request is to amend portions of the RPD and CPD zoning for River Hall; to increase the number of permitted residential units in River Hall by 696, so go from 1,999 to 2,695; include some recreational, the ability to do recreational uses in the CPD portion of the site; and also to provide for five additional deviations that have been requested as part of the application.

The additional dwelling units would be located in what we have designated as Areas A and E on these maps. They're simply illustrative maps at this point because the master concept plan doesn't distinguish them, and Tina will go over the master concept plan in a little more depth, but Area E is

the large, undeveloped, unplatted portion of River Hall that exists on the southern boundary of the project adjacent to Lehigh Acres. Area A includes the CPD portion of the project into which we would request the ability to do some multi-family type units at that location and would not be a significant number. The majority of the -- the vast majority of the additional units would be developed in Area E.

Area B, which is Cascades; Area C, which is Hamilton Lakes; and Area D, which is River Hall Country Club are already substantially or already platted, development ordered. There are no proposed changes for Areas B, C, or D. They will remain as platted, under development order.

And I guess the last thing I note is you can see the large areas of conservation preservation areas. They're shown in the crosshatched green or in the case of -- I'm sorry, in the case of projects that are not colored green, they're just the crosshatched area. They are not to be changed at all as part of this rezoning. They will remain as presently designated and as presently protected under the master concept plan.

We have proposed five deviations, and I will

go through them in depth. I think Dave does that later on. Two have been recommended for denial, and we're not contesting that, related to the excavation, banks, slopes, and also to the second means of access, ingress and egress, and the staff has added a condition to address when and how that second access will be constructed.

There are three recommended for approval. Two of them involve setbacks, and one involves a small deviation from the requirement of how much commercial uses you must have in order to have residential development within a RPD -- within a CPD. We have only 45,000. The regulation currently requires 50,000. We'd like to be able to do, as I indicated, some multi-family units in the CPD portion of the project, so that's the reason for that deviation.

That concludes, I guess, the substantive part of, well, my presentation.

I did file a 48-hour notice letter with your office and attached an e-mail that I had sent over to Chip kind of identifying any concerns that we had with the staff report. There were four. Three were just nitpicks, edits, and he can address whether he's okay with them. I think he's

okay with two and not the other one, and that's fine.

And then the other one that was more of the substantive nature was Condition 11 in the staff report, deals with the construction of a traffic signal at the entrance to River Hall, River Hall Parkway and State Road 80, and the developer is not arguing that they don't want to do it. They will do the construction of the signal. It meets warrants. FDOT has issued the warrant of the signal at this location earlier in 2014, and we'll proceed with construction as was noted in the Condition 11.

The time for construction of a signal usually ranges between 12 months and 18 months. From the time you do the design, do the permitting, order the materials, get it constructed, it's usually a 12- to 18-month process, and so -- and staff condition basically suggest that if it's not constructed within 12 months, that no development orders would be issued on -- no additional development orders would be issued for the project.

We had wanted a little flexibility in case of unforeseen problems and because the process can

take, you know, realistically up to 18 months, we had thought maybe we could ask for an ability to ask for an extension from the community development director in the event that we couldn't quite do it within 12 months, hopefully we'd get it done within 18 at the outside, so I threw that out as a possible suggestion.

Chip came back and said not necessarily adverse to it, but it's too loosey goosey, can you provide some criteria for when the extension would be -- could be granted by the director. So I floated some language by Mr. Block and Mr. Jacob yesterday that if I can present to you at this point.

MS. BELFLOWER: Yes.

MR. SCHROPP: Thank you.

MS. BELFLOWER: We will make this Applicant's Exhibit 12.

MR. SCHROPP: Yes.

MS. BELFLOWER: And it is a revised Condition 11.

Do you have copies for the members of the public?

MR. SCHROPP: I've got three or so. If anybody -- Ralph, do you want one?

MR. BROOKES: I would. Thank you.

MR. SCHROPP: And I don't have the staff report here. Let me get the staff report. This is actually -- what I've passed out is actually something that could be inserted into existing Condition 11, and I would suggest prior, immediately prior to the last sentence, if you read through Condition 11, it basically says it meets warrants, we need to proceed forward with construction of the signal, and we need to initiate it within 30 days of the zoning, and signal design must be submitted to FDOT within 150 days, and we have to have it in within 12 -- the 12 months.

What I have suggested is that as a reasonable condition allowing extension of this 12-month deadline is something that would read, in the event the signal is not constructed within 12 months of the zoning, the director of DCD could authorize an extension not to exceed six months in the event the applicant demonstrates that they've made good faith progress with the time frame set forth in the condition, and that would mean meeting the 30-day requirement for initiating design and meeting the 150-day requirement for

submittal to FDOT. So if you demonstrate good faith compliance and proceeding forward with due diligence, and also, if we present a valid reason for the inability to meet the 12-month deadline that was beyond the control of the applicant including delays associated with permitting through FDOT that were not our delays, delays associated with transportation or shipment of materials and equipment, delays caused by flood, weather, storm, other natural disaster or other force nature that might occur or similar things of that nature.

We're not asking for a blanket we come in and we ask for it and we get it. We're fully intending to go forward, initiate the design immediately upon approval, submit within the time frame, but there are some things that are beyond the control of the applicant and the permitting process and the construction process, and that's simply the intent here is to allow the project to get a short extension in the event it runs into problems with construction, and that's the only issue that we had.

MS. BELFLOWER: This is proposed to replace the sentence that you had asked in your 48-hour

letter?

MR. SCHROPP: Yes.

MS. BELFLOWER: And only that sentence?

MR. SCHROPP: Only that sentence, yes, yes. It's a little more detailed, more confining.

MS. BELFLOWER: Okay.

MR. SCHROPP: Thanks. With that, that concludes my presentation. Remainder of our presentation will be our consultants.

Ms. Ekblad is going to cover with you the -- provide a planning overview for the project and background associated with the project in a little more detail. Also going to discuss the current master concept plan as well as the proposed changes to the master concept plan.

After Ms. Ekblad, Ken Passarella is going to be -- provide a brief presentation on bugs and bunnies, the ecology associated with the project in general, and in particular, the conditions proposed by staff as part of this revised application.

Mr. Leung will provide the traffic analysis and discuss the TIS and the traffic impacts associated with the zoning change, and then Dr. Depew will come up and provide -- go through the

conditions of approval, comp plan consistency, and also address the criteria in the code, in the land development regulations, design criteria, as well as the decision making criteria contained within the code.

MS. BELFLOWER: Okay.

MR. SCHROPP: And at the end of Dr. Depew's presentation, I'll give a summary of conclusions that I believe are warranted based on their testimony.

MS. BELFLOWER: Okay. Given the time, I think this is an appropriate time to take our first break, so we will -- let's take a ten-minute break going to be long enough? Anybody have reason for longer than ten minutes? We'll take a break until 10:20.

(A recess was held from 10:09 a.m. through 10:22 a.m.)

MS. BELFLOWER: All right. We are back on the record, and I didn't say at the beginning that we will be stopping at 4:30, so we try to wrap up as closely to 4:30 as we can because it tends to be quarter to 5 until we actually get it wrapped up. So we will go till 4:30 today, and if it is necessary for days, it will be Thursday and Friday

as currently scheduled. Okay.

MR. SCHROPP: Your Honor, for our next witness, Tina Ekblad, she's previously been tendered and accepted in the forum as an expert in comprehensive planning, land use planning and zoning, and I would tender her as an expert in those fields as well. Her resume is included in the exhibits that were submitted earlier today.

MS. BELFLOWER: Any objection?

MR. BLOCK: No, ma'am.

MS. BELFLOWER: So accepted.

MR. SCHROPP: Thank you.

MS. EKBLAD: Again, for the record, I am Tina Ekblad, the planning director at Morris Depew Associates. I'm going to touch briefly on the background of the River Hall community. I'd like to start --

MS. BELFLOWER: Hang on a second.

Can y'all hear?

MR. BROOKES: No, it's a little quiet.

MS. EKBLAD: Is that better?

I want to start with just that revised land use map that you saw during the introduction. This was a revision that we submitted. Again, it reduces the area of the map amendment from

transmittal down to the current proposal, and we are undergoing a planned development amendment to implement the comp plan request. Before I move on to the master concept plan, I just want to point out a few small areas.

In this general vicinity, you will note on the master concept plan, it is not included in our amendment area. These tracts are already platted, and we did not deem them to be necessary for the zoning request. Other than that, the shaded yellow areas on the map are included within the amendment request in the planned development.

This is the proposed master concept plan. What we have done is keep the original from the current zoning resolution intact as much as possible. There are a few minor revisions which we'll go over later in the presentation, and we have shaded the area subject to the amendment in dark gray.

So this area to the south here is included in the amendment area, and the commercial and vacant land here is included in the zoning amendment area. These lands are all owned by GreenPointe Community, and they represent the area that we need, that we refer to as the infill area, or they

are subject to one of the deviations that were requested.

Formally, the request is to increase the number of dwelling units within the River Hall community by 696 units for a total of 2,695 units. We have done a minor amendment to the schedule of uses to allow recreational uses within the commercial area of the community, and we have also requested five additional deviations related to lot layout and site design.

Before I get into the details of River Hall as a planned -- master planned development, I just want to discuss the surrounding neighborhood briefly and the area that we are located within.

What we've done with this graphic is identify the existing commercial node here which is at the corner of Buckingham and State Road 80, and what we've done is take the logos and labels of the existing businesses that are in that location today, so can you see the types of community services that are at that location.

What this map also shows is the future potential for commercial in this area located at the entrance of River Hall with our current commercial planned development, but also the Olga

Square Commercial Plan Development that was recently approved. So there's a second commercial node that can occur along State Road 80 in this area.

I also want to touch on the surrounding residential communities adjacent to River Hall. You'll see labeled on this graphic the Hawks Preserve community, the Reserve at Buckingham, Portico, and Lehigh Acres, and what I'd ask you to note is that the density of these communities that are already permitted and some of them either under construction or fully built out ranges from two dwelling units to four dwelling units an acre, and if you look at the River Hall community, you'll see that our density is clustered today along the western edge, and as you move further towards Hickey Creek Mitigation Park, we begin to open that clustering up with the golf course, and so that residential intensity is reduced a bit by the provision of those open space areas of the golf course within the River Hall Country Club community and also our existing preserve areas, so we're providing a bit of a transition from those existing communities to the mitigation park with today's proposal, and we carry that transition

forward through the plan amendment.

Just for the record sake, I would point out simply that north of the River Hall community is a mostly rural area, and I'll go over that further on the next slide as well as Hickey Creek Mitigation Park to the east.

This next slide simply demonstrates in words the graphic that came before it, so you'll see that along the western and southern edge, the future land use allows for higher densities and intensities through the sub-outlying suburban -- sub-outlying suburban and urban community future land use designations. You also see to the north the commercial future land use that I noted for that Olga CPD as well as the rural and conservation lands and same thing to the east as conservation lands, a small amount of urban community that sticks up from the south end related to Lehigh Acres. That's why you see that designation on this chart.

Next, we have just an illustrative rendering of the master concept plan. We prepared this to help people understand better what was being proposed. I find that with a black and white master concept plan, it's difficult sometimes to

pinpoint what we're doing and why we're doing it, so we have this graphic colored up to represent the existing preservation which you'll see in dark green along the eastern edge and also in the central portion of the community. Again, those are under easement, and that is not proposed to be changed. Those areas are not included in this amendment.

The light green represents the existing golf course within the River Hall Country Club community and the proposed golf course within the amendment area. We are not proposing to take those areas away. That open space would remain with the amendment. We would continue to provide that.

The tan is where the residential would be located, whether it's single family or multi-family, and that is accurately demonstrated on the master concept plan. We've used labels to identify where exactly the multi-family would go and where the single family is proposed.

Mostly, the multi-family is in these three development pods here, and that's simply to provide us flexibility to pick one later on. And we've used -- I believe it's MF-1 to designate

that on the black and white master concept plan.

The orange that you see here, here, and here are the amenities. Some of them are already constructed. There is room for expansion. I'll talk about that a little bit further along in the presentation.

The yellow is where the current elementary school is located, River Hall Elementary, and the purple, magenta color is the current CPD and also where the parcel for the fire district is currently located.

This graphic you're familiar with from Attorney Schropp's introduction, and I just wanted to reiterate where the additional units would be located.

Again, this Area E, we also refer to it as the infill area, is where a majority of the units are proposed to be located. Area A provides for some additional units to be located within the CPD, but again, the majority would be in that south, southwest portion of the property, and this graphic does represent the existing platted areas within the community which would not be changed. We would not re-plat or anything like that, and the existing preserve which would not be changed.

Do you have a question?

MS. BELFLOWER: Not at this point.

MS. EKBLAD: Okay. Next, we have again done a rendering of the existing master concept plan which is at the top of the screen versus the proposed master concept plan. And we've done a blow-up of the small area in the southern portion of the property that is changing. So if you look at our proposed master concept plan, you'll see that the access point, the location of that has been adjusted.

And the reason for that is if you look at this original master concept plan, you can see that there is no access to the Hampton Lakes community. And so what we did was relocate that access point slightly to the west so that people from the Hampton Lakes community could use this access point and drive right into their community rather than possibly using it on the current master concept plan and having to drive through River Hall Country Club to get to their neighborhood.

We also have adjusted the development area of the residential tracts within this area just for better flow. Again, we are keeping the open space between the tracts as is proposed. We've just

adjusted where those residential units would be located.

And what we've done here is take that rendered master concept plan at the top and then show you what that area looks like today in River Hall, and you'll see this red boundary mimics that Area E on the previous exhibit, and this is the infill area, and you can see that today, it's been cleared, it remains cleared, and you can also see the existing platted lots that are obviously not included within the infill area. So we are truly trying to locate the density in an area that has not been platted and where it is needed.

I just want to touch for a minute, this is a copy of the original marketing plan for the River Hall community, so you'll see the existing neighborhoods of Cascades, Hampton Lakes, and River Hall Country Club, and I would ask you to note that in this area which mimics our infill area, the original marketing plan proposes this location within the community to be for future neighborhoods, and again, if we compare that to our infill area, which is outlined in red on the graphic at the bottom of the screen, you can see that this lines up with the area in the, excuse

me, the marketing plan that was labeled for future neighborhoods and future development, so we are just trying to see that plan through with our amendment today.

I want to talk about the existing development pattern within the community and the existing services that support the community. So this is what River Hall looks like today from the aerial. You can see the cleared platted lands, the golf course, the preservation areas.

And the next few slides we're going to go into some detail about the existing development. This tract is within the Hampton Lakes neighborhood, and you can see the existing residential, and I don't know how well that shows up, but there are existing lot lines here, and again, we would not propose to change those. We are not proposing to re-plat them. They would remain. We are simply asking to be able to carry that pattern through to the southern portion that hasn't been developed yet.

You can also see one of the existing amenity areas within the community. This amenity services the existing residents and the existing neighborhoods today. It has adequate capacity and

acreage to be expanded to service the new units that could go on these platted lots and also the new units that we're proposing with the amendment.

Next, we have the existing multi-family within the River Hall community. We, again, we're not proposing to revise any of the property development regulations that go with the multi-family or the single family. We're simply asking to carry this pattern of development through to the infill area. We're trying to take the characteristics of the existing master plan community and carry it forward.

The next. Okay. I'm going to back up just a minute. So the other thing that I wanted to show you with these graphics of what is developed today and how we're going to propose to carry through these development regulations is to demonstrate that there is a difference between the design and the permitted community of River Hall and the surrounding neighborhoods to the north.

River Hall is a master plan community that has a suburban land form. The single-family units have been clustered around open space and around the preserve lands. The same thing with the

multi-family in a development pattern that is typical of a suburban environment. You would not find multi-family or the services that I'm going to go through in a rural area.

So this graphic is to demonstrate the central water and sewer system and the irrigation system. We are utilizing Lee County Utilities for our potable water and sanitary sewer. The system was designed and permitted to handle the number of units that are within, well, more than the number of units within our planned development amendment request, so we do not need to go back and address infrastructure. We simply need to extend the infrastructure into the undeveloped area to service the additional units. It already has the capacity for that. Same thing with the irrigation.

These next two graphics simply demonstrate that we are within the franchise area for Lee County Utilities for central water and sanitary sewer. Again, that's also something that you don't find with a -- typically within a rural area. It's typically these services are for suburban and urban areas within the county.

We have an existing stormwater management

system. That system has been designed and permitted to accommodate more than the proposed units of the proposed amendment, so again, we don't have to go back and retrofit infrastructure. We simply need to expand it to include the infill area. The system has been designed to be a closed system consistent with the suburban development pattern of the community.

We also have River Hall Parkway which is our main access from State Road 80 through the community. It brings you to the gated access points of River Hall Country Club, Hampton Lakes, and the Cascades. Before it reaches those points, it is a public roadway. It has been designed to meet the urban collector standards of the Land Development Code, so it is a four-lane divided highway. It does provide public access and it does meet the requirements of Section 10-296. The reason it is public is because it provides access to that commercial plan development and River Hall Elementary.

And this is just a cross-section of that urban collector, and this is the cross-section that River Hall Parkway meets prior to hitting the gates of the residential communities.

And again, this roadway is designed for urban development. It has closed drainage. It has space for utilities. It is not -- this is not something that you would see within a rural area. It is due to the suburban nature of the community.

I want to touch on urban services. Dr. Depew will touch on them a little bit later in the findings portion of his presentation, but the River Hall community today has service from all of the Lee County required urban services, so school districts, solid waste utilities, LeeTran, and emergency services. The school district has the capacity for the community within the district.

There's a revised letter. Did we --

MR. SCHROPP: I've got it.

We've got a revised analysis from the Lee County School Board yesterday.

MS. BELFLOWER: Okay.

MR. SCHROPP: And probably should submit that as part of the record. It updates the memo that's in the staff report.

MS. BELFLOWER: Do you want to do that now or do you want to do it later?

MR. SCHROPP: Let her continue. I'll dig it out.

MS. BELFLOWER: Okay.

MS. EKBLAD: The letter states that the school district does have the capacity to serve the additional homes that are being proposed as part of the amendment.

The school district also supports the advancement of the second access. We'll hear Dr. Depew talk about the conditions included in the staff report. We are proposing to advance the construction of that second access point, and the school district does support that condition.

Lee County Solid Waste already provides service to the community. They do have available capacity to service the additional units as does Lee County Utilities. They also service the community currently and have the capacity to service the additional units.

LeeTran has a bus stop within a mile of the entry. That route does have 80 percent capacity available. Even though River Hall is not within the service boundary for LeeTran, that bus stop is, again, less than a mile away.

The fire district provides service to the existing community. They do have capacity to service the additional units. They also have a

parcel within the community for a new fire station when that time is determined to be necessary.

Lee County EMS provides service to -- excuse me, existing community, and they have the capacity to serve the additional units. You will see a condition in the staff report where we are working with them to provide space for their services as well prior to that fire station being constructed.

Lee County Sheriff's Department also has capacity to service the new units, and they currently service the existing community, and again, these are all urban services as defined by the Lee Plan and Land Development Code that service the existing River Hall community and have the capacity to service the additional units.

Before I wrap up, I just want to touch on the current -- the existing preservation area along our eastern border adjacent to Hickey Creek. This graphic, you've seen a version of it a few times, shows you the distances between the existing platted community and Hickey Creek Mitigation Bank. I'll zoom in on it in just a minute, but I want to draw your attention to this existing preserve and the buffer that it provides from the existing and the infill area in this development

that's proposed. And again, that would not be changed with the amendment. It would remain as is.

So I've taken that graphic and just zoomed in on that preserve and that buffer area, and you can see that the existing platted lots here are approximately 670 feet to our property boundary, and the infill area, labeled Area E here, is approximately, well, it's between 1,979 feet and 2,348 feet to our eastern property boundary. So the area that we are asking for these additional units to be located in is no closer to the mitigation park than the existing platted units within the River Hall Country Club today.

In addition to the separation distances, there is also a canal along our eastern property boundary, and that, I'm going to call it an easement, but the area that the canal occupies ranges between 200 and 250 feet, so from our property boundary, there's an additional 200 to 250 feet before you reach the property boundary of the mitigation park. The canal also impedes any kind of access that could potentially be to the park from our property because there's no -- there's no access point over it. So we just

wanted to point out that the preserve would remain in place. It would act as a buffer to the existing community, but there's also an impediment there in the existing canal, and the infill area is no closer to that mitigation park than the existing development today.

And with that, I've wrapped up my comments about the background. I don't know if Russell has any questions or if you do.

MS. BELFLOWER: Do you want to do any direct?

MR. SCHROPP: No, thank you.

MS. BELFLOWER: Staff have any questions?

MR. BLOCK: For clarification, yes, ma'am, if I may.

For the record, Chip Block.

Let me take you back to page 23 of the PowerPoint presentation if I may first.

MS. EKBLAD: Okay.

MR. BLOCK: In this amendment or this drawing, there are a couple of other small areas that we have seen discussed in the amendment process such as the right-of-way area up near where the gate is at the amenities center for Hampton Lakes which is on the western portion of the site along with -- I believe there's a multi-family area near the

clubhouse facility, near the country club clubhouse facility.

MS. EKBLAD: You're talking about this area here.

MR. BLOCK: That one and that one and looks like a road right of way or something. Those are included in the amendment; are they not?

MS. EKBLAD: In the plan development amendment, they are.

MR. BLOCK: Okay.

MS. EKBLAD: Road right of ways would not change. They would remain as they are platted today.

MR. BLOCK: Right. I just wanted to make sure it was clear to the members of the public, when you generalize the infill area to the south and discuss some of the areas on the eastern portion of the site and then discuss the area in Tract -- I think that's Tract E at the north or A at the north, I can't recall which one it is.

MS. EKBLAD: Up here.

MR. BLOCK: You discussed that, but you did not identify those other two areas, and I just wanted to make sure it was clear on the record that those two areas are also included in this

zoning amendment application. That's all I was attempting to do.

MS. EKBLAD: Okay.

MR. BLOCK: No other question on that.

The next one is on page 27. There's a -- for lack of a better color terminology -- teal area north of the school, elementary school, but before you reach the purple or pink area which is the town center. What does that teal area represent?

MS. EKBLAD: If you'll recall our original proposal, and this is going back into the comp plan amendment as well, it included the ability for a park to be constructed by the developer, and we heard very loudly from the residents of River Hall and from the surrounding community that they did not want the park, so we left the use within the schedule so that if at some point in time in the future they desired it, they could have it, but it is not part of our proposal today.

MR. BLOCK: But the effect of the color of teal doesn't designate anything other than what would be permitted in the town center today; is that correct?

MS. EKBLAD: Correct.

MR. BLOCK: I wanted to make sure because I

saw a different color there, and I wanted to make sure we understood that.

And finally, on page 29. You have mentioned during your presentation that the access point to the south has moved a little bit to the west as depicted on the proposed master concept plan. Is that -- where is that access point located at now in relationship to lots and/or roadways in Lehigh Acres to the south?

MS. EKBLAD: It aligns with a roadway in Lehigh. We did make sure that that would work out correctly. I do not know the name of the roadway off the top of my head. If I need to look that up and enter it into the record later, I can do that.

MR. BLOCK: I don't believe so because that road then ultimately connects with the identified street --

MS. EKBLAD: Uh-huh.

MR. BLOCK: -- in both the applicant's documents along with the staff report onto 75th Street. I just wanted to make sure that it had been aligned to meet --

MS. EKBLAD: Yes.

MR. BLOCK: -- a roadway access there.

MS. EKBLAD: Uh-huh.

MR. BLOCK: That's all the questions I had.

Thank you very much, Madam Hearing Examiner.

MS. BELFLOWER: Okay. Thank you. I appreciate those because some of those were the same ones I had.

Okay. Let's go to the one -- the graphic that had the little bits of the road and the -- I've forgotten which number that was, blue and white. That one.

Okay. There's a road segment that Chip pointed out.

MS. EKBLAD: Uh-huh.

MS. BELFLOWER: There's also a road segment to the east in the country club area next to where there are lots that are in the plan amendment that are not in the zoning. Why are those included in the zoning, those road segments? I understand why they're included in the plan amendment or I assume I understand because you want to calculate the density based upon the acreage, but why are they in the rezoning?

MS. EKBLAD: I don't have an adequate planning answer except to say that when we revised the map amendment and went ahead and revised the plan development amendment, we were very focused on

where the residential tracts were, and so if those roadways needed to come out of the plan development amendment for consistency sake, I don't believe we would have a problem with that.

MR. SCHROPP: I can elaborate. The original master concept plan submittal was a little bit broader, of course, with the CDD lands included, and when we got around to revising the master concept plan to take out the CDD lands, it left some remnants of lands that are controlled by GreenPointe that remaining in the master concept plan, and we simply didn't take them out. I don't -- they're not proposed to be changed.

Density isn't contingent upon them being included in the master concept plan. They could be taken out, but just they were -- they were the remnants of what was -- what remained after we took out the CDD land.

MS. BELFLOWER: Okay. Then I guess that leads me to my next question. Are there -- there appear to be other areas. The platted portions of the southwestern part of it is the infill. Part of it goes up beyond that are already platted lots. And in fact, that whole portion that you said will remain a traditional single-family neighborhood,

it doesn't look like you're asking to change the unit types, the zoning designation, anything else in that area. I guess what I'm trying to ask is, is there a reason that the zoning boundaries would not only include the parcels that you're actually doing an amendment, the portions you want to add the potential of multi-family to, the portions that you need to have deviations for? The parts that are staying exactly the same, is there a reason to include them in the zoning application?

MS. EKBLAD: There was. So if you look at the master concept plan here, you will see a deviation number.

MS. BELFLOWER: Right.

MS. EKBLAD: Staff is currently recommending denial against some of those deviation numbers, and we're not contesting that, but in order to ask for it, we had to include it.

MS. BELFLOWER: Okay.

MS. EKBLAD: So that's some of what you're seeing.

MS. BELFLOWER: Okay. So every parcel that is included in there either has a change in the use list for that particular area or a deviation associated with it except possibly those roadways.

MS. EKBLAD: Right. Or it needs units. I believe, like, this area here is included, and it doesn't -- did we determine that does not have a development order on it?

MR. SCHROPP: It does have a development order.

MS. EKBLAD: It does have a development order.

MR. SCHROPP: For multi-family.

MS. BELFLOWER: I think you were expanding the multi-family on that particular portion. If I remember flipping between the two maps, the best that I could tell, it looked like you were expanding the area that would have multi-family in that. Okay. All right.

So I think we're clear that you're not including things that you're not asking for some change to except for those two roadway segments, and potentially, we could take the roadway segments out.

MS. EKBLAD: Uh-huh.

MS. BELFLOWER: Okay. The addition of multi-family to parcels that are currently designated for only single family.

MS. EKBLAD: Uh-huh.

MS. BELFLOWER: The portion we were just

talking about that is sort of in the middle of everything that I think the multi-family area is expanding slightly, and then you said there were three fingers.

MS. EKBLAD: Uh-huh.

MS. BELFLOWER: One of which is already approved for, and two, you're adding the potential, the two eastern ones, I think you're adding the potential for multi-family to those, and then the CPD area. Those are the only places that multi-family is not currently approved and that you're asking for the potential; is that correct?

MS. EKBLAD: Uh-huh.

MS. BELFLOWER: Is there a density, a net density limitation in those areas, or is that only constrained by the setbacks and lot coverage requirements?

MS. EKBLAD: It would be constrained by the existing setbacks and the existing lot coverage. We're not asking for any revisions to that.

MS. BELFLOWER: So whatever you can fit in the heights that are already approved, setbacks that are already approved.

MS. EKBLAD: Yes.

MS. BELFLOWER: Just the same as would have been allowed in the other parcels that are already designated multi-family.

MS. EKBLAD: Yes.

MS. BELFLOWER: And so those areas that are now going to be allowing multi-family that we were not allowed multi-family before are separated from the properties to the south, the properties outside of the project by the preserve area, and that's not changing; correct?

MS. EKBLAD: Correct.

MS. BELFLOWER: Okay. Are there any developable parts of the portion that is not included in this zoning application, the existing, that are not platted? That are allowed for residential that are not platted currently? Basically what I'm getting to is you're asking for more units. You're indicating that you're putting them in these two areas. Are there any unplatted areas that are not included in this that would now not be able to develop, or would the same number of units that they expected?

MS. EKBLAD: Well, I know that we have done an analysis and ensured that the way the density works between the future land use categories, what

we would need would be available to us, and I think -- I think Dr. Depew touches on this more in his presentation. I don't want to stumble through it and then we get further in and you're like, oh.

DR. DEPEW: Let me just answer no. We have accommodated all the various densities in all the other areas. Now, there is one other multi-family area that's not included in the rezoning request, but it's also owned by GreenPointe, and there's also units available for it. So everything's been accommodated throughout the development as best as we can account for at any rate.

MS. BELFLOWER: And this is always a difficulty in a planned development when parcels are sold off, especially when the builder changes, that you get down to the end, and somebody doesn't have development rights, so that's what I'm asking, and your answer is no, that has all been addressed.

DR. DEPEW: Yes, ma'am.

MS. BELFLOWER: And nobody will be left. Okay. The private recreation facility use that is proposed.

MS. EKBLAD: Uh-huh.

MS. BELFLOWER: Is that currently proposed in

that teal area on the map that we were talking about earlier that Chip asked you about, or is that just somewhere within the CPD and you're not specifying?

MS. EKBLAD: Well, private recreational facilities are currently an approved use within the residential plan development, so that teal area, it's hard to see, but the CPD boundary is right here.

MS. BELFLOWER: Okay.

MS. EKBLAD: And the teal area was south of that. So --

MS. BELFLOWER: And that is currently approved as RPD.

MS. EKBLAD: Correct.

MS. BELFLOWER: Okay.

MS. EKBLAD: So the private recreation is already an approved use. We were adding it to the CPD area so if we needed some flow back and forth, we could accommodate that.

MS. BELFLOWER: Okay. Your organization was different from my organization.

In the write-up, there is discussion about civic uses, and you had indicated that you had asked for parks, and actually, a group two park

which included a civic center. Staff is recommending against that, so they did not include that in the proposed conditions.

Is the addition of the private recreation facility because there continues to be a discussion about a civic node and a civic use as part of the CPD and making an aspect of it, is the civic use that you're talking about the private recreation facility?

MS. EKBLAD: It is now.

MS. BELFLOWER: Okay. Okay. And the definition of a private recreation facility onsite is different from a recreational hall.

MS. EKBLAD: Yes.

MS. BELFLOWER: The former being more courts and fields and et cetera.

MS. EKBLAD: Yes.

MS. BELFLOWER: And the latter being a building used, so what you're asking for is the courts and fields aspect, not a meeting hall type of area.

MS. EKBLAD: Correct.

MS. BELFLOWER: Okay. The EMS facility that you mentioned, and I know that that's going to be addressed in one of the conditions, but is the

River Hall sales facility, is that shown on the master concept plan as to where that is, and is that in a portion that's being rezoned?

MS. EKBLAD: Grady, chime in if I get it wrong, but I believe the sale center is right here which is shaded in gray.

MR. MIARS: Correct.

MS. BELFLOWER: And that is included in the rezoning.

MS. EKBLAD: Correct.

MS. BELFLOWER: So the proposal under the condition to put a temporary EMS facility there would be in a portion of the property that is included in this rezoning.

MS. EKBLAD: Yes.

MS. BELFLOWER: Okay. I think there was somewhere in the condition another question that probably related to the MCP, but I'm sure Dr. Depew can answer it for us. Okay. Thank you.

MS. EKBLAD: Thank you.

MS. BELFLOWER: Did that raise any other questions that staff has?

MR. BLOCK: No, ma'am.

MS. BELFLOWER: Okay.

DR. DEPEW: You might as well leave it up

there.

MS. EKBLAD: Do you want to power it yourself? I didn't think so.

MR. SCHROPP: Madam Hearing Examiner, our next witness will be Ken Passarella, president of Passarella and Associates, consulting ecologist on this. Mr. Passarella's resume is included in the exhibits previously submitted. He's been previously tendered and accepted numerous times in this forum as an expert in ecology, wetlands, and wetland permitting, and I would tender him as an expert in those fields today.

MS. BELFLOWER: Any objection?

MR. BLOCK: No, ma'am.

MS. BELFLOWER: So recognized.

Before you get started, did you find the school board letter that you were going --

MR. SCHROPP: I did not. If -- Tina, do you have the updated school board letter or Chip maybe?

MR. BLOCK: I do.

MS. EKBLAD: I did.

MR. SCHROPP: I thought I put a copy in my file.

MR. BLOCK: Do you want me to get copies of

it?

MS. BELFLOWER: Well, we can wait and submit it as -- let staff submit it in their portion. I had marked it down. I don't want to have a false record here. Okay.

MR. PASSARELLA: Good morning. Can you hear me?

MS. BELFLOWER: Uh-huh.

MR. PASSARELLA: For the record, Ken Passarella with Passarella and Associates. I'm president of Passarella and Associates, and I have been sworn in. And as Russell had mentioned, my presentation is going to be brief, touch upon some of the environmental considerations for the proposed amendment.

First of all, this slide shows the 2005 approved master concept plan for River Hall, and shown in the dark green on this map are the indigenous preserves that are currently part of the approved master concept plan. These indigenous preserves total approximately 465 acres, and those indigenous preserves include 181 acres of South Florida Water Management District and US Army Corps of Engineers jurisdictional wetlands. There's also 13 acres of core

jurisdictional wetlands only on the property. The indigenous preserves includes 271 acres of uplands, and that's the existing master concept plan. Next.

For the proposed master comp plan, there are no changes proposed to the indigenous preserves. Again, they're shown in the dark green, and under this amendment, there are no proposed changes to the indigenous preserves.

Also, there was a series of environmental conditions in the previously approved zoning. They were Conditions 3A through 3J. Those conditions are carried forward. I'd just like to point out, I believe there was one minor typo or error in the staff report related to that. If you go to page 12 of 14 of the staff report, it's the fourth full paragraph down in that staff report, and I'll read that paragraph for you.

It starts off saying ES staff recommends that environmental conditions 3A through 3E from the previous zoning action be brought forward and remain in full force and effect. I believe that was supposed to be 3A through 3J.

And if you go to Attachment C of the staff report which are the conditions, and you look on

page five of those conditions, you'll see conditions, environmental conditioning starting at three on page five, and it goes 3A, and it goes over to 3J on the next page. Those are the conditions that would be carried forward.

There's also two new environmental conditions proposed. Those are 3K and 3L. And you can see those on page six and carries over to page seven of the staff's conditions, and 3K addresses an updated protected species management plan, and 3L addresses prescribed burn management activities. And quickly, I'll read those conditions for you.

3K states that existing approved development will meet requirements of the River Hall/Lee County Protective Species Management Plan dated May 2006. However, prior to local development order approval for future development of the lands within the legally described areas as part of the amendment sought in DCI 2013-0003, a protected species management plan must be submitted revising the gopher tortoise and burrowing owl management plans to address the current conditions and update management techniques and required permits including residential education materials for the gopher tortoise, listed wading birds, and Florida

scrub jay, as well as incorporate a large mammal management plan to limit potential negative human/wildlife interactions.

And the last part of that condition was added to help address the Florida Fish and Wildlife Conservation Commission comment letter that was received as part of the process.

I think Russell had previously mentioned there was a comment letter from the Florida Fish and Wildlife Conservation Commission, and I think Mr. Depew will address that as well in his presentation, but this condition helps address those comments received from the Florida Fish and Wildlife Conservation Commission.

Also, 3L is a new condition, environmental condition, and I'll read that quickly as well.

Prior prescribed burn management activities occurring within the onsite preserve or on the adjacent Hickey Creek Mitigation Park as notified by the CDD and/or park staff, the HOA of the development pods located adjacent to the easternmost preserve must notify residents these development pods of the scheduled prescribed burn activities, and general education material on prescribed burn management activities must be

provided. If covenants or deed restrictions are required for these development pods, the documents must include language requiring each deed holder will be informed of their purchase of a lot adjacent to an onsite preserve or public preserve lands which is managed with prescribed burning, and each deed holder will be presented with educational material on prescribed burn management activities at the time of purchase.

Again, that's to notify folks who may be purchasing lots in that area that there are preserve lands located to the east there, part of this development, as well as part of Hickey Creek Mitigation Park where prescribed burning would be a management activity to maintain the ecological integrity of those lands. So that was another condition that was added.

And with that, that's all I had for my presentation. Any questions?

MS. BELFLOWER: Staff have any questions?

MR. BLOCK: No, ma'am.

MS. BELFLOWER: Only thing I had on environmental was that I needed a copy of that letter that's going to be referenced, so I suppose you're presenting that later or --

MR. SCHROPP: The Florida Wildlife?

MS. BELFLOWER: Fish and Wildlife.

MR. SCHROPP: I'm happy to present it. I didn't know how in-depth you wanted to get in comp plan review.

MS. BELFLOWER: Okay. That was on the comp plan.

MR. SCHROPP: It was a comment letter we received on the comp plan amendment.

MS. BELFLOWER: But the points that they made relate to the zoning, you're addressing them through the zoning; correct?

MR. SCHROPP: Yes.

MR. PASSARELLA: That's correct.

MS. BELFLOWER: I think it would be helpful. Whether we get it from staff or from you, I think it would be helpful for the process for that to be part of the record just so I can --

MR. SCHROPP: That's fine. I only have one copy, so if I can run copies at lunch.

MS. BELFLOWER: We can do that. That's all I have. Thank you.

MR. PASSARELLA: Thank you.

MR. SCHROPP: Our next witness will be Steven Leung with Plummer and Associates, Consulting

Traffic Engineers. They were the consulting traffic engineers on the project. He has been previously tendered and accepted as an expert witness in transportation planning and traffic analysis, and his resume is included in the materials that I previously submitted. I would tender him as an expert in transportation planning and traffic analysis.

MS. BELFLOWER: Any objection?

MR. BLOCK: No, ma'am.

MS. BELFLOWER: So accepted.

MR. LEUNG: Good morning. I'm Steve Leung with David Plummer and Associates, and I'm the traffic consultant to the applicant, and I've been sworn in.

Just want to highlight some of the transportation considerations in support of this application. We prepared the traffic impact statement. That was dated revised December 16th, 2014, and the revision was an update to the previous rezoning study, and we wanted to make sure that reflected the most current conditions and the assumptions.

Again, the TIS was prepared consistent with the Lee County guidelines for the zoning traffic

study. I believe the TIS being entered in the record as Exhibit --

MR. SCHROPP: 11.

MR. LEUNG: 11. Thank you.

And Russell also mentioned about the two amended pages. That was, I believe, pages 12 and 19 of the TIS, just to correct some of the -- a little bit of transposition errors on one of the tables, and again, the numbers really did not factor into the analysis and conclusions, but we wanted to make sure that everything was correct.

MR. SCHROPP: The corrections were submitted as Exhibit 10, and the TIS was Exhibit 11.

MS. BELFLOWER: And the only differences between Exhibit 11, TIS, and what staff reviewed that was submitted with the December 17th changes are those two corrections.

MR. SCHROPP: Those two pages with transpositional errors and numbers, and Mr. Leung provided copies of the corrected pages to Mr. Block, and I believe he circulated them to Mr. Price --

MS. BELFLOWER: Okay.

MR. SCHROPP: -- before the hearing.

MS. BELFLOWER: So what staff had in their

records is consistent with what you're submitting as exhibits.

MR. SCHROPP: Consistent with what they analyzed as well.

MS. BELFLOWER: Okay. Thank you.

MR. LEUNG: I'll be happy to go over those specific numbers.

MS. BELFLOWER: Unless there's a concern, I'll take them at face value.

MR. LEUNG: Well, the traffic study reflected the 2695 dwelling units as being proposed. The buildout horizon year is 2020. We also added an additional year in terms of the background traffic to make sure that we accounted for any potential growth in the area, and so the horizon we looked at was 2021, one year in addition to our proposed buildout.

And the traffic assessment, as I mentioned, we looked at the general background growth in the area as well as specifically reflected the recently approved Olga Square which reflected approximately 73 -- 7,000 square feet of commercial use.

In terms of the roadway network, we looked at State Road 80, State Road 31, Buckingham Road, and

also all the roadways that may be impacted by this development, and we came to the conclusion that even with the existing number of lanes, that all roadways will operate with acceptable level of service at coincident buildout of the project.

We also looked at the intersections including the intersections at State Road 31, Buckingham Road, and the River Hall Parkway, and again, we have some recommended improvements in terms of turn lanes just to give everybody a heads up that these intersections will operate as expected even with and without this application.

And also, we established that with the additional 696 dwelling units that we're asking for, that's going to provide a base for the Olga Square Commercial Development, and we're going to help keep that traffic off of SR 80 because now they have the ability to go back and forth just across the road at State Road 80, and really, it helps out the area.

Next slide, please.

Lee County DOT reviewed the traffic study, and they concluded the finding that there's no objections to the application. DCD staff also looked at the traffic, and they recommended that

we go forward with the signalization of the State Road 80/River Hall Parkway intersection, and we couldn't agree more. And again, we just want to make sure that it's understood that the -- when the Florida DOT prepared the traffic warrants, that was reflective of the school traffic that's existing out there. It's not associated with our 300 units, the current existing units out there, so it was really looking at the safety and the operations of the school which had a big impact on the warrants.

And finally, we anticipate that the road's impact fees that may be collected from the 696 dwelling units would be estimated approximately 4.7 million dollars. That's based on the current impact fee schedule at a hundred percent.

And that's really the conclusion of the traffic study, and I'll be happy to answer any questions that you may have.

MS. BELFLOWER: Okay. Staff have questions?

MR. PRICE: I do. Rob Price with Development Services.

If you go back to that previous slide real quick.

MR. LEUNG: Okay.

MR. PRICE: Bullet number five indicates that all intersections are expected to operate at or better than adopted level of service standards. Does that include State Road 80 at River Hall Parkway?

MR. LEUNG: Well, I -- with the recommended improvements, yes.

MR. PRICE: Okay.

MR. LEUNG: And part of that recommendation would be to have that signal.

MR. PRICE: So I just want to make it clear that that intersection is shown to fail in your traffic study, and the traffic signal is required in order to help mitigate that level of service deficiency.

MR. LEUNG: Absolutely.

MR. PRICE: Was signalization of that intersection a requirement of the permit by FDOT for -- I believe at the time it was Hawks' Haven, the access to State Route 80? When that connection was permitted, are you aware of a condition that required signalization?

MR. LEUNG: I believe that is correct, and we also understood that that is just site-related improvement for that signal. We don't have any

objections. Like I said, we're looking forward to going forward with the signal.

MR. PRICE: Good to go.

You made a statement that the signal warrant analysis was only reflective of the school traffic. Is that your statement?

MR. LEUNG: Correct. The analysis that was performed by the Florida Department of Transportation in April of 2014 looked at the -- all the traffic count, and I believe that the hour coincident -- the highest hour coincident with inbound and outbound traffic on the minor street, which is River Hall Parkway, reflected the school operation hours of between 8 and 9 a.m. and also between 3 and 4 p.m. if you look at the -- at that warrant analysis.

MR. PRICE: So it's your opinion that there's no residential traffic at those times?

MR. LEUNG: No, there's residential traffic, but I think the bulk of it that met the warrants was the school traffic, and again, it doesn't really matter because we are -- that is part of the burden that we're going to absorb is to provide that signal.

MR. PRICE: But they didn't make a distinction

in their analysis because it was specifically because of the school.

MR. LEUNG: No, they did not. I just wanted to make sure because we only have just roughly over 300 units out there, and my experience with signal warrants, I don't think 300 units would warrant a signal.

MR. PRICE: Understand. I think that's all I have.

MS. BELFLOWER: Okay. In the Olga Square zoning that was done across the street, there was discussion about improvements that were being planned for State Road 80 that involved closing off some of the existing crossovers across the median to the west of River Hall Boulevard Parkway, whatever the roadway is, and to the east. Did your traffic analysis -- is that still the plans and did your traffic analysis take those into consideration in doing the analysis?

MR. LEUNG: Our traffic analysis did not look at some of those minor intersections. The concern would be our site-related intersection which is the River Hall Parkway intersection, and we also looked at the next major intersection to the west which is Buckingham Road.

If you're referring to that, if the signalization was to go forward with their changes in the access management plan along State Route 80, it could be, and that's -- would be up to the Florida Department of Transportation to establish what changes should be made.

MR. PRICE: Let me help. Can I help? Have you -- I feel like this is a dumb question, but you reviewed staff's analysis of the traffic, my staff report as attachment, and have you seen the attachment that is the FDOT connection permit at the back of the report?

MR. LEUNG: Yes, I did.

MR. PRICE: I apologize, I don't have it with me, but there is a specific condition that's under special conditions of that permit that require that when signalization occurs at State Road 80 and River Hall Parkway, that the full median opening to the west, which I believe is South Olga Drive, and the full median opening, here, I'll just bring it up so you can read it.

Let's see. It's that provision right there, special provisions. If you can just explain that to the hearing examiner and read that.

MS. BELFLOWER: And my concern, and thank you

for that, Rob. In terms of what you looked at with your analysis, if there are commitments that are tied to this project that -- whether those were taken into consideration, but also the fact that one of the concerns in the Olga Square rezoning was if those north/south roads north of State Road 80 were closed off, that there would be traffic coming through Olga Square to access the intersection potentially and the impacts of what that would do to the intersection, so not only the traffic coming from Olga Square, but whether or not there would be other traffic coming from around the neighborhood was part of the discussion, and several of the neighbors had concerns about that.

So I'm trying to understand both what you were required to under the DOT permit, and I did not realize it was that specific in the permit, what was required in the permit, and in looking at the surrounding future traffic, what sort of things did you take into consideration relative to those other uses?

MR. LEUNG: Well, as mentioned, the closing of the medians on either side of River Hall does not affect River Hall's traffic, so we reflected,

obviously, the school and the remaining buildout of River Hall and what's being proposed, and in terms of addressing the north side of State Road 80 and the Olga Square project, we took their traffic volumes that was presented in their TIS and merged it into ours, and so if Olga Square reflected other traffic, then that would be in there. If not, it was based on the information that was reviewed and approved based on Olga Hall -- based on Olga Square's traffic volumes.

MR. PRICE: Okay. So Madam Hearing Examiner, perhaps when it's my turn to testify, I can help kind of clear the air a little bit on some of those items, but I do think it's important for Steve to kind of answer your question and read that provision into the record that specifically talks about those adjacent median openings just so that it's on the record, and I can testify as to whether or not, you know, I think that we have any issues. I mean, I don't want to scare anybody, so but I think, you know, those things will be considered at a later date.

MS. BELFLOWER: And I appreciate that, and knowing that that already is a condition, that that's going to be the restriction of the design

that was looked at that will be going forward for the signal anticipation, if all those things were taken into consideration and it can be said that those intersections as revised through this process will -- with the signal will be adequate under the county's regulations, that's what I'm trying to understand because there was -- your statement was that it -- the intersection fails without the signal.

I think I heard you say that the intersection is -- meets the county's requirements for adequacy with the signal, and that's with a signal designed with all the improvements that are part of the conditions existing on that intersection, the agreement that you had to enter into with DOT to be able to get access to State Road 80.

Is that a correct statement?

MR. LEUNG: That is correct. That's generally correct, but I just want to make sure that there seems to be a disconnect. We're trying to jump from what's existing. What's driving the signal would be the existing conditions and the existing T intersection that exists out there.

MS. BELFLOWER: Right.

MR. LEUNG: And so when -- the process of the

signal design at that time, I think that the design would be purely on the T intersection unless the Florida DOT says no, I think we need to consider other things including the potential connection on the north side of opposing River Hall Parkway because to my understanding at this point, there's no connection permit being applied by Olga Square, and so that's something that we would have to discuss with the Florida DOT at the time of the zoning.

But I can tell you that the site-related improvement for River Hall would be the signalization. It does not exempt Olga Square from doing their site-related improvement which is at that intersection of River Hall and State Road 80.

MS. BELFLOWER: So the T intersection that River Hall is going to make the improvements to, this signal and whatever turn lanes, et cetera, are required, closed, whatever roadways you're required to do under your current agreement with FDOT, would that -- those intersection improvements would accommodate making it a full intersection with them making improvements on their side and whatever changes, the portions that

you're talking about would result in an intersection that meets the 2020 requirements of adequacy?

MR. LEUNG: Yes, it would.

MS. BELFLOWER: Okay. All right. And then, Bob, you can elaborate, and if you need to address anything further in rebuttal, I think we can -- I just want to make sure we had everything covered.

MR. LEUNG: I don't think we're saying anything different. I'm just not sure what you're leading to. It's just clarification.

MR. PRICE: The important part, I think, is the changes that are going to happen as a result of an access from the north from Olga Square is going to be their responsibility and not River Hall's responsibility, so those impacts will be assessed by the State at that point in time when they come to the State to ask for a permit to access State Road 80 across from River Hall Parkway.

MS. BELFLOWER: And I'm just wanting to be sure that the improvements being made by River Hall can anticipate that connection such that you were not redoing things or that it will fail because of something that can't be fixed. If we

can anticipate and make them all work from the beginning, that seems to make a lot more sense, but since this is a FDOT road and the county doesn't have a whole lot of control over it one way or the other except that they're asking for a condition to hold up your permits unless it happens, so I would think it's in everybody's best interest to get this so that it will work.

And I think that was all the transportation questions, and you look like you want to answer.

MR. SCHROPP: That's exactly the conclusion I come down to as well. This is a FDOT issue, and we'll work it out with FDOT as to what the design criteria would be.

MS. BELFLOWER: As long as the county is happy with whatever you work out so they don't hold up your permits. Okay. I think that answers the questions. Thank you.

MR. LEUNG: Thank you.

MS. BELFLOWER: All right. At this point, are you ready to go to Dr. Depew?

MR. SCHROPP: We are, and would it be appropriate to take a lunch break?

MS. BELFLOWER: I think so because I suspect that's going to be more than a half an hour

presentation. His one word answer earlier I was going to write down in the record is the shortest answer I had ever heard.

Before we do break, I have -- for me to be able to get my arms around the request, I looked at what was being asked for in relation to what already exists in terms of the conditions and the deviations and the way staff has proposed the conditions where it basically says these conditions only affect the development that's being done under this rezoning, and then the majority of them are repeats of conditions that are in -- that are going to control the other part was very confusing, so what I've done because I tend to rewrite these things, I have combined my understanding of the existing conditions, the ADDs that have been approved, and the proposed conditions, and I'm just giving it a name, not married to this name at all, but identifying the existing part of River Hall that is not part of this amendment will be River Hall I and the part that is being amended through this zoning amendment as River Hall II, and then trying to address which conditions apply to which parts because we cannot change the development rights or

obligations of the existing River Hall if this -- the proposed amendment was to be approved.

So I have copies that I want to give you before you go to lunch, and I have enough copies, hopefully, for at least certain members of the public to have copies of them. I'm not asking for you to respond to every single change that is in here in your presentation, but if you can look it over and see if you disagree with the approach or the idea.

I have not -- tried to not do this in the frame of I agree or disagree with certain ones of the conditions, it's just I've put in what you asked for in this 48-hour letter. I obviously didn't reflect the change you brought in today.

They're in different colors. The black type is the currently approved language. The red language, and I hope I stayed consistent with this, the red language is the staff proposed conditions. The blue language is my suggested changes, and the kind of purple changes are the changes you asked for in your 48-hour letter.

You will notice in here something that occurred to me at 11 o'clock last night. The density, and I have this question about the CPD.

In calculating density in the CPD because under the definition of density in the Lee Plan, you cannot include commercial and office areas in your density calculations, and both for putting the multi-family in the CPD, it becomes a factor, but it also becomes a factor if you counted the entire CPD area in your chart under Condition Number 5. It appears to be assuming -- the 585.6 acres appears to be assuming that all of the suburban outlying, I mean the sub-outlying suburban area will be available for density calculations when part of those will be in the CPD. So the number that you had calculated and the total that you came up with of -- I think you said there were 54 extra units by the acreage, that may be enough to account for the CPD.

I didn't see it addressed in here one way or the other. I put a little asterisk down at the bottom of the chart saying that it assumes that it is all available for residential density calculations. I didn't want you all to freak out without understanding what I was pointing out in that.

MR. SCHROPP: The CPD is all available for residential. That was the assumption.

MS. BELFLOWER: Yes.

MR. SCHROPP: Yes, I concur with that.

MS. BELFLOWER: All the sub-outlying suburban is available for density calculation purposes.

MR. SCHROPP: Yes. That's the way we analyzed it as well.

MS. BELFLOWER: Okay. And that may not necessarily be the case when you actually get down to developing. If you develop something commercial, it can't be counted toward your residential density.

MR. SCHROPP: Agreed. And the intent was only to reflect the maximum that could be reflected ultimately in development.

MS. BELFLOWER: Okay. Let me give these copies then before we go on break. And we will -- let's be back here by 1, and we will start at that point, and Ralph, you're going to want a copy.

Anybody else from the public that's going to want a copy?

MR. BROOKES: Thank you. I think Dan wants one. Thank you.

MS. BELFLOWER: All right.

MR. SCHROPP: Throw one over to Chip.

MS. BELFLOWER: I can give two to staff. Make

sure I kept one for me. And there's three for you.

MR. SCHROPP: Thank you very much.

MS. BELFLOWER: Then we will go on break, and please be back here at 1.

MR. SCHROPP: Thank you.

(A lunch recess was held from 11:37 a.m. through 1:00 p.m.)

MS. BELFLOWER: Okay. We will go back on the record. I think we are now ready for Dr. Depew.

MR. SCHROPP: Before Dr. Depew, if I could, he's been previously accepted as an expert in planning, land use planning, comprehensive planning, zoning, and I would tender him as an expert in those fields today.

MS. BELFLOWER: Any objection?

MR. BLOCK: No.

MS. BELFLOWER: So accepted.

DR. DEPEW: Madam Hearing Examiner, David Depew representing the applicant.

You were very timely in passing your item out here this morning just before lunch. I went through it. Part of my presentation was intending to go through and highlight the new and revised conditions and deviations. Let me note here that

what you've produced is -- appears to be, as best as I can tell from reading over this over the lunch break, accurate and reflective of the conditions that both the applicant and the staff have agreed upon with some editorial revisions obviously, and with the exception of the revised condition on number 11, the additional sentence that was mentioned this morning, so what that's going to do, basically, since it's very clear that I don't need to go through this since you've already done this basically, is I'm going to eliminate a whole -- basically a whole chapter of my presentation. So I'm going to start skipping through these slides on the new and revised conditions because you've already dealt with all of this in your -- you call it the hearing examiner's exhibit or whatever.

MS. BELFLOWER: I don't want to cut off your presentation since the burden is on you in terms of making forward. We don't necessarily need to read every word, and if you want to summarize it, I --

DR. DEPEW: This does such a much better job than I can do to summarize it that I am more than happy to tell you that this is reflective of the

conditions that the applicant and the staff have agreed upon with the one caveat of Condition 11, and as a result, I don't really feel any need to go into these unless there are specific questions about these conditions, and the balance of my presentation, you see I went from 55 to 75, so I managed to skip 20 entire slides.

The balance of my presentation is going to be predicated on basically these conditions, and my conclusions are predicated upon an approval with these conditions as they apply to the area you've described as River Hall II.

MS. BELFLOWER: Okay.

DR. DEPEW: Because that's what we're talking about.

MS. BELFLOWER: And as -- I do have some questions. As I indicated, I just was trying to reflect things. I do have some questions about the conditions that we can go through one by one after you've completed, but you all are in agreement with how the existing conditions apply to River Hall I and how these changes apply to River Hall II.

DR. DEPEW: Yes, ma'am.

MR. SCHROPP: With the limited time we had to

look at it at lunch, I think we do agree that it makes sense the way it's organized, and as Dave said, our intention was to provide you a background of how the conditions worked out, and it's pretty clear you have gotten background at this point, having gone through and reorganized and identified which conditions apply to which parts of the project, so I don't think we're cutting short anything. I think we're taking note that whatever information we would have imparted, I think you probably already have.

MS. BELFLOWER: Okay. And with that, we know that we may with the public because they did not have necessarily the history of the existing conditions and et cetera, there may be some questions that have -- that you would have answered otherwise that you may need to answer.

DR. DEPEW: And we're fully prepared to do that as need be, but I don't think there's much point in just having everybody listen to me drone on about what the conditions are since it's clear that the conditions are accurately reproduced, as I said, with some editing to it in this document, so there's not much point in me rehashing any of that.

MS. BELFLOWER: Okay.

DR. DEPEW: Let me start off with turning to the Lee Plan and talking about the sub-outlying suburban designation of the Lee Plan. It describes residential areas that are predominantly low density development. Generally, the requisite infrastructure needed for higher density is not planned or in place. It's intended the areas will develop at lower residential densities than other future urban areas. They're within communities where higher densities are incompatible with the surrounding area, where there's a desire to retain a low-density community character, higher densities in commercial development greater than neighborhood centers. Industrial land uses are not permitted. Standard density range is from one dwelling unit to the acre up to two dwelling units to the acre, and bonus densities aren't allowed.

MS. BELFLOWER: Hang on. Just a second.

If he's reading something and going too fast, just let us know.

COURT REPORTER: I shall.

DR. DEPEW: She's done me before.

MS. BELFLOWER: You're going at a fairly even pace. I think she was keeping up. I just wanted

to let her know to stop us.

DR. DEPEW: If we look at these characteristics, I mean, there's a whole series of elements of this that kind of blend together. It's talking about requisite infrastructure for higher densities not planned or in place. So that's one obviously.

It's going to develop at lower residential densities in other future urban areas. That's another one.

It's within communities where the higher densities are incompatible with surrounding area. That's another. That's a third one.

Where there's a desire to retain a low-density community character, so that's a fourth one.

And then it talks about the fact that higher densities and commercial development greater than neighborhood centers along with industrial land uses are not permitted.

So, I mean, those are some characteristics of what you found in sub-outlying suburban.

Well, here's a picture of River Hall. And I would submit to you based on some of the testimony that we've already had and also looking at this aerial photograph, that the area we're talking

about is exactly consistent with this particular definition of sub-outlying suburban, and the development pattern that we're proposing is consistent with sub-outlying suburban.

As you noted from Ms. Ekblad's testimony, we've got infrastructure that is all through this area and stubbed out to the area down here which is primarily the area to be developed.

We've got a suburban style of land use that exists through here in terms of both the existing development and in terms of the platted developments in those areas that are platted, so it meets that requirement.

We're not talking about higher levels of commercial down here. The only thing we've got up here is a neighborhood center which is, again, consistent with what the definition says. And it's in an area which, as we've already seen and I'll demonstrate this again in a few minutes, that is adjacent to areas of higher density to the west and to the south, and yet preserves the setbacks and the separation from the lower density and the conservation uses that are located to the north and to the east of the subject property.

So it's clear to me that what we're doing with

this particular proposal is very consistent with the sub-outlying suburban categorization of the Lee Plan, and that's -- that's what we're doing in terms of the Comprehensive Plan request that would recast this area as sub-outlying suburban.

So the style of development that we're talking about in here is a style of development that doesn't exceed the two units to the acre, and in fact, even overall, the density of the development doesn't exceed the two units to the acre, and it is a transitional type of use in a suburban land form that is consistent with the suburban land form that already exists to the north of this area, and between the area that's the infill area and this rural development over here, and as you already saw, we have significant separation between the -- this suburban land form that we're intending to develop down here and the Hickey's Creek Mitigation Park over here including this canal that separates the development and this very large area here, and as you may recall on one of the earlier exhibits, we had something on the order of 600 plus feet between the residential use here and the property line.

We had something on the order of around 1,900

and some odd feet between the actual development envelope and the property line here, and we had something on the order of 2,300 and change feet distance between the actual first living unit and the property line over here.

And so down below, we've got the platted subdivision of Lehigh Acres, and I've got another exhibit that I'll show you in just a minute that further outlines this, as well as the Portico over here to the west at higher densities. So what we've got is a suburban, an outlying suburban or a sub-outlying suburban transition area between these higher-density developments to the south and to the west and these lower-density developments, and in fact, we even have this area here which is fully consistent in terms of its land form even if it is a different land use designation. In terms of its land form, it's totally consistent with what we've got in here in the infill development.

So we believe that this request does comply with the overall intent as well as the specifics of the definition of the sub-outlying suburban category.

In terms of growth management, the design of the infrastructure for the property, as Ms. Ekblad

had mentioned, demonstrates that the potable water facilities have been designed to accommodate the units. Wastewater has been designed to accommodate these added units. The irrigation has been designed to accommodate the added units. The water management system has been designed to accommodate the added units. Internal circulation has been designed to accommodate the units, and the amenities have been designed to accommodate the units.

We've gotten letters of availability, and we believe that the plan amendment as it's articulated currently in the planned development amendment indeed promote that mix of uses that serve both the residents of River Hall and the surrounding area.

Goal five of the Lee Plan talk about various elements associated with residential development, and it asks that any sort of residential development be -- provide for sufficient land to be located appropriately on the future land use map, that it has existing infrastructure, and will allow an appropriate level of density that is consistent with abutting residential developments.

We believe that this planned development

amendment is going to expand the uses within the existing CPD to provide some additional units that will assist in realizing this commercial node that is designated up at the entry, and it is consistent with the approval that's directly across the street on the Olga CPD, as well as I indicated before, the infill area to the south serving as a transition that is fully consistent with the existing development that already exists within River Hall, and when you look at the surrounding land uses and future land use designations, you can see to the north, there is commercial and rural designations depending on where you're looking at from the River Hall development, and there are vacant and residential properties there although, as I said, the Olga CPD is one that is just recently approved, and it will be interesting to see how that ultimately developed over time.

To the south, we have platted residential of Lehigh Acres and an urban community designation. To the east is Hickey's Creek. There's a conservation upland, the Lee County preserve and recreation area, but to the west is suburban and outlying suburban with a variety of single-family

developments with various levels of density and intensity that exist in those areas, and this gives you a better idea.

You've seen this map before. It's the map of the various neighborhoods. What it doesn't show up here is the -- that's the school area right there, and then this is the area that was in pink and teal that we were talking about prior to lunch. But this does give you an idea of some of the surrounding development, and again, what you're seeing here is -- and this is some of the suburban development over here on the west side of River Hall, but what you're seeing is gradations in density and the design that was done originally with this project.

And again, the infill area is an area that's surrounded by either development on the west, south, and north in terms of both Hampton Lakes and River Hall, or it's got a substantial separation in terms of the preservation land that's along the easterly boundary separating it from Hickey's Creek Mitigation Park over there.

So the infill area is surrounded by either buffers or development that is consistent with what we're actually talking about developing in

this particular area, and so we believe that it is truly infill, and it is consistent with the neighborhoods in which it is located.

Without this kind of infill development in that particular area, the applicant is really left with no particular use available on this piece of property, and it's especially interesting to note that this is a significantly lower density than what they see directly to the south in Lehigh Acres, and yet it is fully consistent with the type of development design that one sees abutting it to the north and abutting it to the west. So it is -- it is part of what we think is of an infill transition development between the urban community area to the south and the rural and preservation areas north and east.

The additional dwelling units are going to be located within the unplatted and developable areas in the community to ensure there's no reduction in open space. There's no reduction in buffering. There's no reduction in landscaping or the recreation areas that would occur. The lot sizes and the designs of the lots are all consistent with the existing property development regulations, and so when you actually -- when this

is done and you actually drive through the development, you're not going to be able to tell the difference between the various new neighborhood, if you will, the River Hall I, to go back to the proposed conditions, and the River Hall II neighborhood.

They're going to be developed exactly the same. They're going to look the same. It's simply an extension of what the existing development is in this particular area. And that's why we think it should be viewed as an infill property because it is, once you look again at this, it is clearly located interior to the property, and it becomes what is the essence of infill in that it is a more efficient utilization of the resources and the existing infrastructure to promote the ideal carrying capacity of this particular property.

This is that larger one that shows you a little bit more of the areas surrounding, and as I said, this area down here is a very large portion of Lehigh Acres as a platted subdivision, and Portico's over here at two units to the acre. This comes in in between three and four dwelling units per acre, and so what we're talking about

here is a sub-outlying suburban that maxes out at two units to the acre, and then it transitions through the River Hall Country Club and this area up here into this larger lot area to the north and northeast of the subject property.

The area along State Route 80 is really sort of the easterly extension of the development node that has occurred and has been developing over the years here at Buckingham and State Road 80, and you can see all of the various developments that are in there, all the various services that are in there including a number of public facilities. Riverdale High School. There's a Lee County Library element. There's another Lee County school facility here. We've got a number of churches that are located all throughout this particular area, and obviously a number of fast foods, grocery stores, hardware stores, the CVS, the pharmacy is located there. A number of banks are there also. Some other facilities that are in that node, and it's clearly a developing commercial node for this particular area.

And to the character of this area here, and I've heard over the discussion over the last couple of years about how this is a rural area of

the county, and you get the idea that the cows are roaming everywhere throughout here is simply incorrect. What this is is the last remaining portion of a suburban golf course community. This is a platted subdivision. It's a gated, suburban, golf course community. That's what it is. And so that's the type of development that's being proposed on this southerly portion of the property. It is consistent with what's out there.

In terms of looking at the Caloosahatchee Shores Community Plan, that Objective 21.1 talks about the Shores retaining their old Florida identity and the various types of architecture and landscaping that will be -- and site design that will be encouraged in the Caloosahatchee Shores community.

The River Hall community currently promotes that Florida vernacular style of architecture and requires hundred percent native vegetation in all the required buffers. The development amendment, the PD amendment doesn't change any of those conditions, and the existing design components that have already emerged as this project has developed are going to be continued throughout the rest of the development, and again, that classic

infill style.

21.2 talks about commercial land uses. The policies encourage both the restriction and the redevelopment of existing commercial as well as an increase in commercial opportunities available within the Shores.

The existing approval on this project included a CPD for 45,000 square feet of mixed, nonresidential development up at the north end, and the proposed plan development amendment simply adds to that by adding some residential units into that area along with the ability to provide recreational facilities for those residential units that would be located at this spot.

So again, what we're asking for in this, we think, is consistent with Objective 21.2, and the normal design element that you would associate with a mixed-use development like this in which we're trying to add the residential uses that the Shores say is part of the commercial land uses that they're trying to work forward as part of a mixed-use view, if you will, of the future, but it also provides for some of the recreational amenities to be provided at the CPD and provide some additional resources to be developed as part

of that CPD in the future, again, consistent with what the policies under Objective 21.2 would suggest that the community plan has adopted for their future.

So moving on to 21.3, the Comprehensive Plan talks about residential uses and the fact that the Shores value residential development and attempts to reduce conflicts between uses while protecting natural resources, open space, and increased recreational opportunities. Obviously, as I indicated before, we've got the increased recreational opportunities where we're doing the mixed-use elements. We've located CPD on the northern part of the property. The school already exists out there. Much of the development already exists. We have room in the development to increase the areas of amenities as again, Mr. Ekblad showed you in her presentation.

The residential uses are located to -- adjacent to existing and future proposed residential uses of similar or higher densities actually, and the approval of the request will ultimately add interconnections, if nothing else, between -- along State Road 80 but also with the addition of the second access point to the south.

21.4 talks about mixed-use development. Again, going back to the CPD across the front of the project, it's clear that the community itself is suggesting that commercial and residential uses should be mixed, and that's what we've done as part of this request, and we hope that this is going to provide some additional linkages along State Road 80 and throughout the development itself.

21.5 talks about community facilities and parks and a desire to establish a broad mix of these facilities within the Shores. We believe that the request proposes to increase potential for civic and recreational opportunities for residents of both the community and the surrounding area. If nothing else, we get to add an additional nine holes to the golf course with additional dwelling units in this area, and that alone increases significantly some of the recreational opportunities for the residents of the development.

In terms of public participation, the Shores plan also talks about public informational sessions for all amendments. We did that. On a number of occasions we've had public informational

sessions in 2012, '13, and '14, so we've been back and forth, and I will tell you and the testimony already reflects that there have been a number of changes as a result of the feedback that has been received.

Moving on to Goal 107, Objective 107.3, and Policy 107.3.1, these are some of the environmental and conservation goals, objectives, and policies. We believe that by utilizing the existing footprint, that we're eliminating any added impacts to the existing native habitats that are located on the property. We aren't changing any of the conservation easement areas, so again, we're preserving the long-term possibilities of protection of these wetland and upland habitats.

The indigenous habitats most suitable for protection have been previously identified. They are retained. The areas are not included in the area of the proposed -- for this particular plan development amendment, and we believe that there's going to be no added impacts, and indeed, we're going to have additional open space with regard to how the golf course is being done.

In terms of my conclusions for the Lee Plan, it's my professional belief after looking through

all of the details associated with the project design and as proposed, the condition that the request meets or exceeds all the measurable performance criteria that are found in the Lee Plan, request is consistent with the Lee Plan, and it complies with all of the applicable policies that are found within the Lee Plan.

Going to turn now over to considerations of the Land Development Code. 34-411(a) talks about developments being consistent with the Lee Plan. I've already addressed that. I believe, again, from my professional analysis of this that it is consistent with the Lee Plan.

All planned developments unless otherwise accepted are designed and constructed in accordance with the provision of all applicable county regulations in force at the time. Site is currently approved as a residential subdivision. Some site improvements are completed, and any future construction will comply with the regulations in effect at the time, and there is, I believe, a condition to that effect in the proposed conditions.

(c) talks about locating to minimize negative effects. Again, I believe that we've demonstrated

that the additional units that are being requested are within the footprint of the original development plan. The master site plan, master concept plan has been modified slightly but is not a significant change since its approval in 2005, and as I indicated, there are no increased impacts or erosions to the conservation or preservation areas that are in the proposed site plan.

The tract that we're talking about has access to the existing road system within the development which was designed specifically to handle any additional units that might be placed on that system internally. It also has direct access to Palm Beach Boulevard which is a major arterial, and as indicated by one of the conditions, we will also have a second access to the south going down into the Lehigh street system which ultimately, I believe, connects with 75th and finally down Cemetery Road and over to Buckingham.

It's not within a public transit service area. However, the bus stop is within a mile over at Buckingham Road, and LeeTran has approximately 80 percent capacity available on that particular service as opposed or as it currently stands.

We don't believe the development will result

in increased drainage impacts or otherwise impose any other nuisance in accordance with (f). The drainage system, as indicated previously, has already been designed to handle any of the additional elements associated with this development and has also been consistent with what the East County Water Control District has requested in terms of preserving flow-ways that run through the subject property.

Now, that brings me to one minor little correction that I would point out to you. In Condition 26, the reference is to the east county, well, it talks about East County WMD. It should be ECWCD. It should be East County Water Control District. It's not a water management district. It's a water control district.

MS. BELFLOWER: So it should be ECWCD?

DR. DEPEW: Yes, ma'am.

MS. BELFLOWER: I believe it was spelled out in one of the previous conditions.

DR. DEPEW: I obviously missed it because I was looking for that too, and I didn't see it.

MS. BELFLOWER: Because I was trying to understand what those initials stood for and --

DR. DEPEW: I know that they've got South

Florida Water District. Here it is. Well, it's on the bottom of page 13 on 23, second access.

MS. BELFLOWER: Uh-huh.

DR. DEPEW: And it actually says East County Water Control District, and it says ECWCD, but then later on it just becomes ECWMD. So I think it was just a typo.

MS. BELFLOWER: Okay. All right.

DR. DEPEW: (g) talks about the planning design and execution of a planned development to protect, preserve, or not unnecessarily destroy or alter natural or historic archeological features.

Again, the master concept plan that was approved originally was determined to meet this standard. I should point out the master concept plan that was approved originally met all of these standards, but it was determined to meet this standard.

We're not changing the development footprint at all, so we believe that it still meets this standard. What we're proposing is simply a development within an area that's already been cleared and is already, as you saw, was already designated as a future neighborhood on one of the original development plans proposed for this, one

of the original marketing plans.

We're not decreasing any of the required open space that was mandated in the original approval, and the additional dwelling units and recreation and civic uses are all directed towards the developable areas so that they won't impact negatively on any of the existing conservation or preservation areas.

(h) talks about the creative use of open space. We complied with this, again, during the original development approval. We believe we're still -- we're still in compliance with this. If you look at the location of the various indigenous areas and various preservation areas, we believe that they've been done very creatively in terms of how the site plan was designed and laid out, and again, where we're going with the infill area is consistent with that philosophy and that theory to preserve as best we can those indigenous and proper areas in there.

We have located the property -- in terms of (i), we've located the property in an area of existing subdivisions and commercial development. They were previously found to be compatible with the commercial development. We believe that it's

still compatible with the commercial development.

As I indicated, the proposed development is surrounded by areas that are compatible and of equivalent intensity of use, and so what we tried to do is integrate this development with the existing development. We think we've done that by creating this infill area to the south, again, as a buffer between the Lehigh Acres with the revised entryway here that provides entry access, ingress and egress for both Hampton Lakes and for River Hall Country Club, and so we think that this is, again, consistent with 34-411(j).

Where we were talking about the land use that's incompatible, then you want to talk about buffering and transitions. We don't think that the surrounding land use is incompatible, but we do recognize that what we're doing is providing a transitional use as part of this infill area, and we're proposing that the existing area will connect into the existing country club and the existing area at Hampton Lakes.

The River Hall community complies with the standards that are found in 34-411(l) in terms of creating subunits and neighborhoods. As I indicated, we've added to the country club and

added an additional nine holes to that portion of the community. We've also got a portion of the community that adds to Hampton Lakes, so we think that we've done exactly what this particular standard would normally anticipate.

And (m), we've talked about enhancing the viability and value of the resulting development and also the insuring of internal buffering and separation of potentially conflicting uses within the planned development. Well, our uses are exactly the same in the proposed infill area as what's existing in the development, so we don't think that we have a problem of potentially conflicting uses because they're the same uses. They're exactly the same. The property development are the same, the activities are the same. We're not proposing anything that is somehow different from what's already there.

And the design of all the streets, of all the buffers, everything that -- all the nuts and bolts, if you will, of the development, are the same going from one to the other. As I indicated before, when this is all built out, you won't be able to tell driving from one portion into the -- from one of the older portions and the infill

portion any difference in the activity and of the development.

Sorry. There's a lot of these.

Going on to (n), it talks about the type of use, the density, height, bulk, all the other areas of this are intended to vary throughout the development. Again, as I indicated, if you look at the master concept plan, we've complied with this. We utilized the existing development areas. We've kept those areas that might be a little bit different away from the other areas, the areas, all the property development regulations are the same. It's not going to be any different. It's going to look exactly like the neighborhoods that are already there.

All the required parking areas are going to be provided in accordance with the requirements of Chapter 34. Joint use of parking isn't really applicable. The internal consistency through signage and architectural uniform planning schedules, all of those are going to be consistent with the existing approved conditions and the existing approved development that's there, so all of that internal uniformity is going to exist as well.

Going onto 34-145(c)(2), question is whether there exists change or changing conditions, make approval of the request appropriate. Well, the area has changed over the recent years, and we've also got significantly more growth that's starting to occur.

We're coming out of the recession. It's clear that there is a lot more interest in housing. We believe this area is one of the areas of Lee County that is well situated for development.

This particular project itself is well situated because it has the infrastructure in place, and what we're proposing as part of this infill is in an area that is surrounded by development that in which this project would be consistent. So we think that the proposed amendment is consistent with the existing surrounding densities, and it provides a transition between the development that is occurring to the west and to the south and the rural areas and the preservation areas to the north and to the east.

Again, whether or not it's consistent with the Lee Plan. As I said, I believe that it is consistent with the Lee Plan.

In terms of findings, the applicant, we believe, has demonstrated that the proposed amendment will provide infill and redevelopment of the subject project at a density that's consistent with the surrounding uses. We believe that we're compliant with the Lee Plan and consistent with the Lee Plan. We believe that the conditions are reasonably related to the impacts of the development plan that's been proposed, and they are limited to those areas that are within the application. We believe the application was made in a timely fashion and has been deemed by both the staff and the applicant to be sufficient for a determination, an adequate amount of information has been provided, and we believe that the record reflects that.

We believe that the request does indeed meet or exceed all of the applicable objective performance criteria that are found both in the Lee Plan and in the Land Development Code, and I believe that my testimony has more or less touched on that.

We also believe that given that the property is proposed to be designated sub-outlying suburban, the maximum number of dwelling units in

that category would be limited to -- that's a typo, should be 2750. The request is consistent with the permitted density of each of the future land use categories as set forth in the Lee Plan.

I believe the request is compatible with existing or planned uses. As I indicated, it is a transitional development, and going back to that map, you can see that it clearly transitions from the development to the south and the development to the west and the development north and to the east.

As Mr. Leung testified, the provided traffic impact statements for the planned development demonstrate the approval will not place undue burden on the existing transportation system as conditioned. Sufficient capacity is available to accommodate the traffic generated by the development, and in terms of environmentally critical areas, again, the planned development only includes lands that were previously approved for development, and we're not decreasing the open space acreage or modifying any of the conservation areas, so we believe we're still consistent with that element as well.

We believe that we're consistent with -- the

proposed mix of uses is consistent with and appropriate to the location that we've proposed for it. We believe the application supports that the proposed mix of uses are appropriate, and the conditions that are to be applied ensure the sufficient safeguards to both the public interest and the surrounding and proximate property owners will be maintained.

The conditions provide sufficient safeguards for the public interest, and as I indicated, they are reasonably related to the impacts that the development would have upon the public interest.

The deviations, we believe, recognize the existing conditions within the River Hall community to provide a consistent and compatible pattern of development. The applicant has provided during this presentation an indication of compliance with the standards that are set forth in the Land Development Code.

The changes proposed within a future urban area category, again, anticipating that the sub-outlying suburban designation is approved for this particular property, it would then be within a future urban category, and as the testimony has demonstrated here, we have all of the necessary

facilities and services as defined by the Lee Plan that are available and would be required to be available by both the plan and the code to service the level of development that we're talking about.

In conclusion, it's my professional opinion that the proposed request, again, meets or exceeds all the measurable performance criteria that are found in the Lee County Land Development Code. The application meets the requirements and has been deemed sufficient pursuant to that code. The current use of the property, which is basically no use at all, is insufficient to allow the property owner any sort of general normally anticipated use of a piece of property.

The details of the proposed request serve to implement the general health, safety, and welfare of the public and implement both the intent and the specifics of the design criteria of the Lee County Land Development Code.

Madam Hearing Examiner, that concludes my presentation, and I don't know that I made 30 minutes, but I certainly made less than an hour.

MS. BELFLOWER: Very good. Thank you. Do you want to do any direct?

MR. SCHROPP: Just one clarification. There

was one slide that showed the number 2570, and that was just a typo.

DR. DEPEW: Transposition. Should be 2750.

MR. SCHROPP: And actually, it should be 2749. In one of our earlier versions, we rounded up, so it dropped down to 2749. That was on slide 108, and that's consistent with the numbers that I presented earlier in terms of the maximum development potential under the future land use map.

MS. BELFLOWER: Okay.

DR. DEPEW: And in fact, Madam Hearing Examiner, I think in one of the conditions in what came out this morning, yes, those are the numbers in Condition 5A, those are the correct numbers in that.

MS. BELFLOWER: You said 5A is correct?

DR. DEPEW: Yes, ma'am.

MS. BELFLOWER: Okay. Okay. Staff have any questions?

MR. BLOCK: No, ma'am.

MS. BELFLOWER: Okay. Thought about it for a minute.

And I appreciate your comments about the rewrite of the conditions. There are four ADDs, I

believe, that are addressed either in the staff report or in the conditions.

DR. DEPEW: I believe that's correct.

MS. BELFLOWER: And are those all of the ADDs that need to be reflected in --

DR. DEPEW: I believe that to be the case, yes, ma'am.

MS. BELFLOWER: So the applicant's position is that we're taking the 2005 resolution, adding the provisions that are in the ADDs that have been addressed through the ADDs and approved through that, and then the changes that you're asking for with this application to roll them all together into one resolution to address it comprehensively.

DR. DEPEW: We didn't really feel strongly about that one way or the other, but I think staff wanted to try and codify everything, so they had one set of conditions to go to, and I understand the reason for that. It's much easier to administer. So, you know, if it helps, yes, we're happy to go ahead and do that, but we didn't specifically make that request.

MS. BELFLOWER: Okay.

DR. DEPEW: But we're happy to go along with that if it makes sense.

MS. BELFLOWER: Okay. And as far as you know, have all the points and all the approvals that were given in the ADDs, have they been addressed in these conditions?

DR. DEPEW: As far as I know, they have been, yes, ma'am. There was considerable work on that, so --

MS. BELFLOWER: Okay. I wanted to talk a little bit about the town center and the CPD area. Starting with the -- what's shown on the previously approved master concept plan which is page two of your total five-page master concept plan packet, it shows an area called town center.

DR. DEPEW: Yes, ma'am.

MS. BELFLOWER: What is that currently approved for? What uses?

DR. DEPEW: It's basically kind of an amenity center. It's a town meeting hall. It's got a pool. There's some tennis courts. There's a workout room. There's obviously parking lots and stuff in there. I think there's a -- there's some kind of food prep in there as I recall.

MS. BELFLOWER: It's currently developed?

DR. DEPEW: A portion of it.

MS. BELFLOWER: A portion of it.

DR. DEPEW: I can go back up here to one of Ms. Ekblad's slides. I can show you that there's a piece of it.

MS. BELFLOWER: I guess in part, my question is it's zoned RPD; correct?

DR. DEPEW: Yes, ma'am.

MS. BELFLOWER: But it does not have specific approval for residential. It's not marked RS-1 or RM-1, it's just called town center.

DR. DEPEW: It was designated as part of the amenity package for the project.

There it was. That's it right there, and -- this is one of the orange areas that we had on one of the earlier. Let me back up to that illustrative plan.

MS. BELFLOWER: That's not the area that was shown in teal though?

DR. DEPEW: No. This teal area is part of the RPD.

MS. EKBLAD: I think we need some clarification about what you're referring to as the teal area.

MS. BELFLOWER: I'm talking about that teal area on page two of the master concept plan, the one that is entitled Previously Approved Master

Concept Plan. It shows that what we're calling the teal area near the elementary school, it calls it town center.

DR. DEPEW: I think the -- I think the -- see if this is working.

MS. BELFLOWER: There's no hair band anymore.

DR. DEPEW: I don't see the switch to turn it on.

I think there's a little gap there, but I think that CPD boundary town center stuff is part of those leaders that goes up to this area here. See, this is still part of the RPD, but this node goes -- both of those go to this node.

MS. BELFLOWER: Okay. So where it says CPD boundary, it also is CPD boundary town center.

DR. DEPEW: Yeah. See, because look. You've got town center here with the acre, 24 acres.

MS. EKBLAD: If you look at the schedule of uses as well, that's why it says town center paren CPD.

MS. BELFLOWER: Okay. But the area does not say R-1 or RMF as the other areas are designated. It's RPD, I understand that, but it doesn't have a designation of uses, and I don't think in the conditions there was -- is that under the

residential golf and amenity sites? Is that one of those under the schedule of uses?

MS. EKBLAD: Our understanding would have been that because it doesn't say RMF or R-1, any of the other uses under the residential would have been acceptable to be located in that area.

MS. BELFLOWER: Okay. So it -- because it doesn't say RM-1 or -- R-1 or RMF-1, it is not allowed residential, but it is allowed any of the other uses that are under the residential golf and amenities site designation; is that correct?

MS. EKBLAD: That was my understanding.

MS. BELFLOWER: So there's no expectation for dwelling units, but everything else that's on that list is fair game.

DR. DEPEW: Yes, ma'am.

MS. BELFLOWER: I mean, there are other areas specifically labeled as amenity site and club site. So I was just --

MR. SCHROPP: I think clarifying, if we could, I think what was -- I think we did anticipate at least the ability to consider residential for that, that parcel south of the CPD boundary. It probably needs to be labeled, and I'm wondering whether the RMF label on the west side wasn't

really intended to carry over. This is kind of a throwback, I think, to the original zoning, and I didn't handle it, so I don't know specifically, but the intent, I think, was always that the residential ability be available there. So maybe the site plan needs to be clarified to designate that as RMF, but you see what I'm saying?

MS. BELFLOWER: Yes, I understand. The west side says --

MR. SCHROPP: RMF-1.

MS. BELFLOWER: RMF-1.

MR. SCHROPP: And maybe that was intended to bleed over.

DR. DEPEW: That's what it looks like to me. I wasn't involved in the first go-round in this either, so I can't tell you.

MS. BELFLOWER: Well, and that raises an interesting point because the previously approved master concept plan says RMF-1 on that westernmost side of the property, but the master concept plan that is showing your changes has that as R-1. But you're not proposing to change what is already approved.

DR. DEPEW: No.

MR. SCHROPP: No. That is single family.

MS. BELFLOWER: So there may be perhaps some discrepancies.

DR. DEPEW: May need to tweak the site plan.

MS. BELFLOWER: Okay. Okay. Let's talk about the -- well, if I don't ask you this question now, I'm going to forget it. You said that the infill area's current use is no use at all.

DR. DEPEW: Yes, ma'am.

MS. BELFLOWER: What does that mean?

DR. DEPEW: That means it's just vacant and open space. There are no units assigned to it. Agriculture is not an existing use on it. There are no uses assigned to it at all.

MS. BELFLOWER: You currently have platted 1903.

DR. DEPEW: Yes, ma'am.

MS. BELFLOWER: You're approved for 1999.

DR. DEPEW: Uh-huh.

MS. BELFLOWER: So there's 96 units unaccounted for --

DR. DEPEW: Right.

MS. BELFLOWER: -- that could potentially develop in this infill area? If everything was denied and in terms of what your zoning is that you were stuck with exactly what you have right

now --

DR. DEPEW: The difficulty with developing that with 96 units is we still have to go back and somehow get a site plan approved. I'm trying to go up here to a site plan. Site plan approved for that area because right now, we don't have an approved site plan of any sort for that particular area that makes sense for 96 units.

What we have as the original site plan approval -- back up here to the original site plan approval.

MS. BELFLOWER: Give me epilepsy with the flashing.

DR. DEPEW: It's not any better here.

MS. EKBLAD: We don't have an original black and white.

DR. DEPEW: I don't have the original black and white, but if you look at the approved master concept plan, this is illustrative, so it lacks some of the things, but it's colored up. What you've got are development areas there that if we just added 96 lots in there, the design problem with doing 96 lots in a configuration that complies with that gives you basically -- you either -- you either have the lots that are

significantly consistent with what exists or you get these weird lots. If you try and utilize the entire space, you get these weird lots that are way too wide compared to their depth.

MS. BELFLOWER: I'm -- my point in trying to clarify what I want to be sure is understood or clear for the record and clear in my mind is if there are only 96 units left to be developed, it's because whether it was this developer or a previous developer platted out and took all the density and put it somewhere else on the property and left the portion of the property that only has 96 units left. It's not that there's anything with the zoning, it's not with anything with the Comprehensive Plan designation that forced that situation, it was how the developer chose to lay out the lots and the portions that have already been platted. Is that a correct statement?

DR. DEPEW: Yes, insofar as it was a decision of the earlier developer, the prior developer to develop the site plan that you see there as the original site plan, yes, ma'am. From that standpoint, it was.

The problem with it is, is that when that site plan was ultimately developed, it was obviously

developed for a larger number of units, and without getting back into the history of what happened back then and through that, I wasn't part of that. In any event, that development plan that had originally come in was for a much higher level in terms of the number of units, and it was never modified once the approval was given for a much lower level in terms of the density of the development.

And so what's happened now is the development through that process took up 1903 lots in that configuration and left 96 lots left for the area to the south which effectively leaves no reasonable use for the rest of that development.

MS. BELFLOWER: Okay. I understand your perspective of that. I just wanted it clear for the record that there's not a suggestion that there's not a use of the property, and therefore, the zoning has to be approved because it would be unreasonable to leave the existing zoning because it's nothing or a minimal use. It may have been your client may have bought into the situation and was stuck with what he was stuck with, but there's nothing, no action taken by the County in approving the zoning that left it in that

situation. It was a development decision of the property owner that left it in that situation.

DR. DEPEW: I believe the County did not have a hand in making those decisions.

MR. SCHROPP: That's correct. They were just issuing the permits.

MS. BELFLOWER: Okay. And just as a bit of an aside, in the standards you went through in 145, a few of those have been changed. The code has been amended to change those wording, but I think you hit all the points that you had to address, but just so that somebody doesn't rely on some of those points that were made, they're no longer exactly worded that way.

Okay. On the CPD, I touched on it briefly before lunch and the concern about density and calculating density and in commercial areas. You're asking to add townhouses and multi-family, and I understand that's because those are the only types of dwellings that are allowed in a CPD, but you would only have two units per acre on the portion that you're going to count for residential.

DR. DEPEW: That's correct.

MS. BELFLOWER: If you've got 45,000 square

feet --

DR. DEPEW: That's correct.

MS. BELFLOWER: -- and you carve two acres out to make it residential --

DR. DEPEW: Uh-huh.

MS. BELFLOWER: -- you're only going to have four units on that portion because it's only two units per acre for the residential density. You can't multiply the -- if the total CPD is 24 acres, and I don't know exactly how big it is, but if it's 24 acres, there's only 48 units available if you did not do any commercial development and if the whole piece is residential. Are you in agreement with that?

DR. DEPEW: I don't think so.

MR. SCHROPP: I don't think so.

MS. BELFLOWER: I'm looking at the definition of density --

MR. SCHROPP: Right.

MS. BELFLOWER: -- in the Lee Plan, and it explains how density is calculated and what things you can include, but the things that you include have to be residential support uses, and it specifically says you cannot include commercial acreage or office acreage except in two

situations. One is when it's a true mixed-use development, and the other one is when you use TDRs, neither of which apply, a true mixed use under a mixed-use overlay.

MR. SCHROPP: Right.

MS. BELFLOWER: And neither of those situations apply here.

MR. SCHROPP: Here's the way I would look at it. The areas in which the density is proposed to be located that would be approved as part of this project are going into two areas, both of which are designated sub-outlying suburban which has a total acreage component of five hundred and forty something. I can't remember the number. I can look it up. I went over it this morning. That's the total amount of acreage that can generate the density for those lands.

To the extent that acreage is taken away from that total for commercial office component up in the north part, that acreage is, for purposes of calculating density, is removed from the calculation. So that the maximum -- thank you. That made sense. So that the maximum development density from a residential standpoint assumes that there is no commercial office component, but to

the extent that you use acreage in the CPD for commercial office component, that acreage is taken away from the residential density.

MS. BELFLOWER: So if you're looking just at the CPD portion, and you want to develop a part of that --

MR. SCHROPP: Uh-huh.

MS. BELFLOWER: -- you're saying that you get to pull units from anywhere in the development and put them in here, cluster them in here under the density without calculating it based upon that parcel itself.

DR. DEPEW: Yes, ma'am.

MR. SCHROPP: Within the sub-outlying parcel.

DR. DEPEW: If the CPD takes ten acres to go to commercial, 20 units are removed from the sub-outlying suburban calculation, but that doesn't mean that the other 14 acres in the CPD couldn't have 40 units on it as long as we don't exceed the sub-outlying suburban total density calculation.

MS. BELFLOWER: All right. Well, I'm going to obviously ask staff the same question because I'm not sure I'm understanding. When you're looking at a discreet project, I understand the total

numbers and that you take the commercial out in reaching the total numbers, but how you distribute them by parcel and how you calculate in a particular parcel because arguably, that would allow you to put 20 units per net acre in the CPD area when that is a different zoning district. I mean, we're not in an MPD, so you're not sharing across in an MPD. We're in a RPD and a CPD.

I'm not reading the Lee Plan that you would be able to do that. I was thinking this is a discreet parcel. You have to do your calculations on this discreet parcel that may or may not be owned by the same company that owns the rest of the development or perhaps you sell the development rights. That way, I'm just not sure how that works.

Apparently, you all are disagreeing that it's parcel by parcel. You think it can be shared across the development even though they have two different zoning districts.

MR. SCHROPP: As long as -- yes.

MS. BELFLOWER: Without limitations on that density.

MR. SCHROPP: The limitation is provided by the overall acreage contained with the land use

classification. And to the extent that certain property within that land use classification is used for commercial purposes, that acreage gets taken out, and the density is reduced accordingly, but it can still be shared amongst the parcels.

MS. BELFLOWER: Okay. So it would come down, again, to the height, the setbacks, the lot coverage, restrictions.

MR. SCHROPP: Correct.

MS. BELFLOWER: Would the residential -- it's not -- it wouldn't fall under or would it fall under the residential development standard so that it has to meet the residential height standards and the residential setbacks rather than the commercials even though it's in CPD?

MS. EKBLAD: Well, if you -- let me flip to it. If you look at the site development regulations as they're carried out, it's based on the type of development. So whether it's single family versus a two-family attached versus a townhouse and a multi-family, and then you have a completely separate section for commercial. So whatever residential we did, even if it was within the CPD, would have to abide by the property development regulations for that type of

residential.

MS. BELFLOWER: Okay.

MS. EKBLAD: Does that help?

MS. BELFLOWER: Yes.

MS. EKBLAD: Okay.

MS. BELFLOWER: So the limit in terms of intensity of it is limited by these development regulations that are already in place, and you're not asking to change.

MS. EKBLAD: Correct.

DR. DEPEW: Correct.

MS. BELFLOWER: Because in the other areas where you have multi-family, there is a buffer between. There's either a preserve area or it's in the middle of the project or there's some separation from external boundaries, and the CPD, that is the closest area to a rural external boundary, and what you're asking to do is to have the potential of multi-family that could be -- I don't know what your heights and et cetera would allow, that I would suspect it could get up to 12 units per acre, net acre, with the type of development, and it's right now shown as a type B buffer. Are you proposing any extraordinary buffering setbacks or --

DR. DEPEW: We were not because the commercial development had already had a set of buffers and setbacks established for it. All we're doing is adding the mixed use that is consistent with what the plan for the Shores says they're trying to do for all the commercial areas. We think with the addition of the residential provided additional negative impacts to the properties that's adjoined.

MS. BELFLOWER: Type B buffer, I'm not familiar with that. What is --

DR. DEPEW: 15 feet with 36-inch double staggered hedge and five trees per hundred. Is that -- okay. That's it. Pretty good. I'm not a plant guy either.

MS. BELFLOWER: And that's what's required between commercial and residential typically or --

DR. DEPEW: No, commercial and residential is the wall which is a C. C.

MS. BELFLOWER: Okay. So what is allowed in here is -- of a type B does not require a wall, but other than that, it's pretty much the same as a type C?

DR. DEPEW: Yes.

MS. BELFLOWER: All right. I'm going to ask

staff on that one.

Adding the commercial is a change, and given the concerns have been expressed about compatibility with the rural area --

DR. DEPEW: You mean adding the residential to the commercial?

MS. BELFLOWER: Yes, I'm sorry, adding the residential to the commercial is a change, and it is happening in -- right up against the lowest intensity area. So I think we may want to think a little bit more about that one, and we will hear from the neighbors as to whether that's an issue.

DR. DEPEW: I think our concern there was that if we add residential, we're obviously going to decrease the amount of commercial in there, so we think we're decreasing the impact, not increasing the impact.

MS. BELFLOWER: Different impacts, but yes, I understand.

Okay. The suburban -- sub-outlying, I keep messing it up, sub-outlying suburban designation, Policy 1.1.11 talks about commercial development greater than neighborhood centers are not permitted.

DR. DEPEW: Correct.

MS. BELFLOWER: I believe the rural category doesn't talk about commercial developments within it at all, so it doesn't set that sort of standard.

DR. DEPEW: It talks about -- my recollection is that -- without having it in front of me, it talks about commercial development that is supportive of the rural activities. So, for example, a feed store, a tack store, or something like that is typically.

MS. BELFLOWER: But it doesn't have specific wording. This says commercial development greater than neighborhood centers are not permitted.

DR. DEPEW: Yes, ma'am.

MS. BELFLOWER: So can you put some information on the record about whether this is neighborhood center size or less?

DR. DEPEW: You need to look at Policy 6.2.2. I have to pull the plan out now to be certain, but it talks about the various levels of commercial development such as minor commercial place, neighborhood center, community center, a regional center, and the -- let's see. Russell has got the plan right here.

Okay. So this is 6. -- make sure that I got

it right. 6. -- sorry. 6.1.2.

MS. BELFLOWER: Okay.

DR. DEPEW: And it has a number of designations of commercial in it. Neighborhood commercial is 6.1.2.2. And it talks about major functions, sale of convenience goods and personal services, typical leading tenant, supermarket, drugstore, located as follows, intersection or arterial and collector which is what we've got there or arterials. Site areas between two and ten acres. Range of gross floor area is 30,000 square feet to 100,000 square feet, so the 45,000 square feet is at the low end of what the neighborhood commercial designation would be anticipated.

And then it's got some additional stuff about the North Fort Myers area, but quite specifically, it's inapplicable to -- for the current request, but that's the neighborhood commercial that that policy refers to, and we're clearly within those parameters, I believe, on that.

The staff has always indicated the site area is more of a guideline. So I think the commercial area is a little bit larger than this three to ten acres, but the key is the gross floor area, and

that is capped at 45,000 square feet. So we're within that, within that guideline.

MS. BELFLOWER: Is this an intersection? Is River Hall Drive considered a collector or --

DR. DEPEW: I would consider a collector. We may need to get Rob in here to see if he disagrees with that, but Steve, would you consider River Hall Parkway to be a collector?

MR. LEUNG: I believe it is, yes.

DR. DEPEW: It collects the various traffic from the neighborhood and brings it out --

MS. BELFLOWER: I understand that it collects. Whether it meets the county's definition of a collector road, which I think has a definition, I don't --

MS. EKBLAD: Well, the cross-section that I presented earlier in 10-296 calls it an urban collector.

MS. BELFLOWER: Okay. It is designed to an urban collector standard. Okay. We'll hear from staff about whether or not that meets the locational criteria for that type of intersection.

DR. DEPEW: Well, I would say that that determination has already been made because that CPD has been approved. So I believe that that's

one that I'm floundering with it because I think that's already part of the determination that it already met those standards.

MS. BELFLOWER: I understand that, except that you're changing the underlying category, and now you have to meet the underlying category, so I just need evidence on the record to understand that it is the neighborhood collector.

The question about whether or not it meets the 6.1.2 in terms of whether it could be approved because it's at an intersection or not at an intersection, that is probably a moot point because it is already approved there.

I would note that is not 45,000 square feet on 27 acres probably about twice the typical intensity of commercial, and isn't it usually 10,000 square feet per acre?

DR. DEPEW: It's usually, actually, nowadays, it's usually around 8,000 square feet per acre, but yes, it's quite a bit more acreage than what you normally anticipate for that area, but there's -- there's, I think, some other preservation areas that are up there as well. I have to go back and look at it, but if you remember the --

MS. BELFLOWER: Well, actually, for 45,000

square feet, you would expect a 45,000 -- I mean, a 45-acre parcel typically, would you not, for a development that big?

DR. DEPEW: 42,350 square feet. 42 -- anyway. 42,000 square feet.

MS. BELFLOWER: 10,000 square foot per acre?

DR. DEPEW: Right.

MS. BELFLOWER: Okay. So I did that math wrong.

DR. DEPEW: Yeah, you did it the wrong way.

MS. BELFLOWER: So you're saying it's a much larger parcel because there are conservation areas in there.

DR. DEPEW: There's other stuff up there, yes, ma'am.

MS. BELFLOWER: Other stuff up there. Use the technical term.

DR. DEPEW: I'm a -- I'm not an outdoor guy.

MS. BELFLOWER: Okay.

DR. DEPEW: I'll get Ken up here to talk about it if you want.

MS. BELFLOWER: Is this considered a mixed-use development under Objective 21.4, or is it a development that has a mix of uses?

DR. DEPEW: I would say it's a development

that has a mix of uses. It has a component that provides that mixture that is consistent with what the Shores is attempting to achieve but is not specifically a mixed-use development.

MS. BELFLOWER: Okay. Do we want to go through the conditions -- let me ask my basic questions on the conditions, and I won't -- we won't go through wordsmithing at this point because I want to hear from the neighbors before we get to that point to see --

DR. DEPEW: Mr. Schropp still has some words of wisdom to deliver as well.

MS. BELFLOWER: Okay. I think in your narrative, and I believe I heard the statements made here today that the applicant is committing that no lands will be re-platted. In the draft that I gave you all, which I guess we will be calling the hex exhibit, I had suggested a condition that says to codify that commitment, that no lands will be re-platted to increase density. Are you all okay with that?

DR. DEPEW: Yes, ma'am.

MS. BELFLOWER: Is that what your understanding was?

DR. DEPEW: Yes, ma'am.

MS. BELFLOWER: And there was several references in the narrative to an off-site trail. You seem to have argued pretty heavily about that. I understand that it is off site, so it would be difficult to have a condition.

DR. DEPEW: Right.

MS. BELFLOWER: But is there actually a formal agreement to do that? Is there something that we could make a reference that the applicant will do their best, provide their best effort or --

MR. SCHROPP: The trail was part of the -- during the course of the plan amendment came up and was debated, and it ended up not being a part of the Comprehensive Plan amendment. There was also a proposal for a development agreement at that point which was not going forward, so what you probably saw was just some residual references to the off-site trail which is not part of the proposal. By saying that, I think that's the trail that was intended to go along the FPL easement to East Creek which nobody seemed to want to do.

MS. BELFLOWER: Okay. So to the degree that there are statements about how certain provisions of the Lee Plan and the LDC are met by providing

that interconnectivity, that no longer is something that can be relied on; is that correct?

MR. SCHROPP: Okay. There was -- okay. There was a reference also to a trail along State Road 80, a bike path connection from the entrance to River Hall to the Buckingham center, Buckingham Road center area, the node there. My understanding from -- and Chip may want to elaborate on that, was that that was not a commitment that -- that they felt including as part of the zoning as it was an off-site commitment.

MS. BELFLOWER: Okay.

MR. SCHROPP: Yes.

MS. BELFLOWER: So it may happen, but it's not a part of the zoning application.

MR. SCHROPP: And Chip and I have not talked about it since the staff report came out, but I assume that's the reason, and so he can address that.

MS. BELFLOWER: Okay. So to the degree that I would ask if you would look at your narrative and before the rebuttal portion and see if you can address how the project may still meet some of the things that you had relied on the trail because

it's mentioned several times, and I think there seems to be a lot of reliance on the trail being there, and since it's not something that we can tie to this zoning, then I'm not sure that it can be used to justify meeting certain requirements to the degree it's necessary to meet those requirements.

MR. SCHROPP: I'll look at it.

MS. BELFLOWER: Okay. I think in Condition 1, there might need to be an additional commitment which I believe I reflected in the language here that the applicant will have all the additional units in the River Hall II area. I think that's what you had indicated you wanted to do.

DR. DEPEW: Yes, ma'am.

MS. BELFLOWER: And I don't think it was clear, so the -- in the River Hall II only.

DR. DEPEW: Right.

MS. BELFLOWER: And yes, I did have that language in there.

Condition 2A, the references to agriculture. And it's also addressed in 3H and 8. There is -- agriculture is not going to be allowed as a use in the project any longer; correct?

MR. SCHROPP: That's correct.

MS. BELFLOWER: So all references to agriculture can be deleted.

MR. SCHROPP: Yes.

MS. BELFLOWER: In both the uses and in 3H and 8. Okay.

The staff report, I'm going to let Chip talk to this, but I want to understand your understanding.

Staff report says that the request is to allow single-family detached, two-family attached, and zero lot line in both R-1 and the RMF areas, but that's not what the actual condition says. The single family -- only single family is allowed in the R-1 areas and not the other types of units. Is that what you're intending?

MR. SCHROPP: Can you run that by me again?

MS. BELFLOWER: At some point, I guess you all must have talked about allowing two-family attached and zero lot lines in the R-1 areas, but that's not the way the conditions are written. The conditions reflect what is currently allowed which is the R-1 only allows single family and does not allow two family and zero lot line.

MR. SCHROPP: If we can --

MS. BELFLOWER: Come back to that?

MR. SCHROPP: Yeah, let's think about that one.

MS. BELFLOWER: Okay.

MR. SCHROPP: Appreciate the question though.

MS. BELFLOWER: Yeah, because I suspect that's pretty big, and it would be only something, if you do want to make that change, it can only be done in River Hall II because you can't change what is allowed in River Hall I.

MR. SCHROPP: Right.

MS. BELFLOWER: But yes, you need to look at that one.

The open storage area. Where is that located? I couldn't find it on the MCP. There's a condition that makes reference to it as shown on the MCP.

DR. DEPEW: There isn't an open storage area in there right now.

MS. BELFLOWER: Okay.

DR. DEPEW: It's just where the golf course maintenance might be considered open storage. I'm considering the golf course maintenance open storage.

MR. SCHROPP: Which condition is that?

MS. BELFLOWER: It's in the use list.

MR. DEPEW: It's in the use list.

MS. BELFLOWER: And then there is a condition. I've forgotten which number it is.

DR. DEPEW: It says if open storage is put in.

MS. BELFLOWER: Number 19.

DR. DEPEW: If open storage is put in, it's got to be done in a certain fashion. Right now there isn't any.

MS. BELFLOWER: Okay. I have two concerns about it. Open storage is not a use allowed in the RPD and under the LDC use list, so it's not a use that is allowed. The fact that it is in the existing approval right now, I wasn't going to argue about it if it had been done on the MCP, but if it's not on the MCP and if it's not a use that you all had planned to have, I have a little bit of concern about having it listed there, but --

MR. SCHROPP: And by the same token, don't want to -- I assume you don't want to do anything to impact lands not subject to this, so if you wanted to add a condition that outdoor storage is not a permitted use in the RPD section that's subject to River Hall II, we have no objection to that.

MS. BELFLOWER: Okay. The condition as it's

written says as shown on the MCP. Has it ever been shown on the MCP as far as you all know? Outdoor storage.

DR. DEPEW: I don't know. Again, I wasn't involved from the original request.

MS. BELFLOWER: I would suspect the neighbors would like to know.

MR. SCHROPP: It says outdoor storage areas must be in compliance with Section 34, blah, blah, blah, of the LDC with the additional requirements as outlined on page two of two of the MCP.

I don't know that it shows it on the MCP. It says they -- there's some additional requirements on page two.

MS. BELFLOWER: The use list under the RPD, under the residential, it's the next-to-the-last use, says storage, open, recreational vehicle, boats, and similar items for residents only limited to locations, plural, shown on the MCP and must be shielded behind a continuous visual screening at least eight feet in height when visible, blah, blah, blah, blah, blah.

MR. SCHROPP: I do see that. And it says see conditions.

MS. EKBLAD: I don't see it. My copy is

really small.

DR. DEPEW: Recreational.

MS. BELFLOWER: Open space golf course.

DR. DEPEW: I just had it. I lost it. I thought I had it here somewhere.

MS. BELFLOWER: Well, if we could mark that down as something to look into. And I agree if we make changes to that condition, that it may have to only be for River Hall II, but then on the other hand, if it's not shown on the master concept plan, then it's not allowed.

MR. SCHROPP: It's not allowed. It may have been a carryover from a condition that was first drafted and got eliminated on the MCP. I don't know.

MS. BELFLOWER: All right. So we'll mark that down to come back and see.

There is a qualifier on the -- in the CPD for food stores, group one that says may sell food and non-food products. I went back and looked at the previous hearing examiner's recommendation, and in her review of the discussion, there was originally a convenience store requested, and I think staff recommended against the convenience store but agreed to allow a food store because it allows

many convenience type products to be sold, and I think that that language got added to address that, but to me, that makes no sense because obviously group one food stores allow food and non-food products to be stored -- to be sold, so do you have any objections to striking that?

MR. SCHROPP: I do not.

MS. BELFLOWER: Okay. And I think that the CPD is almost entirely or entirely within this rezoning?

MR. SCHROPP: Rezoning area. Yes.

MS. BELFLOWER: Entirely within it. Okay. So we can make that change.

You probably noticed that I regrouped the development standards under Condition 2B because some were grouped by type and some were grouped by use, and it was very confusing, but I hope I did not change anything.

DR. DEPEW: Again, we couldn't determine that there were any changes. It was just part of the editing.

MS. BELFLOWER: Okay. Perimeter setbacks. Not addressed in River Hall I, in the existing River Hall, but they are part of the land development code which River Hall I is required to

meet the Land Development Code. I suggested it in here that it be addressed for River Hall II with specific language, and I wanted to see if you had any thoughts one way or the other about that restriction.

DR. DEPEW: We already thought it applied.

MS. BELFLOWER: Okay.

DR. DEPEW: Because it's part of the land development code that exists at the time of application, so --

MS. BELFLOWER: Well, there have been people that argued that if it isn't said in the conditions, it doesn't apply, so --

DR. DEPEW: Certainly no one in this room.

MS. BELFLOWER: The subparagraph (b)(i) and (b)(ii), there is a very slight difference between the two of them. (b)(2)(ii) seems to say there cannot be certain structures in the side setbacks unless the engineer of record certifies the drainage for the lot, and subparagraph 2(b)(i) makes it two sentences which seems to say no structures, and you have to have the drainage certified. What's your all's understanding of those two provisions, and do they have any role in this particular application, or are they

leftovers?

DR. DEPEW: I thought those were in a prior version of this.

MS. EKBLAD: Yeah.

MS. BELFLOWER: They are probably the existing code.

DR. DEPEW: Yeah.

MS. BELFLOWER: And I don't -- I think that they would apply to River Hall II, and I'm trying to understand. It seems like they are saying the same thing except in one case, you can have them in the side yard if you get the engineer to sign off to say that having them in the side of the yard won't -- you can have your air conditioner there, won't block drainage, and the other one seems to say you can never have your air conditioning there, and your engineer has to sign off that the drainage is typical -- is the same as a typical lot. It's not giving relief with the engineer signoff.

Let me ask you to look at it.

DR. DEPEW: I don't disagree with that. It's just that those were conditions that were in the original zoning, so we didn't really touch them.

MS. BELFLOWER: Okay. All right. If you're

fine with them staying exactly the way they are, then that's fine. I just wanted to see if there was an understanding.

Condition Number 5, proposed condition indicates that the densities -- you're asking that the densities within the suburban and the sub-outlying suburban future land use designations may be shifted between those designations as long as the requirements of Policy 5.1.10 are met. That policy, I think you pretty clearly meet the first two. It's the third one that I have concerns about.

The land is under single ownership at the time the policy was adopted and is contiguous, and in situations where they're divided by roadways or certain things you can count, they can be deemed contiguous, but what you all are asking for is to be able to take parcels that are not contiguous although they may be by the same owner, but to spread from parcels that are not contiguous with each other. And if you have an explanation for why -- what you're asking to do meets that, I need something on the record on that.

MR. JACOB: Madam Hearing Examiner, if I could. The issue at hand is not whether or not

they can qualify under 5.1.10. That's not before you today. The issue is specifically whether or not they can transfer the densities between urban categories, and that's permitted under the Lee Plan now, so we're not taking that away from them in this process. We're not asking you to make that determination today.

MS. BELFLOWER: They're asking to be able to put more units in the acreage of the infill parcel than they have available if you just took the acreage and the infill parcel and multiplied it by two.

MR. JACOB: That's correct. Under 5.1.10, that's their ability. They can do that now without this action if they have the ability to meet those criteria. We're not asking for you to make a determination whether they meet those criteria. That's not part of this application.

MS. BELFLOWER: Okay. So it would be asking for 695 units that they may not be able to build --

MR. JACOB: Correct.

MS. BELFLOWER: -- because they may not be able to meet the density swapping criteria.

MR. JACOB: And we talked about this.

Depending on who actually develops the property, they may never get to the number that exceeds the categories that we're talking about. That's why we put the conditions the way we did.

If you'll note under -- I'm assuming the red. My copy is the hard draft, staff's. We just spelled it out as the maximum that's allowed per category, and they under the comp plan as it exists today have the authority to transfer between the urban categories. That's nothing changing.

We're just making it clear that if you're going to transfer, that's fine, you can transfer, but you have to meet those criteria, and we're not specifying whether they meet it today or tomorrow or whenever. They'll have to demonstrate that when they come in for a development order that includes the unit that exceeds what's listed in the category shown under 5A which may or -- may never happen.

MS. BELFLOWER: Okay. So as long as the acreage, if they wanted to develop 20 acres and they wanted to put 40 units in that 20 acres, as long as the parcel they're coming in asking to develop doesn't require any transferring between

the urban categories, then there won't need to be a determination made, and they will meet the Lee Plan without any question, and they can go forward.

MR. JACOB: Right. The way this is set up, and we've had questions, I've had questions specifically on the phone with regards to how this works because there's confusion on it. The future land use category for this development is the acreage is -- using these numbers, 585 acres, .6 acres. The total number that can be -- of dwelling units for that category for this project is 1,171.

MS. BELFLOWER: Uh-huh.

MR. JACOB: That's it. If they -- if they do not qualify for 5.1.10 when they come in and ask for that 1,172nd unit inside of that category, then they will not be able to develop it. If they do qualify, at that time, then they can transfer it and have additional.

MS. BELFLOWER: So it's not a question we need to answer at this point. It's only when they need to transfer the units, then it will be a determination made at that point.

MR. JACOB: That is correct.

MS. BELFLOWER: Okay. Thank you.

That's Michael Jacob for the record. And I'm sure he was sworn.

So that answers that.

Condition 10 which was Condition 11. Talking about the signal at the intersection that you all have asked for alternative wording on. If -- can this condition bind development in River Hall I?

MR. SCHROPP: Which condition are we talking?

MS. BELFLOWER: 10, formerly 11, the traffic light condition. Where it says -- and you've asked to extend the dates or whatever, but if things don't happen and the county says we're going to stop, no more permits, can this be made to apply to River Hall I development?

MR. SCHROPP: Yeah, and the condition seems to do that where it applies to existing and minor changes to existing development orders and things of that nature. From a technical standpoint, I've kind of wrestled with the dichotomy that staff has tried to create between land subject to this application and lands not subject to it. I would say no. I think prohibition or the condition really only applies to lands that are included within the application.

MS. BELFLOWER: Okay.

MR. SCHROPP: That would seem to be the logical continuation of how the resolution on the conditions were set up. But I understand from a technical -- let me say this. From a -- from the position of the applicant, we're moving forward with the signal, and so we don't anticipate it would be a practical issue complying with it and even subjecting minor changes to existing development orders, but there won't be any.

MS. BELFLOWER: Okay. But in all likelihood, we need -- if it's going to say anything, it needs to say changes to development orders within River Hall II will not be granted.

MR. SCHROPP: New development orders or changes to development orders within River Hall II, yes. And that would pick up some of the existing development orders that are out there for the areas subject to rezoning. For consistency sake, I think you're correct. That's how it probably needs to be worded.

MS. BELFLOWER: Okay. So there is an existing condition which says additional conditions may be required to obtain a local development order. Under the current resolution, the 2005 resolution,

it makes some references at the development order stage, you may have to jump through some additional hoops. That language would stay for River Hall I.

MR. SCHROPP: Yes.

MS. BELFLOWER: And then this language would go for River Hall II.

MR. SCHROPP: Yes.

MS. BELFLOWER: Okay.

The secondary access. It sounds like you all are in agreement to providing the secondary access?

DR. DEPEW: Yes, ma'am.

MS. BELFLOWER: So is deviation nine still needed?

MR. SCHROPP: We included it and kept it in there until staff told us they were going to recommend denial because it's addressed by Condition 23. So with that understanding that it's really not needed, that Condition 23 addresses the access requirements for River Hall in conjunction with the two access requirements, we're okay with the denial of the deviation.

MS. BELFLOWER: Do you want it denied or do you want to withdraw it?

MR. SCHROPP: Subject to your concurrence that our interpretation is correct, that the condition does address and obviates the need for the deviation, eliminates the need for the deviation request, I have no problem withdrawing it.

MS. BELFLOWER: Well, okay. Because the condition is saying -- the development is going forward. It's already approved with one access. It's actually already approved with two access points.

MR. SCHROPP: It is.

MS. BELFLOWER: So with this amendment that you're doing, you're not eliminating the access point, you're just changing some of the wording about how it's going to happen.

DR. DEPEW: The timing.

MR. SCHROPP: And that's consistent with, I believe, the way staff explained their position. We put it in there, and I think it was actually my request that we include it just out of an abundance of caution.

MS. BELFLOWER: Abundance of caution. I knew that word was coming.

MR. SCHROPP: So if it's unnecessary, and I think staff agrees it's unnecessary, we'll

withdraw it.

MS. BELFLOWER: Okay.

MR. SCHROPP: That deviation.

MS. BELFLOWER: Okay. I think we got an answer on that.

The deviation six and seven. Were you going to go through the deviations any further or not?

DR. DEPEW: No. It wasn't our intention to do that.

MS. BELFLOWER: Deviation six and seven is talking about setbacks from certain indigenous areas. And I saw your explanation in the narrative that when -- in 2005, when the River Hall application was pending, just before it was approved, County amended the code and put these setbacks in, but because River Hall's application was in the process, it was allowed to move forward without meeting those requirements; is that correct?

DR. DEPEW: Yes, ma'am.

MS. BELFLOWER: And then when the lots were platted, they were platted with that understanding that it did not have to meet that setback.

DR. DEPEW: Yes, ma'am.

MS. BELFLOWER: So for all the lots that are

platted, what would pull it into having to meet that setback? If they're vested now and they have been platted that way, would they not be vested because of their platting?

DR. DEPEW: We just wanted to make sure there was no misunderstanding about that, that they were vested in accordance with their plat and that there weren't going to be additional setbacks imposed on them when the applications for building permits came in.

MS. BELFLOWER: Okay. It's my understanding from what Tina testified to that several of the areas are included in the development, in the zoning amendment only because your one to ask for these deviations.

DR. DEPEW: Yes, ma'am.

MS. BELFLOWER: If there was a statement from staff on the record that those platted lots are vested to not have to meet the setbacks because they were given that bye, that vesting when the development originally went through --

DR. DEPEW: Much prefer a statement from the county commission stating that.

MS. BELFLOWER: Well, my concern is, well, staff, I think, is recommending approval but on

limited lots, where there was one that was asking for a bunch of lots, and they're saying the ones that are not -- included in this development order, the deviation wouldn't be granted, so you're in the same position for those lots that are not in this amendment that you're not -- if you're not sure of your vesting there within the amendment parcels, you're not sure in the River Hall I area either.

MR. SCHROPP: We're covering as much as we could cover under the application, I guess, is the way to look at it.

MS. BELFLOWER: I'm going to ask staff if they can make a statement when we get to your portion to address those deviations because --

MR. JACOB: I can address that now. Plats will not divest you for setbacks. There's no building shown on a plat. There's nothing that could be shown that vests anyone.

MS. BELFLOWER: So --

MR. JACOB: The deviation would be needed.

MS. BELFLOWER: By rezoning, they are subjecting themselves because if they were vested because the application was pending at the time the ordinance was adopted and they were allowed to

not have to meet them in 2005, by rezoning, they're including those lots and have to get a deviation for them? Or are you saying they're not vested at all?

MR. JACOB: Well, you're talking about two different things. The majority of our ordinances, and again, I would look at this one. When we adopt a regulation pursuant to the effective provision in the ordinance, the ones I do typically indicate that they are not -- the regulations do not apply to the projects that have been found sufficient or deemed complete.

I don't know in this circumstance, but as far as being vesting for changes in regulations is one thing. That's sort of your nonconforming discussion. You're talking about vesting by nature of the fact that something was platted and that does not -- those are two separate concepts.

MS. BELFLOWER: So it was the zoning that made them to be able to go under the old regulations --

MR. JACOB: Correct.

MS. BELFLOWER: -- and not have to meet the new regulations.

MR. JACOB: Correct.

MS. BELFLOWER: This zoning action would

change that. If they include the lots here, they would lose whatever vesting, to use that term, that they had under the zoning approval under the resolution because they were sufficient before, they would lose it unless they get a deviation.

MR. JACOB: Not entirely, but, you know, we have to talk about what regulations were in place, what was developed, what was approved. We have to go through all that analysis, but in an abundance of caution, you can come in and ask for a deviation to make it no longer a nonconforming use and make it a permitted use in essence. To make it legal.

MS. BELFLOWER: So you're going to get some of the lots, but not all the lots through this.

DR. DEPEW: I think you get most of them.

MS. BELFLOWER: It's the standard of the criteria that you have to meet to get a deviation to say, well, we had it, but we're just not sure we have it, and --

DR. DEPEW: Well, I think the deviation ensures that the development on those lots is going to be consistent with development on the other lots that are in those development plans, so from that standpoint, I think it meets the intent

of providing for the general public health, safety, and welfare by providing consistent development on each of those lots and those areas that are already platted.

MS. BELFLOWER: It's not necessarily consistent with the intent of the regulation, the intent of the regulation and given that we've got a very large area to the east that is going to be burned and can possibly be a burn issue, and that's exactly why you have a setback, and yes, you may give a piece of paper to the neighbors, to the property owners when they're coming by the piece of property and said hey, we may be burning out here, and you're only 20 feet away from it, where the code says you should have been 30 feet.

Let's put that on the "think about" list because that kind of concerns me about being able to meet the criteria for a deviation for something that it's something you already have, but you would just like it locked up and not be nonconforming. You want to make it legal. So just put it out there that I have some concerns about that.

And deviation eight which was the slope situation, are you asking --

MR. SCHROPP: We'll withdraw it.

MS. BELFLOWER: You're withdrawing that.

Okay. I think that's most of my questions. We may have some wordsmithing things to go over later. Thank you.

Did that raise any questions or anything more the staff wanted to say?

MR. JACOB: With regards to the conditions, now that we're talking about River Hall I and River Hall II, we probably should consider references to River Hall phase one and phase two. While we may all know what this means, down the road, we may want to clarify.

MS. BELFLOWER: We can call it whatever we want to call it. I just for expediency just named it that just so that we could get the conversation started.

MR. SCHROPP: We could do River Hall Legends and River Hall Champions.

MR. JACOB: I think so. Just I bring that up for --

MS. BELFLOWER: Yes, and I appreciate that, that there are A and B, original amendment, or whatever you want to --

MR. JACOB: Phase one and phase two as they're

defined or shown in the conditions only applies to phase one and phase two within River Hall I. With simple modification to that language, I just don't know.

MS. BELFLOWER: Okay. We'll come up with a name.

MR. SCHROPP: We'll come up with a name.

MS. BELFLOWER: I think everybody's in agreement with the concept that the conditions have to affect the two areas differently.

MR. SCHROPP: Separately, yes.

MS. BELFLOWER: All right.

DR. DEPEW: Are you done with me?

MS. BELFLOWER: Yes. Sit down.

I think it's an appropriate time to take a break. So we will break until --

DR. DEPEW: He's only got five minutes.

MR. SCHROPP: Then we'll finish our presentation.

MS. BELFLOWER: Okay. All right. All right. Let's let Russell finish.

MR. SCHROPP: I'll plod over and hopefully not fall over.

DR. DEPEW: Just hit the down arrow to advance the slide.

MR. SCHROPP: It works. Thank you for your records. I'll be brief. I'll plow through this relatively quickly.

Just wanted to put some general conclusions before you as part of our closing here that I think are supported by the testimony that you've heard here today, and I'll go through them very quickly. There's 15 of them.

The first one, and they're all bullet points on the slide. The first one is that based on the testimony of Mr. -- Dr. Depew and Ms. Ekblad, this is essentially infill development on a portion of River Hall that is under the unified control of GreenPointe Communities.

The amendment will increase the number of dwelling units by 696, and it will locate those units in areas that are already identified for development. No lands will be opened up for development that aren't already identified for development under the master concept plan. No lands will be re-platted, and the minimum property development regulations that are attendant to the remainder of the project will remain in effect and will control the future development.

The revised amendment is consistent with the

Lee Plan as testified by Dr. Depew and will also promote the proper allocation of units throughout the project. It's important to note, I think, that the rural areas that remain after the plan amendment are those areas designated as rural will remain at a density of less than one to one or at one to one or below.

The question of 696 units are located in the unplatted portions of the project and are adjacent to developments that have similar or greater densities, particularly to the south and the west. To the west, Portico. To the south, Lehigh Acres. And no changes are proposed to upland or wetland preserves or open space in order to accommodate the additional development.

As Dr. Depew testified, the request of rezoning meets or exceeds all performance standards in the Land Development Code and plan and also meets the design criteria and the stance for decision making contained in the code.

It's consistent with the densities, intensities, and uses set forth in the Lee Plan, and the requested zoning implements the companion plan amendment that is pending here and provides reasonable use for the remainder of the lands

consistent with that plan amendment.

The current approvals provide for no additional units to be developed on the property. The current approvals in effect, as Dr. Depew testified in response to your questions, essentially have no bona fide reasonable use for the property that is designated for the additional units here, the infill parcels, and so this will provide a reasonable use for the property in accordance with the master concept plan that was previously approved.

The request is compatible with existing and planned uses in the area.

You know what? I always forget to do this. Here we are.

It is compatible with existing and planned uses in the area. It is supported by adequate transportation facilities and infrastructure including sewer and water. The approval of the request will not adversely affect environmentally critical areas or natural resources, and all development will be -- will occur in areas that are already intended to be within the development envelope.

The requested zoning changes comport with the

existing pattern of approved land uses within River Hall. Recommended conditions and other applicable regulations provide sufficient safeguards to the public interest and are reasonably related to the impacts or created by the proposed development.

All urban services are available to support the development, and finally, the requested deviations as conditioned and as withdrawn enhance the achievement of the plan development objectives, and as Dr. Depew testified, preserve and promote the general intent of the Land Development Code, Chapter 34, and protect the public health, safety, and welfare.

With that, that concludes our presentation. We believe we've provided the prima facie case that we are entitled to zoning, and we're available for questions and would certainly reserve the right for rebuttal at the conclusion of staff and the public's input.

MS. BELFLOWER: Okay.

MR. SCHROPP: If there's any questions of us, we stand ready.

MS. BELFLOWER: Okay. Thank you.

MR. SCHROPP: Thank you.

MS. BELFLOWER: Now we will take a break, and please be back at 3:10.

(A recess was held from 2:52 p.m. through 3:10 p.m.)

MS. BELFLOWER: Okay. I think we're ready to get back on the record and are ready to turn to staff.

MR. BLOCK: Okay.

MS. BELFLOWER: If we can please, we're starting the hearing now, please.

Go ahead.

MR. BLOCK: Ready? Good afternoon, Madam Hearing Examiner. For the record, my name is Chip Block. I'm with the Department of Community Development. I have taken the oath today. For this case, I have been accepted as an expert witness and have sworn before. For this case, I'd like to be accepted as an expert witness in zoning and the Land Development Code.

MS. BELFLOWER: Any objection?

MR. SCHROPP: No objection.

MS. BELFLOWER: So accepted.

MR. BLOCK: Thank you, Madam Hearing Examiner.

The couple of items here that we need to just make sure that are part of the record, first of

all, you have a staff report. Recommendation by the staff is contained in that report. Rather lengthy report. It was last printed, and you'll see it, the date of December 30th, 2014, in the lower left-hand corner in the footer. That is the approved or the staff report that we sent to your office. Contains all the staff recommended conditions, findings, and conclusions.

You've heard a lengthy presentation by the applicant, and when I get into my presentation, you'll hear some other things, but coming off the staff report and now going to other documents, first of all, we'd like to make sure the staff report is part of the exhibits.

MS. BELFLOWER: Staff report is Staff Exhibit Number 1.

MR. BLOCK: Thank you, Madam Hearing Examiner.

Second of all, during the public hearing process, you heard discussion related to a revised letter from the school board. I have copies of that letter now.

MS. BELFLOWER: Good.

MR. BLOCK: Letter dated January 9th, 2015, so we just received this from the school board, and it does reflect the changes based upon the

applicant's changes of the -- that they had in their application.

MS. BELFLOWER: Okay.

MR. BLOCK: So at this moment, I'd like to pass it out.

MS. BELFLOWER: That would be Staff Exhibit Number 2, the revised school board letter. Answered one of the questions I had.

MR. BLOCK: Finally, Madam Hearing Examiner, as we're going through and listening to the presentation by the applicant, we went back and looked at our staff report. Particularly, there was discussion about a letter in the environmental report from the environmental sciences staff, and when we looked at the staff report, we noticed that all the attachments to the environmental sciences staff report were not included in the report, but they are referenced there. So because they are lengthy and rather large, we've actually placed them on disks.

MS. BELFLOWER: Oh.

MR. BLOCK: And would like to hand that out to supplement the staff report from the environmental sciences division that provides you all the attachments that are listed in their staff report.

MS. BELFLOWER: Okay. That will be Staff Exhibit Number 3, and it is a CD of the environmental staff report attachments.

MR. SCHROPP: I can't read it.

MR. BLOCK: You can't read it.

DR. DEPEW: Wrong side.

MR. BLOCK: You need to turn it over and use the other glasses. That will assist you in reading it.

Now, with that being said, Madam Hearing Examiner, I will go to my initial part of my presentation that I initially planned. I have the two exhibits, and I have been accepted as an expert witness and sworn in, staff report.

As discussed by the applicant, they are attempting as part of their request to amend the existing planned development zoning that's within the River Hall development. You've heard that today.

The staff recommendation is for approval of this request with the conditions as outlined in Attachment C of the report.

Now, you have taken it upon yourself, and we appreciate that effort, to try to not only do what staff was attempting to do which was provide

conditions for this planned development, but you've gone to the next step of trying to codify all the actions within River Hall, and we appreciate that effort. And we've had some opportunity to go through this. We've heard how the applicant has responded to it.

I'd like to just leave that set of conditions off on the side if I may. Let you ask questions of us as we go through at the end of our presentations to see if we can answer any of your questions regarding it.

We've heard the applicant's responses to that. We're all trying to get to the same point. The final answer is what is allowed within the amended version of River Hall, plus not making sure that the other elements of River Hall don't lose any of their development rights, and we all understand that.

The 48-hour notice in the conditions, following the conditions of approval, you've incorporated those in, and as part of that, not finding mine right now, but I'll deal with that in a second.

The applicant is correct that the proposed uses that they had, they wanted to make sure that

the recreational facilities were added in as part of both areas of the planned development, and we have no objections to that.

The administrative approval, when I looked at that administrative approval in item two of the e-mail from the applicant, when I looked at it, I didn't think any of the areas that were identified in that administrative amendment were part of the amendment land use area legal description for the subject property, and that's why I'm having a little trouble including those in, but if you go to a codified action, then including that action is a correct way of handling it is by including it in. It's very specific.

It identifies specific areas at the end of the administrative approval. I think it clearly defines where those deviations were granted and where they were not, so we'll be safe if we go with codified actions.

MS. BELFLOWER: Okay.

MR. BLOCK: As to Condition 11, I'd like to leave Condition 11 to Rob Price to help you -- help him explain to you the position that he was taking on Condition 11 and what we were attempting to achieve in the conditions. So I would like to

leave that open until we've had the opportunity for Rob Price to discuss it.

As to the changes in Conditions 29 and 30, again, that's -- we're going back to a codification type situation on that. Again, under the codifications, the changes that were granted as part of those administrative approvals, we know that some of those lots that were granted in the administrative approval were inside River Hall, the non-amended area, but also outside of it in the amended area. So by a codification and including those in there, again, that, we believe, it adequately addresses it.

The school board going now to that -- to County's exhibit for that on the school board letter. I will explain that the school board letter from the new one to the old one effectively changes the number of school-age children. There were a much higher number of school-age children in the paragraph as discussed by the school district. Now they're totalling 219 school-age students would be generated, and you'll also note that the paragraph in the original letter from the school board discussing the consumption on premises issue and its relationship to where the

consumption on premises would be in relationship to River Hall Elementary shows that they were -- and I explained it to them, where the consumption on premises was going to be in the commercial planned development section of the overall planned development was more than the separation requirement under the Land Development Code between the consumption on premises applications or use and the school district property itself.

So because of that, they removed that concern that they had under the consumption on premises because there was going to be adequate separation, and there was going to be compliance with the Land Development Code for that.

So just kind of going over my notes here. I need to go back over my notes from the public hearing.

Mr. Passarella pointed out a couple of errors in the environmental sciences section, particularly the conditions where it was A through J, not A through E. And that's just in the staff report itself, and yes, that was a typographical error associated to it that it should be carried over, and the two new conditions, K and L, were correct. Those were the two new conditions.

Really, I think after I have asked my questions of the applicant, I believe that addresses all the points that I needed to make.

Staff does recommend approval of this request. We recommend approval with the conditions. If we're going through the codified conditions, we need to work on those just to make sure everybody understands where everything is.

Was it your intent at the end of the hearing -- what was going to be your intent at the end of the hearing with your codified conditions?

MS. BELFLOWER: I think that if we're in agreement with going forward with this form, the members of the public have a copy of this as well so that we're all looking at the same thing.

In terms of wordsmithing, what we call River Hall I, River Hall II, I think we can hold that to the end because I don't think that's something that the neighbors are going to be particularly concerned about, but if they are, they are welcome to stay and listen to that portion of it.

So my thought is if it is necessary to do any wordsmithing on the conditions, that we do that after the public has spoken.

MR. BLOCK: Okay. So we'll take the

opportunity also to digest it a little more ourselves during that time frame, and when we get to the point of discussing the codified conditions, we can all go through those and work out the language as necessary.

MS. BELFLOWER: Okay.

MR. BLOCK: With that being said, Madam Hearing Examiner, that's effectively my presentation.

Brandon, do you have a presentation?

MR. DUNN: No.

MR. BLOCK: We do have the Division of Planning and Division of Environmental Sciences are here. They were not going to have any presentations as such, but if you have any questions, you certainly have the right to ask them.

After my presentation and taking any questions from yourself or the applicant, Rob Price would be doing a short presentation regarding transportation-related issues.

MS. BELFLOWER: Okay.

MR. BLOCK: So with that, I'll just open up the floor at this particular time for any questions that you may have.

MS. BELFLOWER: Did you have questions?

MR. SCHROPP: Not so much a question, but on the school district letter, Chip can comment if he wants to, looking at the letter, it says in the second paragraph, this request will add an additional 750 single-family dwelling units. That's the number that would be added by the plan amendment, but as we've discussed, the zoning would add 696, so I just wanted to kind of explain that discrepancy on the record. It would only serve to reduce the impacts if she evaluated the zoning number rather than the comp plan number, but just for the record, clarification.

MS. BELFLOWER: Okay.

MR. SCHROPP: It would only reduce the school children generation rate or generation.

MS. BELFLOWER: Okay. Let's go to the school board letter because that was actually a question I had of the county attorney's office was in reference to that.

She took off the reference to the alcoholic beverage provisions which is what my question was about, but it would still be true to a recreation, well, let me ask this question.

Can a recreational facility or any of the uses

that are allowed in the teal area, the area that is within 500 feet of the elementary school or anywhere around the elementary school, can any of those uses have alcoholic beverage consumption on-premise licenses?

MR. BLOCK: Okay. That's going to be in the identified residential area, and in the identified, I believe we all clarified and kind of agree that outside of the commercial planned development district but in the residential planned development district, the residential and accessory uses would be all agreeable and permitted uses, and so I would have to say from the standpoint of consumption on premises since it is listed under the residential golf and amenities sites, the answer would be yes, but a qualified yes.

That qualified yes is where is it in relation -- where is the actual use going to be in relationship to our measurement standards from consumption on premises location to the surrounding boundary lines that have to be measured, and with that, since no deviation has been granted, they would still have to comply with the Land Development Code for those separation

requirements.

MS. BELFLOWER: Well, the only -- the point that she raised is a reference to the statute, and Michael, if I could ask you to come up, and I'm sorry to hit you cold with this, but I'm sure you can handle it.

The language that was in the letter previously makes reference to Florida Statute 562.452(A) which prohibits on-premises consumption of alcoholic beverages within 500 feet of a public school except for restaurants deriving at least 51 percent of the gross revenue from the sales of food and nonalcoholic beverages.

And the statute actually goes on to say unless the county and municipality approves the location as promoting the public health, safety, and general welfare of the community under proceedings as provided in 125.664, which is the ordinance adopting provisions.

So my question is the statutes prohibit any on-premises consumption except for a restaurant that with 51 percent, an SRX license, and that would include a recreational facility, a clubhouse, amenity that had served alcohol unless the County has approved the location as promoting

the public health, safety, and welfare through a rezoning or LDC adoption process.

Does the fact that the Land Development Code not require restaurants to have 51 percent and does not require certain other amenities, and I think the recreation facility clubhouse ones are one of the other exceptions under the Land Development Code, do those constitute the exception that the statute is looking at, that whatever the County has adopted as alcoholic beverage regulations provisions, if they vary from the statute, do they meet the statute because they have been adopted as a part of the Land Development Code?

MR. JACOB: The answer is yes, it could be. When I heard you read, it only applies to five -- within 500 feet.

MS. BELFLOWER: Right. You can't have it within 500 feet.

MR. JACOB: So if it was 600 feet, the statute wouldn't apply.

MS. BELFLOWER: Right. My question is if there is an amenity, and there's an amenity area across the street from the elementary school. If they wanted to have -- and I was looking at this

from the perspective of restaurants, and I'm not sure what the exceptions are, but there are some exceptions to the 500-foot requirement. If those exceptions are in the Land Development Code, would that be the finding of public health, safety, and welfare authorization that the statute allows, or do we have to look at each project for the compliance with the statute one by one?

MR. JACOB: I'm going to say based on what I'm hearing, the answer is the ordinance itself would have to have -- the ordinance adopting the regulations that would allow it within 500 feet or in essence, the ability to get a deviation to allow within 500 feet, that would qualify under the statutory requirement for an ordinance, but what you read indicated there must be a finding that the public health, safety, whatever the portion you read.

MS. BELFLOWER: Unless the County approves the location as promoting the public health, safety, and general welfare of the community.

MR. JACOB: So I would, in order to make sure everything complies with that, I would have to go back and look at the ordinance that adopted that to make sure in light of the regulation that there

was some sort of finding or reference in the ordinance that that's what that would do, but as Chip indicated, there's no request for a deviation inside the 500 feet, so what you read wouldn't apply.

MS. BELFLOWER: Okay.

MR. JACOB: But if they wanted to put it within 500 feet and somebody wanted to challenge that based upon say maybe the ordinance adopting that regulation didn't comply with the state statute, we would, of course, have to find out when that state statute was enacted as opposed to what regulation we're talking about.

MS. BELFLOWER: Okay. All right. So we don't have to worry about it in this one because there's no deviation request, and hopefully, there's no exception for amenities within 500 feet, and I think it's probably something that is met by the words of the Land Development Code because the Land Development Code protects the public health, safety, and welfare, and then the provisions are enough to do that.

MR. JACOB: Right.

MS. BELFLOWER: I've just never had that question raised that directly before as was done

in this letter, so okay. I think we're okay on this one. It might be something that we might want to go look at so we have a ready answer in future cases.

MR. JACOB: We definitely want to for staff purposes keep that in consideration so that if we do adopt Land Development Code regulations that apply to say deviation under the 500-foot mark, that there is a finding by the board when they do adopt that ordinance that it --

MS. BELFLOWER: Meets the statute.

MR. JACOB: -- does meet the statutory requirements.

MS. BELFLOWER: Thank you.

MR. JACOB: Uh-huh.

MS. BELFLOWER: The ADDs, the four ADDs that are referenced in the conditions and in the staff reports, --

MR. BLOCK: Yes, ma'am.

MS. BELFLOWER: -- are you relatively comfortable that they are incorporated into these -- this codification of conditions, or do you think that we might need to look at whether everything has been covered?

MR. BLOCK: When I researched this, Madam

Hearing Examiner, initially during the zoning case when it was first filed and then following up with your 24-hour notice to us as to questions that you had, I went back and checked, and throughout all of River Hall trying to find any ADD that may have been granted within the River Hall project, and I found no additional ADDs, administrative approvals that were granted as part of this, so I'm very satisfied with it.

MS. BELFLOWER: Okay. I think the applicant has answered most of my questions.

I would like to hear on the Lee Plan about the multi-family in the CPD and how that works and how that is determined. Let me see if I've got any further questions for Chip.

I think that was the main issue was to just understand how the CPD might develop with residential and how those units could be calculated.

MR. DUNN: Okay.

MS. BELFLOWER: Thank you, Chip.

MR. BLOCK: Thank you. At this point I'd like to maybe, since it's going to be direct testimony, have Rob come up and provide his direct testimony on questions related to transportation-related

issues we wanted to bring up, and at that point staff will be finished with its presentation, but if you've got any questions.

MS. BELFLOWER: After he talks about the --

MR. BLOCK: And you can ask questions of Division of Planning or Environmental Sciences as the case may be.

MS. BELFLOWER: Okay. I got you. Your hierarchy.

MR. BLOCK: It's going up since I started it.

MS. BELFLOWER: We're going to lose Rob as I understand. This may be his last presentation, so --

MR. PRICE: Good afternoon, Madam Hearing Examiner. Rob Price with Development Services. I'm a licensed professional engineer in the state of Florida, and I've been recognized in this forum as an expert in transportation planning, traffic engineering, and development order review in the past. I wish to be recognized as such again today.

MR. SCHROPP: No objection.

MS. BELFLOWER: So accepted.

MR. PRICE: You're right, I think this is my last time, but I was going to just kind of briefly

touch on my conditions because there's been some back and forth with regard to specifically the traffic signal condition, so I guess I kind of -- hopefully, I can kind of sum up some of what's the genesis for the condition and where we're trying to go with it. Maybe help clear the air.

The bottom line is the State, when they issued the connection permit for Hawks' Haven which is the predecessor of this site, that connection permit is attached to the back of my staff report, and there's a special provision that's in that permit that requires signalization of that intersection, and the language says the proposed connection and full median opening will be signalized at the applicant's expense when the signal warrants are met as determined by the Florida Department of Transportation traffic operation division.

All necessary analyses for determination of signal warrants, the development of detailed signalization design plans, and all construction costs will be responsibility of the applicant. So their permit specifically says once they deem the signal is warranted and it's necessary, it gets constructed at the applicant's expense.

We received word back in April that through communications with the school board, the traffic division from the State had gone out and done an updated signal warrant analysis at River Hall Parkway and State Road 80, and they deemed that that intersection meets the signal warrants. They contacted us to see -- we have a pretty good coordination effort with the State, and so they reached out to us to ask if we could reach out, help them reach out to the developer, which we did. We forwarded the signal warrant analysis to the team over here, and we kind of indicated it was time to start getting with the State to build the signal.

Since that time, I'm not aware of any communications that have happened with the State regarding beginning of design and permitting of that signal. So as a result, in an effort to try to assist the State with their efforts, we proposed this condition.

Reasonable time frame for construction, permitting, design of a traffic signal is 12 to 18 months. We would like to see it get started six months ago, but unfortunately, that just hasn't happened. So what we're trying to do with this

condition is to kind of light the flame to get the ball rolling and get it going. It's -- the 12-month time frame, you know, we're open to some modifications.

The concern that I have is that we're not usurping the State's authority on their roadway. This is a direct result of their authority to maintain their roads and their connection permit, and so we want to be very careful not to put -- extend the timeframes when the State's condition clearly says construct it now, so that was the reasoning that we didn't have the ability for the director to extend the, you know, the prohibition of development order issuance after the 12 months.

Like I said, I had some discussions with our staff on the third floor, and a reasonable time frame was 12 months to 18 months, so we went with the 12 months because we wanted to make it clear that it needs to be installed, it needs to be installed right away.

The applicant has attempted to kind of utilize some of the language from my condition regarding the second access point to provide the same assurances that they can receive extensions down the road, and there's a difference in the two

conditions, and again, the reason that we didn't want to go there on the signal condition was because it's a State Road, and ultimately, it's their call, and they want to install now.

But we provided that ability for the applicant on the access condition, the secondary access to Lehigh because originally through the original review of this case, the second access was triggered by the 1,598th dwelling unit, and so are we a little concerned that we have approved DOs that go above 1,598 and don't have that access point designed yet? Sure.

Theoretically, they could apply for building permits, and our permitting counter could deny after we get to 1,598, but we have some more wiggle room because of the latitude that was given for the construction of that second access in the original zoning and the current zoning approval, so that's why we kind of went down that path with the condition regarding the secondary access point was we can provide some additional extensions if you show us that, you know, you've got DO plans, we're working, moving forward on getting the access point designed and getting it constructed.

If there's just a big boom and we start adding

a bunch of units out there, as long as we're getting the design underway and we've got the thing ready to go, we want to see it show up in the next DO for the unplatted lands, and then once we have it approved, then we'll feel a lot more comfortable that it's going to get built.

So that's kind of the genesis for the difference in the conditions and the timing, and so at the end of the day, if it's your will to grant the extra language that gives them the ability to ask for extensions on the development order approvals for the traffic signal, based on the way they've proposed it, I don't have a major problem with it. I just want to make it abundantly clear on the record that the State has the authority, they want the signal built now, and we're trying to help them do that. So that's really the genesis for that condition.

When I was back at my desk listening, I heard you guys talking, you were asking Dr. Depew some questions about the classification of River Hall Parkway.

MS. BELFLOWER: Uh-huh.

MR. PRICE: It would according to Administrative Code 11-1, it would certainly

qualify as a collector road, a minor collector roadway, so the site location standards are satisfied with regard to the commercial uses that are shown and approved out there today, so we wouldn't have any concerns with regard to that.

If there's any other questions, I'd be happy to answer them. I know we did talk about a little bit with Steve up here about the adjacent median openings, so I guess it probably is prudent just to put that on the record as well.

The second special provision in the connection permit says the full median openings at South Olga Road and Linwood Avenue will be directionalized by the applicant at the applicant's expense when requested by the Florida Department of Transportation and/or signalization of the Hawks' Haven connection occurs.

So once signalization occurs, those median openings get directionalized to left in, right in, right outs. No left out will be allowed off of the side streets.

I would anticipate through the design and permitting of the signal at River Hall Parkway that that will come -- that will shake out, and the design of those improvements will happen at

that time as well, but ultimately, that's the State's review, and they're the ones doing that review. So, you know, we're kind of out of that one, but there will be a time in the interim, let's just -- I know you were specifically concerned about what happens when Olga Square comes in and the changes to the intersections.

Well, if River Hall Parkway gets a signal built before South Olga Square gets developed, there will certainly be a time in the interim where the ability for people on South Olga Drive to make a left out to head eastbound will be restricted, and they'll have to go either westbound and make a U turn or head east through some other network of roads in order to get out further east on State Route 80.

That's contemplated in the State's permit. I think it's something they anticipated all along, so I don't know that it's a major decision factor that we need to be worrying about too much in this forum.

When Olga Square comes in to develop, they're going to have to get a permit to access State Road 80 opposite of River Hall Parkway. They're going to be required to provide a traffic signal to

accommodate their traffic, do any modifications to lanes that's going to be required to accommodate their traffic, and it's going to include some cut-through traffic, I'm sure, from some of the residents off of South Olga Drive that would traverse through their site and then use a signal.

All those things are going to be taken into account when that project develops, so, you know, I don't think it's really relevant too much with what we're doing here because I agree with Steve's testimony. It's a T intersection. They're going to be setting it up as a T intersection, and if the State's requesting more, that's something they're going to have to negotiate out with the State.

So I don't think I really have much else to say unless you have some questions.

MS. BELFLOWER: I do, but let's see what the applicant has.

MR. SCHROPP: Just a clarification. You read some part out of the permit about the closures of the directional. What -- which permit was that?

MR. PRICE: This is the connection permit for -- the driveway connection permit for Hawks' Haven.

MR. SCHROPP: Okay. Just wanted to make sure it was Hawks' Haven.

MR. PRICE: And the special provision, it's not numbered. They're actually just bulleted. It's the second special provision. It's the one right underneath the signalization.

MR. SCHROPP: That's all I had.

MS. BELFLOWER: Okay. On that point, under the Hawks' Haven conditions, it's saying that it has to be closed. Is that the developer has to close them?

MR. PRICE: Yes, ma'am.

MS. BELFLOWER: So in the design that -- for the signal, that's part of the design that has to be done.

MR. PRICE: My anticipation in reading the connection permit is that when they come in to design the signal, and they meet with the State to kick it off, the State's going to have the project extend from west of South Olga Drive to east of Linwood Avenue, and there's going to be modifications at all three median openings.

MS. BELFLOWER: Okay. What happens if the driveway conditions are not met both in actuality and from the County's perspective?

MR. PRICE: Driveway connection as in the second access point?

MS. BELFLOWER: No, the --

MR. PRICE: The signalization?

MS. BELFLOWER: Yes, the DOT permit. If the conditions of the DOT permit are not met, what is DOT's ability to do anything?

MR. PRICE: Well, DOT has the ability to go out and close the median opening today.

MS. BELFLOWER: Okay.

MR. PRICE: And I don't think there's -- I don't think there's a will for them to do that at this point, but if there's a bunch of crashes that start to happen out there and there's some fatalities and there becomes a political will for them to make modifications to that intersection, it absolutely could result in some sort of barriers being placed in the median to prohibit the left out until the signal is constructed.

MS. BELFLOWER: From the County's perspective, in the evaluation you do with development orders and with building permits in terms of adequacy of access and et cetera, it's a DOT road, but the County would require proof that there is compliance with all of the access and the

improvements and everything that are -- that needed to be done. The county can enforce the DOT restrictions by not granting permits, correct, on a case-by-case basis or is that not correct?

MR. PRICE: Well, we -- okay. So in order to issue a DO for a project that impacts a state road, we require a notice of intent to issue a permit. And then prior to CC, we would require actual copies of the permit so that we can ensure that it was approved in the DO and matches what's approved in the State's permit.

In this particular case, it's built. It's already in place. I don't believe that the DO reviewer would hold up a development order because a condition in a state permit is not met.

MS. BELFLOWER: Okay.

MR. PRICE: It really falls back on the State to enforce their conditions.

MS. BELFLOWER: That's my question.

MR. PRICE: And we're trying to assist them with our condition. That's basically --

MS. BELFLOWER: The condition as it reads for what we have been calling River Hall I, the existing condition says approval of this zoning request does not address access onto State Road 80

since Lee County has no jurisdiction over that roadway. The developer must pursue this access approval with FDOT. Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts, and additional conditions consistent with Lee County LDC may be required to obtain a local development order.

On an individual development order basis, this condition controls what we're calling River Hall I.

MR. PRICE: Okay. Yeah.

MS. BELFLOWER: If they took longer than 12 months to get the signal designed and in place, would this condition allow review at the local development order stage to say you haven't met your DOT permit requirements, we're not going to give you anymore?

MR. PRICE: The existing condition?

MS. BELFLOWER: Existing condition.

MR. PRICE: I don't believe so.

MS. BELFLOWER: Okay. So what you're asking to do is as it relates to River Hall 2, the subject of the zoning application, is to say that we -- the County is going to enforce the DOT

permit language by holding up development orders, that the condition doesn't currently allow to be done in your estimation.

MR. PRICE: That's my opinion.

MS. BELFLOWER: Okay. Michael, do you want to comment on that? Do you have any concerns about holding up permits to enforce another agency's conditions?

MR. JACOB: Let me be an attorney today. If the hearing examiner determined that access to the site with additional units being placed in there was not adequate and certain improvements may be necessary, it might be something the hearing examiner could look at conditioning on the property.

As far as your specific question goes, no, I would not suggest that staff try to enforce a DOT permit condition unless there's something in our land development code that allows them to do that.

In this case, this is a voluntary condition that this applicant is agreeing to install the lights without agreeing that they are the sole entity required to do that. They are agreeing to do that to address the transportation issues, not to mention the fact that they -- somebody, let's

put it that way, has to do it in accordance with the permit.

From the County's standpoint, my preference is to strike the condition altogether to avoid the issue because of all the issues raised by Rob and the potential for giving the individuals that may come in and develop this site the ability to think they can forego the development or the permit requirements from FDOT because we clearly don't have the authority to change those, which as Rob indicated, are required when warrants are met which has already happened.

So if you're asking me my preference, my comment is to avoid the issue altogether and leave it up to the State, and of course, the applicant has agreed to move forward with those improvements, and if you want to make that as a condition or if you want to agree that those improvements are needed to add these additional units and tie it to compatibility issues, then --

MS. BELFLOWER: Or adequacy issues.

MR. JACOB: Right.

MR. PRICE: And just to clarify, I was uneasy about drafting this condition from the very beginning. One of the reasons that it became

apparent that it might be necessary was at previous hearings it was stated it doesn't apply to them, and so I was concerned about that statement, and so what we're doing is intensifying a project that has a main access point on a State Road, and their TIS shows that as an unsignalized intersection, it fails miserably.

The signal is warranted. It's warranted now, and the only way that signal is ever going to function acceptably is by installation of a traffic light. If we left this thing unsignalized for much longer, it's going to fail. We're going to have fatalities. We're going to have a public health, safety, welfare issue, and their TIS specifically calls that out, so that's why I felt a little bit more comfortable with moving forward with the condition just simply because the conclusion of their traffic study says we've got to have a signal out there, and we have to have a signal out there in order for this intersection to function.

MS. BELFLOWER: Basically since any condition that was put on would only cover River Hall II and the need is now, in terms of making a finding that the transportation systems are adequate, they are

not adequate as it currently exists, and anything that is under the County's ability to condition and require improvements for; is that a correct statement? You said it fails, the intersection fails now without lights.

MR. PRICE: The intersection meets the signal warrants now.

MS. BELFLOWER: Right, but it fails as adequacy.

MR. PRICE: Based on their traffic impact statement under existing approvals, it fails without a signal. It doesn't fail today, it fails at some point between now and 1,999 dwelling units.

MS. BELFLOWER: Okay.

MR. PRICE: It fails worse at 2795 without the signal. So it doesn't fail right now. It's going to fail sometime in the near future.

MS. BELFLOWER: All right. If -- given that we have to make a finding of adequacy, and short of having a number like we did with this -- the secondary access, the previous approval, the secondary access where it put a number that you can't go over this, short of having that and saying at this point, it fails, we have what you

described, Michael, as a voluntary agreement to put in the signal, and we have proposed language from the applicant to give them flexibility to get it in a reasonable time frame and to make accommodations for if there are problems.

If there was going to be a condition, is it your opinion, Michael, that it would be better to be a condition that the applicant has agreed to do, to basically make the whole condition a voluntary condition to address the concern to allow me to make a recommendation on adequacy if that is what my recommendation is?

MR. JACOB: Well, let me take a step back. In most rezonings that I've been involved with since being here, there are many projects where the applicant's proposed conditions or limitations on what they're asking for in order to address potential issues with the impact of development. This would be no different than any of those. Sort of the holdover, the catch we're having here is the difference between you requiring conditions with them agreeing to conditions in a normal zoning setting, and this condition that is in here that is tied to the permit we don't enforce.

MS. BELFLOWER: Right.

MR. JACOB: So from my standpoint, what I would prefer is to get rid of this language, don't address that language, and if you find that the project as proposed by the applicant addresses the transportation impacts you're looking at, then you make that as a condition.

Again, understanding that the warrants that we're talking about have already been met, and it's a requirement of the permit, so whether you feel like you need to be redundant and require another condition for that, it's up to you, but knowing what the applicant has proposed, and I don't know the specific facts, you can ask them, but they're at 300-some-odd units that have been constructed.

I don't know if there's anybody here that can testify as to how long it would take before you get up to 1,999 units as far as duration goes, but in my normal decision making abilities, I don't think you're going to get close to that number in 18 months. And if for some reason there's a boom and you can get 18, 1,300 units in less than 18 months, good job, but that's highly unlikely to occur in my nonexpert opinion.

MS. BELFLOWER: The concern, I think, is the

language talking about what DOT required and DOT's determination of it. If the language just says the applicant agrees to signalize the intersection in accordance with the FDOT permit language and agrees that it will be done within 12 months with the potential for extending it for six months if it's reasonable, and then if that doesn't occur, then no permits will be issued in River Hall II.

MR. JACOB: I'll just add this so you guys can just tell me whether you like it or not.

From the County's standpoint, and what you're sitting here and you're reviewing to make sure that the transportation facilities are adequate for the request, the request is for additional units. So based on the testimony, the TIS, is there a number, is there a unit number that once you get to X from the County's standpoint, from your standpoint, now this is inappropriate and you must have this signal to make this compatible and consistent with the county regulation.

I'd rather you tie it to a unit number rather than a duration. From the County's standpoint, they're required to do it now, but before we get involved, before you say look, that's too many units to have going through right now, what is the

unit count number? It can't -- they're saying that --

MS. BELFLOWER: It has to be 1999 because they're already approved for 1999, so it would have to be before they can build -- have the 2,000th unit built, then the intersection improvements, a signal has to be in place.

MR. PRICE: The signal is supposed to be in place before they would get to 1999.

MS. BELFLOWER: That's under the DOT permit which we can't do anything about.

MR. JACOB: Let me clarify what I was saying. I'm not saying at 1999, that's when they do the improvement. I'm saying, and it's just semantics here, but at unit 1999, no additional units may be built without the signal in place.

MS. BELFLOWER: Right, right. Not when they start the improvements, but it has to be in place before a building permit will be issued for the 2,000th unit.

MR. JACOB: And if you tie that to your consistency discussion, compatibility, I don't think we're getting into this permit analysis of how that all. They know what's required under the permit.

MS. BELFLOWER: So separate it from DOT. Just say that this project cannot exceed the number of units that it is approved, cannot get permits to build the number of units that it is approved for unless there is a signal in place and --

MR. PRICE: Can I interject for a second? We are -- we have made a concerted effort on all of our conditions and past projects not to tie these types of things to building permit issuance because fact of the matter is, our first -- our downstairs staff is not reviewing zoning resolutions when they're issuing building permits, so that's why we try to tie these things to development order approval.

MS. BELFLOWER: Okay. Development order then.

MR. PRICE: So and I'm concerned just because it sounds like the route you're going is to say we can't issue any development order approvals on -- in River Hall II until that signal is installed. And I -- I guess I shouldn't be concerned, that's for the applicant to be concerned about, but my sense is they're going to want to have development order approvals on some of those lands prior to the installation of that signal, and we want them to have some development order approvals because

we want that second access point yesterday, and that second access point goes right through River Hall II, and we want to get that thing permitted, and we want to get them ready to move forward and build it.

So I appreciate where you're going with it. I just -- I'm just voicing our concern from a development services standpoint on how we enforce these conditions at the DO stage, and what we have here, we can enforce. Now, whether it's appropriate, you know, is a legal argument.

I think the applicant's mostly agreeable to what we're doing, and if we can tweak it to where they're at, I'm okay with what they propose. I just wanted the record to state that this all is coming back because of the issue with the signal and the State's permit.

MS. BELFLOWER: Is there a way of identifying in the building permit what phase they're in, what area they're in, something that if we can name these areas such that there will be no building permit issued in River Hall II unless that signal is -- that way, at the development order stage, you're going to put on the development order, you can't get building permits on this unless that

signal is in place.

MR. PRICE: I wish there was a way.

MS. BELFLOWER: Let's do this because we're obviously going to go to a second day at least. Let me ask if -- I think we understand the legal issues. I understand the practical issues, and I think that the applicant is in agreement of wanting to do it, they've just got to know how it's going to be worded and how they're going to be held up.

MR. PRICE: And you're going to leave the record open.

MS. BELFLOWER: I don't want to leave the record open per se. I want to the best of y'all's ability to get this resolved before we get to rebuttal.

MR. PRICE: Okay.

MS. BELFLOWER: I don't know how long the neighbors are going to take, whether it's going to be all day tomorrow or not, but if it's possible to try to come up with a language, and if you want to agree to certain language that it's not couched in the terms of the County is enforcing the DOT requirement, but more that the developer recognizes this is what we've got and this is how

we're agreeing to do it sort of thing, I think that may get us all to where we are agreeing needs to be, but we've got to do it legally. Okay.

MR. SCHROPP: I have been following the discussion. We're amenable to working, whatever comports with the County feels they can enforce.

MS. BELFLOWER: I would suggest something that takes out all the discussion about the DOT and puts in some of the flexibility language that the applicant has asked for, but at a trigger point that the county staff can implement, so --

MR. SCHROPP: And the trigger point being based on some level of development order or some location of development order?

MS. BELFLOWER: Yes, and I don't know whether it should be development order per se except that it has to be noted in the development order that building permits are not going to be issued under that development order because -- I agree with Rob's point that you're going to want to have the ability to get development orders for large areas approved.

MR. SCHROPP: Right.

MS. BELFLOWER: Just not building permits.

MR. SCHROPP: Yes, exactly, and it may be

development orders for infrastructure that don't include platted lots and things of that nature which might be the distinction we need to draw.

I tend to agree with Rob that we don't want to put this on a building permit level for the reason that he mentioned, but also because some of River Hall II is already platted and taking away essentially the right to obtain a building permit.

MS. BELFLOWER: Right. Okay.

MR. SCHROPP: Potentially.

MS. BELFLOWER: Okay. All right. So you all are going to work on that.

MR. SCHROPP: We'll work on it.

MS. BELFLOWER: That's going to be a come-back-to-us issue.

All right. Now, we want to talk about the density and --

MR. JACOB: Sure.

MS. BELFLOWER: Okay. The CPD and the ability to have multi-family in there and how the density would be calculated, can they take units that they have approved elsewhere in the project and put it in there without regard to the underlying designation?

MR. DUNN: I agree with the applicant's

interpretation of the rule. If 15 acres were to come out of that CPD area to put in some commercial stuff, and, you know, they'd lose 30 units based two units an acre, that they would be able to move those 30 units from maybe the southern infill area to make up to that or maybe even more depending, but they would have to continue to meet the site development regulations that are adopted as part of the resolution with the height setbacks, so there would be some other restrictions put on it, but yeah, that is done.

I know you're probably thinking about 5.1.10, it's not contiguous, but 5.1.10 is really discussing when you have more than one land use category. This would be within the same land use category, so I don't have any -- find any issues with it.

MS. BELFLOWER: Okay. I was thinking actually more of the commercial parcel is going -- the CPD parcel is going to in all likelihood be a distinct property, and say it's ten acres, and in that ten acres, it's approved for commercial, but it's also approved for residential, so if they want to put residential on that ten acres, if it was standing alone by itself, it could only have 20 units on it

because it's two units per acre in that planned category.

MR. DUNN: Not necessarily. That wouldn't be how we would interpret it. I mean, that would prohibit clustering, and we don't want to prohibit clustering.

MS. BELFLOWER: That's my point. So my question. So as long as the total development does not exceed the total number that they're approved for --

MR. DUNN: Right.

MS. BELFLOWER: -- they can be allocated in different places --

MR. DUNN: Right.

MS. BELFLOWER: -- at -- Michael's saying not.

MR. JACOB: Be careful of that.

MS. BELFLOWER: They can be allocated in different places of the same future land use category.

MR. JACOB: Got you.

MS. BELFLOWER: as long as it's moving from a yellow area to a yellow area on their map of the amendment, it can be placed anywhere on the site that has that yellow and is approved for multi-family.

MR. DUNN: I would agree with that as long as it's consistent with that table that was in Condition 5, you know, there's no more than, I think, 1,171 units within the sub-outlying suburban, and that would go down if they took ten acres out for a commercial building, that would go down by 20 units, so --

MS. BELFLOWER: Okay.

MR. DUNN: But those 20 units might show up down in the other area where there's 20 less units in that area, you know, in the southern infill area, we'll say.

MS. BELFLOWER: Well, now, let's be careful, that last point that you just made. If there is 20 acres of commercial in that sub-outlying suburban, that 20 acres is commercial, and it is not available for calculations; is that correct?

MR. DUNN: Yes, yes. The loss of 20 units could show up.

MS. BELFLOWER: I thought I understood. Okay. Okay. Given -- and this is another Chip question. Given that there is a potential for multi-family in the CPD area, staff has not proposed any additional conditions for buffering to the eastern area anything different from it as a commercial

use. Did you look at that point in that question of having multi-family next to the rural future land use category without an extraordinary buffer?

MR. BLOCK: I believe, Madam Hearing Examiner, the condition has been set already within the CPD and buffering of land use next to the property to the east, and --

MS. BELFLOWER: B.

MR. BLOCK: It's a B in accordance with the conditions, and that was a -- at that time a commercial zoning district next to the adjacent, so multi-family next to that same. I don't see any purpose in changing that condition of the B buffer, and that is a requirement under today's standards for the zoning.

MS. BELFLOWER: What is the buffering required between multi-family and single-family zonings?

MR. BLOCK: If you're building multi-family and placing it next to single family, it's a B buffer.

MS. BELFLOWER: Okay. So it's the same buffer.

MR. BLOCK: Yes, ma'am.

MS. BELFLOWER: Okay. Okay. All right. I think that that answered all the questions we had

of staff. I don't think we necessarily had any environmental services questions. I didn't. I just had sought the exhibits, and with the clarifications that these new environmental conditions are only going to apply in River Hall II. Is that a correct understanding? That the new conditions are only going to apply to the new areas?

MS. DERHEIMER: For the record, Susie Derheimer, Environmental Sciences. That is correct. The conditions in the current zoning will apply to as River Hall I.

MS. BELFLOWER: Okay. And then the new conditions will apply only to River Hall II.

MS. DERHEIMER: Right.

MS. BELFLOWER: All right. Did you have any questions you wanted to ask Environmental Science?

MR. SCHROPP: Oh, no.

MS. DERHEIMER: For one clarification, that's the species conditions, the open space, and you -- in your revisions to the conditions, it appears to be consistent with what we're thinking, but like the open space and all that applies to the project as a whole.

MS. BELFLOWER: Correct.

MS. DERHEIMER: It's just the species work that was done through the 2006 management plans will apply for the existing developments where the new conditions talk about additional species work.

MS. BELFLOWER: They have to do new studies.

MS. DERHEIMER: Correct, for River Hall II.

MS. BELFLOWER: Okay. All right. Thank you. Does that complete staff's presentation?

MR. BLOCK: Yes, ma'am, it does.

MS. BELFLOWER: Okay. We have a very short time. I know that there was one individual who indicated he had an appointment he couldn't get out of tomorrow. If that person would like to speak today, now, we will allow that.

Now, understand this is your only opportunity to speak. You won't be able to come back tomorrow and speak again, so it's a one-shot deal.

MR. KIMBALL: I'll attempt to return tomorrow to listen to the rest of it.

MS. BELFLOWER: Yes, you're more than welcome to do that.

MR. KIMBALL: I'll narrow down what I'm about to say because I wanted to focus on one issue.

MS. BELFLOWER: Okay.

MR. KIMBALL: And I'll leave it to the rest of

the folks to address the other issues.

MS. BELFLOWER: All right. Would you state your name, please?

MR. KIMBALL: My name is Ed Kimball. I am the president of East Lee County Council. That's an organization that has four planning communities as its members; Alva, Buckingham, Bayshore, and Fort Myers Shores planning area. As a subset of that, I chair the Caloosahatchee Shores Planning Committee which River Hall is a part.

I am deeply concerned about the traffic issue. We had a prior conversation where we did the Olga Square issue and what it meant if you started to block out some of those side streets in the contribution of traffic. They would find and people find the easiest way out.

What Olga Square was intended for and what it might become in terms of traffic would be two different things. There would be an additional contribution from within the community to go through something as a planned commercial development that they weren't going to use. They were just going to use it as an access to get to State Route 80 at that new traffic light.

What I see in this staff report concerning

trips being generated by the addition, and the number seems to have changed -- the number of units they're asking for -- daily, so I don't have an adjustment in my head that took me from 6,000 additional trips a day to what the new number would be based on 600 and whatever.

MS. BELFLOWER: 96 units.

MR. KIMBALL: But it's going to be a significant number. So by the way, I'm also a fire commissioner in Fort Myers Shore Fire District, so what really concerns me is public health, welfare, and safety as part of this thing. Each one of these hearings seems to address the issue at hand as being singular and not looking at the cumulative effect, I'll get the words out, of all of these things and what it means at that intersection.

I can't tell you today with any degree of accuracy when the numbers of units, housing units in the area will generate an additional firehouse at River Hall. As you heard, we do own the property, and it will come. I'm just not sure when. But as an emergency service provider, we're a fixed station. Whereas law enforcement, a fixed station is the patrol car. EMS, it's the

transport wagon and the advanced life support system and equipment that are in that vehicle. They have zones that they cover just like the fire district does. They have to be flexible at all times.

So we start to look at traffic response times in terms of welfare and safety of the people that live in the area are very, very important to us. And the more traffic and more congestion we generate, the worse it's going to be in terms of delay times. Now, it's nice to have offered a place in River Hall to put an EMS vehicle so they can park there, but I don't know that EMS has made the commitment to do that because they try to locate themselves in places that give them the biggest access to roads that take them north, south, east, or west, and whether the impact of trying to move closer to River Hall would cause a problem. So traffic is always the issue and the delays caused at that intersection.

Remember, not too far to the west is Buckingham Road and 80. Again, so the coordination and gridlocking among those two places could be horrendous. So every unit we add to it just contributes to the problem.

I'm especially disturbed with the fact that the second access point according to the -- Rob's traffic study and his conclusions in the staff report said that that actually would only carry two percent of the traffic. Well, if it's located at Ruth Avenue, which I believe it is; is that right?

MR. SCHROPP: We'll find out.

MR. KIMBALL: Yeah. I can understand why because I actually drove out there to see what Ruth Avenue was like. That was the depicted on your chart here. And I've got to tell you, emergency response trying to find their way out to Ruth Avenue along 75th Street is problematic. And I don't see people living in River Hall are going to use that as an exit at all.

Way back when owner one of this property was coming through their phase, 75th Street was to be co-located with access to Sunshine Boulevard. That made all perfect sense because then I can get emergency response to come up Sunshine from Lehigh, ambulance as well as fire as well as police. That makes sense.

This isn't going to improve any of those conditions. It also made sense because people

from River Hall could go right down to Sunshine, to Colonial, and get access that way. The whole point was to get the relief at 80 and get some higher percentage of traffic from River Hall to use that second access point. That's not going to happen. I'm really concerned about the delays out there that it has on the community.

And like I said before, right now, when we ask our emergency services people to give us answers, their basic answer is yeah, it's our obligation to provide it, and we can provide that service. I think EMS is the only one that came up with a 8.5 minute response time which exceeds their bogey, and if that's their problem today, what's it going to be if we build up this traffic based on all that's taking place in and around that signal at River Hall Parkway and 80?

That EMS unit travels in a large area. If they're out of area, the closest guy is probably coming out of Lehigh. I'm not sure what Tice has as far has emergency services for EMS, but it is a problem. We're not serving our community by adding additional units and additional traffic. Even if we assume that from the original 6,000 estimated additional trips, 850 units were going

to be created, and if we even drop that by 2,000, it's still 4,000 extra trips a day being generated by the additional units. That's a real problem and concern for the community, and it should be a concern for all of us in the county.

The concern is that they seem to look at things as an individual thing. Well, that's the problem with the guy across the street in Olga Square. When he comes along for his development orders or when the State decides to do this or that, look at the community -- the cumulative effect now. It's coming. I'm not talking about today, we need to look at what we know is going to happen in the near future and the problem it creates, and additional units just exacerbates the problem. Anything above 1999 is worse than it is.

My other comment would be to understand the assumption that the staff report makes to you as the hearing examiner on all of the policies that they seem to be assuming support the land being rural. Specifically, Policy 1.4.1. I know words are important in legalspeak, but some words were left out of that policy when it was gone over as part of the last board of commissioners meeting that transmitted the application. And I don't

know the answer to the question, but in helping define what is rural since there is an absence of a definition --

MS. BELFLOWER: I'm going to need to ask for a clarification how this relates to the zoning because we're operating under the assumption the plan amendment is approved, which is --

MR. KIMBALL: That's what I'm trying to clarify. Is that what we're doing?

MS. BELFLOWER: We have to operate from the assumption that the plan amendment is approved to review the zoning, or if it's denied, and actually, the applicant didn't address what happens if it's denied as to what they want to go forward, but whether it's appropriate to have the plan amendment or not, whether it meets the rural, all those issues are not in front of me.

MR. KIMBALL: I just wanted to make sure that the understanding from the community is when we looked at all of the policies that were listed that the staff assumed were okay, that in fact we agreed with that, and that what they did in that plan amendment met the criteria from the policies that they used as examples. We don't think they did.

MS. BELFLOWER: Okay.

MR. KIMBALL: So now I know where that issue stands.

The other concept that I have a problem with is infill.

I asked Chip, "What is the definition of infill?"

He basically said, if I'm correct, "There isn't any."

So one of the things we encouraged, whether it be rural lands or whatever lands we're developing is let's not start to look like, excuse me, those that might live in Lehigh, this gridlock, this grid network of construction. We didn't really want to see that. So the plan encourages clustering, making more open space, doing all that sort of thing.

So under the current land use being rural, one per acre, and it did that. Well, they put in what they wanted to put in, that didn't mean that the leftover land became infill. They weren't entitled to use it. Now they're coming back and saying it's infill, and that's where I'm going to put my stuff. I don't know what to make of it.

So in somebody's response, whether I'm here or

not, I'd like to hear some answers to that question.

MS. BELFLOWER: Okay.

MR. KIMBALL: Thank you for your time.

MS. BELFLOWER: All right. I can tell you the word infill is defined in the Land Development Code and in the Lee Plan. Whether you agree that they met it or not, infill development under 34-2 means development, redevelopment, or reuse of vacant and under-utilized sites surrounded by existing development and where street access is available. That's the Land Development Code.

Under the Lee Plan glossary, infill is the use of land within a predominantly developed area for further construction or development. These lands already have public services available, but may require improvements to meet current development standards. So those are the two definitions of infill.

I'm not commenting as to whether this project meets it. They are asserting that it does. I share your concern about saying that we put all our development over here and now we don't have any development left so give us some more, but --

MR. KIMBALL: Yeah. It's a strange concept to

understand because they develop under the rurals, and they built what they were entitled to build, and they have this vacant land, and if it stayed rural, they'd have no rights to it. They couldn't call it infill.

MS. BELFLOWER: I think you may be mixing two things because it's in -- I believe their point, and I'm going to ask them to follow-up on this, I believe that their point was that infill, it's infill because it already has the facilities and services available to it, and they're now looking to come to develop it after getting the plan amendment to allow more density.

MR. KIMBALL: Okay.

MS. BELFLOWER: I will ask them to comment on that, but there are definitions.

MR. KIMBALL: From a layman's standpoint, this is really confusing. Thank you.

MS. BELFLOWER: All right. Did you have any questions of him?

MR. SCHROPP: No, thank you.

MS. BELFLOWER: Staff?

MR. BLOCK: No, ma'am.

MS. BELFLOWER: Thank you very much.

All right. I think we need to continue this

hearing until 9 o'clock tomorrow, same place, and we will start with the applicant. I know -- excuse me, the neighbors. I have several names here. I don't know if you all want to present in a particular order. I understand Mr. Brookes indicated that they have some experts they want to submit, so I will leave it to you guys if you want to organize in a certain way so that certain people go before others, then I'm amenable to that, and just let me know tomorrow, and we will arrange the schedule that way.

If you are a person who is not represented by the representatives for some of the other neighbors, you might want to get with them and say whether you want to go first or last or whatever and let you all coordinate that.

So we will continue this hearing until 9 o'clock tomorrow.

(The proceedings adjourned for the day at 4:28 p.m.)

* * *

STATE OF FLORIDA)
COUNTY OF LEE)

I, Kathy Nicholson, Certified Realtime Reporter and Notary Public, State of Florida, do hereby certify that I was authorized to and did stenographically report the foregoing hearing; and that the foregoing typewritten transcript, consisting of pages 1 through 266, is a true record of the proceedings.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with this action, nor am I financially interested in the action.

Dated this 22nd day of January, 2015.

Kathy Nicholson

Kathy Nicholson, RPR, CRR
Notary Public, State of Florida

* * *

LEE COUNTY HEARING EXAMINER

CASE NO. DCI2013-00003

APPLICANT: GreenPointe Communities, LLC
in reference to River Hall

Transcript of proceedings before Laura B. Belflower, Deputy Hearing Examiner, 1500 Monroe Street, Fort Myers, Florida, on January 14, 2015, commencing at 9:00 a.m.

WORD INDEX

VOLUME I

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LEE COUNTY HEARING EXAMINER

CASE NO. DCI2013-00003

APPLICANT: GreenPointe Communities, LLC
in reference to River Hall

Transcript of proceedings before Laura B. Belflower, Deputy Hearing Examiner, 1500 Monroe Street, Fort Myers, Florida, on January 15, 2015, commencing at 9:00 a.m.

VOLUME II

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COPY

JANUARY 15, 2015, DAY TWO OF HEARING

MS. BELFLOWER: We are back on the record. This is January 15th, the River Hall rezoning case.

I have a couple of housekeeping issues. One is I received an e-mail, January 13th, from Steve Brodkin. We will accept that as an exhibit from him, Exhibit 1, Brodkin Exhibit 1. Is he here?

MS. ASFOUR: He isn't here. He did give me a statement to read. If I could do my own and read his.

MS. BELFLOWER: Okay.

MS. ASFOUR: Or I could just leave his with you.

MS. BELFLOWER: That's fine. You can do either one when it's time.

I will accept this as an exhibit. I will note that anything in writing when the person is not here to be cross-examined is considered hearsay even if you read it into the record, but that's fine. I mean --

MS. ASFOUR: If I read his, I can't do mine?

MS. BELFLOWER: You can do your own, yes.

MS. ASFOUR: Okay.

MS. BELFLOWER: There's no time limit. We

just received this, and so I'm taking this as an exhibit with the notes that it is hearsay evidence which means that it doesn't carry as much weight, but it's still information to be considered.

Okay. Were there other housekeeping items that have come up?

MR. JACOB: What is it that you're referring to?

MS. BELFLOWER: It's an e-mail from him with a letter attached with his comments --

MR. JACOB: Okay.

MS. BELFLOWER: -- and his thoughts and concerns about it.

MR. SCHROPP: Would it be possible to get a copy?

MS. BELFLOWER: Yes, we can get copies for you. It may be the same thing that she wants to read, but we can get copies for everyone. Much of it talks about the plan amendment which we understand from yesterday is not relevant, but we will still accept the information.

Anything else that --

MR. SCHROPP: Not for the applicant.

MS. BELFLOWER: I will get copies for you before you need to do a rebuttal.

I did have one point that I did not raise with staff. In response to the memo that I sent out about the plan amendment, does staff have a written recommendation on the plan amendment, the revised plan amendment at this point?

MR. DUNN: Staff does not have a written recommendation on the plan amendment. We feel that the zoning as modified on December 17th, 2014, is consistent with what was transmitted which is consistent with the state statute that allows the concurrent amendment and rezoning to go on at the same time, but we have not prepared a recommendation for the -- as to the revised comprehensive plan amendment yet.

MS. BELFLOWER: So you don't have -- what I was looking for was not so much the yes or no, but the evaluation of the consistency with the plan amendment with the rest of the plan, you have -- you only have what you have for the transmittal hearing; is that correct?

MR. DUNN: That's correct.

MS. BELFLOWER: Okay. And at that time, you were recommending denial; correct?

MR. DUNN: We did at that time, yes.

MS. BELFLOWER: Okay. All right. Then I

think where we are at this point is we are with the public and the public participation, and are these in the order that you -- that the --

MR. BROOKES: Yes.

MS. BELFLOWER: -- that the public wishes to have them introduced?

Okay. Then we will start with Gary Stilwell.

MR. STILWELL: Nobody told me that.

Good morning. My name is Gary Stilwell. I'm -- I've been sworn in yesterday, and I'm a resident of the Oak Creek Road neighborhood that is north of the project.

I don't claim to represent everyone out there in the neighborhood; however, I do share all of the collective concerns that they have about the project.

I have several questions and some concerns. The first one, and I think the most important one to a lot of the folks out there in that area, is about hydrological data. And we don't know, and I haven't done enough research to find out where the supply wells are that irrigate the golf course, but there is a concern about the expansion of the golf course. I understand it's 27 holes currently, and I believe they're adding another

nine to make a total of 36, so that would be another third more use of water out there, ground water, and the concern that everyone has is the water levels out there because most of the, well, all of the folks out there are on wells for their water supplies, and the concern is that the drawdown will be enough to cause loss of water to some or many people.

So the questions I have is where are the wells located that serve the golf course irrigation, and will the water drawdowns as a result of the golf course expansion exceed any of the water management district's guidelines, and I don't know what those are, but I'm sure there are some. And if they do or do not, I don't know how that drawdown is determined. I'm not sure if there are still monitoring wells out there.

I know that in the original Hawks' Haven application, I believe that they were required to by the Florida Water Management District to install monitoring wells, and if that's true and they're still being utilized or they're not, well, if they're not, I'd like to know if they will be in the future, and if they are, will they be the same wells, and if they're not going to be the

same wells, I would submit that the new monitoring wells, if they're going to put some in, would not give you historical data, so they're essentially useless for this project. So the original wells should be the ones that are used as monitoring if there's going to be some.

MS. BELFLOWER: All right.

MR. STILWELL: And if that -- if it's determined that -- and I don't know where the reporting of the monitoring data would go to, if it goes to Department of Natural Resources or whether it goes to Southwest Florida Water Management, but if it's determined that there is some drawdown issues there, I would hope that the reporting is timely enough that the drawdown is identified long before somebody's well goes dry out there.

In the case where that might happen, I'd like to see some kind of verbiage or something in the zoning thing that talks about what if that happens, what is the project going to be responsible for if the water levels do drop because of this, and what are they going to do about it if somebody's well goes dry because of that. That's the water data.

MS. BELFLOWER: Okay.

MR. STILWELL: On the conservation areas, this is also a water related, but if the water draw due to the increase golf course areas, well, of course it's going to increase, but will that water use reduce the wetland area's available surface water? I don't know that, but if it does, that will impact the alligator, sand hill crane, and scrub jay habitats that are out there and potentially impact those species.

In addition to the water issue for that, the gopher tortoise and burrowing owl habitat, the minimum approach distance for that is 150 feet given by the State or their recommendations, and does this plan propose a buffer area between construction and the approach to the fence or gated gopher tortoise habitat or burrowing owl habitat? I don't know if those guidelines are in the project. I didn't see anything in staff reports about them, but I'd like to see something in there that at least identifies that.

The staff report also indicates that there's a number of trees per foot and shrub placement for buffer areas, but they don't delineate what kind of trees or shrubs are to be used. It's my

understanding that the original permit for that -- for the Hawks' Haven, and I'm assuming it carries right on through, is that it's supposed to be hundred percent native plants.

MS. BELFLOWER: That is a requirement. I did see that, yes.

MR. STILWELL: So it is -- then we can forget that one then.

MS. BELFLOWER: Okay.

MR. STILWELL: And a comment now, and this is on the vehicular traffic. When Hawks' Haven was first developed, we were assured by the developer that the Hickey Creek access would be abandoned and even the thought of using that, and it would never be used for a construction entrance at all.

Since 2004, that Hickey Creek Road access has been used by construction vehicles for the project; sod trucks, concrete trucks, and they drive through that area. It's a gated easement for Florida Power and Light, I think. As far as I know, the owner of record is a property piece that's located right there at the end of Hickey Creek Road, and the FPL easement, I believe, was donated by that property owner.

The FPL maintenance occasionally uses that

access, and they have a -- their own lock on that gate, but as an FPL employee, I've personally had to go close and lock that gate on many occasions, just as recently as the 2nd of January, and I am not an FPL employee, I'm a retired FPL person now, so I don't have the jurisdiction to mess with Florida Power and Light stuff anymore, so I can't do anything about it other than complain to the applicant or the River Hall area or the law enforcement agencies because of the increased traffic through there, large trucks and all that kind of stuff tearing up Hickey Creek Road.

And even though that's a county-maintained road, the very end of that, Oak Creek Road that is in horrible repair right now is a privately owned road. It's not county maintained, and the residents have to keep that road up, and these trucks keep tearing the road up pretty badly.

So as I said, we were told that that would never ever be used as a construction entrance or emergency entrance, and I understand that that's still a part of this that it will not ever be used as an access.

The only reason that I mention any of this is strictly an indication of the veracity of the

applicant, and I understand that the current applicant is not the same, at least I think they're not, as the ones that were there when Hawks' Haven was first proposed. So -- and I believe that there's also some issues with some vandals getting through there because the gate's not locked, so -- but I don't believe that that's an issue for them anymore because it's not -- I don't believe it's their property in the first place, so --

MS. BELFLOWER: Can I ask a question?

MR. STILWELL: Yes.

MS. BELFLOWER: Do you know whether there is a gate into River Hall from Hickey Road, Hickey Creek Road?

MR. STILWELL: At the end of Hickey Creek Road, there is a tubular, probably a 30-foot gate.

MS. BELFLOWER: Onto the River Hall property? Into the project?

MR. STILWELL: It goes through to that. It goes -- it's north of the FP and L easement for the power line. It's right at the end of Hickey Creek Road, and there is a 20-some area piece of property that is west of that entry gate which I believe the property owner there is the owner of

record of that chunk of property that that road goes through.

MS. BELFLOWER: Okay.

MR. STILWELL: It's not really a road. It's more of a dirt access.

MS. BELFLOWER: So the gate onto the River Hall property goes through that person's property? I'm trying to understand how the trucks could be getting onto the River Hall property through this.

MR. STILWELL: It goes straight through the FP and L --

MS. BELFLOWER: And is there no fence around the River Hall property?

MR. STILWELL: No.

MS. BELFLOWER: So they don't have to go through a gate, there's no fence.

MR. STILWELL: The only gate is the one at Hickey Creek --

MS. BELFLOWER: Okay.

MR. STILWELL: -- with a bunch of locks on it. As a matter of fact, five days ago, somebody cut the chain on that thing.

MS. BELFLOWER: Okay.

MR. STILWELL: On the lock. One of the other FPL guys.

MR. JACOB: Madam Hearing Examiner, Mr. Price has some information on that when it's time.

MS. BELFLOWER: I wanted to make sure we understood the point you were raising so we could get an answer.

MR. STILWELL: On the southern access point for the traffic, the proposed access at the south section of the project on Lehigh Acres, I think, is 75th Street. It was rejected by the original Hawks' Haven group due to inadequate road structure and questionable amount of use that it would get. I believe their estimate was less than ten percent, and I think I heard yesterday from the fellow that did the traffic, Rob? I can't remember his name. It was two percent.

They also deemed that it was unacceptable for fire emergency access due to the condition of the road and its remote location. And as of this date, I have no indication that Lehigh roads have been upgraded past the garbage over grass growing issues that were originally cited as one of the reasons why they wouldn't use that.

And it wasn't -- it wasn't acceptable to the applicant back then, and I don't really see any reason why it would be now because it's -- if it

hasn't been upgraded, it's probably deteriorated even more.

I think that a second access would be better served by a connection with what was mentioned yesterday with Sunshine Boulevard. There's obviously a lot more access available for emergency people to get into the back end there if they were able to get it through Sunshine.

I don't believe though that that -- the total burden of any roadwork or refurbishment should be on the applicant. I think that the County should be responsible for maintaining roads for any permitted place that they have, and they ought to be made available so that emergency vehicles or whatever could get through there. I'm not saying that the county should foot the whole bill, but I certainly think that it shouldn't be a total burden on the applicant to do something like that. Certainly some of it because they are the ones that are creating the impact, but not all of it.

Plus the fact that ten years ago, I guess it was, when Hawks' Haven was proposed, that southern access was one of the things that was -- that the County was considering as being the access, so they've had ten years to consider that. I would

have thought that some plans would have been made to prepare for that since they were the ones that originally thought that it was applicable.

I believe that the Portico or Buckingham Road access would be a very viable option. The one reason why I say that is there's a fire station that's very, very close to that. Tice Fire District station is down there, and it would be relatively easy for emergency vehicles to get to the back end of the project through that, I think, much quicker than they could get to an emergency through Highway 80, especially given the testimony of the fire chief yesterday and his assessment.

On the signal requirements, I don't want a signal out there at all personally, and that's just anybody that drives around town, you don't want anymore traffic lights. If one goes in there, I certainly hope that they follow Florida's right on red turn laws. Some of the new intersections around here cause nothing but terrible problems when they prevent you from turning right on red.

I do think staff report said it -- I would agree with that. I think they have a statement in there that the signal should be installed within

24 months, and I would agree that a time frame is much more appropriate than tying it to units constructed. Units constructed are nothing more than the DOT's way of statistically showing that there may be a failure at an intersection. And it's kind of like flipping a coin. Heads, you win. Tails, you lose. I personally don't want to see my granddaughter as the first fatality out there because of -- they guessed wrong. If they know that the thing is bad, then it needs to be fixed, and it needs to be fixed right now, so the minimum time that they were given was -- that applicant's even proposed I think was 18 months.

MR. SCHROPP: 12 to 18.

MR. STILWELL: 12 to 18. So 24 isn't reasonable, and I think that would be a good thing to have in there. I would agree with that and say that that's what should be done. I like the time frame thing.

I don't know what repercussions you could put on that other than just say, you know, you either do it in 24 months or you don't get anything, period. I don't know if any progress reports or anything like that has been made on the signal installation since the State required them to do

that. I thought it was a lot longer ago than that, but thank goodness she told me it was April this year. I forgot about that, so certainly, there has been a tremendous amount of time elapsed since the State put that requirement on the applicant, but I don't know if there's been any progress on that, there's plans to do it or -- because the State required it.

That's all I have.

MS. BELFLOWER: Okay. All right.

MR. STILWELL: Thank you very, very much.

MS. BELFLOWER: Hang on. Let see if there's any questions.

MR. SCHROPP: No, thank you.

MS. BELFLOWER: No questions?

MR. BLOCK: No questions, but before Mr. Stilwell leaves, would you like me to bring an aerial photograph so you know where the residents are located at?

MS. BELFLOWER: That would be helpful, plus some of the points he talked about where Hickey Creek is and how Sunshine reacts with this property, that would be helpful. So if you can hang on until he can get that to work.

MR. STILWELL: It will take a while. It needs

to warm up.

MS. BELFLOWER: Yeah, we've got to wake it up. I see something coming up here. As soon as you get signed in, it should be ready.

MR. JACOB: We don't have anymore questions for Mr. Stilwell.

MS. BELFLOWER: I do want him to point where on the map he was talking about.

Let me see if I have a question. I think I asked the one.

MR. STILWELL: Damn, you connect fast.

MR. JACOB: County just got rid of dial up.

MR. DEPEW: Your tax dollars at work.

MS. BELFLOWER: On Windows 3.1.

MR. DEPEW: Windows?

MS. BELFLOWER: We did just get Windows XP and not completely that.

MR. JACOB: Netscape and AOL accounts are no longer good.

MS. BELFLOWER: Yeah.

MR. BLOCK: Just go ahead and bring up Lee. Madam Hearing Examiner, I will zoom in to the subject property because that's a site that anybody can get into. If it's going to let me click on it. It was there yesterday. I'll let it

show again. Okay. Zoom in here.

MS. BELFLOWER: Oops. Wrong way.

MR. BLOCK: Bye, Lee County.

MS. BELFLOWER: Should be a restore back to the previous -- you just clicked on the map.

MR. BLOCK: I want to get rid of that though. This ought to be helpful. I'll put it on the aerial photography. That should help.

MS. BELFLOWER: Okay. Can you first point to where you live? I see Oak Creek Road. Is that what you indicated?

MR. BLOCK: Right in here is Oak Creek.

MR. STILWELL: I live right here.

MS. BELFLOWER: And can you zoom in a little bit so that we can see where Hickey Creek comes in?

MR. STILWELL: Right here is the gate.

MS. BELFLOWER: Okay.

MR. STILWELL: Right here. And I believe the owner of record here actually owns this right-of-way property.

MS. BELFLOWER: So the trucks that you're talking about, the sod trucks and et cetera, are coming in at the gate onto that private property and going --

MR. STILWELL: They come down Hickey Creek, and they come in this direction.

MS. BELFLOWER: Is that an easement through there as well?

MR. STILWELL: I believe that it is. And the reason that I say that is because it has a Florida Power and Light lock on it. Or had.

MS. BELFLOWER: And what leads you to believe that these are trucks that are going to River Hall?

MR. STILWELL: Sod trucks, concrete trucks. I don't know. There's nothing there. I mean, they're just coming through.

MS. BELFLOWER: So there's no gate, there's no fence, no anything?

MR. STILWELL: Not to my knowledge. I have not been down this thing, so I don't know.

MR. DEPEW: How do they get through? They're heavy trucks. There's no road there.

MR. STILWELL: It's a dirt, grass in the middle.

MR. DEPEW: I don't see anything on that aerial.

MR. STILWELL: You can see a piece of it right here.

MS. BELFLOWER: But onto the River Hall property is the question as how they would be -- if you take a concrete truck across the pasture, I think it's a pretty risky thing to do.

MR. STILWELL: I don't know what this is down here. I just know there's trucks coming in.

MS. BELFLOWER: Do we want to go ahead and address this now?

MR. PRICE: Let's do that. Rob Price with Development Services.

We actually got a complaint not too long ago, probably in December, early December, that there were sod trucks driving down Hickey Creek Road from a resident out there, and they were going to River Hall is what the complaint was. So we sent our inspector out to check into it, and the sod trucks are going out to lay sod in the FPL easement. It's all FPL sod trucks. Our -- you can laugh.

MR. STILWELL: That's okay.

MR. PRICE: Our inspector, I was skeptical because I suspected they might be going into River Hall, and our inspector went out there, and he insists there's physically no way possible for a truck to get from that easement into River Hall's

property, so I would just tell you that we monitor that, and if anybody sees construction traffic out there and they have questions, call Development Services, call Code Enforcement. Don't call the sheriff's office. Code enforcement are the people to call, and we have a condition on the zoning today that's being carried through that prohibits construction traffic from River Hall onto Hickey Creek Road, and that will be maintained. So if you ever see construction traffic and you think it's going to River Hall, call Code Enforcement, and it will be addressed.

MS. BELFLOWER: Okay.

MR. STILWELL: Thank you very much.

MR. PRICE: Yes, sir.

MS. BELFLOWER: Good. That was --

MR. STILWELL: Nevermind.

MS. BELFLOWER: -- timely information. And to confirm, that is still a condition the applicant has agreed for that remaining as a condition, and additionally, there are no access points, temporary or permanent, allowed through that area, so just that by itself even without this condition would make it in violation of their approval.

MR. STILWELL: I apologize for taking up your

time --

MS. BELFLOWER: No.

MR. STILWELL: -- with something I didn't do enough research on.

MS. BELFLOWER: No problem.

MR. STILWELL: Thank you very much.

MS. BELFLOWER: I'm glad we could take that point off of the list anyway.

Okay. Next speaker, Karen Asfour.

MS. ASFOUR: Well, first I'd like to comment on a couple of things that were brought up yesterday.

MS. BELFLOWER: Okay.

MS. ASFOUR: The first is the statement about using up most of the 1,999 units that left a large unplatted southern area, and it was mentioned that it was the former developer that made that decision to put all of those close to 1,999 in the northern part. However, the principals of that former developer include the principals of the present developer, so even though it's a different name, the developers knew what they were doing, and they did make that decision, and the people that made that decision are still the people, some of the people that are involved.

Also, there was mention about the infrastructure that was designed to handle the additional units. However, we know that sometimes things are designed to do something, and yet it doesn't work out. The shuttle is an example of that. It was designed to take off, fly, and land. However, two of them didn't do what they were designed to do. They blew up.

And in the summer of 2013, we had a major flood out in River Hall, and it made it very difficult for some of us to get to our homes, and this was because of some of the infrastructure, and this makes us very leery about the fact that this -- a lot of this has been in the ground or established out there for ten years, and even though it may have been designed to do that, at this point in time, we're a little concerned about the additional units tying into that older infrastructure.

The other thing that I'd like to bring up is some of the negative impacts of the zoning, and one is the increased traffic and the congestion on the intersection of River Hall, but also on State Road 80. The additional units would bring the total residents to approximately 6,800 people, and

all of these residents would be living in that enclosed area with one spine road. So that one road going through the development is what all of these 6,800 people would be using.

And there is the proposed second entry, but it's not really viable for many people. I brought some pictures that I took out there of the proposed entry road which I think is Ruth, unless it's been changed, and also the place where the emergency exit was being proposed, unless that has been changed, and 75th that shows the condition of the roads, that they are very substandard, and there's also the fact that there is no direct way to get anywhere.

You're having to come -- if you come from Buckingham Road and up through Cemetery Road, you have to make all kinds of twists and turns. It's like a little maze out there, so there isn't anything direct.

The other thing is the additional residents that will be added will be down in the southern area which is close to Hickey Creek, and there are a lot of animals that traverse from Hickey Creek through the preserve and onto the developed portion, and if that bottom area is developed, it

will be there too.

We have seen bear, wild hog, and alligator on our properties around the preserves and lakes, and we've also seen evidence of the Florida panther, and this -- these particular animals could pose a safety hazard. The more people that are there, the more interaction you can get, and I do have a picture of a black bear that was on my property because I live on one of the preserve areas that connects to the Hickey Creek Mitigation Park.

And then the other thing that I wanted to mention was the fact that of the -- the fact that when we bought our house or our lot, at that time, we were given a book that explained River Hall, and one of the maps in the book explained where the different neighborhoods were, and it also showed the future development, and it did show this section as future development, but when we were doing research, we thought that everything that was approved, that that would be going on that future development, what was approved, the 1,999 units as we found out because our property is also shown as future development, and yet, we had -- the lot was in at that time, so I don't -- we didn't see any distinction between that being a

future development and this down at the bottom area being a future development because our section was already plotted and had in the infrastructure and everything. So when you look back at it, it doesn't add up.

So what they're saying now is it was always developed, supposed to be that way, yes, but we thought it was already set when we bought our property, and that's the same as a lot of other people that purchased in there at that time.

MS. BELFLOWER: Okay.

MS. ASFOUR: Okay. And I can leave any of this with you. I would like to take my book back, but I can leave it on loan.

MS. BELFLOWER: I think we have the marketing plan was something the applicant had submitted. If you want to submit the pictures --

MS. ASFOUR: Okay.

MS. BELFLOWER: -- we can do that. We will accept these photos, and they will be Asfour Exhibit Number 1.

And do you want to see copies of them?

MR. SCHROPP: Yes, probably wouldn't be a bad idea.

MS. ASFOUR: Take this one thing.

MS. BELFLOWER: Can you show them to them first and let them take a look at them?

Can you point on the map as to where your house is?

MS. ASFOUR: That little white triangle right there.

MS. BELFLOWER: In the northern kind of northeastern quadrant?

MS. ASFOUR: Yes. As a matter of fact, our house, wait a minute. Here I am. Yeah, this is a wetland behind our house, and the FPL easement goes along here, and we do have a lot of people running up and down with I don't know, monster trucks or ATVs or stuff like that that we're assuming is getting on through this way. We don't know how they're getting on, but they do run up and down there. I don't think they're big construction trucks, but they're something running up and down.

MS. BELFLOWER: Okay.

MS. ASFOUR: And now I will read Mr. Brodkin's.

MR. SCHROPP: I'm just going to interrupt. Proforma objection to hearsay at this point, and I understand your rulings.

MS. BELFLOWER: Okay. It is hearsay. We have acknowledged that, and the entire decision cannot be based on hearsay evidence, but it can be accepted as information.

MS. ASFOUR: Okay. The Concerned Citizens of Bayshore Community opposes the rezoning of River Hall which would allow an increase in the maximum number of dwelling units. The consideration of the rezoning is premature since there have been substantive changes to the plan since transmittal including the addition of multi-family dwellings to the commercial portion of the development creating a mixed-use center. This has not been reviewed by the LPA, and a public informational session is required consistent with Policy 21.6.3 of the Lee Plan.

Under the findings and conclusions on page three of the DCI 2013-0003 staff report, it states the deviations as conditioned, A, enhance the plan development, and B, preserve and promote the general intent of the LDC to protect the public health, safety, and welfare.

How does increasing the density of the development which will increase traffic congestion within the community and surrounding area, slow

emergency response times, overburden the public and private amenities, and change a development that residents invested in as rural development into a suburban development enhance the development and promote the public health, safety, and welfare? It does not, which is why there is widespread opposition.

Three. The density increase for River Hall has been opposed by numerous River Hall residents as demonstrated by petitions and public meetings; the River Hall CDD, the two homeowner associations controlled by the residents within River Hall, the East Lee County Council, Alva, Inc., Concerned Citizens of Bayshore, North Fort Myers Design and Review Committee, Responsible Growth Management Coalition, the Conservancy of Southwest Florida, and Lee Public Voice.

We believe that the transmitted document is inconsistent with the Lee Plan in part because there was no finding of overriding public necessity as required by Policy 21.1.5. The applicant has made no case for overriding public necessity.

The staff report for CPA 2012 dated June 13 and recommending denial, the amendment does not

qualify as an overriding public necessity. The BOCC cannot make an arbitrary pronouncement that a property is nonrural in order to circumvent the Lee Plan. As a member of the East Lee County Council, the Concerned Citizens of Bayshore Community is also represented by Attorney Ralph Brookes.

We ask that you recommend denial of the rezoning. Thank you. Steve Brodkin, president, Concerned Citizens of Bayshore Community.

MS. BELFLOWER: Okay.

MR. SCHROPP: In addition to hearsay, it's also object on the basis of relevance. That letter was entirely about the Comprehensive Plan amendment.

MS. BELFLOWER: And ma'am, if you can just submit that letter so that we have a copy, and I'll make this as Brodkin Exhibit Number 2.

MS. ASFOUR: You don't need my statement; do you?

MS. BELFLOWER: No, no. You made that statement, but you read his, so we can put his written statement in the record.

I understand that it is hearsay. I also hear and agree that the portions of it are talking

about plan amendment. I don't think it's completely about the plan amendment, but I will weigh the evidence and address the relevant portions.

MR. SCHROPP: I had just one question. The picture, where was that? Can you point out where the bear was in that picture?

MS. ASFOUR: The bear?

MR. SCHROPP: Yes.

MS. BELFLOWER: She said it was in her backyard.

MS. ASFOUR: He was walking across my -- he was walking across my property.

MR. BLOCK: Can you zoom in?

MR. SCHROPP: Can I see the picture?

MS. BELFLOWER: Maybe you can.

MS. ASFOUR: I think it's the last one.

MR. SCHROPP: Yes.

MS. ASFOUR: Yes, see this little tree here? That's in -- that's at the edge of my property. He was walking across my property.

MS. BELFLOWER: There's the zoomed-in picture.

MS. ASFOUR: He was walking from here across here. This is that tree, and he was right here, so he had just walked through my backyard, and I

ran out, not fast because I didn't want him to see me, because I ran out and took a picture of him.

MR. SCHROPP: All right. So that was kind of adjoining your property. Just curious because the grass is a little high.

MS. ASFOUR: But this is the tree that is in my property.

MR. SCHROPP: Thank you. Appreciate it. Thank you. That's all I have. Thanks.

MS. ASFOUR: That's it.

MS. BELFLOWER: Staff have any questions?

MR. BLOCK: No questions.

MS. BELFLOWER: Thank you very much.

Okay. Ruby Daniels.

Yes, pull that down. There you go.

MS. DANIELS: Thank you. Good morning, Madam Hearing Examiner. My name is Ruby Daniels. I've been sworn in. And I'm president of Alva, Incorporated, and Alva, Incorporated stands for A Living Vision of Alva, Incorporated.

We are a community east of Caloosahatchee Shores, and we are also a planning community. Alva is the oldest community in Lee County, and was a vibrant rural community, center of trade and commercial activity in the late 1800s and early

1900s. Ours was the prominent community long before Fort Myers became what it is today. Over time, Fort Myers outgrew Alva, but Alva is still a rural community. It has a rich history that we desire to protect.

We have a community plan that has been adopted into the Lee Plan as Goal 26. We are currently working on development of land development codes, and what we're working on now are codes for commercial development, and when we complete that, we intend to start working on land development codes.

Because we desire to maintain our rural lands and character, that forms the basis for our first concern about the application to the zoning of portions of River Hall from rural to suburban. Because we know that everything is connected to everything else, we know the conversion of rural lands to suburban in River -- parts of River Hall will contribute to the erosion of rural lands in the remaining rural area in northeast Lee County. It will set a precedent that will not go unnoticed by people who have different values than what we have in our community.

MS. BELFLOWER: Ms. Daniels, may I interrupt

you just a second? The plan amendment part of it, as we discussed yesterday, is not something that we can consider, so we're having to assume that the plan amendment is approved and that this is -- zoning is going forward, so the category that we're talking about for the lands that they're talking to amend is the sub-outlying suburban category.

I know you -- that the neighbors don't want to assume the plan amendment is going to be approved, and you're opposed to that happening, but for the zoning petition, we have to act as if it is approved or it's denied and how the zoning request will be affected by that, so if the plan amendment is approved, does this zoning meet the new -- the full Lee Plan, and if you want to argue that compatibility with the areas that remain rural and the impacts on the rural areas of having the zoning in place, that would be appropriate, but --

MR. BROOKES: Your Honor, just to clarify one thing. Earlier in the hearing, you said that you were also going to ask the applicant and staff if the plan amendment were not to be approved, whether this would be -- how much of this will be consistent with the existing comp plan, so I think

that's -- her thing is relevant for that.

MS. BELFLOWER: Okay. If the -- yes.

MR. BROOKES: I shouldn't say thing.

MS. BELFLOWER: Her point. Her point. Okay.

And if you can leave it in terms, and we probably should have had the applicant address what happens if the plan amendment is denied with the zoning application because there are some changes in there that do not need the plan amendment to go forward such as the recreational facility and the commercial area, some of the changes, so we don't know whether they would just withdraw the whole zoning application.

If you want to address the zoning if the plan amendment is denied, then that's fine, but everything has to be based on the zoning application itself. Either the zoning application is going to be consistent with the Lee Plan or it's not going to be consistent with the Lee Plan. That's the only role that the Lee Plan has in it. And I know it's hard to break the things apart.

MS. DANIELS: Yes. The point I wish to make is if the zoning application is approved, however it's approved, it will set a precedent for further erosion of the conversion -- further erosion of

rural lands into suburban lands.

MS. BELFLOWER: Okay.

MS. DANIELS: If I may be allowed to say.

MS. BELFLOWER: Okay.

MS. DANIELS: That's my big concern here.

MS. BELFLOWER: Okay.

MS. DANIELS: And if I may, I would like to address rural character and values as it relates to land use planning.

Through our experiences of writing a community plan for Alva, we understand the challenge of capturing the essence of rural and expressing it in land use terminology, so we rely on rural as it appears in Table 1(b), one dwelling unit per acre. And I both personally and as a community advocate know that one dwelling unit per acre is something I can start with to define rural, but it is so much more than that.

If you visit Alva, and if you haven't, I hope you will, you can -- you can see how real people living in a rural environment live, and so you can see a home that has no barn attached to it, no farm animals near the home sitting next to a home that has a huge backyard and maybe a farm animal or two in the backyard, and so you can ask

yourself does the person without the barn and the farm animal, is he less rural than the person who lives beside him and has a barn and farm animal? And the answer is no. Not at all. Because both property owners share what I call rural values.

They value the rural environment, and of course, in Alva, you can also see huge pastures filled with cows and horses and maybe goats. You will see homes that have backyard gardens, chicken coops because it's allowable in certain areas, and so I would be remiss if I didn't also tell you that most of these rural people including myself have a pickup truck. It's just part of our value system. We need a pickup truck to live in a rural area.

So how does that relate to River Hall rezoning? To me, it's very simple. It goes back to rural values and the people who invested in River Hall have rural values at the core of their being. They came looking in Lee County for a rural place to build a home and live a rural lifestyle.

They came to River Hall, saw the beautiful environment that was preserved thanks to county codes, and were led to believe they would be

living in a rural community, and that's why they have expressed their displeasure with what's being proposed in River Hall in many different ways; petitions, speaking in opposition at public hearings, writing letters, sending e-mails, meeting with elected officials, and withdrawing CDD lands from the amendments.

So we support the efforts of the residents of River Hall in opposition to this zoning application, and I believe that the complete examination of all of the issues, you will find sufficient evidence to recommend denial of this application. Thank you.

MS. BELFLOWER: Thank you. And hang on a minute.

MS. DANIELS: And please come visit us in Alva.

MS. BELFLOWER: Do you have any questions?

MR. SCHROPP: What kind of pickup truck do you have?

MS. DANIELS: I have? I have two.

MR. SCHROPP: I'm just kidding.

MS. DANIELS: I'd be glad to tell you.

MR. SCHROPP: I have one too. No questions.

MS. DANIELS: One Ford pickup truck and one

antique truck that was bought by my husband's grandparents in 1950. Still have the original title, everything.

MR. SCHROPP: Okay.

MS. DANIELS: And it's in storage. It's preserved.

MS. BELFLOWER: Hang on a minute.

MR. JACOB: Ms. Daniels, will you go to the aerial and show the hearing examiner where Alva is on that aerial?

MS. DANIELS: I'm not sure Alva is on that aerial. It's behind the blue.

MS. BELFLOWER: If we can close the blue there.

MR. BLOCK: I've been asked by staff to.

MS. DANIELS: I can also give you a description of our planning area. Our planning community starts at Hickey Creek.

MS. BELFLOWER: Yeah, let's -- just one second. I think the aerial might be more helpful. There we go.

MS. DANIELS: Here we go.

MS. BELFLOWER: Yeah, but now we've lost the aerial. Sunshine, I see Sunshine coming up out of Lehigh, so that is the western boundary of Alva

which that's the Hickey Creek mitigation area; is that correct? So that southernmost part where the line is straight?

MS. DANIELS: I'm not sure that this is completely accurate. I've never heard that we go as far as Sunshine.

MR. JACOB: Turn the aerial back on.

MR. BLOCK: Hold on a second.

MS. BELFLOWER: Okay. Where do you think that the boundary is?

MS. DANIELS: Let's see. I'm so close, I can't find Hickey Creek. And I can't read -- I can't even read this.

MS. BELFLOWER: Hickey Creek Road is right there.

MR. BLOCK: Hickey Creek Road is right here. Mitigation park would be right here.

MS. DANIELS: Okay. So Hickey Creek is right in here.

MR. BLOCK: The road is over here and mitigation park.

MS. DANIELS: Hickey Creek Road. Well, we have to go to Hickey Creek itself. Is that it?

MS. BELFLOWER: Yeah.

MS. DANIELS: Then this is where Alva begins,

and it goes down to Lehigh which I have been told because I've been asked many times exactly how south we go, and the best answer I've gotten is somewhere around 23rd Street in Lehigh, and it continues over to Hendry County north to Charlotte County, over to Calusa Regional Park.

MS. BELFLOWER: Okay. So that overlay map is correct. It includes the mitigation area, not just Hickey Creek itself.

MR. BLOCK: Right.

MS. BELFLOWER: So it borders the eastern side of River Hall.

MS. ASFOUR: Yes.

MS. DANIELS: We have no planning authority over the mitigation park or Calusa Regional or any of the conservation areas.

MS. BELFLOWER: Right. Okay. Does that answer your question?

MR. JACOB: (Nodded head in the affirmative.)

MS. BELFLOWER: Okay. Thank you.

Constance Dennis.

MS. DENNIS: Good morning. My name is Constance Dennis, Connie Dennis, and I am sworn in. I live right on bordering the mitigation park. I live on Bateman Road, and I've lived

there for 28 years, and I have been a steward of the park and of the animals, and that's one of my main concerns is the animals, all of the ones that we've seen over the years, and I've been happy that the people who live there now are stewards of the animals also.

And I just want to know, I feel a little bit at a disadvantage with the changes in the plan not being -- I'm a reader. I've been a reading teacher, so I can read things better than just listening to it and trying to figure everything out, so I'm very brief today, but I just say I was wondering just what are the -- they're saying they're going to take care of them.

I remember something about burning, and they're going to have rules for burning, but what are the rules going to be for the people in these condos coming in with all these people with the animals there, what are they going to know how to take care of them, how to treat them, and what are they going to do to be sure that it's done?

You can hand somebody a paper to look at, and people have people coming in all the time, but enforcement of it, is there any way to be sure that things -- that people know about it and care

still?

Representing my road, Bateman Road, ever since this has come up, we have also been concerned about the traffic, and I know everybody is bringing it up, but I'm just looking at right now, people leaving River Hall, they leave, they go to work, they go shopping, they go to the doctor, they go to movies, they go to restaurants, and we're counting the buses or the school thing, so if we divide 2695 by two, meaning half of them are going to go out the back entrance, that's 1348 just for people that are single people. It just seems like too much.

If we're looking at what, the future, like when we think about schools, we're thinking about what's it going to be like 20, 30 years from now, and I know the Lee Plan is trying to do the same thing. What's it going to be like in 20 years, not just ten years, but with all these people coming out?

And we do have, every once in awhile we have a hurricane, and usually that's the hurricane route, so the people, all those people are going to be coming out at the same place and, you know, with congestion, so that's one of my main concerns.

And then I was wondering about the -- they said that they're going to pay for the entrances, I think, with the projected impact fees, and is that going to be with the current impact fees where it's only like 20 percent of what it has been in the past, and how long is that going to take, or are they going to -- just thinking, are they going to borrow from their money, and then when they get developed or people come in, they're going to take those impact fees and add it up and then pay for it? I just had a question about that.

And then there's some -- several other things that they said they're going to do, and I know in the past, like, at those two community meetings, there were people that were saying, oh, well, you've said things, but they haven't been done. So if they're going to say things they're going to do, who's going to check up to see that these are done?

I don't know about an organization like this. I'm not a part of it. So who checks to see that all these promises are kept? So those are my main concerns.

MS. BELFLOWER: Okay. All right. I'm trying

to make sure I get everybody's questions down. I'm sure the applicant and staff are doing the same.

Okay. I think I can answer quickly, and the applicant and staff may want to add further, but in terms of the promises that have been made, that was one of the things that we addressed yesterday in the conditions of making sure things that they have relied on, saying we will do this and that justifies what we're asking for, to make sure that they are being put in as conditions in the zoning, and in terms of enforcing that, they are conditions on the zoning, and they can't go forward if they aren't in compliance with them. They won't be able to get development order approvals and permit approvals, and if it's something that isn't tied to the building permits and they don't comply, then they would be brought in through a code enforcement action, so I share the concern.

I think the County shares the concern about when there are commitments made, that they're put in writing so everybody knows what's required and can be consistently applied.

MS. DENNIS: So code enforcement would be

checking periodically on these things?

MS. BELFLOWER: Yes, yes.

MS. DENNIS: All right. Thank you.

MS. BELFLOWER: Did you have any questions?

MR. SCHROPP: No.

MR. BLOCK: No, ma'am.

MS. BELFLOWER: Okay. Roger Thornberry.

MR. THORNBERRY: I have been sworn. My name the Tug Thornberry. I'm a resident of River Hall. I've been there for four years.

Before I begin, I think it's necessary to tell you that I am not a certified expert. However, in view of what Cecil Pendergrass has said about those of us who oppose developers and development, then I think it's necessary for me to establish some credibility because Cecil referred to us as rabble in T-shirts with a logo, and some of us are a little more than that.

I'm retired US Army, full colonel, with 27 years of active duty. I'm a Vietnam veteran. I am a veteran of the Panama fiasco. I held a top secret SI clearance which is the highest security clearance that anyone in the military can hold. I was deeply involved in the war plans for this country even at the JCS level for the last six

years I was on active duty. I was the executive agent for the implementation of top secret operational plans which I implemented back before I left during the Panama fiasco. I commanded as many as 1,100 troops.

I hold the allegiant of merit. I hold the Vietnam cross of gallantry. I hold the Vietnam honor medal. I have five awards of US army meritory service, two Army commendation medals, Department of Defense meritory service medal. I could go on, but I think I'm a credible witness. I don't think I'm rabble, and I'm certainly not a crackpot, and by the way, ma'am, I hold a master's degree in public administration, and I have written a subdivision ordinance and a planned unit development ordinance as a graduate student for the city of Hagerstown, Maryland.

While we're on the subject of expert witnesses, I hope you are mindful of the fact that these expert witnesses which we've heard here for the last few days or at least yesterday, I've heard them for five times. I could almost give their presentation. These people, all their testimony is all bought and paid for by Grady Miars and GreenPointe. These people are not here

to promote good government. They're not here out of the goodness of their heart. They're here because they are paid, and I suspect rather handsomely, by the developer to promote his interest.

I also hope that you will keep in mind that the county staff that we have heard here from, they serve at the pleasure of the county commission. Three of the county commissioners, that's all it takes for majority, three of the five have already made their views known by voting to transmit the application to change the land use which should have preceded -- the final acts on that should have preceded any actions on the zoning.

These people know. They can count to three. They serve at the pleasure of the county commission. What I'm saying to you is these people are in a very precarious position. They know the majority supports this, and they have to be -- in my opinion, have to be very careful what they say and the position they take, and it leaves some of us wondering whether or not that their position that they have announced here is unbiased or are they under pressure thinking that they may

lose their job. That's a question that needs to be addressed.

There's apparently not a merit system in this county that protects these people. They voted or their position on the land use plan was to not transmit it. They took a position contrary to the developer. Now, on this zoning, they have taken a position to support it because they've made the assumption that it's going to be approved. How does that assumption impact the fact that we expect a fair hearing in front of the county commission when we've already made the assumption that it's going to be approved? I can't get that straight in my mind.

MS. BELFLOWER: Let me help you with that, and I need to clarify perhaps some of the comments that I made yesterday.

The zoning has to make an assumption that either the plan amendment is going to be approved, approved in some modified form, or denied. That -- because the two are going together when I am doing my recommendation, I'm going to have to look, those are the only three options that I see for the plan amendment, so either you assume that it is approved and review the Lee Plan as it would

then be changed and see how this project falls under the Lee Plan with that change, you assume that it is denied and what would that do to the zoning request and what portions of the zoning request could still go forward and what could not, or you try to figure out some sort of modified form.

If there is a modified form that the neighbors want to propose and ask that that be considered, the zoning be measured against that, then I guess we could take that into consideration, but we have to -- I have to have some -- what would be the Lee Plan for me to evaluate whether the zoning request meets a Lee Plan, and so we have what it is now which would be if it was denied, we have what they're asking for it to be, so the assumptions, the assumption staff had to make was that it was going to be approved, and they are recommending if it is approved, they find that the zoning meets the approved one.

They did not give if it's denied what portion should go forward, and maybe before you even go further, I ought to ask the applicant to address that because I think it is going to be hard for the neighbors to speak to the issue of if it is

denied, what happens, but it is necessary to make an assumption of what happens if it is approved.

I don't believe that staff is taking the position that they think it's a foregone conclusion, so therefore, they're saying it is approved and they're acting accordingly. I think to be able to evaluate the zoning, there are only three options, and they have to consider each one of the three options.

MR. THORNBERRY: That's not the response that we received from the county staff, the county planning staff when asked why they changed their position. Their response was they changed it because they're operating under the assumption and that assumption only that this -- the land use is going to be approved.

MS. BELFLOWER: Okay. Well, whatever the staff's position and argument, that's not the position that I'm taking. I'm going to have to look at --

MR. THORNBERRY: I appreciate that, ma'am.

MS. BELFLOWER: -- those three options, and otherwise, we don't have anything to evaluate the zoning against, and that's the only thing we're doing here is evaluating the rezoning request.

MR. THORNBERRY: I appreciate your position, but I will tell you as someone has at least some limited experience in this, this is the most illogical, convoluted procedure, process that I have ever seen. This is like trying to prosecute someone in court and their case has never been in front of a grand jury where a true bill has been returned, where they've been indicted.

We've got the cart before the horse because without the land use plan being changed, you don't have a zoning request. Is that not correct, ma'am?

MS. BELFLOWER: You do have a zoning request, but yes, it would be -- my life would be a lot easier and everybody's life would be a lot easier if the plan amendment had already gone through and we had a decision one way or the other. Unfortunately, at the state level in terms of the description of comprehensive planning, it allows for an option for the zoning and the plan amendment to go through together. They have exercised that option.

You can ask that it be -- the two be divorced from each other and that the plan amendment be decided one way or the other so that we have a

clearer picture. I hear you and I agree, life would be much easier, but this is where we are.

MR. THORNBERRY: And I do not in any way want to impugn your integrity at all. I believe you to be a fair, open-minded person. You've demonstrated that yesterday because you hit upon some key points in this whole process that I think has been a dirty little secret, and I'm going to address it later on, but I'd like to go back, and I think it's necessary to understand the history of what's happened here.

Of course, this request for increased density, this is the fourth iteration. It's been denied three times. Now we're here for the fourth time.

Let me give you the perspective of a resident. Went in there 2011 in the sales office. I looked at the master plan they had laid out there in the lobby on a big old map and asked a few questions about is this approved zoning. Yes. Is this approved what we used to call a plat plan up north, a subdivision plan here, is it approved by the county? Yes.

Based upon that, I, and I suggest to you that most of the 350 people that have bought property in there went through the same process. They felt

that this zoning that was approved by the county tantamount to law, that the good officers of this county would protect their property investment by not allowing such as a double wide to be erected beside of my property or a multi-family house being put beside of my house in those areas. We felt the county's going to protect us. They're going to enforce the zoning law.

Based on that, 350 of us, if you go to the tax assessors records and you look at the amount of money that we spent to purchase 350 homes out there, it exceeds a hundred million dollars. The developer, I'll remind you, spent 1.2 million to buy it, the entire place, lock, stock, and barrel.

David Depew and Russell over here like to tell us there's $20,000,000 that they've invested. You need to take a close look at that, ma'am. Yep, they had to pay some back taxes around 4 to $5,000,000. Majority of that $20,000,000 is where they purchased bonds. These are revenue generating bonds that they can sell today. These are not sunken costs. These are not lost costs that they're locked in. They can sell those things, make some money on them, and they're making money on them right now. This is strictly

an option, it was not necessary, as part of them buying this property.

So with that 350 of us buying this property, thinking we're protected, and we were for two years. Then in the summer, I believe in the summer of 2013, maybe '12, we -- all of us up north visit our grandchildren, and we find out during the summer, the GreenPointe, they've held public meetings over in Alva proposing an increase density of 1,000 units.

Let me digress here just a moment and tell you what that means in cost or in profit. I sold a lot in River Hall in April 2014 for $58,000. One thousand times that is 58 million dollars in revenue, a windfall to the developer, and that's what this is all about. Not to protect the environment, not to create jobs, or anything else. This is about 50 -- somewhere around 40 to $50,000,000 in windfall profit to a Jacksonville developer.

That's why we're here. That's why they've been so persistent in this application. That's why it's here for the fourth time.

I don't understand why that a Jacksonville developer's $1.2 million investment trumps a

hundred million dollar investment by 350 residents out there, and by the way, the funds we invested in our homes represents the majority of wealth that most of us plain old folks have accumulated over the course of a lifetime.

Now, if this zoning is approved, Karen has already addressed the fact it's going to add around 2,000 more people. It's going to add around 1,150, 1,050 more vehicles, making somewhere around 6,000 to 8,000 more trips per day. We feel that brings -- that brings the total population of River Hall potentially up to close to 7,000. I think Karen used the 6,800 figure. We're talking about something that rivals east coast urban sprawl.

With that congestion, that traffic, the crowding, overwhelming of what facilities we have out there, it can have no other effect other than to drive down the values of our homes. The net effect of this would be transferring money out of the pockets of a bunch of us old dog-faced soldiers, and there's a number of us out there, into the pockets of a Jacksonville developer. That's the net effect. That's what this is all about.

I also want to address a couple of other things. We spent a great deal of time in here yesterday about this traffic light. This morning I came out of there, and there were like 15 cars backed up. I'm going west, so I have to turn right, go down and make a U turn. Are you aware, ma'am, that in the last two weeks, we have had two fatalities out there on that stretch of US 80 within about three miles of this intersection? We had a major accident at that intersection about ten days ago.

This is a dangerous piece of State Route 80, and I hope when you come out to visit, that you will be there whenever there's a hundred cars backed up picking up children from River Hall School, and I hope you will take the time to see those soccer moms with cars full of children negotiating that intersection, trying to make a left-hand turn, pull out into the suicide lane. It is only a question of time, not if, until some people are killed, and there's going to be some school children killed more than likely.

Yet all I heard from most of the county staff yesterday was the fact that we need to give the developer the time he needs. Let's not step on

anybody's toes. Let's go ahead and give 12, 18 months, maybe two years to do it. The development order long ago required the developer to put in a traffic light. He hasn't done it. The warrant's been issued. The studies have been made. He still hasn't even responded to that.

This may go beyond the scope of your responsibilities here, but ma'am, you may have access to some of the power structure around here. Please impress upon them there's going to be some people killed at that intersection. It's dangerous.

I -- I want to address something else, why the people are so certain that this is going to go through. Again, we have the record of county commissioners. Three of them have voted for it. John Manning and Mr. Mann voted against it. We don't think anything has changed that's going to alter that particular vote.

It should be noted, though, that in our view, one of the county commissioners, particularly Mr. Hammond, should recuse himself. Why? Because Mr. Hammond was appointed to that position by Governor Scott.

MR. JACOB: Madam Hearing Examiner, I'm going

to have to object to any further testimony.

MS. BELFLOWER: This really isn't going to the zoning.

MR. DEPEW: Just irrelevant and insulting.

MR. THORNBERRY: They are going to vote on the zoning, ma'am.

MS. BELFLOWER: They are going to vote on the zoning, but whether or not how the board should conduct themselves, whether they need to recuse themselves or whatever actions they need to take on the zoning, plan amendment, is outside of what I can consider.

What I'm taking in is facts about whether or not this zoning application is consistent with the county's adopted regulations including the plan amendment that is pending, and that's all that I can address one way or the other.

You're free to make whatever points you want to make before the board --

MR. THORNBERRY: And I will --

MS. BELFLOWER: -- but on that particular --

MR. THORNBERRY: -- and have.

MS. BELFLOWER: On that particular topic, that is outside the scope of what we are here to discuss.

MR. THORNBERRY: Well, then I think that pretty well concludes my presentation.

MS. BELFLOWER: Okay. Okay. Do we have any questions of this witness?

MR. SCHROPP: No, thank you.

MS. BELFLOWER: Could you point where in River Hall your property is?

MR. THORNBERRY: If you give me a topographical map with a compass, I can find it very easily. I am in the country club. I'm on the second fairway.

MS. BELFLOWER: Okay. That's the -- can you zoom?

MR. BLOCK: Probably going to go in here then.

MS. BELFLOWER: What's the street?

MR. THORNBERRY: Okay. Here we go. I'm in Sagittaria. I'm here. That's my house.

MS. BELFLOWER: Okay. Okay. That is part of the land that was included in the plan amendment or that area or at least a portion of it is in the plan amendment but not in the zoning; is that correct?

MR. SCHROPP: His property would not have --

MS. BELFLOWER: His property was not, but those subdivisions, portions of it are in the plan

amendment.

MR. SCHROPP: Portions of them were --

MS. BELFLOWER: But not in the zoning.

MR. SCHROPP: Yes.

MS. BELFLOWER: Okay.

MR. SCHROPP: And I'd have to check, I think they still are.

MS. BELFLOWER: At one point in -- they are in the zoning or they're not in the zoning.

MS. EKBLAD: They are not in the zoning.

MS. BELFLOWER: Because at one point in one of the graphics, and I know things change a lot, but in one of the graphics, it did show this area still in the rezoning, but it is in the plan amendment, not your lot, but some of the lots around you are.

MR. DEPEW: Yes, ma'am, a part of Sagittaria is in the plan amendment.

MS. BELFLOWER: Okay. Is in the plan amendment, but they are not being rezoned. So lots near you are not part of the rezoning. Your other points about the impacts on the cumulative traffic and other amenities, but under this request, the potential of there being a change to your zoning near -- immediately near your house.

MR. THORNBERRY: Yeah, we're not part of, as you refer to it, as River Hall II. The 300, I don't know, 326 or 356 acres out there that was unplatted --

MS. BELFLOWER: Right.

MR. THORNBERRY: -- I thought it was very astute of you to note that there were 96 units had not been included, and there is an explanation for it. I think David Depew, he's on record as saying that all along, the developer has planned on increasing the density here, and just as aside, we've got it on tape, and it's also -- it's also -- this was in front of the Lee Planning Agency two years ago. David Depew got up and said they have always planned.

He said, "I think we were hoping we would get lucky. We've always planned for an increased density out here."

MS. BELFLOWER: And even -- I'm not saying whether he did or he didn't, but a developer always has the potential to plan for the future, and if they hope that they're able to get it, the concern that I raised yesterday and I still have the concern is if there are only 96 units left, then that's at the developer's risk. That in and

of itself is not a justification for the rezoning.

If they get the plan amendment and if they meet all the requirements of the code and the Lee Plan and the Land Development Code, then they may have a justification for increasing it. The fact that they chose to use multi-family and 5,000 square foot lots instead of three acre, half acre lots, and three-quarter acre lots, leaving them with only 96 units left to develop of their total approval, that's at their risk.

To me, that does not carry any weight of justifying the zoning in and of itself, but if they get the plan amendment and they demonstrate that they meet all the requirements, that may be a different thing. So that's where I was coming down on those 96 units.

MR. THORNBERRY: But if this had been planned all along, the questions we've asked our attorneys to look at is was a fraud perpetrated upon the 350 of us that bought property in there under the illusion that there were going to be 1999 units. Now, all of a sudden, the developer says, three or four years down the road, just kidding. We actually meant 2,999, and I think that's down to almost 2,700 now. So the question that we have

for our attorneys is, and they're looking at it right now, has a fraud been perpetrated here by omitting this fact.

MS. BELFLOWER: And that's a private issue for you all to address with your attorney. And I'm sure that the applicant will have some response to your concerns about your reliance upon your zoning, and we will get their comments on that.

MR. THORNBERRY: Okay.

MS. BELFLOWER: Thank you very much.

At this point, number one, we need to take a break, but when we come back from the break, I would ask that the applicant, I should have had you all do this yesterday, if the applicant can explain what will happen to this plan amendment, what you would request to go forward or not go forward if the plan amendment is denied because I am going to have to address that in my recommendation. So when we come back, if you can address that so that the neighbors can then respond from that position as well.

MR. SCHROPP: Sure.

MS. BELFLOWER: We will break until ten minutes till 11.

(A recess was held from 10:36 a.m. through

10:51 a.m.)

MS. BELFLOWER: Let's get back on the record. Okay. We are back on the record, and before we get back to the neighbors, I do want to ask the applicant to address that question, which I managed to leave my pen in my office. Let's see if we've got more here. Okay.

MR. SCHROPP: If the plan amendment is denied?

MS. BELFLOWER: If the plan amendment is denied, what is the applicant's intention on this zoning?

MR. SCHROPP: Well, the applicant's intention would be to let the zoning go forward and would need to be denied because the density simply wouldn't be accommodated. In terms of other aspects besides the density, we have really no desire to receive approval for them if the remainder of the zoning doesn't -- isn't approvable, so there's nothing else that we would fall on our sword over that needs to go forward.

MS. BELFLOWER: So the change to add the recreational area to the CPD --

MR. SCHROPP: It's inconsequential to us.

MS. BELFLOWER: Because it would, theoretically, be possible to approve those

changes.

MR. SCHROPP: Yes.

MS. BELFLOWER: The applicant doesn't care one way or the other.

MR. SCHROPP: In actuality, the deviations I would prefer be denied as well because I just as soon rely on the previous zoning for whatever vesting value that we talked about yesterday.

MS. BELFLOWER: Well, then that leaves the question as to whether it would be appropriate to withdraw it. That is at your option.

MR. SCHROPP: And I guess at that point we'll decide whether to withdraw it at the podium or not, but my inclination is we'll probably go ahead and let it be denied.

MS. BELFLOWER: In my recommendation, I will address what would happen if the plan amendment is denied and what aspects of the rezoning request could be approved and what my recommendation would be on those aspects of them, and then it's up to you to make that --

MR. SCHROPP: I understand.

MS. BELFLOWER: -- point with the board, and I see movement from Mr. Jacob. Did you have anything you wanted to add to that?

MR. JACOB: Oh, no, no.

MS. BELFLOWER: Okay. Just head movement. Okay.

All right. So operating from that position that if the plan amendment is approved as requested, this is what you all are requesting for the zoning application, and everything that has been presented is from that, and I think it's almost impossible to guess what portion of it, if a portion of it was approved and some units were allowed or whatever, then it would work out that whatever units worked out is what worked out with what's left.

MR. SCHROPP: Right, and we can't speculate on what might be approved.

MS. BELFLOWER: And at some point, it's not worth it for you all to go forward.

MR. SCHROPP: Certainly if the plan amendment is denied in total, it's not worth it.

MS. BELFLOWER: Okay. All right. Then we will go to -- actually, we had one person that I missed before Mr. Brookes and before our new person, and that's Don Glenn, Glenny? Glenn I guess it is. G-l-e-n. Not here? Okay. Must have been from yesterday.

Okay. Terry Weiss.

MR. BLOCK: She may need to be sworn in.

MS. WEISS: You need to swear me in.

(Ms. Weiss was administered the oath by the hearing examiner.)

MS. WEISS: Yes.

MS. BELFLOWER: If you could pull the microphone toward your mouth and state your name for the record, please.

MS. WEISS: Terry Weiss.

MS. BELFLOWER: Okay.

MS. WEISS: I want to show you where I live.

MS. BELFLOWER: Okay.

MS. WEISS: I live right here in this forest right here

MS. BELFLOWER: On Oak Creek Road?

MS. WEISS: Yes, that's my house in the forest. I want you to understand I live in a forest for a reason.

MS. BELFLOWER: Okay.

MS. WEISS: I was here -- I didn't realize it was so long ago, but it was back in 2004, and I basically felt like I was ignored along with all the other people in the community, but a few of my neighbors asked me to come today. Good friend of

mine had to work and asked me to please come and represent her also.

I moved here about 15 years ago from Sunrise, Florida which is on the outskirts of Fort Lauderdale, Broward County. I felt I was being squeezed out of everything. I lived about seven miles from my job. It took me 35 minutes to get there. I moved here. I lived 16 miles from my job, and it took me 25 minutes to get there.

We moved to this area away from entertainment. It's about 45 minutes to get anywhere; a place to eat, movies, shopping, pretty much anything. We all rely on rinky dink Winn Dixie, but nobody complains. This is what we wanted. We didn't want to be squeezed out anymore.

I have five acres, two goats, an apiary, you know, cats, a dog. That's the life that everybody here chose. We didn't choose to live in a gated community. We didn't choose to live in an urban community. We chose to live in a rural community.

When I was reading the proposal for the change in zoning, they mentioned the animals that are on the endangered species list that would be affected. They don't mention the animals that aren't on the endangered species list that are

going to be affected. They don't mention the groups of hogs, the coyotes, the raccoons, the rabbits, the possums, the turtles, the armadillos, the owls, the hawks, the foxes, just to name a few that I see on a daily basis, daily basis from my porch, when I go out for a jog in the morning.

I've seen newspaper articles of people in gated communities very upset that their manicured lawns were being destroyed by hogs. The hogs are in my yard too. I don't complain.

I also read that River Hall is doing us a favor by requesting this suburban zoning as a gateway from urban to rural. A gateway from urban to rural. In between Buckingham and Alva, we need a gateway from urban to rural? I don't see that. I just don't see that.

In their plan that reads like a novel with all these fabulous adjectives of how great life is going to be, they offer the residents of the community amenities; commercial, bike paths. Did we ask for that? No. Do we want it? No. We want it the way it is. That's why we moved there. That's why we live there.

If you drive down Palm Peach Boulevard, you'll see a lot of storefronts that are empty, changing

from owner to owner. The old Winn Dixie has been empty since I've been living here, and they talk about a commercial area across the street from their development. Why? We have commercial areas that aren't even being utilized. Do you know why? Because we would rather drive 45 minutes and go into town if we need something. Our doctors are there. Our shopping is there. Our movies are there. Our restaurants are there. Personally, if I wanted to live in a gated community, I would go to Bonita Springs, Daniels, off of Treeline maybe, but people that want to live as far away from the urban center as we do, I don't believe want to live in a gated community.

I must say I was very happy when the housing bust came. Oh, what a relief to not have to worry about River Hall building behind my house, but now, alas, banks are starting to give loans to people that shouldn't get them again. So we have, again, the request for more houses.

They don't know anything about us, and they come here trying to say that they're going to make our life better. There's only one reason that they're here and they're doing it. As Gordon Gekko said, greed. Greed.

I'd also like to say that this affects, if I didn't say it before, everyone east of Buckingham Road all the way into LaBelle. Everybody. And not just people that live right near River Hall should be involved in this. That's it.

MS. BELFLOWER: Okay. Thank you. Hang on.

Any questions?

MR. BLOCK: No.

MS. BELFLOWER: Thank you very much.

Okay. Mr. Brookes.

MR. BROOKES: If I might borrow that sign-in sheet. Thank you.

Good morning. My name is attorney Ralph Brookes, and I represent the East Lee County Council, Inc.; the River Hall Citizens Ad Hoc Committee, Inc.; the Concerned Citizens of Bayshore Community, Inc.; Steve Brodkin, 17720 Durrance Road, North Fort Myers, Florida; and Alva Inc. and Ruby Daniels.

And I have with me today an expert witness. Julianne Thomas as an expert planner, and a copy of her resume she will hand out or I can hand out, and also attached to a public participation form with her address so that it's part of the record for board of county commission testimony.

MS. BELFLOWER: Okay.

MR. BROOKES: And with that, I'd introduce Julianne Thomas who has a presentation.

MS. BELFLOWER: Okay. You're tendering her as an expert?

MR. BROOKES: Yes.

MS. THOMAS: I misspelled conservancy. Don't hold that against me.

MR. BROOKES: She's not an expert in spelling.

MS. THOMAS: Even though that's where I work right now.

MS. BELFLOWER: Any objection? You want to look over? Any objection from staff in recognizing her as an expert?

MR. BROOKES: Julianne, if you could walk us through your positions in planning before you do your report.

MS. THOMAS: Sure.

MR. BROOKES: I'll have some legal things after she's done.

MS. THOMAS: Do you want me to start with my education? All right.

Currently, I work for the Conservancy -- Julianne Thomas. I was sworn in yesterday for the record.

Currently, I work for the Conservancy of Southwest Florida. I've worked with them since 2009. My title is senior growth management specialist. I was just given a title change this year. Prior to that, I was just the growth management specialist. Primarily, I do work in east Lee County, Hendry County, Glades County, and Charlotte County. We have other staff members that do Collier County, so I get to drive a lot.

I primarily look at comprehensive plan changes, their consistency with the comprehensive plan changes in terms of being consistent with state law, in terms of being consistent with the Land Development Code, and things like that.

I also, one of my degrees is in geographic systems. I make maps. I have made maps on behalf of the conservancy for external and internal publications. There's a map called "The Living Gulf Coast of Florida" are maps I've included in that book.

Prior to 2009, I worked for Lake County, Florida as a senior planner. Lake County is just north of Orlando. During the boom years, it was the third fastest growing county in Florida. They were undergoing the change from rural to urban

areas all over that county. So I worked there. I was -- I was laid off when the boom went bust, and so they didn't, you know, all of our funds, all of the staff funding was from impact fees. There weren't any impact fees, so about 50 people ended up getting laid off in the building department and the community development area.

Prior to that, I worked in Monroe County, Florida which is the Florida Keys which is also a real community by the way. Working in the Keys is very intensive because it's an area of critical state concern, so every single application that is reviewed in the Keys has to be reviewed for consistency with comprehensive plan and with Florida statutes because every single permit in the Keys other than re-roofing and fences not on Big Pine Key have to get approved by the state land planning agency before they can actually do anything, so very well practiced in checking for consistency between plans, between plans and statutes and things like that. It's what I've done for the past ten years. I know, it sounds exciting; doesn't it?

I also am, I suppose, an expert in transferring -- in transfer of development rights

because while I haven't written anything on it, I have actually transferred development rights between parcels which, as I've learned, is not very common that people have actually done that in their real life, and so I understand having to go out to the property, do a survey, figure out which lands can actually be put under easement, how many development units that represents, when you're moving it someplace else, making sure the changes don't adversely affect existing development, existing development rights, hurricane evacuation, all those kind of things.

Prior to that when I was getting my graduate -- one my graduate degrees from Eastern Michigan University, I built relational databases, and I was a database analyst.

I have two masters degrees from Eastern Michigan University. One is in urban planning and geographic information systems. The other one is a master of liberal studies in interdisciplinary technology. If you'd like me to explain that, I can. What that essentially is, we look at how technology changes society and how society changes in relationship to technology and interconnecting this between them. My thesis was on whether or

not computers could become conscious. The answer is no. So --

MS. BELFLOWER: Good.

MS. THOMAS: And then I also went to law school at the College of William and Mary. I've never taken a bar exam, never sat for a bar exam, but I did go to law school there.

Questions, concerns?

MR. SCHROPP: May I inquire just briefly?

MS. THOMAS: Sure.

MR. SCHROPP: Are you a certified planner, AICP?

MS. THOMAS: I've never sat for the exam. I'm a good test taker. I've never sat for the exam.

MR. SCHROPP: And just one other question.

MS. THOMAS: Sure.

MR. SCHROPP: Looks like your present position with the conservancy involves evaluation of plan changes, comments regarding plan changes. It doesn't involve the actual development of plan amendments or comprehensive plans. You're basically evaluating the work of others?

MS. THOMAS: Correct.

MR. SCHROPP: Thank you.

I have no objection. Well, what is the --

Ralph, what is the tender?

MR. BROOKES: Planning, an expert in planning and zoning.

MS. THOMAS: I'm going to be talking about rural indicators and consistency with LDC, consistency with the Lee Plan, specifically relating to infill development.

MR. BROOKES: We offer her as an expert in the field of planning.

MR. SCHROPP: No objection.

MS. BELFLOWER: Have any objection?

MR. BLOCK: No objection.

MS. BELFLOWER: So recognized.

MS. THOMAS: Okay.

MS. BELFLOWER: And I'm going to accept your resume as Thompson -- Thomas Exhibit Number 1.

MS. THOMAS: All right. So yesterday, the applicant gave some information about why this really isn't rural land, and I wanted to address that because rural development can look like a lot of different things depending on where you are.

If you're in Hendry County, everything looks like rural development. Development at one unit per acre is extremely high development, and any planned development in Hendry County that's over

300 units has to provide central utilities, so just because it's in Hendry County and it would be considered rural, if they're going to be building a planned unit development greater than 300, I believe, the -- it's around 325 sort of depending on the layout, they have to provide a package plan that will give them central water and those sort of amenities which means that the existence of those is not really an indication of whether it's rural or not.

So also, there was some talk about the entrance road being a certain width and being a certain whatever, and I think that we probably can all agree that it was built at the width it was because of the elementary school in order to provide access to the elementary school. I would assume that there are guidelines and regulations for how wide the road needed to be and how much traffic would need to be accommodated. Excuse me. And so the width and design of the road really has more to do with the fact that there's a school there rather than a bearing on the community, whether it's rural or not, so I don't really think that looking at, you know, this is a minor collector or whatever really gives you a lot of

information about whether or not the community is rural or not rural.

One of the things that the applicant stated was that this request was consistent with the Land Development Code, but I don't believe that it is. Section 34-145(c)(2)(a) requires change.

MR. SCHROPP: Excuse me, can you repeat the --

MS. THOMAS: Sure. You guys had that on your slide yesterday. It's 34-145(c)(2)(a).

MR. SCHROPP: (c)(2)(a). Thank you.

MS. THOMAS: Requires change or changing conditions in order to request an amendment. They haven't shown that there are changed conditions out here because a change of ownership is not changing conditions. I mean, part of the purpose of planning is to provide certainty, and if you would -- and if changing ownership could be a changed condition, what that essentially means is that anytime a developer doesn't like their entitlements, they can form a new LLC, transfer ownership to the now LLC, and then come back and ask for more entitlements because it's -- so I don't believe that it meets the Lee Plan requirements of showing that there are changed or changing conditions.

Well, actually, I think that if there is a change or changing condition, it's the safety of people traveling down 80 because if there in fact have been two fatalities in the past few weeks and that's a dangerous intersection, then I would say that change or changing conditions would say no additional units should be approved because it's not safe, and for public safety reasons, additional units just don't make any sense there.

The same requirement for change or changing condition is also found in the Lee Plan, so I don't -- I don't think it meets that, and I'm going to -- I have --

MS. BELFLOWER: Can I stop you a second?

MS. THOMAS: Sure.

MS. BELFLOWER: Do you have the citation on the Lee Plan provision for changing conditions?

MS. THOMAS: No. I can look it up at a break.

MS. BELFLOWER: Okay. At break, if you would.

MS. THOMAS: Yeah, I can do at that. No problem.

MS. BELFLOWER: Thank you.

MS. THOMAS: And it's my understanding from the testimony yesterday that the applicant purchased the property in 2010; is that correct?

MR. SCHROPP: Yes.

MS. THOMAS: Yes. Okay. I would like to submit, this is from the Lee Plan. It was a Caloosahatchee Shores amendment that was adopted in 2009. I'm looking specifically to address the position of infill development because in order to be considered infill, it has to be considered under-utilized property, and I believe that --

MR. SCHROPP: May I inquire as to the exhibit? The exhibit, as I understand, it is a plan amendment. Was it adopted?

MS. THOMAS: It was adopted.

MR. SCHROPP: So it was incorporated into the current plan.

MS. THOMAS: Uh-huh.

MR. SCHROPP: So can we just rely on what the current plan?

MS. BELFLOWER: If the section numbers in there are the same and if that happens to be a grouping of several policies.

MS. THOMAS: Well, I wanted to draw attention to what the planning staff had said about the amendment in 2009, which is prior to when the applicant purchased the property because that was their opinion at the time. It's my opinion now,

and it's relevant to whether or not it should be considered infill property.

MR. BROOKES: Ma'am, the case, *Seminole Tribe*, it says when you are interpreting a comprehensive plan policy, you're to use the same analysis as you would if you were interpreting a statute. In other words, statutory construction. So if we look at the Lee Plan policy, one of the things we can do is look at the legislative history to determine the meaning of what that policy is by what the history of the legislative history of the adoption. The staff report is similar to a staff committee report on a legislative section of the statutes.

MS. BELFLOWER: And to the point of a need to interpret the plain language of the words to the degree that the simple language of the policies are not clear and the first source is to go to the entire document, the entire Lee Plan itself to try to determine it, and then you go to legislative history.

MR. BROOKES: First, we'll read the goals, objectives, and policies.

MS. BELFLOWER: And as to Mr. Schropp's point about relying on the words, if this was adopted, I

do first need to know the actual adopted words, and to the degree that they're ambiguous, I can take as information --

MS. THOMAS: Okay.

MS. BELFLOWER: -- the staff analysis that went with it, so I think it's appropriate to accept the plan amendment document as a document that relays at least what staff's analysis was, and then you can explain why you agree or disagree to the points of it.

So that being said, I will accept the document as Thomas Exhibit Number 2, and when you're through reading.

MS. THOMAS: Okay. This was -- this is from a hearing which took place on February 25th, 2009. The specific objective is to objective -- it says 20.1, but I don't believe that's the actual -- I don't think that that's what the number is right now. I think its 21.1.5. Oh, wait. No, sorry. This refers to a different -- this falls under Goal 21 of the -- how much do you want me to read?

MS. BELFLOWER: Tell me which goal, objective, or policy that we're talking about.

MS. THOMAS: It's Goal 21, and Goal 21 is the Caloosahatchee Shores, and it is says to protect

the existing character, natural resources, and quality of life of Caloosahatchee Shores while promoting new development, redevelopment, and maintaining a more rural identity for the neighborhoods east of I-75 by establishing minimum aesthetic requirements, planning the location and intensity of future commercial and residential uses, and providing incentives for redevelopment, mixed-use development, and pedestrian safe environments.

This goal and subsequent objectives and policies apply to the Caloosahatchee Shores boundaries as depicted on May 1st. Then it says page two of five in the appendix.

Then it says -- then it talks about -- it compares it to Objective 17.1 in the Buckingham community and Objective 20.1 in the Bayshore community.

So under staff comments, you know, the staff comments, the county attorney did suggest at the time that there could be, well, first, there are approximately 300 -- sorry, 3,189 acres of rural lands in the Caloosahatchee Shores planning area. There is absolutely no way you can get to 3,189 acres of rural land in Caloosahatchee Shores

without including 1,700 or so acres of rural land in River Hall.

So we know that this amendment was specifically to include and address River Hall in 2009. And in 2009, the planning staff questioned whether there would be -- I'll just read it.

Planning staff questions that there are valid investment-backed expectations on rural properties in Caloosahatchee Shores or anywhere else for that matter. If you purchase a piece of property that is designated as rural, it would be reasonable to expect that that is what you have. Planning staff does not believe that any investment-backed expectations beyond the uses allowed in rural category is reasonably foreseeable and would be speculative.

I think that's pretty clear that -- and my expert recommendation, my opinion, I agree with that. If you purchase rural land, then you have rural rights and abilities.

This was adopted on February 25th, 2009, which is prior to when the applicant bought the property, and that means that the applicant knew or should have known about this, and the applicant knew or should have known that by Lee County

standards, if you purchase a piece of property designated as rural, it would be reasonable to expect that that is what you have, and that at that time, planning staff did not believe that there were expectations -- that there were investment-backed expectations beyond uses allowed in the rural category.

Here's the whole thing. It's on page five.

MS. BELFLOWER: Okay. This is CPA 2007-01, Caloosahatchee Shores BOCC-sponsored amendment to the Lee County Comprehensive Plan.

MR. DUNN: Is that the adoption document? It should say on the front cover.

MS. BELFLOWER: It is the document for the adoption hearing.

MR. DUNN: Okay.

MS. THOMAS: Do you want a copy?

MR. DUNN: Sure. Thank you.

MS. BELFLOWER: And it is dated at the -- January 16th, 2009.

MR. SCHROPP: This is Thomas 2?

MS. BELFLOWER: Yes, this is Thomas 2.

MS. THOMAS: Given this, we don't think that it's fair to characterize this as infill because it's not under-utilized. It was recognized in

2009 as rural property with rural uses, and it was in, you know, the plan amendment indicates that that was always the intention of how this land should be used. So we don't think that it can be characterized as infill development, and we object to that classification.

Now, unfortunately, I have to talk about numbers. Nobody likes to talk about numbers, myself included, but I'm going to talk about numbers in relation to the table that's found in the -- is this deviations? Is that what -- this is the conditions to the --

MR. SCHROPP: Yes.

MS. THOMAS: This table.

MR. SCHROPP: Yes. She's looking at the exhibit that you prepared.

MS. BELFLOWER: Okay.

MR. SCHROPP: Hex Exhibit 1 and table in Condition 5.

MS. THOMAS: Yeah.

MS. BELFLOWER: Okay. Before you go into that --

MS. THOMAS: Sure.

MS. BELFLOWER: -- we get into the numbers, I think it might be appropriate to ask one question

that I have so I understand the previous testimony you made about the infill. What is your understanding of the implications if there was a finding that this constitutes infill under the Caloosahatchee Shores requirements or under the Lee Plan in general or under the Land Development Code?

MS. THOMAS: Well, I think that the definition of infill has two components; one is that there have to be existing services available, and that's true, but it also has to be that the property is under-utilized, and that's not true because as I think I've demonstrated by, you know, the conversation that happened in 2009, when they adopted the requirement, this overriding necessity language is what was adopted in 2009, so I believe that in order for this to be considered infill, it would have to rise to that level.

There would have to be an overriding public necessity that this was under-utilized property that was needed to fulfill some sort of overriding public need in the Caloosahatchee Shores community because the comp plan requires overriding public necessity to change rural land use designation to something else.

MS. BELFLOWER: Okay. So your thought is that if it is labeled infill and that it is accepted that it is infill, then that leads to the argument under the --

MS. THOMAS: Well, I think --

MS. BELFLOWER: -- from the zoning standpoint, and I understand your point about from the comprehensive plan and the overriding public necessity portion of it. And I was going to ask the applicant before they address things in their summary, I'm not sure I understood their point of labelling it as infill which they did repeatedly, and you're saying you disagree with that label. I'm trying to understand what it would mean under the codes if it was labeled infill and why it shouldn't.

MS. THOMAS: I think if it's labeled infill, that it assumes the property is underutilized under current zoning or future land use map, and I don't think that's true, so I think the danger of referring to it and allowing it to be referred to as infill property automatically carries with it the assumption that the property is underutilized under current zoning, and I think -- and I just don't think that's true.

MS. BELFLOWER: Okay. Okay.

MS. THOMAS: And I mean, I think that's just one of those things that it's language and, you know, that's how you start to change things, introduce new language, and there's a slow erosion of other principles, so when you use that language, I think that assumes that the property is underutilized. The property is not underutilized, and so allowing that term assumes facts not in evidence to be really legal about things.

Now, one of the things that -- do you have any other questions?

MS. BELFLOWER: No. I've got that point. Thank you.

MS. THOMAS: My first issue with a lot of the graphics that the applicant showed yesterday is that it showed a purple area in River Hall that's supposed to be rural, and they listed the density on those -- on that portion as 1.5 units per acre. This development order clearly states under 5 that the portion of property within the rural future land use category must maintain densities of one dwelling unit per acre or less. So in order to be consistent with the development order, the density

can't be 1.5 units per acre like they were showing yesterday, and I think they were showing it at 1.5 units per acre because their argument is this is 1.5, so having two here isn't a big deal. It's not supposed to be 1.5. It's very clear here that it's supposed to be one.

There's a condition that says the portion of property within the rural future land use category must maintain densities of one dwelling unit per acre or less, so all of those pictures, what they were saying it's consistent, look how it fits in, this is 1.5. It's not 1.5. It's supposed to be one.

And I think, again, much like designating it as infill property, I think that sort of allows you to move to a decision that maybe it's not so bad when really, they're not showing things the way they really are. That should say one dwelling unit per acre. It should always say that. The development order requires that, and so to sort of go forward and not address that, I just don't think that would be right because it's clear from this, and that's not changing, that the rural category must maintain densities of one dwelling unit per acre or less.

Now, that was the easy part of numbers. Now we get into the far more complicated part of numbers. I don't even know the best way to go about doing this.

First, I just feel compelled to point out that the numbers, like what's going forward now, what's -- as listed in the app -- I guess the other sort of easier numbers issue is that it appears to be inconsistent throughout the application how much land they're actually referring to. Parts of the application talk about 553 acres, the tables all seem to say 585.6 acres, and if you look on page four of the application under land use classification, it says 553. Under M, total area, 553. But then, you know, you get to other things, and they're using 585.6, so I just find that confusing.

MS. BELFLOWER: As to what the acreage is of the total zoning request?

MS. THOMAS: What they're actually requesting. Because are they requesting 553, and if they're requesting 553, then why are they referring to 553 in some places and 585.6 in other places?

Also, when this was originally advertised

before they amended their request, all of the advertisements and all of the staff reports, and actually, the staff report that was transmitted to the state land planning agencies and all the state agencies characterized the land as 79 acres of suburban, 1648 acres of rural, and 251 acres of wetlands. As it turns out, according to the -- you know, when we actually went back and checked things out, there are only 181 acres of wetlands, not the 223 that were advertised or the 251 that was on the information transmitted to the State. That's confusing.

I actually went through, and I picked out all the wetland areas, and I did the math, and in fact, it is 181 acres, but it is confusing because everyone was under the impression there were at a minimum 223 acres of wetlands because that's what all the legal ads had said up to this point.

It also said that there were 79 acres of suburban, and now they're saying there are 71.5. I don't know where that difference comes from, and I'm not sure that it necessarily matters. However, I think it is clear from looking at the record that those were the numbers that were originally used, and I say that because if you

have 79 acres of suburban, 251 acres of wetlands, you're left with 648 acres of rural, and I think that's what was intended because if you go back to the portion where I was reading, it says the portion of the property within the rural future land use category must maintain one dwelling unit per acre. No more than 1,648 units can be constructed under the rural designated area, so that leads me to believe that at the time of adoption, everybody was on the page with 79 acres of suburban, 251 acres of wetland, 1,648 acres of rural.

If that's not what it is, that's not what it is, and that's okay. It's just it's provided a lot of confusion to me and I'm sure to other members of the public moving forward, and I think it needs to be addressed sort of where we started, where we are now, what that difference looks like, and how people are, you know, and what's moving forward. So I have concerns about -- okay.

So to go through some of these conditions, I would like to point out that the applicant is making certain decisions not to do things. There are lots of rural plan communities that maintain ag uses on parts of their property. There's a

huge development in central Florida called The Villages which is wildly successful, and they have pockets of pasture land throughout where water buffalos graze. It's very odd, but everybody loves water buffalo. They sell them at the golf store, little stuffed animals with little bandanas that say "The Villages," but, you know, they're choosing to ask that ag uses be deleted as an option, and if they left that in there, they could potentially use that for apiary, pasture land. I don't know what could be considered, but there are rural and ag uses that might be appropriate.

MS. BELFLOWER: Let me clarify something on the zoning categories that they have. The CPD and the RPD do not allow agricultural uses.

MS. THOMAS: Even though it's listed in here?

MS. BELFLOWER: It was to recognize that they were allowed to keep the ag that they had, and that has now all been eliminated. They had to eliminate it before they got the first development order, I think.

MS. THOMAS: Okay.

MS. BELFLOWER: So that's the reason why it's been struck.

MS. THOMAS: There are other things that they

could -- they could say they wanted to put in an equestrian center, put in a community garden, or water buffalos, whatever. There are other options other than infill or not infill, residential development that could take place.

The other thing that I wanted to sort of draw, like put on the record is that area down here, this area, it's 3 -- it's about 360 acres more or less. And that seems to be the area that everyone is talking about. If they were going to do increased development, that's where it would go. Well, best case, I guess I don't understand 553. I mean, I know that there's about 40 acres up towards the top, but I don't understand if they're only trying to build two units per acre on 360 acres, why are we talking about 553 or 585.6 because that's 357, 360 acres, so it sort of raises the concern that they're planning on building that at more than two units per acre because if you take 1,171 and divide it by 360, it's about 3.2 acres per unit, which is higher than what is allowed in sub-outlying suburban, but based on the conversation yesterday, I have to be honest, I'm not really sure where we ended up with whether they would be able to do that based on, I

mean, if they're approved for 1,171 suburban, outlying-suburban units, are they going to keep track of where they go and make sure that it's not developed at more than two units per acre? I don't know.

You know, I don't think that it should be approved. However, if it is approved, I think that much like there's -- there's language which, you know, limits the density of the rural future land use to one unit per acre, that if density on any suburban outlying is approved, that density should be limited to two units per acre or less, just to make it clear that if -- I mean, we don't think that there are changed conditions.

We don't think that Lee County should give them any additional units. We think that they should have known what they were buying in 2010. They made a bad business decision. They gambled that they would be able to come in and get additional approvals. Lee County is under no obligation to give those units. They don't -- there are no changed conditions that require additional units.

There's approximately -- on page 37 of the staff report that was transmitted to state

agencies, they showed all the units surrounding River Hall that have been approved but not built, and there's about 4,950 of them. So there's no, you know, it's not like people want, you know, are looking for units out there and there aren't units available. There's only 16 percent of the units in River Hall that have been sold. There's no changed conditions that would make anyone say, oh, there's a public need, there's a public necessity for increased density. The traffic concerns make me think that 1,903 is a lot, let alone additional ones. So that's a concern.

Also, I was a little bit concerned -- I was a little bit confused. Under section C under number five, it says units within suburban and sub-outlying suburban future land use designations may be shifted between these future land use designations as long as requirements of Lee Policy 5.1.10 are met.

I didn't know whether or not the applicant actually owned any suburban land, so I went and I checked, and it turns out they do. They own about three acres of upland that is suburban. I don't know if that's what they were intending and they wanted to shift to these units across the street

so there are lands over here. I have no idea, but they don't, as far as I know, they don't own any other land in the suburban land use category, so I don't know why you would allow them to shift units that they don't have a legal entitlement to to someplace else.

So I was really uncomfortable with that language, you know, absent additional information being provided by the applicant that clarifies what that means and what suburban lands they were including to be able to transfer density from.

I think that might be really all I have to say. If you have any questions, I can answer them.

MS. BELFLOWER: I just -- on that last point about shifting from suburban, you're saying that they only own like three acres, --

MS. THOMAS: Correct.

MS. BELFLOWER: -- but you agree that there are 71 acres within the River Hall boundaries that are suburban or you haven't measured it?

MS. THOMAS: There's at least that many. Originally, it was 79. I'm not really sure where the 8.5 acres are. Those could be wetlands because I believe that there's at least that much

wetlands in that category, and they may have just counted that as wetlands, I'm not exactly sure, but I guess part of my concern is that, you know, unless it's property they own, they wouldn't need permission of the property owners to use their development rights; wouldn't they? I guess that would be my question.

If -- because that's not owned by the applicant any longer. It's owned by individuals and River Hall, Cascades, and things like that, and so, I mean, I would assume that -- I guess I'm assuming, and perhaps I'm wrong, but I would guess that you wouldn't let applicants use density that they're not entitled to without the permission of the people that own it.

MR. BROOKES: She has a document that answers your question also.

MS. THOMAS: Sort of. This is the River Hall area. The green is rural. Blue is wetlands. This is the suburban area, and that yellow parcel is a parcel that I know that the --

MR. BROOKES: That's existing. Existing future land use.

MS. THOMAS: They possibly could own more. I didn't go through all the 575 units in that area.

MR. BROOKES: Without the plan amendment, this is what their current map shows.

MS. THOMAS: This yellow parcel is what I think you're --

MR. BROOKES: She's color coded it differently than --

MS. BELFLOWER: Okay. And black boundary on this is the --

MS. THOMAS: That's River Hall.

MS. BELFLOWER: River Hall PD.

MS. THOMAS: Yes.

MS. BELFLOWER: So that parcel you're talking about is outside of the River Hall PD?

MS. THOMAS: Well, it was originally part of the River Hall development, but it has since -- it was never considered prior to this revision. Like the -- like when River Hall -- when GreenPointe submitted their application back in 2013, they were talking about 1,200 and -- I can tell you exactly. They were talking about 1,278 acres of rural and wetlands that they were changing, and they weren't including this suburban area which is the Cascade. They weren't including that at all in the original application. The first time that that became part of the application was when

everything was amended.

MS. BELFLOWER: But is it in the --

MR. BROOKES: For the record, can you explain where you pointed to when you said "this suburban area," describe how you're looking at --

MS. BELFLOWER: Hang on.

MR. BROOKES: The colors you're using.

MS. BELFLOWER: Hang on. Let me get the question that I have answered first.

Is this portion that you have outlined in yellow within the River Hall development rezoned in 2005, under the resolution, whatever the number is, 51, I think, 05-51?

MS. THOMAS: If that includes the suburban areas, then yes. And it goes to -- it goes to -- it goes straight up from this boundary.

MR. BROOKES: Describe for the court reporter. It needs to be in the transcript, Julianne, is what I'm worried about.

MS. THOMAS: The rural area at the western boundary, if you draw that straight up to Road 80, it will encapsulate a suburban area. Most but not all of that suburban area is part of the River Hall development.

MS. BELFLOWER: Okay. Okay. So on this

graphic that you have provided, the black line does not follow the River Hall PD, the RPD/CPD. It follows something -- part of a plan amendment at some point.

MS. THOMAS: Correct.

MS. BELFLOWER: Okay. But your point is that the land that this applicant owns that is suburban designated that is within River Hall planned development is only that --

MS. THOMAS: Correct.

MS. BELFLOWER: -- approximately three acres.

MS. THOMAS: That I'm aware. Like I said, there's nearly 600 lots that are encapsulated in there.

MS. BELFLOWER: Okay. We will get that question answered. This will be Thomas Exhibit Number 3, and it is a picture that she has indicated depicts the current future land use planned categories for the area with a small portion of the suburban indicated. Okay.

MS. THOMAS: Okay. Anyone else have a question?

MS. BELFLOWER: Does the applicant have questions they would like to ask?

MR. SCHROPP: Yes, ma'am.

Ms. Thomas, at the beginning of your presentation, you started with an assumption that the -- thank you. That the entrance road at River Hall -- in River Hall Parkway was built four lanes because of the elementary school, and you assumed that there were guidelines or regulations for access to schools. What's your basis for that statement? Are you aware of any access guidelines or restrictions or requirements for access?

MS. THOMAS: I'm not aware of them specifically. However, I do know that when you're building a project, whether it's commercial or for public, you have an estimated number of trips that you're expecting, and the width of the road and type of road and the access point are all dependent on the amount of use that is expected by the uses, by what's going to go there.

You build -- you have different access and different widths of road depending on the intensity of the use, and the school is -- although it's a public use, it's a fairly intensive use.

MR. SCHROPP: So the answer to my question is no, you're not aware of any guide --

MS. THOMAS: I don't have any specific ones.

MR. SCHROPP: If you would let me finish the question. So you're not aware of any guidelines or regulations that would require this to have been completed for the school?

MS. THOMAS: Not specifically.

MR. SCHROPP: Are you aware of any analysis that was done at the time the elementary school was constructed that showed that the four lane was necessary for the elementary school?

MS. THOMAS: No, sir.

MR. SCHROPP: Have you done any such analysis?

MS. THOMAS: I have not.

MR. SCHROPP: So as far as your statement that your assumption was this was done for the elementary school, you have no basis for that assumption?

MS. THOMAS: I have my professional experience of how roads are constructed based on uses that are going to be using the roadway.

MR. SCHROPP: As applies particularly to River Hall Elementary School, you --

MS. THOMAS: No.

MR. SCHROPP: -- have no basis in fact for that assumption?

MS. THOMAS: No.

MR. SCHROPP: That's correct?

MS. THOMAS: That's correct.

MR. SCHROPP: I apologize. I asked you about this when you were going through it, and you said you -- you referenced Section 34-145(c)(2)(a) with regard to the change conditions. Do you have a copy of that? And I apologize because I've been scrambling, looking for it.

MS. THOMAS: I don't, but it was on one of your slides yesterday, so if I can look through your slides from yesterday, perhaps I can.

MR. SCHROPP: I was going to ask you to look at the code.

MS. THOMAS: Sure, I can do that too.

MR. SCHROPP: 34. Get you the 34-145.

MS. THOMAS: I might have it.

MR. SCHROPP: I just can't find the reference.

MS. BELFLOWER: And actually, this is one of the provisions that I pointed out to you yesterday that you all were using old standards, and I recognized that she was responding to what you said, and it is not -- that is not a standard written that way.

MS. THOMAS: Okay.

MS. BELFLOWER: However, the applicant raised

it as showing that they had changed conditions that they believe justify the application, and I'm going to accept her testimony as responding to what the applicant said about the changed conditions and her points as to why it does not justify the application.

MR. SCHROPP: That explanation, I appreciate it. I'll move on.

MS. THOMAS: And I will find out.

MR. JACOB: So for clarify, we're offering rebuttal to irrelevant provisions?

MS. BELFLOWER: Well, to the degree that the applicant believes that it is relevant to show that there are changed conditions because that is a standard in many jurisdictions.

MR. JACOB: Don't bring up the Constitution, please.

MS. THOMAS: And I will find the Lee Plan reference that does require changed conditions for future land use amendment to show that it's not consistent with the Lee Plan.

MS. BELFLOWER: Okay. Thank you.

MS. THOMAS: I should have done that. I'm sorry.

MS. BELFLOWER: And she indicated, Russell,

that she's going to find the Lee Plan provision that she believes addresses changed conditions, and you can respond to that in your rebuttal.

MR. SCHROPP: Thank you. We'll handle that through rebuttal.

So with regard to the 2009 amendment and the requirement for changed conditions, I think you presented the 2009 plan amendment as an indication that the client bought the property at the time it was rural and after this plan amendment?

MS. BELFLOWER: Russell, you're going to need to lean forward a little bit. The mic's not picking you up.

MS. THOMAS: Is that your question?

MR. SCHROPP: Is that essentially what your testimony was?

MS. THOMAS: My testimony is that in 2007, the Caloosahatchee Shores planning area changed their -- changed the provisions that governed them in the Lee Plan to include a finding of overriding public necessity for any changes to the rurally designated lands.

If you look at the staff report, there are 3,189 acres of rurally designated land, and my professional opinion is in line with the staff

analysis at the time which is that land designated as rural in the Caloosahatchee Shores planning area, there is no other reasonable investment-backed expectation other than rural uses.

MR. SCHROPP: So you're testifying as to GreenPointe's reasonable investment-backed expectations?

MS. THOMAS: I'm saying -- no, I'm not. I'm testifying as to whether or not Lee County is -- I don't believe based on in part this amendment and based on the designation of rural, that Lee County is obligated in any way to increase the development rights because I think it was made pretty clear in that staff report, which I agree with, that it was designated rural, and they intended to keep it rural.

MR. SCHROPP: As an expert planner, are you familiar with the requirements of Chapter 163?

MS. THOMAS: Very much so.

MR. SCHROPP: So you're aware that under Chapter 163, plans can change?

MS. THOMAS: They can.

MR. SCHROPP: And one of your chief duties at the conservancy is to review proposed amendments

to change or changes to proposed amendments to future land use maps?

MS. THOMAS: That's correct.

MR. SCHROPP: And have you ever seen a proposed future land use map amendment change land use designation that would increase density?

MS. THOMAS: Yes.

MR. SCHROPP: So it does happen?

MS. THOMAS: It happens a lot.

MR. SCHROPP: It happens a lot. Yes, it does. So the fact that the plan may designate something in 2009 rural doesn't mean it's always going to stay rural; does it? It doesn't mean that it can't be subject to change or consideration for change?

MS. THOMAS: It can be subject to consideration. However, that request needs to happen in the context of the expectations of the planning area and of the county.

MR. SCHROPP: You've reviewed a lot of these changes?

MS. THOMAS: Since in the past ten years.

MR. SCHROPP: Let just go with your time at the conservancy.

MS. BELFLOWER: How far are we going into the

plan amendment?

MR. SCHROPP: Well, --

MS. THOMAS: I've reviewed --

MS. BELFLOWER: Your question, I'm asking, your question seems to be going to the plan amendment issue. To the point that I heard her making was that you all have indicated that this is a suburban area and that it justifies a change, I was hearing her point that it was purchased as a rural area, and she is indicating at least staff thought -- the way she's categorizing what staff thought was that everybody knew they were buying rural. I know that that's going to the plan amendment --

MR. SCHROPP: Yes.

MS. BELFLOWER: -- in the -- when the staff made that statement, they were talking about the Lee Plan and how it went. I'm not sure we can go much further with that comment other than you bought what you bought, and what that means to the zoning, we can pursue, but I don't want to go any further into the plan amendment.

MR. SCHROPP: I understand. We'll address the rest on rebuttal. Thank you.

MR. BROOKES: I have one follow-up for

Julianne based on the last.

MS. BELFLOWER: I'm going to need you to stand up there. There's a mic under there. If you want to flip it on if you don't want to share a microphone.

MR. BROOKES: Julianne, with regard to a plan amendment, that Mr. Schropp was referring to that plan amendments can happen to change rural lands, is there a special policy in the Lee Plan, Caloosahatchee Shores Community Plan that addresses that requirement?

MS. THOMAS: There is --

MR. SCHROPP: Again, we're getting into the plan amendments.

MS. BELFLOWER: That really --

MR. BROOKES: He opened the door.

MS. BELFLOWER: I understand, and I shut it down. I closed it.

MR. BROOKES: Let me ask if in your opinion as an expert planner, is this rezoning inconsistent with Policy 21.1.5?

MS. THOMAS: It is.

MR. BROOKES: Why?

MR. SCHROPP: Objection. It's not subject of my cross-examination.

MR. BROOKES: I'll let him cross on it, recross.

MS. THOMAS: You tell us was you want us to do.

MR. SCHROPP: I think she will.

MS. BELFLOWER: Yeah, I really don't want to get into the legal cross -- as long as we don't go too far afield, if your position is that it is inconsistent with the Lee Plan, the zoning requested inconsistent with the Lee Plan, any portion of the Lee Plan --

MS. THOMAS: Yes.

MS. BELFLOWER: -- adopted or proposed --

MS. THOMAS: Yes.

MS. BELFLOWER: -- then I would like to hear that, and then you can ask questions on that testimony.

MS. THOMAS: Okay. Well, Policy 21.1.5 states that one important aspect of the Caloosahatchee Shores community plan goal is to retain its rural character and rural use where it currently exists. Therefore, no land use map amendments to the remaining rural lands category will be permitted after May 15th, 2009, unless a finding of overriding public necessity is made by three

members of the board of county commissioners.

So my opinion is that any change of the rural lands category which needs to happen in order to increase the density is not proper. It's inconsistent.

MS. BELFLOWER: We have to assume the plan amendment is approved or it's denied.

MS. THOMAS: Right.

MS. BELFLOWER: If it is approved, would this rezoning in your opinion, rezoning request meet that policy?

MR. BROOKES: Let me just respond to your question. If it is approved without a finding of overriding public necessity, would it meet that policy?

MS. BELFLOWER: No.

MS. THOMAS: In order to be consistent with the policy, an overriding public necessity needs to be made by three members of the board of county commissioners.

MS. BELFLOWER: For the plan to be changed, the Lee Plan to be changed.

MS. THOMAS: Correct.

MS. BELFLOWER: Not for any rezoning to occur. For any Lee Plan to be changed to take it out of a

rural category, that finding has to be made --

MS. THOMAS: Correct.

MS. BELFLOWER: -- under that policy?

MS. THOMAS: Correct.

MS. BELFLOWER: Is what you're saying?

MS. THOMAS: Correct.

MS. BELFLOWER: That goes directly to the plan amendment. I need to know if the plan amendment is approved, which is what we have to assume it's approved, approved with amendments, or denied.

MS. THOMAS: Okay.

MS. BELFLOWER: If the plan amendment is approved, whether you agree with that approval or not, that action is done, and now they're looking at the zoning.

MS. THOMAS: As long as the approval, I'm sorry, I didn't mean to interrupt you.

MS. BELFLOWER: No, go ahead.

MS. THOMAS: As long as the approval was made with the finding of overriding public necessity from three members of the board of county commissioners, then it could be considered consistent.

MR. SCHROPP: Move to strike as irrelevant, as contrary to your previous rulings, and as

prejudicial to the case, and if we're going to go down this path, I've got to put on some additional testimony on what the board did at the transmittal hearing.

MS. BELFLOWER: We do not strike testimony, but I recognize your objection. It is going to the plan amendment, no matter what form, correct, incorrect, ill advised, great decision, no matter what happens, if the plan amendment is amended, that's the starting point that we have to consider, that it has been amended, whether it's --

MS. THOMAS: Correct.

MS. BELFLOWER: -- lawful, whether you all would win a lawsuit if you challenged it or not, if it is approved, would this request be consistent with the sub-outlying suburban category that the area that they are asking to be sub-outlying suburban? I have trouble with that name.

MS. THOMAS: I'm not sure. Some of the concerns that I raised about the acreage and the number of units they were asking for and where that went to and that was what I, you know, part of my testimony is that if we assume that it's

going to be approved, I think that much like it says the portion of the lands within the rural future land use category must maintain densities of one dwelling unit per acre or less, that to be safe, in order to make sure everything's consistent, if it were approved and if you're assuming it gets approved, you would want to put in language that states the portion of the property within the sub-outlying suburban future land use category must maintain densities of two dwelling units per acre or less.

MS. BELFLOWER: Okay.

MS. THOMAS: In order to be consistent, part of sub-outlying suburban specifically states that bonus density is not allowed, so I think that including language that says no more than two units per acre would be appropriate --

MS. BELFLOWER: Okay.

MS. THOMAS: -- if it's approved.

MS. BELFLOWER: Okay. And the other points, I have all the other points that -- and I do want to get them addressed. As to that particular policy, that policy goes to the plan amendment, and --

MS. THOMAS: I understand.

MS. BELFLOWER: -- like I said, we don't

strike testimony, but I understand your point, and I recognize the objection. To the degree the discussion is going to the appropriateness of the plan amendment, it will not be considered in my recommendation.

MR. SCHROPP: Well, and here's my predicament, and I'm looking beyond the board of county commissioners and whether this gets challenged, whether zoning gets challenged which has been put in evidence, and if I'm not able to present some evidence as to what the board's determination was, the record's tainted, quite frankly, because Mr. Brookes and his witness have gone beyond the limits of what you've allowed for testimony.

MR. BROOKES: Your Honor, I think --

MS. BELFLOWER: Mr. Brookes, please sit down.

We have never -- because this is not a formal proceeding, we have no ability to strike testimony, but we have the ability to indicate whether or not something is within what I can be considering, and I introduced that, and I described that envelope, and I'm saying that that testimony that was provided about how the plan amendment should be done and when it is appropriate for the plan amendment is not within

the envelope of what I will be considering and will be part of the record of evidence, the body of evidence that I will be considering.

Are the words recorded? Yes, the words are recorded, but I don't think there's a way in this process to do anything about that, and Michael, I don't know if you want to add to that.

MR. JACOB: I have to respectfully disagree. There is a way to refuse to hear irrelevant testimony. All testimony with regards to the board's decision of whether it was proper or not with regards to the proposed amendment is irrelevant to this proceeding, and you may refuse to hear it under the Administrative Code.

MS. BELFLOWER: Okay.

MR. JACOB: And by that, whether it's -- you can't unhear what was said.

MS. BELFLOWER: I think that's what I'm doing. I'm refusing to accept that as evidence to be considered as part of this rezoning application. I can't say strike that from the record and have the court reporter strike it from the record, but --

MR. JACOB: For the purpose of these proceedings, the appropriate objection is

irrelevant and/or relevancy with the -- what I'm hearing is sustaining that objection if I could articulate what I've seen.

MS. BELFLOWER: Yes.

MR. SCHROPP: And in particular, to the testimony regarding consistency of the zoning to 21.1.5 which was entirely irrelevant and was asked under the supposition that she was going to offer an opinion as to how the zoning was inconsistent with Policy 21.1.5, which she did not.

MS. BELFLOWER: And I agree. What I heard and what I think given the parameters that we are assuming that the plan amendment is correct, she did not find -- she did not have an opinion that the rezoning application would necessarily be inconsistent with that policy itself, but she did raise other points of consistency with the Lee Plan that she had expressed earlier in her testimony.

MR. SCHROPP: And are irrelevant.

MS. BELFLOWER: No, not about the plan amendment. I'm talking about the numbers, the density in each category, those sorts of issues.

MR. SCHROPP: All of which we'll address on rebuttal.

MS. BELFLOWER: Okay. Okay.

MR. SCHROPP: Thank you.

MR. JACOB: I have some questions, unfortunately. A little bit further.

MS. BELFLOWER: Okay. But don't say anything about plan amendment.

MS. JACOB: I'm not, but there is a part of this that -- there was a statement made, and I'm going to paraphrase what I think I heard you say, and it's similar to you indicated there's a Lee Plan provision that requires a change of conditions, and we don't have the citation to that yet.

MS. THOMAS: I think we decided that that's been changed. I brought that up because that was in the applicant's presentation yesterday.

MS. BELFLOWER: That was the Land Development Code.

MS. THOMAS: Yeah, I didn't double-check.

MR. JACOB: As far as the Land Development Code goes that was changed, but if it's still in the Lee Plan, then it doesn't mean that we've changed it in the Land Development Code. Still require to follow through with it if it was in the Lee Plan.

MS. THOMAS: I believe it is, but I'm not sure where.

MR. JACOB: And I'm not sure either, but just to be clear, I have to ask the question based on what I think your position is. And you indicated change of condition implies a public necessity requirement.

MS. THOMAS: No.

MR. JACOB: Okay. There was some discussion in your testimony that in order to find a change of condition, the need for the units.

MS. THOMAS: No. I'm not sure what you're referring to. When I was talking about a change of conditions, and I will find the Lee policy, the Lee Plan policy that requires change of conditions in order to consider a change to the Lee Plan, and what I said is that a change of ownership is not a change of conditions.

MR. JACOB: Okay. You went into some testimony, and we talked about infill and what is or isn't infill. The hearing examiner asked the question a lot more politically correct than I will, but if this is or is not infill, what's the point? What does that change in regards to the zoning application?

MR. BROOKES: Asked and answered.

MS. BELFLOWER: No.

MS. THOMAS: If it's considered infill, then it assumes that it is underutilized. I don't agree with that assumption. Part of the definition of infill means that the property is being underutilized. So if it's referred to as infill property, it assumes that the property is being underutilized.

MR. JACOB: Okay. It's your opinion that the property is not infill as that's defined under the Lee Plan.

MS. THOMAS: Correct.

MR. JACOB: Okay. Does this zoning get approved or denied if it's infill or not?

MS. THOMAS: I can't answer that. I only know that yesterday, it was referred to as infill property, and then there was a question about what that meant, and when I looked at what that meant, I don't believe that it meets the Lee County definition for infill, so to the extent that the hearing examiner would consider whether or not infill makes a difference to her, I can't answer that question.

MR. JACOB: Okay. So you're not aware of any

requirement that would require the hearing examiner to find this to be infill in order for this to be approved?

MS. THOMAS: I'm not aware of any requirement that would require her to find that, no.

MR. JACOB: All right. You indicated that in Hendry County, one unit per acre would be considered more of an urban density.

MS. THOMAS: It really, actually, it's -- they don't really have -- their land use categories are very different than what's found in Lee County. Do you want me to go into great detail about it?

MR. JACOB: I would like some explanation as to -- in Lee County, it's sort of a black and white. It's either urban or rural. There's really --

MS. THOMAS: Right.

MR. JACOB: -- no middle ground there. And you indicated that in Hendry County, one unit per acre wouldn't be rural.

MS. THOMAS: It could be -- in Hendry County, in order to develop at more than five -- more than one unit per five acres, they usually have to go through a planned unit development, and the planned unit development can have, you know,

depending on the size and scope of it can be anywhere from one unit per acre to one unit per three acres, but if it's going to develop at more than one unit per five acres, they have to go through the planned unit development process.

So it's different. It's just my point was not to specifically say that, but it was to say that, you know, the only way that you know what's rural or what's not rural, it's very much semantics, and part of the applicant's testimony is that this isn't rural land. Well, it's designated as rural on the future land use map, and in Lee County, one unit per acre is considered rural. It's low density for Lee County, so I think it is rural.

That was the point of my testimony. I'm sorry if that was confusing.

MR. JACOB: You said the property's not underutilized.

MS. THOMAS: No.

MR. JACOB: Are you referring to what's been designated as River Hall II for this application? Or are you specifically referring to the -- what you referred to as the 300 acres at the southern portion of the property?

MS. THOMAS: I'm referring to the entire

development. The owner in 2006 decided at -- when it was approved for 1,999 units to start selling lots to individual land owners, and at that point, they no longer had unified ownership of the property, and I think that the land owners believed that the maximum density for the unit, for the entire development was going to be 1,999 units. The owner at the time could have platted those units however they wanted. Their chosen configuration for platting their units isn't really mine to judge or yours to judge, but they platted it in the way that they thought best to use the property, and they knew how much property they had, and they knew that they were leaving 96 units left over, and this is the configuration that they decided to go forward with and to start selling lots off to other people, so they no longer had unified control, and so I think that, you know, that the owner at the time made the decision that this is how they wanted to use the land, and I don't think that a new owner necessarily means that the previous owner didn't use the land appropriately.

MR. JACOB: So underutilization standard, you're referring to River Hall as a community as a

whole?

MS. THOMAS: Correct.

MR. JACOB: And for the -- everybody's benefit, can you define or provide us your definition of underutilization?

MS. THOMAS: I think underutilization -- underutilization would be in a manner less than expected by the future land use plan.

MR. JACOB: Okay. I have no further questions.

MS. THOMAS: Because my understanding is that state statutes confirm the comp plan which informs zoning, so it kind of goes down. So underutilization to me would be something less than what is allowed by the future land use map.

MR. JACOB: Okay.

MR. SCHROPP: May I ask a follow-up to one of my questions?

MS. BELFLOWER: Let me see if staff is through. Is that all the questions that y'all have?

MR. JACOB: No.

MS. BELFLOWER: Okay. Yes.

MR. SCHROPP: In response to one of Mr. Jacob's questions, you indicated some

assumption with regard to the intention of the previous developer with regard to the platting development and design and sales of the community. Did you have any conversation with the previous developer?

MS. THOMAS: No.

MR. SCHROPP: Reviewed any documents that would indicate what his intent was?

MS. THOMAS: I believe that you can look at their actions, and you can judge by that.

MR. SCHROPP: So this is an assumption on your part of what the previous developer was thinking when he planned, developed, designed, and sold the community?

MS. THOMAS: After they had been denied for additional units, yes. They were -- I mean, I don't think we want to start getting into all that testimony. I think that the previous owner made a business decision on how to --

MR. SCHROPP: And what is your basis for that? What is your basis in fact for that?

MS. THOMAS: Because that's what we have.

MR. SCHROPP: You have no factual basis to make that assumption?

MS. BELFLOWER: No, Russell, she answered the

question. It's platted that way, so somebody chose, some property owner chose to plat it that way, and that's what it is. So that shows an intent to develop the property the way they asked the county to develop the property.

MR. JACOB: I think what we're going to is the intent to leave the rest of it alone.

MR. SCHROPP: She can't honestly testify as to what the intent of the developer was. She can say it was platted in this manner. We all can sit there and do that, and that's clear from its face. So her testimony adds nothing to what is actually shown in the development plans. She's looking at the development plans and saying well, this was -- this is how it developed.

MS. BELFLOWER: Okay. That's not what I heard from the testimony, and I'll have to go back and listen to the exact words, but what I heard her saying was that the developer chose to use up all the units except 96 units in this particular pattern, and --

MS. THOMAS: Correct.

MS. BELFLOWER: -- is that -- and by platting it out the way it was platted by asking for the development orders, --

MS. THOMAS: They made a business decision on how to move forward.

MR. SCHROPP: And there's absolutely no basis for that statement, "they made a business decision." She's not talked to the owners. She's not talked -- all she can say is what she has said which is --

MS. BELFLOWER: The plats indicate --

MR. SCHROPP: -- the plat speaks for itself which is a result of that. Everything else she said with regard to the intent of the developer is speculative and not based on fact.

MS. BELFLOWER: Okay. In terms of intent, yes.

MR. SCHROPP: Yes.

MS. BELFLOWER: Okay. Any other questions of this witness?

MR. SCHROPP: No, thank you.

MS. BELFLOWER: We've beat her up enough.

MR. SCHROPP: Sorry.

MS. THOMAS: I don't think you are, but that's okay.

MR. SCHROPP: I'm not sorry or I didn't beat you up?

MS. THOMAS: You can interpret that however

you'd like.

MR. SCHROPP: Fair enough.

MS. BELFLOWER: All right. I think that I've asked the questions that I have. I think that she has raised several points that I would like the applicant to specifically address. One that you might want to look at over lunch, which we're going to take in just a moment, was specifically the question about the density in the rural areas in what will be left as the -- under the rural category. I know that the chart has a certain number of units that are allowed in there, and I'd like to know how many are already platted and what will be left as the rural areas so that we can get that cleared up because we may be talking about net versus gross density --

MR. SCHROPP: Okay.

MS. BELFLOWER: -- and that sort of thing, so that if we can have that number after lunch, I think that would be helpful. And then there were several other questions that I think that we want to get answers to.

MR. BROOKES: I had a little bit more too. Do you want me to wait till after lunch because mine's more than three minutes?

MS. BELFLOWER: Yes. But you were the last, no, we've got one more person after you. Daniel Cox.

MR. COX: I'll only be five minutes, Your Honor.

MS. BELFLOWER: The only reason I'm hesitating in breaking now is because I want to go over what the questions are so that you all can prepare and be prepared to answer all the questions that we have. I think you have a list, but you may not be seeing them the same way I am, so let's go ahead and go forward.

Yes, thank you.

MR. BROOKES: Ralph Brookes, attorney again. Thank you, Your Honor.

I think that it's important to realize that there's a legal standard that we apply based on the Florida Supreme Court ruling in 1993 in *Brevard versus Snyder*. It's not referenced in the staff report, but that case is found at 627 So.2d 469.

And the Supreme Court in *Snyder* wrote after explaining the history of comprehensive planning and zoning and the requirement for consistency in Florida that, quote, we hold the landowner and the

rezoning seeking to rezone property has the burden of proving the proposal is consistent with the comprehensive plan and complies with all procedural requirements of the zoning ordinance. At this point, the burden shifts to the governmental board to demonstrate that maintaining the existing zoning classification with respect to the property accomplishes a legitimate public purpose.

So it's almost like a tennis match in that first you have to show it's consistent with the comprehensive plan and the requirements of the zoning ordinance, and then it can still be denied if you find or recommend and the board finds that maintaining the existing PD with respect to the property accomplishes a legitimate public purpose.

That case has been applied many times in Florida. Two of the cases are *Machado* and *Pinecrest*, and they both say that rezonings, when you're looking at these changes to a PD, must be strictly scrutinized for consistency with the comprehensive plan.

MS. BELFLOWER: Can you give the citations on those two cases?

MR. BROOKES: Yes. *Machado* is at 519 So.2d

629, and *Pinecrest* is at 795 So.2d 191.

MS. BELFLOWER: Thank you.

MR. BROOKES: It's important to remember that the applicant has submitted a proposed future land use map change, but has either withdrawn or is not seeking text amendments to goals, objectives, and policies in the written part of the comprehensive plan which has the force of law under Chapter 163.3215. The burden of enforcing comprehensive plans is placed on citizens. So a citizen with statutory standing as an adversely aggrieved party can challenge rezonings as inconsistent with the goals, objectives, and policies in the comprehensive plan.

Pinecrest Lakes versus Shidel, the case I mentioned, there was a multi-family building that was built in an area that this court found was inconsistent with the comprehensive plan, and the remedy that the Court ordered which was upheld by the Florida Supreme Court was demolition of that multi-family building even after families had moved into those units. They had to evacuate the building, and the building was demolished.

There are 96 units remaining that have been approved but not yet platted. Of the 1,999 units,

only 300-some of those units have actually been built. So lots have been platted. Those platted lots await purchasers or owners to build units upon them. There's actually 360 platted -- 360 units that have been built. Those 96 units can fit onto this remaining property something averaging like four-acre lots, so one home per four acres or so, you could fit 96 units in this area.

It's important to realize that the future land use map categories, suburb -- sub-outlying suburban -- I have the same problem with that designation. A sub-outlying suburban category allows between one and two units per acre. *Snyder* is clear that the comprehensive plan only sets a long-term maximum density. It doesn't establish a short-term minimum density. So simply because you have a change to sub-outlying suburban doesn't mean that you're entitled to the full two units per acre.

It depends on many factors; other parts of the comprehensive plan, whether services are available right now, whether there's any infrastructure problems or issues, whether it can be accommodated reasonably and safely, but certainly some point in

the future planning horizon, they could apply for a rezoning. The question is, is it appropriate now to go from these remaining 96 units that are still left and add on the additional units that are requested now.

Many of the commitments that are made by this applicant have been previously committed to or required based upon the current approval for the 1999 dwelling units. For example, the 2005 connection permit --

In the 2005 connection permit to State Road 80, the 2005 connection permit was for work within the State Road 80 right of way and was provided to Lee County staff from FDOT on April 24th, 2014. This permit requires the developer funding for the traffic signal at the intersection of State Road 80 and River Hall Parkway when the signal is warranted. Five days later on April 29th, 2014, FDOT notified staff that they determined that the signal was now warranted, so they asked for a copy of the 2005 connection permit on April 24th of last year.

DOT forwarded that to Lee County, and they said, my gosh, April 29th, five days later, that signal is warranted, so that's required under the

2005 rezoning.

It's now January 15th, and no permit --

MS. BELFLOWER: Wait a minute.

MR. BROOKES: -- for the signalization --

MS. BELFLOWER: Did you just say that's required under the 2005 zoning?

MR. BROOKES: I'm sorry, the 2005 connection permit.

MS. BELFLOWER: Okay.

MR. BROOKES: So it was required and wasn't built.

One of the issues that we have is financial assurances. If there was a permit and that was required, why isn't it built? If a prior owner went bankrupt and there's no money to do signalization, what's to prevent this owner from declaring bankruptcy, folding up this LLC, starting another LLC, and avoiding the requirement of signalization? So we would like to see financial assurances for all these conditions that are placed in this rezoning.

The plan amendment causes the remaining River Hall rural lands which are not included in this amendment to exceed their allowable density. They were supposed to stay one unit per acre. When you

take these rural areas and turn them into sub-outlying suburban, you're removing total acreage from the remaining rural lands. You've asked them to look at that at lunch.

Under the prior configuration of lands in October of 2014, Lee County staff found that in fact, it would cause them to go over the density on the remaining rural lands, the ones that are left in rural, and that's in their staff report from October 8th, 2014, page five of 39.

MS. BELFLOWER: Okay.

MR. BROOKES: Staff at that time found that that was inconsistent with the future land use category rural, but also with Lee Plan Policy 5.1.10 which prohibits non-urban areas from exceeding their allowable density, and again, that's the non-urban areas that aren't being changed, that are being left as rural in this planned development.

Now, what this planned development does, and perhaps part is an outgrowth of this proposed future land use map change, this proposed amendment creates spot zoning. It creates enclaves of sub-outlying suburban pockets within areas that are rural that surround it. It is like

a leopard's spots.

MR. SCHROPP: Objection. He strayed into the plan amendment.

MS. BELFLOWER: That is moving into the plan amendment.

MR. BROOKES: Okay. I'm sorry. Let me rephrase it.

MS. BELFLOWER: Okay.

MR. BROOKES: This rezoning creates spots of densities that are of suburban -- sub-outlying suburban densities. If you remember, if you look at the drawings, there's spots. There are enclaves that are created with higher densities that are around -- that are within the lower densities, and these are the suburban areas that are within the rural areas, so it doesn't have a cohesive designation. Spot zoning is prohibited in Florida law.

MS. BELFLOWER: I need you to elaborate a little bit more about what it is about the zoning and the uses and the lot sizes that would make it different from the lots next door to them. They may have greater density potential under the Lee Plan, but under this zoning request, what makes them spots different from the properties next to

them?

MR. BROOKES: There are multi-family areas next to single-family areas. There are single-family pods that have higher density than surrounding rural lands.

MS. BELFLOWER: Okay.

MR. BROOKES: The Caloosahatchee Shores Community Plan Goal 21 was to retain its rural character and rural land use where it currently exists. This rezoning is inconsistent with Goal 21.

This rezoning would re-designate almost 20 -- approximately 20 percent of the rural lands left within the Caloosahatchee Shores Community Plan, so we're not talking about a small amount.

The addition of 656 more dwelling units on State Road 80 will exacerbate the projected unacceptable condition of roadway segment failures. I'll get into those more specifically later.

And again, I'll get into this more specifically, but there are approximately 4,950 approved vacant residential lots that have been created in the Caloosahatchee Shores Community Planning Area since December 2000. These are

approved lots that have not yet been built. There's, one, no need for this additional development in the Caloosahatchee Shores Community Planning Area, much less within River Hall which only has 360 units built of the 1999.

MR. SCHROPP: May I inquire, Madam Hearing Examiner, there's a lot of opinion testimony being given here that was not proffered by any expert witness that I'm aware of at this point, and is he testifying as an expert in planning or is he testifying as a witness or as an attorney? In which case, --

MR. BROOKES: Your Honor, --

MS. BELFLOWER: I have heard some statements of fact that he doesn't have to be an expert to state that he is indicating are facts, and you may ask for the source of those facts. I haven't heard a planning opinion offered as of this point.

MR. BROOKES: The source of the fact of the 4,950 units is from the October 8th, 2014 staff report that Lee County staff prepared.

MS. BELFLOWER: You were sworn in, right, Mr. Brookes?

MR. BROOKES: Yes.

MS. BELFLOWER: Okay. So he's testifying as a

-- he's testifying and not as an attorney, just as an attorney.

MR. BROOKES: I have heard that this project from the testimony presented by the applicant and by staff and in the staff report of October 8th, 2014, that there will be an increase in traffic on State Road 80 that's generated by this project. State Road 80 is utilized by humans and cars. It is also utilized by panthers and bears that cross State Road 80 and must interact with cars that are traveling in traffic along State Road 80, so it increases the potential for wildlife/vehicle interactions on State Road 80, as well as the potential for collisions that result in injury or death to panthers or black bears.

This plan is inconsistent with Objective 1.1 of the Lee Plan which states that future urban land use categories are based on existing and future availability of public facilities and services.

MS. BELFLOWER: That was an opinion.

MR. SCHROPP: That's an opinion.

MS. BELFLOWER: That was an opinion. I'm waiting for the because.

MR. BROOKES: I'm looking to grab it here. I

have the --

MR. SCHROPP: As was quite frankly the opinion of the increased interactions between motor vehicles and panther. He's not qualified to offer those kind of observations off the cuff just on the basis of increased traffic.

MR. BROOKES: In Attachment 7 to the October 8th, 2014 staff report, it's a copy of the request of a letter of availability from the Lee County Division of Public Safety, and it is the emergency response to River Hall dated December 1st, 2012, about EMS. And in this emergency response letter, which I'd like to submit into the record because it doesn't appear that this is part of the attachments that are in the current rezoning application.

MR. SCHROPP: May I go back, before we go on because he started off with a statement that with regard to the doesn't meet adequate services and things of that nature, and then we question whether there was any basis in fact for that statement.

MS. BELFLOWER: He's stating because --

MR. BROOKES: EMS is one of the public infrastructure services.

MS. BELFLOWER: Let's categorize it that way. EMS is one of the urban services. The Lee Plan requires that urban services have to be adequate in a development that is in an urban future land use category. This states that EMS service is not adequate. Then you can't say, so therefore, urban services are inadequate, but you can state all those facts, and if you would like to do that, I will accept it as that.

MR. BROOKES: Yes, entered into evidence for that.

MS. BELFLOWER: And to the degree that there's an opinion offered, he's not qualified, you can make your objection, and that goes to the competency of the evidence, so it's part of the weighing factor.

MR. BROOKES: And with this emergency response, they have included maps that show Medic 11 drive times, River Hall entrance, and to the various portions of River Hall, and it also states that two nearest ambulances are Medic 11 and Medic 22. The document really speaks for itself. So simply put that into evidence.

MS. BELFLOWER: Okay. And is that different from the letter that is in the staff report

because I believe there's -- I think we have a letter from EMS in the staff report.

MR. BROOKES: I looked and I couldn't find one.

MS. BELFLOWER: All right. We'll accept this, and if it's a repeat, then we'll just accept it as a repeat. This is going to be Brookes Exhibit 1, and it is -- I'm not seeing page numbers. About a five- or six-page document.

MR. BROOKES: If you want to write page numbers, that's fine, on there. I think there's five.

MS. BELFLOWER: Called Emergency Response to River Hall dated December 1st, 2012, but it was received by community development on September 12th of 2013. Are you aware of this document?

MR. SCHROPP: I am. Thank you.

MR. BLOCK: Madam Hearing Examiner, if I may clarify for the record. If you will refer to the applicant's supplemental materials that were part of the staff report, the last document is an e-mail from emergency medical services just before Attachment F. That was presented to the applicant regarding some -- regarding emergency medical services.

MS. BELFLOWER: Okay. So that is later than this, and that's the one that says that there's a temporary facility placed -- that they are okay with the condition talking about a temporary facility.

MR. BLOCK: That was the communication back and forth between the applicant and EMS and the offered condition, yes, ma'am.

MS. BELFLOWER: Okay. So that comes chronologically after this.

MR. BROOKES: Understood. Also, we have an October 17th, 2012 letter from Wayne Gaither, planner at LeeTran, to Morris Depew that talks about LeeTran. It says, quote, currently, LeeTran does not provide service to Hawks' Haven, proposed River Hall, as it lies outside the one-quarter mile transit service buffer. Closest transit route to the site is route 100.

MS. BELFLOWER: Okay.

MR. BROOKES: And if you'd like to mark that.

MS. BELFLOWER: That's going to be Brookes 2. Now, that one is in there; isn't I? In the staff report? Anyway, we'll accept it.

MR. BROOKES: And then an e-mail from Wayne Gaither to Brandon Dunn, October 18th, 2012, that

trans -- that's a cover letter for that letter that I've just given you.

And in that e-mail, Wayne Gaither states, "I did not find sufficient response to determine how an increase in demand for these services would be funded. As was stated above, there are no plans for expanding the service in this area which would create another potential unfunded need for transit services within the horizon of the 2012-2021 transit development plan."

MS. BELFLOWER: Okay. I'm going to make this a combined exhibit, and I think Mr. --

MR. BROOKES: And that was also Exhibit 6 to the October 8th, 2014 staff report.

MS. BELFLOWER: These will be Brookes Exhibit 2, and it's a composite two-page document referencing LeeTran.

MR. SCHROPP: Let me make an objection on the basis of relevance. The documents are directed to the plan amendment, not to the zoning.

MR. BROOKES: In response, I think they're directed to the future development by number of units in River Hall.

MR. SCHROPP: The documents speak for themselves unless Mr. Brookes has testimony as to

what they were intended to testify.

MR. BROOKES: I'll let the documents speak for themselves.

MR. SCHROPP: The documents say they're addressing CPA 2012-1.

MS. BELFLOWER: The e-mail does appear on a cursory look to be addressing the Lee Plan and consistency with the Lee Plan. I'm not sure whether it is -- to the degree that it is addressing the plan amendment and is not relevant to the rezoning request, it will not be considered, those portions will not be considered.

The letter actually is a request for a letter of availability, and it is addressed to Ms. Ekblad and is talking about the residential planned development.

MR. SCHROPP: Which was also part of the plan amendment process, not the rezoning.

MS. BELFLOWER: To the degree that the information is relevant to the rezoning request, we will consider it from that perspective.

MR. JACOB: Make one additional comment that these documents are hearsay by definition.

MS. BELFLOWER: Yes, they are hearsay documents.

MR. JACOB: Thank you.

MS. BELFLOWER: As are all portions from different agencies that don't come to these hearings, in the staff report and otherwise, are hearsay documents.

MR. JACOB: Correct.

MS. BELFLOWER: And the entire decision cannot be based upon it, but they can be considered as evidence as long as they're relevant.

MR. BROOKES: And the October 8th, 2014 staff report, Lee County staff stated on page 16 --

MS. BELFLOWER: What was the date again?

MR. BROOKES: Same, October 8th. They're all October 8th, 2014.

MR. SCHROPP: Staff report for the plan amendment?

MR. BROOKES: It is for CPA 2012-01.

MR. SCHROPP: Thank you.

MR. BROOKES: It's our assertion that this rezoning would be inconsistent with Policy 5.1.10.

MS. BELFLOWER: They made that statement in the staff report for the CPA?

MR. BROOKES: I'm making it now with regard to the rezoning. Let me withdraw and rephrase my statement.

This rezoning, as I mentioned before, will cause the density in the remaining rural areas to increase and allow the allowed density -- and exceed the allowable density on that remaining rural area. It will cause it to tip. That violates Policy 5.1.10, paragraph 2.

MS. BELFLOWER: Is that your opinion that it does?

MR. BROOKES: It's our assertion that it does, and it was also, a very similar statement was made in that October 2014 staff report of Lee County.

MS. BELFLOWER: Mr. Brookes.

MR. BROOKES: It's very hard because of the constraint about not being able to talk about the plan amendment.

MS. BELFLOWER: I understand, but the plan amendment is not in front of us.

MR. BROOKES: One of the questions that I would then -- let me rephrase it this way. One of the questions I would ask you to ask Lee County planning staff is do the remaining rural category lands exceed their allowable density, and is that then inconsistent with Policy 5.1.10?

MS. BELFLOWER: And we will get an answer to that. Yes. Okay.

MR. BROOKES: The existing RPD, as you, I think, understand, was conditioned to assure that the number of units in the existing rural category would not exceed one unit per acre. This would now cause them to exceed that.

MS. BELFLOWER: Okay.

MR. BROOKES: The result of this amendment is the shrinking of the existing rural area within this rezone. It's our understanding that there's -- and this is based on the staff report of October 8th, 2014, that this there are 288 existing units built in the remaining rural lands, and that there's 581 vacant platted lots within those remaining rural lands.

MS. BELFLOWER: What were those numbers again?

MR. BROOKES: 288 units, 581 more vacant platted lots.

MS. BELFLOWER: Okay.

MR. BROOKES: The remaining rural lands have changed, I believe, because of the removal of the CDD lands. Perhaps. I'm not sure. If there's 637.66 acres of remaining rural lands outside of this, they would then have the density of approximately 1.32 units per acre which would exceed the number one.

Remaining rural lands. Throughout the Fort Myers Shores Planning Community, which includes the Caloosahatchee Shores Planning Community, would have zero remaining units available under Table 1(b). That means that any other owners of rural lands within the Fort Myers Shores Planning Community of which Caloosahatchee Shores is only one half of it, the other parts, Palm Beach Community -- Planning Community, would have zero remaining units available. That could cause private property right concerns for other rural landowners within the community planning area that's encompassed by Table 1(b), Fort Myers Shores Planning Community.

I ask you to ask planning staff how many units would be remaining for other private property owners to utilize that have rural and are entitled to one unit per acre.

MS. BELFLOWER: If the zoning was approved you're saying?

MR. BROOKES: Yes. It would also affect the population acreage in Table 1(b), and I'm asking you to ask staff how that would affect the population allocations.

MS. BELFLOWER: The zoning would affect the --

MR. BROOKES: It would utilize those allocations that are available under Table 1(b) for the Fort Myers Shores Planning Community.

MS. BELFLOWER: Okay.

MR. BROOKES: Table 1(b) is in the comp plan, and it says how many units you have and how much population, and as units are placed in this rezoning, those units will be allocated, so they'll be no longer -- no longer available for other future developments.

MS. BELFLOWER: But if the plan amendment is approved and this is no longer rural and the amendment to Table 1(b) is made that they are asking for, it will address removing those units -- we'll get --

MR. BROOKES: It might, but it will take acreage out of rural.

MS. BELFLOWER: We'll get staff to address the table and how many units will be available if the plan amendment was approved.

MR. BROOKES: And I can tell you this is something that we have asked staff, but we don't understand their answer.

The Caloosahatchee Shores Community Plan was developed by the Caloosahatchee Shores Community

Planning Panel in which the ELCC was also working. So my clients were part of the preparation of Goal 21 as well as the objectives and policies that are found under Goal 21.

The ELCC believes that this rezoning is inconsistent with the goals, objectives, and policies found in the Caloosahatchee Shores Community Plan.

In the Caloosahatchee Shores Community Planning Area, the following developments have been approved, and they have the following number of active permits and unbuilt permits. And this is fact data taken from the October 8th, 2014 staff report.

The project known as Buckingham 345 has been approved for 690 units. There are zero permits that have ever been pulled as of October 2014. Unbuilt, there are 690 remaining units.

Caloosahatchee Estates was approved for 90 dwelling units. Zero permits were pulled. There are still 90 units available.

Portico was approved for 1,178 dwelling units. Six permits were pulled. There are still unbuilt 1,172 units.

River Hall was approved for 1,999. In October

2014, only 333 permits or occupied units exist, about 16.6 percent, for a total of 1,666 unbuilt units.

River Pointe was approved for 140 dwelling units. Zero permits were pulled. There are still 140 units to be built in River Pointe.

Veranda was approved for 1,700 units. There are 915 active permits or occupied units. There are still 785 unbuilt units.

Hemingway Pointe was approved for 207 dwelling units. There are zero active permits. There are 207 unbuilt units within Hemingway Pointe.

The State Road 31 multi-family RPD was approved for 60 units. There are zero units built. There are still 60 homes to be -- units, excuse me, multi-family RPD units in State Road 31 multi-family RPD. So zero of those units were ever built.

Marina Del Lago was approved for 140 units. Zero active permits or occupied units exist. There are still 140 unbuilt homes or units.

The total units areawide that have been approved are 6,204. Twenty percent of those have been built at 1,254 total, and that's within River Hall and Veranda and Portico is where they're

located for 4,950 unbuilt units.

I would ask you to ask the traffic engineers for the county whether the introduction of a traffic signal will degrade the through capacity of State Road 80 and will it have some negative effect on other residents within the Caloosahatchee Shores Community.

With regard to the southern access point that was referred to, the -- this second access was already required under Condition 26 of Resolution Z-05-051, which require that access be provided to 75th Street West in Lehigh Acres prior to the issuance of a CO for the 1,598th dwelling unit within the development.

Although many of the 1,999 units that were approved in River Hall have not been built, they have received nine development orders for a total of 1,903 dwelling units, leaving those 96 unplatted lots. Even though these development orders are approved, there is still no second access.

I'd like to show the slide. Chip, if I could, the PDF of the connection roads.

MR. BLOCK: Hang on just a second. And which one of the three documents are you looking for?

MR. BROOKES: Let's go with the PDF. That's got all of them in there.

The red dot there is 75th Street. It's hard to tell exactly where it comes in. I think it actually would come into the right of the red dot.

MS. BELFLOWER: You can zoom in a little bit there.

MR. BROOKES: This is 75th, so somewhere along in here, you can see these lakes correspond. Maybe zoom out a little bit to show the whole area. Have a point to make about where these roads lead.

MS. BELFLOWER: Okay.

MR. BROOKES: That's good. Maybe one more bump up.

MS. BELFLOWER: Bigger.

MR. BROOKES: That's good.

It appears there's a roadway network in Lehigh Acres. That is bisected by these blue lines that are canals. If you've ever driven in Lehigh Acres to look at homes or show homes, I've had the pleasure of driving around with my wife who's a realtor around Lehigh, and my GPS didn't work, and I was sidetracked, and I couldn't get from one place to another. It's very difficult because

these canals have to be crossed by bridges.

So if you look at the canals, you can see throughfares by the bridges. There's one here at Sunshine Boulevard, so you take 75th down here and then go down this way to Sunshine. But if you get trapped in here, there's a neighborhood here, and cars have to come and go through there, and to get here, you go for a ways. And appears that the other ways here are all hemmed in by a canal, so you couldn't get over to that side.

Next slide, please.

And here is an aerial that shows with the Google Earth 75th Street over to Sunshine in an aerial photograph and a street view of what it looks like at that particular red dot which is probably not exactly lined up. Actually, I think we're looking over here. Now that I look at this closer, I believe that's the area, so if we could go back to the previous slide.

Looks like we're on this side of the canal over in here rather than here to go to Sunshine, so you're actually on this side, and here, there's canals here, and there's some ways in and out through here. I don't know if this connects here.

There hasn't been any competent substantial

evidence shown how cars when they leave this proposed exit, what roads they would travel to eventually reach a collector or an arterial and how many local streets the River Hall people would have to travel through Lehigh to reach those roads, and there's no competent, substantial evidence about the condition of those roads, those particular roads, although I can tell you from personal observation and experience, I do not like driving my own personal Mustang through many of the roads on Lehigh because they are worse shape than the roads in Cape Coral which are city maintained, but the Lehigh Acres is an unincorporated area, and it's my understanding it's badly in need of local street maintenance.

We would ask, is the gate that is to be included at River Hall to keep Lehigh residents out of River Hall and to allow River Hall residents to utilize these streets of Lehigh, and if they are, those streets adequate, are we adding problems to deficient local streets that need repairs and maintenance?

Also, if this entrance is supposed to be for school buses, for fire trucks, and for EMS, will it be a manned gate with a person that can lift

the gate or open the gate depending on whether it's an arm or whether it's gates, or will all school buses, fire trucks, and EMS be provided with some clicker like I use for my garage door to open, or will it be some kind of electronic laser device that goes into the windows of vehicles, the emergency vehicles, and the school buses to be able to access the gate, or will it be a gate that's controlled by a person who must open and close the gate each time?

The Lee County School District did request access to the community from Lehigh in order to reduce fuel costs and vehicle miles traveled for the school bus traffic, but it's not explained, there's no evidence about how those school buses will utilize the gate if in fact there is a gate.

If there isn't a gate, will the River Hall development then have additional traffic from Lehigh Acres trying to access State Road 80 in a shortcut route for these residents who are pretty far back, I guess, if you want to say that or back into Lehigh Acres, and there's only a few boulevard streets, parkways that provide major access to Lehigh Acres, and once you get off those roads, it's a bit of a circuitous route as you can

see from the grid pattern located just south of 75th Street. It doesn't appear that there's a straight shot out from 75th in that location.

The depiction of the southern access diagram is pretty general that was shown that had -- was shown by -- I believe it was Planner David Depew or Planner Tina Ekblad that showed simply arrows, flow arrows. It didn't show the actual road or any engineering drawings or any site plan about how it would be -- how it would be organized.

But it also appears that that lake, at least in the October 8th, 2014 staff report noted that in development order for River Hall, DOS 2006-42, it identified that lake as a flow-way, a flow-way lake. The flow-way lake is also a feature that's identified on the master concept plan in Z-05-051, yet no competent substantial evidence is presented how that lake will function as a flow-way. Will it go to a canal? Will it go to the canal that you see above 75th Street? Where does it go? And apparently does it go to the --

MS. BELFLOWER: Let me ask a question. Are you talking about the lake on River Hall property that is next to where the secondary access or --

MR. BROOKES: Southern access point, there was

a slide that shows the southern access point.

MS. BELFLOWER: Would be just south of the lake.

MR. BROOKES: Showed arrows that went like this, and then underneath that arrow apparently is concrete or pavement or a bridge, but it doesn't show a bridge. They don't show that it is, in fact, still a connection, a flow-way lake or whether that will be then shut off by the relocating of that southern access to the point where it's supposed to flow into the canal, and if it's not going to flow into the canal, is that inconsistent with the prior development orders and zoning resolution to call that a flow-way lake. Does it go anywhere? Does it lead anywhere?

MS. BELFLOWER: Okay. So you want that, the impact of the access on that lake and the drainage?

MR. BROOKES: Yes, I have questions about that. Is there an impact to the flow-way aspect of that lake?

Now, in October 8th of 2014, the Lee County Department of Transportation had a section of the staff report, and they said, granted, it was not caused by this development alone because of all of

the other unapproved units that have been built, the units that were approved and built, and the other background existing units that are in the area, they said, quote, we accept the applicant's analysis that the following roadway segments will operate at an unacceptable level of service with or without this project in the study area.

MR. SCHROPP: Again, that's a reference to the comp plan amendment and the comp plan TIS is distinctly different from the rezoning TIS.

MS. BELFLOWER: I think they made the similar statement in their zoning because I noted it myself, we accept the applicant's statement that, and then they didn't say whether they agreed with it. It just said --

MR. BROOKES: You may want to ask both the transportation study engineer for applicant --

MS. BELFLOWER: Are you reading from the --

MR. BROOKES: Let me withdraw. I'm reading from the October 8th staff report, but let me withdraw that and have you ask them as a direct question, did the traffic engineer for the applicant, did they say that with or without this project, there's going to be three unacceptable level of service segments? Those segments are

Buckingham Road from Gunnery to State Road 80, the second segment is State Road 31 from State Road 80 to north River Road, and the third segment is State Road 80 from State Road 31 to Tropic Avenue.

MS. BELFLOWER: Okay. So the question is will those three road segments be unacceptable level of service with or without this zoning?

MR. BROOKES: Yes.

MS. BELFLOWER: Okay.

MR. BROOKES: And will this rezoning add additional units and additional traffic to those roadway segments, and if so, how many trips and how will that affect the level of service, and will it cause a degradation of that level of service?

MS. BELFLOWER: Okay.

MR. BROOKES: It is my client's position that Lee County should not allow additional density that would further exacerbate an unacceptable level of service on those three through roadway segments until those three roadway segments are improved. And the applicant as the proposer of additional units should be required to pay a proportionate fair share of those roadway improvements, and additional development should

not occur until those roadway improvements are in place.

MR. JACOB: While there's a moment of silence, can we get an ETA on how much longer this is going to be because I'm going to start eating this microphone?

MR. BROOKES: I think it's going to be about 15, 20 minutes. I'll try to go pretty quick here.

MR. JACOB: I originally heard something like three minutes, but now it's an hour and a half.

MR. BROOKES: I said it wasn't going to be three minutes.

MS. BELFLOWER: It was going to be more than three minutes, but frankly, my blood sugar has dropped so low right now that I'm not going to be able to take --

MR. BROOKES: We can take a break, and I can come back.

MS. BELFLOWER: Yeah. We do need to take a break. I did want to go through the questions that we are --

MR. BROOKES: Let me jump ahead and give you the questions I printed out from yesterday. If you want to distribute those ahead of time.

MS. BELFLOWER: Okay. Yeah, not just from

you. I wanted to go over all the questions so the applicant can be prepared to address them because that's going to be the next thing on the agenda after we finish the last member of the public.

But this is going to take longer -- do you feel comfortable that you know most of the questions that you wrote down and heard and are able to address them?

MR. SCHROPP: I think so. I've been writing them down as we go, and --

MS. BELFLOWER: They have raised a few things in my mind, and I have marked them as -- I told you the one, and Mr. Brookes reiterated it, about the density in the remaining rural areas. I need those numbers. So if you all are willing to do them off the cuff, talk about at lunch what you've got, and then we'll just proceed from where we are. If we have to go over to a third day, we'll go over to a third day.

MR. SCHROPP: I'm willing to do that.

MS. BELFLOWER: Then we will break until 2:30, and we will pick up with Mr. Brookes's testimony, and we have one more person, Mr. Cox. And is there anyone else who wishes to --

MR. SCHROPP: No, but can we come back a

little earlier than 2:30?

MS. BELFLOWER: Yeah, it's after -- you worry about people being able to get lunch, but it's after the lunch hour, so let's make it 2:15.

MR. SCHROPP: Thank you.

MS. BELFLOWER: Be back at 2:15.

(A lunch recess was held from 1:07 p.m. through 2:15 p.m.)

MS. BELFLOWER: All right. We will go back on the record. Mr. Brookes.

MR. BROOKES: Yes. We would ask that the hearing examiner consider Policy 2.2.3 of the Lee Plan, especially with regard to our questions earlier about the three segments of roads that will exceed the levels of service with or without this development.

Policy 2.2.3 states when an area within the county is approaching the capacity of the necessary facilities as described above, and those are roads and EMS service here, requested rezonings to increase density and intensities may be deferred or denied to give preference to existing vacant lots and other valid development approvals provided that a constitutionally mandated, reasonable use of the land would still

be permitted.

With regard to that policy, would ask you to remember that there are 96 units that have not been platted that could be placed in the area proposed for the rezoning providing a reasonable economic use of the property and also consider the various unbuilt units in the developments which I listed earlier.

I have an attachment from the county staff report, October 8th, 2014, and this is simply to show the locations of those other developments that I read off; the Buckingham, Hemingway Pointe, Marina Del Largo, Portico, et cetera. So I'd like to introduce that as our exhibit.

MS. BELFLOWER: Okay. This is -- we're up to Brookes 3, I believe. And this is page -- okay. There's no a page number, but it's identified as Attachment 3 of CPA 2012-01 which, I guess, is transmitted --

MR. BROOKES: The October 18th, 2014 staff report.

MS. BELFLOWER: Staff report for the transmittal hearing; correct?

MR. BROOKES: I'm not sure if it was a transmittal or adoption hearing actually.

MS. BELFLOWER: The adoption one hasn't happened yet, so it must have been the transmittal.

MR. BROOKES: Okay. That's correct. You're right.

MS. BELFLOWER: Did you want to see a copy of this or --

MR. SCHROPP: No. That's okay. Thank you.

MS. BELFLOWER: You also had submitted some questions earlier. Did you want those marked as an exhibit or are you going to talk about them later?

MR. BROOKES: I'm not sure of the procedure. These were the questions that I was going to ask on cross-examination that you asked under the new process be submitted in writing, so that's what those are.

MS. BELFLOWER: Okay. Okay. Yeah. The suggestion was that if you would like to submit them in writing, I think this is very helpful to submit them in writing, and we can ask that they be responded to, but you're not going to present them further other than to present them as an exhibit.

MR. BROOKES: I can read them if you like out

loud.

MS. BELFLOWER: It's up to you. No. If you're fine with submitting them as an exhibit, we can do that. So I will mark that as Brookes Exhibit Number 4.

MR. BROOKES: It's my understanding that I wouldn't be able to ask a question, get an answer, ask a follow-up question, and answer.

MS. BELFLOWER: If it is a question you need to know the answer before you could go to the next portion of it, if you want to identify some these that you would like to get an answer before you say -- if you're going to two different directions, but you've provided them in writing.

MR. BROOKES: And I did 1A, 4A, B, C, and sometimes I say if not, then A, B, C. If you want to ask them.

MS. BELFLOWER: We'll ask that they be answered in that way.

MR. BROOKES: I had a couple more points here.

MS. BELFLOWER: Okay.

MR. BROOKES: Go pretty quickly.

MS. BELFLOWER: Okay.

MR. BROOKES: With regard to the educational materials for species and management plans for

species on the property, it's my understanding that there is no large mammal management plan for this rezoning, and we would ask whether there is one or isn't one, whether there should be one since black bear has been identified by a prior witness as being present on -- within the area in River Hall.

In the Hickey's Creek Mitigation Park Land Stewardship Land Management Plan, they also document panther and black bear utilization of Hickey's Creek Mitigation Park in that stewardship management plan, so there is a place to look at for a reference to prepare a large mammal management plan. And it's our position that that would be required to be consistent with Comprehensive Plan Objective 107.4 which states Lee County will continue to protect habitats of endangered and threatened species and species of special concern in order to maintain and enhance existing population numbers and distribution of listed species.

The rezoning is not in compliance with LDC Section 10-415(b)(1)(c) which requires a minimum setback of 20 feet from buildings and a 30-foot setback for indigenous plant communities subject

to fire.

The rezoning is inconsistent with Land Development Code Section 10-329(d)(4) which requires banks of excavations to be sloped at a ratio not greater than six horizontal to one vertical from the top of a bank to water depth of two feet about low dry season water table.

MS. BELFLOWER: I think that one was withdrawn, that deviation request was withdrawn, the excavation areas.

MR. BROOKES: And I'm not sure what that means, but that's in my questions. When they're withdrawing a deviation, does that mean they're then going to change the plan to comply with that section or simply not request a variation or variance or deviation?

MS. BELFLOWER: They would have to going forward, all development going forward would have to meet that requirement.

MR. BROOKES: We would ask that that be considered as a condition of approval, compliance with this six horizontal to one vertical requirement. And also that they meet that 30-foot setback for the indigenous plant communities subject to fire and the 20-foot setback between

buildings as a condition.

And that they do not comply with or should be conditioned to comply with Section 10-291.3 which requires residential subdivisions of more than five acres to provide more than one means of ingress or egress for the development onto State Road 80.

MS. BELFLOWER: That's the secondary entrance.

MR. BROOKES: That was also a deviation, that they're asking for a deviation.

MS. BELFLOWER: Which they've withdrawn.

MR. BROOKES: Okay.

MS. BELFLOWER: And there is a condition requiring them to provide the secondary access.

MR. BROOKES: Okay. We talked about the secondary access with the slide that's on the screen now that shows that that point is not a direct route to any collector or arterial road in Lehigh Acres.

We find the rezoning to be inconsistent with LDC Section 34-934 which permits dwelling units within a CPD where there are at least 50,000 square feet or more of commercial uses. They were asking to depart from that section to allow it where there's only 45,000 square feet of

commercial uses. I don't know if that's been withdrawn or part of the deviations.

MS. BELFLOWER: No, they acknowledge that they would need a deviation for that. You're disagreeing with granting the deviation?

MR. BROOKES: Yes. We're holding them to the code section.

MS. BELFLOWER: Okay. Are you going to speak to concerns that you may have about residential in the CPD as to why you're objecting to that?

MR. BROOKES: Well, it's in the code.

MS. BELFLOWER: Right.

MR. BROOKES: So there was a rational basis for it to be in the code. If they want to make it 45,000 square feet in Lee County or in the Caloosahatchee Shores Planning Area, then they need to amend the code first. There's not -- it's not in compliance with that Land Development Code section. So I believe a deviation is similar to a variance in that if you can use the property for a reasonable economic investment and return without a deviation, then the deviation or variance should not be granted. So it's not -- this is a code requirement, and we're asking that they comply with that code.

I think a community the size of River Hall is large enough that if you were trying to encourage internal capture and you wanted commercial square footage, even something of 5,000 square feet is a difference and could be the size of a convenience store that would stop traffic leaving to go down to Publix for small errands and things, so it might be that if you're going to have the encouragement of multi-family units in this CPD, and you're trying to have a true mixed use, we think they should have the full 50,000 square feet rather than 45,000. Does not meet the code requirement.

MS. BELFLOWER: Okay.

MR. BROOKES: In Plan Policy 1 dash -- excuse me. Lee Plan Policy 1.1.11 talks about the intent and purpose of the sub-outlying suburban areas, and it states they are residential areas that are predominantly low-density development. The standard range is from one dwelling unit per acre to two dwelling units per acre, and bonus densities are not allowed.

We do not have to grant the rezoning to the highest two dwelling units per acre. You can maintain the density of one dwelling unit per

acre. You're not required to do two dwelling units per acre, especially in this case.

In reaching a decision under LDC 34-145(c)(2), in reaching a decision, the hearing examiner must consider the following whenever applicable: A, when there exists change or changing conditions that make approval of the request appropriate.

MS. BELFLOWER: That's no longer the requirement in the code. That was the discussion we had with Ms. Thomas.

MR. BROOKES: Okay. I'm sorry. That's directly from the Morris Depew reports.

MS. BELFLOWER: Yes, they cited them.

MR. BROOKES: We both thought it was in there. It's no longer in there. I presume that you have the current section and what you're supposed to look at.

MS. BELFLOWER: Right. Now, I allowed Ms. Thomas's testimony because they did raise that there were changing conditions. She argued that there were not changing conditions, and so we have evidence on both sides --

MR. BROOKES: Okay.

MS. BELFLOWER: -- of that question.

MR. BROOKES: With regard to deviations in

your question earlier, if this is still the code, Section 377(a)(4) states that the hearing examiner's recommendation must be based upon a finding that each item enhances the achievement of the objectives of the planned development, preserves and promotes the general intent of this chapter, protect the public health, safety, and welfare.

And also under (h) of that same section, where a change proposed is within a future urban area category, I'm not sure this is urban or suburban or whether this would apply at all, but it does say the hearing examiner must also find urban services as defined in the Lee Plan are or will be available and adequate to serve the proposed land use. So we challenge that with regard to the roads and the EMS service.

We'd also point out to you in the Lee Plan Vision Statement, I-5 is the page number, and then number 4 is the Fort Myers Shores Community which describes the Fort Myers Shores Community, and it states this community contains two distinct areas; Caloosahatchee Shores located east of I-75 and Palm Beach Boulevard located west of I-75. States that the Caloosahatchee Shores Planning Community

has a more rural character and describes for you the boundaries of the Caloosahatchee Shores Planning Community, and it's important for you to look at that larger Fort Myers Shores Community of which Caloosahatchee Shores is one of two communities.

And that's it. Thank you.

MS. BELFLOWER: Okay. Hang on. I have some questions I'm sure, Ralph.

MR. BROOKES: Oh, okay.

MS. BELFLOWER: I suspected --

MR. BROOKES: I don't know if I can answer them. I asked a lot of questions myself, but go ahead.

MS. BELFLOWER: Well, we will get answers to your questions, and we'll see if they have any questions.

MR. SCHROPP: I have no questions. However, Mr. Brookes did not tender himself or was he accepted as an expert in any field; transportation, planning, ecology, or any other related field which he testified, so to extent that any of his testimony expresses an opinion, I would request that it be given the due weight of a nonexpert opinion in those areas.

MS. BELFLOWER: Okay.

MR. SCHROPP: Thank you.

MS. BELFLOWER: Uh-huh. Staff have any questions?

MR. BLOCK: No, ma'am. I don't.

MS. BELFLOWER: Well. Thank you.

MR. BROOKES: Thank you. Just one note for the record. I'm certified in city, county, and local government law by the Florida bar since 2004, but I'm not holding myself as an expert planner.

MS. BELFLOWER: Okay.

MR. BROOKES: Thank you.

MS. BELFLOWER: Daniel Cox.

MR. COX: Good afternoon. Daniel Cox representing the River Hall Community Development District.

Could I get the aerial, Mr. Block?

MR. BLOCK: Yes. The county aerial.

MR. COX: Yes. That's good.

MR. BLOCK: And you want me to zoom into that particular area?

MR. COX: I'll get to there in just a second.

MR. BLOCK: Okay.

MR. COX: As you may be aware, community

development districts are general purpose local governments, special purpose local governments that are essentially formed to manage and operate on the infrastructure essential for the developments of communities like River Hall.

In this particular district, the CDD owns the lakes, the preserves, and if you'll pardon me, this section of River Hall Parkway commencing about right here all the way up to 80, and this is mainly what I'm concerned about and talk to the hearing examiner about today and ask some questions of the applicant.

In the background, it's been mentioned a couple of times about the community development district having withdrawn its properties from the CPA 2010-01, and basically the reason for that was that the district was extremely concerned about the impacts on infrastructure.

The surface water management system, of course, which is subject to a different permit and is not before you for any discussions about those impacts, but River Hall Parkway was really important to us because as staff has characterized it as a minor collector. I had never really thought about it that way. I had always thought

about it more as an internal project roadway, but as a minor collector, it does have a level of service that is required to be maintained, and there has been no testimony about whether the existing analysis of the traffic impact statement analyzed the existing conditions on River Hall Parkway or what the impacts of the additional 696 units would be.

You did have some testimony from Colonel Thornberry this morning. He talked about the River Hall Elementary School and the associated traffic at the drop-off and pick-up times, and I would encourage the hearing examiner to maybe plan your site visit to where you get to drive through that area during one of those pick-up or drop-off times because if we could zoom in on that, I'll kind of give you an idea of what happens.

This is the elementary school here. And say in the afternoon, when it's time for pick-up, you'll have a line of buses that fully occupy the left lane of the southbound two lanes, fully occupy the left lanes waiting to turn in to go in and pick up kids; a couple at that end with a couple of hundred parents or whatever that are trying to come to pick up the kids, and then as

they're coming back up and they're stacking back up going out here, this road becomes essentially unserviceable.

So we would request if there has not been an analysis, that an analysis be required, and if there are traffic circulation improvements that can be made to River Hall Parkway to ameliorate that situation, that that be included as a condition to the approval of the zoning change.

Ralph, you kept my conditions and deviations list.

MR. BROOKES: We're sharing the hearing examiner's red, blue --

MR. COX: I know you guys just went through this about the withdrawal of the two deviations that staff was going to object to, and in my notes, when Ms. Ekblad and I believe it was Mr. Strauss testified that they were not going to object or not going to contest staff's denial or recommendation of denial, but I did have one place in my notes where I wrote "withdrawn" next to those two deviations, so I just want a clarification. Are they going to not contest staff's recommendation of denial, or are they withdrawing their request for those two

deviations, and those dealt with -- specifically, the sixth one, lake bank slope which we would have to object to very harshly because it has an impact on the maintenance of those lake banks, and the second deviation that I had said that they may withdraw, they also said they would not contest staff's denial was the two access points, so we would just like clarification of whether those are not going to be contested or whether they are absolutely withdrawn.

MS. BELFLOWER: And I think it's appropriate to get that now. Deviation eight in the document that I had provided is the one about the banks excavation.

MR. SCHROPP: That's withdrawn.

MS. BELFLOWER: That is withdrawn. And the other one was the one means of access. That's deviation nine, the deviation to 10-2913. That is also withdrawn?

MR. SCHROPP: That is withdrawn with the understanding that it is not necessary because the two access points are addressed as part of the conditions.

MS. BELFLOWER: Okay.

MR. SCHROPP: I insisted that that be included

as part of the application just out of an abundance of caution, but the discussion yesterday we had, as I recall it, was that it was not necessary because the conditions actually provide for the two access points.

MS. BELFLOWER: Okay. If I could ask for a clarification on the withdrawal of the six-to-one deviation. Is there an argument or a position that the four-to-one deviation is what applies to River Hall I currently, or do you agree that the current LDC requirement will apply to anything moving forward?

MR. SCHROPP: Current LDC requirement applies to anything moving forward.

MS. BELFLOWER: So the six to one would apply to anything that would be built under this zoning if the zoning was approved with the withdrawal of the deviation.

MR. SCHROPP: With regard to River Hall II, yes.

MS. BELFLOWER: Okay. Does that answer that question on those?

MR. COX: Yes, ma'am. Thank you. And you'll recall that from the master concept plan, this area up here is the CPD that they were asking for

the ability to transfer some of the multi-family units up there, and there was some discussion about how many units could be allowed on that CPD, and it was my understanding of what was said was that it was limited by the development standards and not necessarily by the two units per acre requirement, and I wanted to make sure that if that's the case, then that if we have not had an analysis of the impacts of that multi-family use on the CPD on River Hall Parkway, that that also be included in the analysis that we've requested relative to the school traffic impacts.

MS. BELFLOWER: Okay.

MR. COX: And further conditions that any adverse impacts in River Hall be mediated by the developer.

I want to get to the last thing that I need to talk about, but it's going to be several parts to it. That deals with the driveway permit for River Hall Parkway's intersection with State Road 80 that was issued by FDOT that required the traffic signal and the closing of the two median cuts, one immediately east of where the traffic signal would be and one immediately west of where the traffic signal would be, and both of those were to be at

the applicant at the time, Hawks' Haven, LLC, was the applicant for the DOT permit, and DOT conditioned that the warrants have been issued that says that should have been signalized back in April of last year, and there's been no progress to my knowledge of any planning, engineering, design, and certainly it has not been constructed.

There have been some suggestions made in public hearings that the present developer is not bound by those requirements in that FDOT permit. I would like to know if that is truly the developer's position, and if so, what is the basis for that?

MS. BELFLOWER: Okay.

MR. COX: And in light of their position, if it's their position they're not bound by the DOT permit, then I would ask staff to revisit the discussion that was had yesterday about striking the condition of having what's now Condition 10 in the list that you've provided, to have that in place. I certainly don't have a problem with Mr. Schropp's suggested change that gave them the ability to get an extension beyond the one year if they've met their 150-day permit application requirement, and I would also want it clarified

that the condition includes everything associated with putting that signal in which triggers having to close those two median cuts because they're too close to a signal.

Would like to know the answer to the question of specifically on whether they're bound by the FDOT permit requirements.

And the other, I guess one last statement on the River Hall Parkway is that typically when we do a TIS, we're looking at peak a.m., peak p.m. trips, and I think that that should be modified in this particular TIS for the River Hall Parkway segment to be the peak school drop-off and pick-up times.

MS. BELFLOWER: Okay.

MR. COX: I think all I did was ask questions, but I'll be happy to answer any questions you had with me.

MS. BELFLOWER: I do not have any.

Does the applicant have any?

MR. SCHROPP: If there are additional units allowed in River Hall which will generate additional school children, would that alleviate some of the stacking going on State Road 80?

MR. COX: That would be a good question to ask

the person preparing the TIS.

MR. SCHROPP: Thank you.

MR. JACOB: What are the peak school hours? You left off at the end there talking about --

MR. COX: The peak drop-off, pick-up times, and that would probably run from say 30 to 45 minutes prior to school start to about 30 minutes after school start and same with school discharge, 30 to 45 minutes before to 30 minutes after.

MR. JACOB: For those of us who don't have children there --

MR. COX: I don't have them. We can get you the times.

MS. BELFLOWER: Every school is different, and that would have to be something that would be taken into consideration. I would assume there are standards that the traffic engineers use when looking at schools.

MR. JACOB: Our Lee Plan specifies what they're supposed to use for their study.

MS. BELFLOWER: Okay. So this would be something different than that; is that what your point is?

MR. JACOB: Yes, ma'am.

MR. COX: I understand that. It would just be

--

MR. JACOB: Let me caveat that. Unless whatever the hours are happen to fall within the same requirements as our code.

MR. COX: I guess we're just asking for a little bit extra.

MS. BELFLOWER: Okay. Staff did not have any questions?

MR. BLOCK: No, ma'am.

MS. BELFLOWER: Okay. Is there anyone else from the public who wishes to speak?

MS. DANIELS: I have a question I thought of during lunch. Is it too late to submit it?

MR. JACOB: Is this it?

MS. BELFLOWER: Michael's going to read the question.

MR. JACOB: You want me to read the question?

MR. SCHROPP: You can answer it too if you want.

MR. JACOB: Yes.

What kind of communication has GreenPointe had with the East League County Drainage District about the south exit and the bridge that would need to be built in -- built over the canal near Harns Marsh?

MS. BELFLOWER: Okay. All right. I hope you got that. I didn't get all of it, but we may have to ask to repeat it. All right. At this point, I think it might be helpful if we go through the list of questions that we heard and decide who it may be appropriate to answer between the applicant and the staff to provide answers or if some of them, both sides want to weigh in, so --

MR. JACOB: Are we going to go down and ask the question and see who wants to respond, or are we going to go through and --

MS. BELFLOWER: Well, I suspect some of it, the applicant would like to do in a more --

MR. SCHROPP: Orderly manner.

MS. BELFLOWER: -- comprehensive manner rather than just trying to respond to each one of them. I just want to make sure that each question gets answered, and well, --

MR. SCHROPP: We'll do it whatever way you'd like to do it. Whatever is the most efficient way for you.

MS. BELFLOWER: I think we can go down and --

MR. DEPEW: Why don't you let us give it a shot.

MS. BELFLOWER: Okay. Talk about a topic.

Tell us a topic, and then try to identify, this is in response to the question so-and-so, and that way I can check them off my list, you can check them off your list, and then we'll see what's left between everybody's list.

MR. SCHROPP: Yeah. Let us try that. We kind of talked about just a loose order, and Carl left, and he was going to be my first one. But I'll -- and actually, if you don't mind, can I -- would that be okay?

MS. BELFLOWER: You can sit there.

MR. SCHROPP: Thank you. We kind of talked about a loose order about getting people back up here to run through it, and I was going to start with Carl, Steve talk about the traffic and signal, Ken to talk about some of the environmental issues that came up, and Dave to kind of get a little bit more because of a lot of it was planning issues, and I've got some things to wrap up, but before Carl starts -- that's okay. Stay there.

The one question you had before the break was how much -- how many units are in rural after this plan amendment is adopted, and I wanted to address that, and if you've got --

MR. BROOKES: I'll object. He's not an expert in planning. We'd like to hear that from an expert planner.

MS. BELFLOWER: Mr. Brookes, is that helpful for the process?

MR. BROOKES: It was the same objection made to me.

MS. BELFLOWER: I don't think so. He's stating a fact, so --

MR. SCHROPP: Simply going to point out in the staff report, if you've got the staff report there, it's all in writing. If you go to Attachment E.

MS. BELFLOWER: E.

MR. SCHROPP: E. Should be a letter from me to Mary Gibbs.

MS. BELFLOWER: How far in are we? Do you know what --

MR. SCHROPP: I'm sorry. It's about a third of the way in.

MS. BELFLOWER: It's the one dated December 17th.

MR. SCHROPP: Yes, ma'am.

MS. BELFLOWER: With the chart on the front of it.

MR. SCHROPP: And that's the chart that I call your attention to. It's a little bit larger chart than what was actually presented in the PowerPoint and provides the data that you're looking for.

After the plan amendment as proposed to be amended with the CDD lands withdrawn, the rural classification would have 1140.3 acres, which would allow 1,140 dwelling units at one unit per acre as a maximum. There are currently permitted, platted, and under development order 1,119 dwelling units which allows -- would allow an additional 21 dwelling units would be constructed without going over the one-to-one limitation.

MS. BELFLOWER: Okay. So in the areas that would remain rural --

MR. SCHROPP: Rural.

MS. BELFLOWER: -- under the plan amendment, the acreage is 1,140. So there's 1,119 currently approved in all forms, some that may not be platted, have to be platted, but it has a development order.

MR. SCHROPP: The multi-family doesn't require a plat, so it's just a DO for X number of units.

MS. BELFLOWER: So that's counted in that number.

MR. SCHROPP: Yes, it is.

MS. BELFLOWER: Okay. So there are 21 units short of the maximum that could be in the rural areas, and there are no portions of what will be left as rural that are developable for units that have not been platted or had a development order on it; is that correct?

MR. SCHROPP: To the best of my knowledge.

MR. DEPEW: No, that's not correct.

MR. SCHROPP: Go ahead.

MR. DEPEW: There is an area that is still developable. The maximum number of units would be the 21 remaining units.

MS. BELFLOWER: Okay. Do you happen to know how large that area is?

MR. DEPEW: It's this, this area right in there. It's fairly small. It's -- I don't know how many acres it is. I want to say maybe seven to ten acres.

MR. BARRACO: Approximately ten.

MS. BELFLOWER: Okay. So it's approximately ten acres, and that's where the 21 units could go, and it's understood that there would not be more than 21 units allowed in there.

MR. BARRACO: Yes.

MR. SCHROPP: Just by way of commentary in response to Mr. Brookes's assertions that it came from the planning staff report on the transmittal that the plan amendment would result in more units in the remaining rural than would be permitted.

What essentially happened was when the CDD withdrew its lands, it required us to go through a re-analysis of what would be permitted under the plan amendment for the remaining lands, and that issue essentially resolved itself with withdrawal of those lands plus the little two additional areas that I -- that you -- I responded to you yesterday that you picked up on.

MS. BELFLOWER: Roadway segments?

MR. SCHROPP: And there were two areas that were with -- that were previously as part of the plan amendment were withdrawn.

MS. BELFLOWER: Okay.

MR. SCHROPP: And by doing that, what we were able to do was bring the -- address the concern that was provided in the staff report in the plan amendment that Mr. Brookes raised and bring the density in the rural, existing rural, remaining rural lands under one to one.

MS. BELFLOWER: Okay. What is the process

that the county has, and I know staff may be better to answer this, but I know in some of the DRIs, there has been blue sheets and yellow sheets and things that have to be submitted to show what development rights have been sold and which parcel has what development rights and a way of accounting to keep track of when you've reached a point. What is the process for River Hall?

MR. SCHROPP: And Chip can probably better answer than I, but it's always been done on an ad hoc basis with projects as to whether that was necessary or not. I don't think there's such a requirement in the River Hall project, but Chip, I don't know if you want to elaborate.

MR. BLOCK: I'll try my best to simplify the answer for you, Madam Hearing Examiner. We do have some, for lack of a better term, bean counting that we do as we go through the development order processes to determine how many residential units have been proposed or commercial development has been proposed, vice versa, and there is a spreadsheet that development services maintains as to how much development intensity has been granted, and as we go through the process, development staff makes sure that development

intensity is not exceeded as may be permitted whether it be through just the fact of compliance with the Land Development Code, but also in plan developments.

MS. BELFLOWER: Is it normally like a total? For example, on this one, the 1,999, and they just make sure they haven't gone over 1,999. I think this project is perhaps a little bit different from a lot of them because of these multiple planning categories that you've got to keep track now when you transfer from this, and the 5.1.10 that we talked about yesterday, and when you go over that number.

Would staff have any concern and would the applicant agree that there be some sort of condition talking about how development orders are submitted and an accounting, the bean counting you were indicating would be provided to give an update of where you are with your acreage numbers under each category with a total?

MR. BLOCK: Well, if there's -- Rob, is there anything more that you can add?

What I was asking, Madam Hearing Examiner, to ask if Rob has anything to add to my understanding of the development order process. It's probably

been 15 years since I reviewed a development order, so things could have changed by now, but I would also point out that there are planned developments out there which you are aware of where we do have a running total requirement for the developer or a future developer to submit as part of the development order process to provide that this is what's been previously approved, this is what we're proposing, we haven't exceeded the totals in the plan development. It doesn't exist in this application except for that one condition that we all know about.

MS. BELFLOWER: Okay.

MR. BLOCK: And I'll let Rob answer in more specificity.

MR. PRICE: Rob Price with Development Services. Generally, when we get a project in, one of the very first things we do for DO review is we pull the zoning resolution, and we take note of the development parameters, and then it's really put on the backs of the applicant to show us that they're not exceeding the parameters.

As you're probably well aware, many times these projects get broken up into many different development orders. Projects can get complicated.

We try -- I'd say most of the reviewers try to insist on a table being provided somewhere on the plan sheet that inventory is where we stand as we go from one case to the next. It can get complicated.

This one is extremely complicated now especially, so at the end of the day, it's on the applicant to provide or to prove their entitlement to the units and that they're not exceeding, and I can assure you that the staff moving forward is going to be taking particular notice of the zoning resolution in this case and making sure that we're not going to exceed any thresholds.

MS. BELFLOWER: Would it be helpful to the process though to have that as a condition so that there's no question, it's not something that you all have to ask for, the applicant has to provide it from the get-go when they present the plans because we're talking -- it's not going to be one developer. We've got multiple developers here that are going to be coming that may not have track of the full information to be able to do the count, two projects going on at the same time, both trying to count the same availability of units type of things.

MR. PRICE: Yes. It's very complicated. Sure, if you want to include a condition, we would support -- we would welcome it. I would hope that condition or no condition, the same type of review would occur.

As each DO comes in, trying to speak in generalities because it just depends on who gets the case as to how it gets handled.

MS. BELFLOWER: Just to minimize the chance of miscounting. Okay. We -- all right. And that's something we need to work on in terms of wordsmithing something.

MR. SCHROPP: That's fine with us.

MS. BELFLOWER: Okay. Applicant has no objection to that.

Thank you very much, Rob.

MR. PRICE: No problem.

MS. BELFLOWER: Okay.

MR. SCHROPP: One more thing before I ask Mr. Barraco to get up. There were some questions regarding the applicant's position regarding signal and the obligation to construct a signal, and the statements that were attributed to the applicant are actually attributed to me at the plan amendment hearing transmittal hearing.

If you look at the driveway connection permit, it's attached to Mr. Price's memo which is Attachment K, so you don't have to search for it. Do you have it?

MS. BELFLOWER: I don't know that --

MR. SCHROPP: It's in the staff report.

MS. BELFLOWER: Okay.

MR. SCHROPP: This is what everybody's been referring to. That's the original connection permit --

MS. BELFLOWER: Okay.

MR. SCHROPP: -- from FDOT in 2005, and as you would notice from the permit, it was issued to, I think, Duke Capital as representative for Hawks' Haven, LLC or some entity like that.

MS. BELFLOWER: Uh-huh.

MR. SCHROPP: Previous developer. That went through bankruptcy. To be quite honest with you, I don't know whether that can be enforced against the current developer or not. It was not recorded. It was not any way made aware to the GreenPointe when they acquired the property, and beyond that, the obligation may have been discharged in bankruptcy. I don't know enough about that bankruptcy to tell you one way or the

other, but I do know there's an issue about whether it can be legally enforced against the current developer.

All that aside, we're perfectly content with the condition of zoning that requires us to move forward with the signal in a due diligent -- a diligent matter and get it accomplished, and that's why we really didn't want to argue about it, but at this point, that would be part of the zoning requirement, and that's why we've kind of structured it the way we have.

MS. BELFLOWER: And that agreement includes all the improvements that were required as part of the driveway permit in terms of shutting the median openings at the two points and whatever turn lanes, et cetera.

MR. SCHROPP: It would be as required by FDOT.

MS. BELFLOWER: Today.

MR. SCHROPP: When we go in for the signal.

MS. BELFLOWER: What they want it to be designed to include.

MR. SCHROPP: And that's, I think, the second point out of all this is while I respect the county and what we're trying to do here, which is make sure this gets done, in large respect, we're

obligated to do what FDOT permits.

MS. BELFLOWER: Okay.

MR. SCHROPP: And so if it doesn't include closing those medians at this point, that's -- but if it does, it does.

MS. BELFLOWER: Okay. And I appreciate that. I think we will want to get into a little bit more in your testimony about -- in whatever order you want to do it, points that were made just in general as to whether the signal will cure everything, what the situation is with or without the signal, with or without this rezoning request, so but I appreciate the point, keeping in mind that it all comes down to what DOT wants to have happen out there.

MR. SCHROPP: It is within their jurisdiction.

MS. BELFLOWER: Right.

MR. SCHROPP: With that, I'll call Carl back up.

MR. BARRACO: Are you sure?

MR. SCHROPP: Yeah.

MS. BELFLOWER: Wait. No, go ahead and sit back down. No. It's leg exercises to jump up and down.

MR. SCHROPP: Mr. Barraco was not one of our

principal witnesses in the presentation in chief, and so he was probably sworn in.

MR. BARRACO: I have been sworn in.

MR. SCHROPP: His resume was included in our exhibits. He is a registered professional engineer in the state of Florida, and he has previously been accepted as an expert in engineering and surface water management in this forum, and I would tender him as an expert in this forum today.

MS. BELFLOWER: I don't think we have a problem with accepting him as an expert as long as he's not presenting new evidence, but everything that he's going to be testifying to is in response to the questions raised and the points raised.

MR. SCHROPP: Yes, exactly.

MS. BELFLOWER: County have any objection to accepting him as an expert?

MR. BLOCK: No, ma'am.

MS. BELFLOWER: So accepted.

MR. BARRACO: Thank you. Again, for the record, Carl Barraco. I'd like to first start off my background with this project. I have served as engineer of record for this project since the inception of the project, so I know the project

and the infrastructure well. I also served as the district engineer for the River Hall Community Development District from its establishment until just recently. So I -- my background is really start at the beginning of the project.

First, I'd like to address the gentlemen's concern of the irrigation, the wells. The first water use permit for irrigation was issued in 2006. In 2013, that permit was modified and is valid until April of 2018, and I would like to put that permit in the record.

MS. BELFLOWER: Okay. This will be Applicant's Exhibit 13, I believe. Are we on 13? This is the South Florida Water Management District water use permit reuse 36-04006W.

MR. BARRACO: That permit provides for irrigation of golf course in the amount of 358 acres. Currently, there's only about 115 acres of golf course, so there's adequate water permitted for use for additional golf course.

The gentleman asked about the location of the wells. There is a map with the well locations in that permit. And finally, with regard to the water use, and I believe it's Condition Number 25 in the hearing examiner's composite exhibit.

MS. BELFLOWER: Wait a minute.

MR. BARRACO: Yes, ma'am.

MS. BELFLOWER: On the permit is only for the golf course?

MR. BARRACO: No, it also -- it's the entire irrigation. He was asking about the golf course, so I just concentrated on the golf course. It's for the entire project.

MS. BELFLOWER: Okay. The irrigation that is provided in the -- under this permit is for the golf course to the common areas, the medians, the roadways, but not for individual lots; is that correct?

MR. BARRACO: It's for all irrigation.

MS. BELFLOWER: So everything in the entire development --

MR. BARRACO: Yes.

MS. BELFLOWER: -- is under this permit?

MR. BARRACO: Yes, ma'am.

MS. BELFLOWER: You mentioned something about 300 and something acres.

MR. BARRACO: And I was just referring to the golf course.

MS. BELFLOWER: Okay.

MR. BARRACO: The water is allocated between

the golf course and the other turf green areas, and since the question was regarding golf course this morning, I just made mention that there is 358 acres of turf -- golf course turf area planned to be irrigated, and approximately 115 has been constructed to date, so there's adequate water for future golf.

MS. BELFLOWER: Okay. So the permit allows irrigation to serve the fully built-out development, and how does that drawdown -- how much of that capacity or allowance is being used currently?

MR. BARRACO: I don't know how much has been, but I can tell you it's significantly less than the permit allows.

MS. BELFLOWER: All right. And you indicated the wells are shown in here. Are they in the same location as they were previously historically or are these new wells?

MR. BARRACO: To my knowledge, everything is consistent with this water use permit, so the well location would be consistent with the exhibits in the permit.

MS. BELFLOWER: The renewed permit just continued forward, the existing permit, and

nothing changed relative to the wells?

MR. BARRACO: Correct.

MS. BELFLOWER: Okay.

MR. BARRACO: To my knowledge. And I was mentioning Condition 25 which is in your composite exhibit. That reinstates -- the difference between the 2006, the original permit, and the 2013, the current permit, is that the monitoring was dropped out, and that condition reinstates or requires the applicant to request the district reinstate that monitoring as part of the current permit.

MS. BELFLOWER: Okay.

MR. BARRACO: So that this is related to Condition 25.

MS. BELFLOWER: Okay. So the permit that you have does not require monitoring. The condition would reapply the requirement for monitoring.

MR. BARRACO: Correct. The monitoring was in the original permit, and then it was dropped in the modification because time had elapsed, and it was requested that that be reintroduced to the permit, and that's what Condition Number 25 does.

MS. BELFLOWER: But that only applies for River Hall II because --

MR. BARRACO: But this permit, this permit covers everything, all water use within River Hall.

MS. BELFLOWER: Okay. So the applicant is accepting that it will cover everything, that the condition would apply throughout River Hall because it's all under one permit.

MR. SCHROPP: Yes.

MS. BELFLOWER: I'm not sure we can do that, but all right, we'll leave that for now. Okay. All right. So monitoring is addressed.

MR. BARRACO: And to finally address the gentleman's questions regarding the monitoring results, they will be on file at the South Florida Water Management District, and if you look at the permit, the permit was -- a copy was sent to Lee County Environmental Sciences, and I believe they will have that information or have access to it.

That's all I had on the water use permit, and if you don't have any questions, I'll go to the next item I was going to.

MS. BELFLOWER: Let's hang on a second. He asked about drawdown and whether it meets the water management district requirements, and I kind of got the impression that the question was how

close is it to some sort of limits or maximum, what are the effects of the drawdown.

MR. BARRACO: The only way I can answer that is that the project and the water use is in good standing with the permit with the South Florida Water Management District, and I'm not aware of any violations.

MS. BELFLOWER: They're using less than, what, a sixth of the total capacity that they have?

MR. BARRACO: They are using less than the permitted capacity, yes. And with the monitoring that's reintroduced, if additional water is used, that monitoring will follow and track that.

MS. BELFLOWER: Okay. What are the triggers on the monitoring? If there is a certain amount of drawdown, is that what the monitoring wells indicate that then that will signal that there's an issue that needs to be looked at; is that how that works?

MR. BARRACO: You are getting into hydrogeology, and you're getting beyond my level of expertise in that particular.

MS. BELFLOWER: Okay. So the monitoring reports are sent, and under the permit, if the water management district or the county receives

the information and goes ho, wait, we've got a problem going on here, what happens under the permit?

MR. BARRACO: Under the permit, the -- I believe that the pumping or the usage would be limited, and until an explanation --

MS. BELFLOWER: Whatever the problem is.

MR. BARRACO: Yes.

MS. BELFLOWER: So under the permit, the water management district has the ability to say we have an issue here, stop pumping, put a restriction on it, and something to try to address the problem.

MR. BARRACO: Absolutely. If the water usage falls outside the parameters of the permit, then the Water Management District steps up and is directly involved with the solution.

MS. BELFLOWER: If they were using more than they would be allowed to be used, but if what they're allowed to use created some sort of problem as evidenced in the monitoring, that's also addressed under the permit?

MR. BARRACO: Yes.

MS. BELFLOWER: Okay. I know a lot of these areas are outside the county's jurisdiction. I'm just trying to understand in terms of our

conditions what the implications would be, and it sounds like it's addressed under the permit.

Okay. The impact on wetlands and the species in them, that's hydrogeology question or --

MR. BARRACO: Well, no. Part of that is probably the environmental consultant's portion, but I would tell you that these are deep wells, and I think the gentleman was referring to the animals. He was talking about surficial water, so there are two different water sources.

MS. BELFLOWER: So that's a significant point. These wells are deep wells.

MR. BARRACO: Yes.

MS. BELFLOWER: They do not affect the surficial aquifer.

MR. BARRACO: Correct.

MS. BELFLOWER: Okay. They asked for a condition. I heard Mr. Stilwell ask for a condition to address what happens with excessive drawdown. As a condition to the zoning, would you -- I just would like your response one way or the other on that.

MR. BARRACO: My reply would be that that is fully covered by the State and the South Florida Water Management District and the water use

permit.

MR. SCHROPP: And my response would be legally the same. I think that's within the jurisdiction of the Water Management District.

MS. BELFLOWER: Okay. Next point.

MR. SCHROPP: Before we -- I think you're going to go on to flooding.

MR. BARRACO: Flooding.

MR. SCHROPP: Before you do, the permit Mr. Barraco just passed out, there's Condition Number 9 and may also -- is on page three which addresses the issue of what happens if unanticipated harm occurs. It's just permittee shall mitigate harm to existing off-site land uses caused by the permittee's withdrawal as determined through the permit issuance. When harm occurs or is imminent, the district will require the permittee to modify withdrawal rates or mitigate the harm caused by withdrawals. Includes the following. And that gets to the heart of the issue of what happens if there's unanticipated impacts from the allocated withdrawal.

MS. BELFLOWER: Okay. So that's addressed already in the permit. Okay.

MR. BARRACO: Should I go on to the next

issue?

MS. BELFLOWER: Uh-huh.

MR. BARRACO: Someone in the public mentioned flooding with regard to the water management system, and I think they mentioned the year 2013. 2013 was a wet year for southwest Florida. There were several back-to-back events which caused flooding in several and actually many large communities. River Hall was no exception.

As the Community Development District engineer, we were contacted immediately during that flooding. We investigated, and we found that the outfalls lacked maintenance. The community development district immediately hired a contractor to perform the maintenance. The maintenance was done. The system reacted immediately and recovered, and in my opinion, the system performs exactly how it was designed.

Any flooding that was experienced in 2013 was attributable to lack of maintenance in the outfall which has been completed and repaired --

MS. BELFLOWER: Okay.

MR. BARRACO: -- and maintained.

MS. BELFLOWER: Okay.

MR. BARRACO: And I would also add that,

again, as the engineer of record, I do know that the entire water management system as well as all of the other infrastructure was designed for a number of units well in excess of what this application would allow for and would provide for in all of River Hall.

MS. BELFLOWER: Okay. Did you want to address the impact on the flow-way aspects?

MR. SCHROPP: That was the one thing we didn't talk about at the break, but do you remember that question from Mr. Brookes?

MR. BARRACO: I do. I wonder if we could get any of the maps up that show that.

MR. DEPEW: The flow-way map?

MR. BARRACO: Any map that shows the flow-way.

MR. COX: Would be MCP from the application.

MR. DEPEW: What if we give you the master concept?

MR. BARRACO: That would work.

MR. PASSARELLA: He doesn't have control. Chip has it.

MS. BELFLOWER: It's all Chip's fault.

MR. BLOCK: It is my fault.

MS. BELFLOWER: You're the tech guru.

MS. EKBLAD: There's a computer right there.

MR. DEPEW: I can flip it over to that tablet, but how about if instead, we put this up here.

MR. BARRACO: Actually, I'm going to end up working from this anyway.

MR. DEPEW: Is it relatively straight?

MS. BELFLOWER: Yeah, relatively.

MR. BARRACO: Can you hear me?

MS. BELFLOWER: Yes.

MR. BARRACO: Okay. The flow-way that was mentioned is -- starts on the south line here and comes up through here, through the conservation area and to the north line. And this is the only portion that has not been constructed. If you'll recall, I believe it's Condition 26 talks about a flow-way established for the East County Water Control District. That's what that flow is established for.

MS. BELFLOWER: Okay.

MR. BARRACO: So there is really no headwater or flow coming into it. It's there to preserve the possibility of the drainage district rainwater into that flow-way into the north property line, so there is no connection.

Condition 26 speaks to that, and really, Condition 26 is to be sure that the land pattern

does not change and this flow-way is maintained from the south line to where that flow-way already exists.

MS. BELFLOWER: Okay. And I think that Mr. Brookes' question was by moving the secondary access to that point, you cut off that lake from the way it was originally designed, so it does not touch the south boundary anymore.

MR. BARRACO: Okay.

MS. BELFLOWER: How would that be addressed?

MR. BARACCO: And the answer is it's not connected at this time. It may never be connected.

This flow-way is in here in the instance that the Water Control District comes and says, "We do have a plan. We do want to use that flow-way. We'll make a connection between our canal and your canal."

And if that's the case, if they did it now, they would have to find a way to connect their ditch into that flow-way. So really, nothing's changed. The flow-way is provided to the project south boundary in either case.

MS. BELFLOWER: So if the roadway is put in that location, it would be designed to have the

capability to have culverts put under it so that the water could connect if the Water Management District wanted to -- not the Water Management District, the Drainage District wanted to make that connection.

MR. BARRACO: Yes, and the Drainage District knows they would have other physical improvements to make if they use that flow-way in the future.

MS. BELFLOWER: Okay. So the placement of the secondary access in that location will not prevent the flow-way from happening the way it is envisioned in this condition.

MR. BARRACO: That's correct.

MS. BELFLOWER: Okay. Okay.

MR. SCHROPP: I think that was all that I had for Carl.

MS. BELFLOWER: And I can't -- I can't tell you whether it is or not. I'm just checking them off, and we'll see where we are when we get to the end.

MR. SCHROPP: He'll be here.

MR. BARRACO: May I be seated?

MR. SCHROPP: Sure.

Next, if we could call Steve Leung up to address some of the issues, those in particular

that were raised with regard to level of service, roadway capacity, River Hall Parkway, and the signal.

MS. BELFLOWER: Okay.

MR. LEUNG: All that.

MR. SCHROPP: You're on.

MR. LEUNG: Good afternoon. For the record, I'm Steve Leung with David Plummer and Associates. I was sworn in yesterday.

I just want to touch upon some of the comments and address some questions and issues regarding the traffic.

The first response I'd like to offer would be the -- I heard the comment from Mr. Brookes regarding the -- an October 2014 staff report which I believe he further explained there were capacity issues, especially on State Road 80. I just want to point that out. That was the -- part of the transmittal of the comp plan amendment to DEO, and I think Mr. Schropp interjected at that time saying that the CPA traffic study addressed different issues than what the application for the rezoning, and just not to belabor the point, I just want to make sure that it's understood that when we -- under the comp plan amendment, what is

required is looking at a long range, a 20- to 30-year horizon year, buildout consistent with the county's long-range transportation plan, and the key issue to address for the CPA is whether changes should be made to the long-range plan if a comp plan amendment is to be approved.

In other words, we have a needs plan and a cost feasible plan as part of the B plan for the LRTP. And the needs really -- the needs plan really indicates what is needed with the buildout horizon at 2035 with a projected land use of the county.

The cost feasible plan takes that list and says okay, what we can afford at 2035. These are all planning efforts. They're not set in stone. Priorities, needs, they all change every five years, every ten years when the comp plan is overhauled or updated.

In this case, the comp plan amendment associated with the -- with this application is that there's some roadways including State Road 30, some segments of State Road 30, State Road 31, and Buckingham Road were identified as deficient. What is needed to fix that deficiency is exactly the same as what's already identified in the needs

plan.

And that's why you see the statement saying that well, it's agreed that certain roads would fail with and without this project. It doesn't mean that there's no mitigation to be done. It does not mean that River Hall would get away with doing nothing. All it means is that the county and the MPO have already identified what is needed for State Road 80 and State Road 31 and Buckingham Road. The same needs apply to when River Hall would add the additional 696 units.

So the recommendation to the needs plan would be stay exactly the way it is because you already identified the improvements, we agree with those improvements with us, so there's really no change needed to address the long-range transportation plan.

The actual mitigation would fall down to the DO stage as we're pulling permits, and at that time, what is going to be fully mitigated by a project for the external road network would be the pavement of roads impact fees. That's a requirement. Regardless of whether there are any impacts or not, the project would pay road impact fees, and that's the requirement for DCI or sub

DRI development.

So being said that, that's why what's presented in CPA is a lot different than what is presented at the matter here for the rezoning.

So to address some of the LOS issues, other existing problems in State Road 80, State Road 31, Buckingham Road, and the answer is no. The existing conditions that all these roads are operating at acceptable level of service.

So what about the future? With the unbuilt portion of River Hall that's already approved, and the answer is no, there are no level service problems.

MS. BELFLOWER: What is the level of service currently on State Road 80?

MR. LEUNG: I believe it's C just east of State Road 31, and I believe it's B east of Buckingham Road.

MS. BELFLOWER: Currently.

MR. LEUNG: Currently.

MS. BELFLOWER: With the already approved traffic added to it and the approved developments in your projected-out years, it will continue to be B and C?

MR. LEUNG: I think it will drop down to C and

E. I have the specific LOS that I can refer to.

MS. BELFLOWER: Is that in the TIS?

MR. LEUNG: Yes, it's in the TIS, and we look at that with the additional background growth including Olga Square, and then the additional units, we're still looking at C and D for State Road 80, so there -- let that be clear that there's not a misconception that there's no LOS issues out there. That's already identified in our TIS as part of the concurrency report. That's compiled by the County. Future conditions with and without this amendment, it's still at acceptable levels of service.

MS. BELFLOWER: Okay. That's the roadway segment?

MR. LEUNG: That's the roadway segments.

MS. BELFLOWER: All right.

MR. LEUNG: A lot of attention has been paid to the River Hall Parkway and State Road 80 intersection, and I think I might have to break it down to a couple of parts regarding the signal warrant.

A signal warrant is done to establish whether a signal may be needed based on these warrants. It doesn't -- it's not an indication of if

warrants are met, whether that signal would be guaranteed to be approved. It's not an indication whether the intersection fails. It really addresses certain components of the intersection as really relevant to the minor approaches of the intersection.

In general, when you're looking at arterials, collectors, SD, functional classification goes from very high traveled roadways down to the local streets. The emphasis for capacity is really on the main arterials such as State Road 80. All other minor roads, whether it's a collector, loco, a driveway, they have very little priorities in terms of capacity and movement.

For example, the State Road 80/River Hall intersection, there's a lot of talk about school buses and school traffic. The northbound-to-westbound movement appears to be the most heavily used and congested movement. Unfortunately, in terms of capacity and priority for the Florida DOT is that that movement is given the least priority among the east/west movement as well as the north/south movement. That's just how traffic operations are viewed at.

They did do a warrant analysis, and I believe

that was a request of the school based on the reference to, I believe, a request from a school board employee to look at the warrants at that intersection. And that was an analysis done April of 2014. I think it was referenced many times here.

You look at that analysis, it was an internal memo within Florida DOT recommending that -- saying that the signal is recommended at that location. It's not a requirement. I believe that letter was or that memo was circulated to Lee County staff, and it was forwarded to us, and it really had no directions, and that's not to say that we're surprised that signal may be warranted out there. So I think we just took that and said let's, you know, let start looking at, you know, working with the Florida DOT to see -- start the process.

There's also an issue about timing. I think that in general, when we look at a stage of starting that we recognize there are problems, and then we look at conducting the signal warrant and getting it approved by the Florida DOT and then continue on with the design and installation, that could take years. We have instances where we may

take two years just to meet warrants, and then the DOT will review it and look at and whether they would approve the signal, and that may take additional time, and then finally, design, so that could take much longer than two years or 18 months, so that's just a natural process of how this -- how it works to be able to get a signal.

Now, if there are immediate concerns of safety that currently exists out there, the Florida DOT has the option of, well, one, they could either request that manual traffic operations be implemented to accommodate the school traffic at certain times, or they could simply just close the median so that only right in and right out would be allowed and perhaps leave a directional median opening where the eastbound, sorry, westbound to southbound movement be allowed. And that would eliminate the issue about the northbound to westbound movement which we're having a lot of queues and delays to my understanding.

MS. BELFLOWER: You mean everybody would make a right turn and then a U turn?

MR. LEUNG: That is in fact, the Florida DOT prefer their policies in terms of access management and how driveways or minor streets

would be operating if there are issues regarding the openings.

And that's really the -- what's showing, what's evident in the permit that everybody's looking at, and it's basically talking about the full median opening to the east and to the west of River Hall Parkway, whereas if a signal would be in place or at the request of the Florida DOT, those two median openings would be directionalized.

And at any time due to safety reasons, the Florida DOT can come and make those modifications. So that is purely a safety issue at this point, and I'm not saying that is -- it is or is not, but the Florida DOT, you know, they have remedies to address those delay-of-safety issues.

MS. BELFLOWER: Okay.

MR. LEUNG: So that's -- that's what I'm saying. I'll be happy to answer any questions at this point regarding --

MS. BELFLOWER: Yeah.

MR. LEUNG: -- the signal and the warrants.

MS. BELFLOWER: I have a very basic question.

MR. LEUNG: Sure.

MS. BELFLOWER: Under the County's standards

for adequacy and whatever the cut-off points of the magic numbers are, does that intersection currently fail under the County's standards; the River Hall/State Road 80 intersection?

MR. LEUNG: No. Usually when we talk about adequacy would be the roadway segments because again, access, it's sensitive in that very little traffic can be accommodated on minor streets.

MS. BELFLOWER: Okay. This is where I'm going.

MR. LEUNG: Okay.

MS. BELFLOWER: The finding that I have to make is whether or not approval of the request will -- it's in the negative. Approval of the request will not place an undue burden upon existing transportation or planned infrastructure facilities and will be served by streets with the capacity to carry traffic generated by the development.

So that's where I need to have the evidence that all the streets have the capacity, and to me, intersections are included in the streets. The streets can't function as streets unless you're addressing the intersections as well. It's not just the through segments, so there has been a lot

of discussion, and I understand that the applicant is agreeing to put in a traffic signal.

The question in my mind is whether -- what the evidence says as to whether or not this approval should be approved as adequate unless that signal is in. I mean, that was one of the requests from the neighbors is don't let them do anything until the improvements are in place.

So I understand we're in a difficult situation because we have DOT, and they can do whatever they think is appropriate to make it work, but given that, are these roadways, both River Hall Parkway, State Road 80, we haven't even talked about the southern access and sufficiency of the roads to serve through that southern access.

I need you to address whether these roads are adequate under the standard that it will not make an undue burden on existing transportation infrastructure and will be served by streets without adequate capacity to carry the traffic generated by the development.

MR. LEUNG: Correct, and in accordance with our traffic impact statement and the review from county staff, all roads will operate -- existing will operate with the additional units at

acceptable levels of service.

MS. BELFLOWER: Okay. And including the intersections or not including the intersections, roadway segments, or just --

MR. LEUNG: Including the intersection and from the conception of this project was always recognized that there would be a need for signalization at that intersection. The issue has always been the timing.

I think once that issue has been identified, which the warrant study has identified, then yes, we'll go ahead with the signal. Now we'll address the future buildout that impacts that intersection.

Existing, there's not an LOS issue right now, but because there are delays that I think that we all want to try to address would be, you know, during school hours of the buses, and incidentally, that is between the hours of 8 to 9 in the a.m. and the p.m. would be between the hours of 3 and 4 where a lot of traffic is coming in just after 3 o'clock, and then when school is out around 3:30ish, then all the traffic going back out again.

Also, I think there was a question about the

level of service on River Hall Parkway at four lanes. As minor -- as a minor collector, the capacity is 1,530, 1,530 in a peak direction, and from a traffic study, what we looked at, we're around 1,300, between 1,300 and 1,400, so we're within the acceptable levels of service.

MS. BELFLOWER: That's with the existing approved units, the total number?

MR. LEUNG: Yes.

MR. SCHROPP: 2695.

MR. LEUNG: 2695, including the commercial near State Road 80, inclusive of the school traffic, and when we did the TIS, we only assigned about two to three percent of the development's traffic to the south. We wanted to make sure that by overestimating the impacts and looking at the worst case condition up at State Road 80, that that signal would still provide adequate level of service at that intersection at buildout.

MS. BELFLOWER: And I don't want to beat this to death, but I want to make sure I get it right because this is very important. The statement about the traffic signal, and you indicated that everybody recognizes the intersection needs to be signalized. Without the signalization in place,

would the additional -- if the intersection has to be signalized now, if it needs it now, then it is not adequate without that signal. It can't be said that the intersection will be adequate unless there is a commitment that there will be a signal before this development happens. Is that a correct statement?

MR. LEUNG: Okay. The signal is warranted based on existing conditions.

MS. BELFLOWER: Uh-huh.

MR. LEUNG: It does not mean that the intersection fails today. A signal, the purpose of a signal is actually just to offer guidance of right of way. It does not necessarily make the intersection safer, and it does not necessarily add capacity. There are certain crashes that could be correctable by a signal, but a signal also creates other safety concerns such as rear-end crashes on the main line.

Anytime that you force vehicles to stop on a roadway, there's probabilities that it could get rear ended because driver's not paying attention, and so you're required to stop, then other issues could arise. So it's false to say that well, you put in a signal, it resolves safety. You put in a

signal, it's going to provide the added capacity.

And what I'm saying is that the emphasis is on the main line. Especially for State Road 80, it is a state strategic intermodal system on that system. That means it will have -- it's of importance for the economic welfare for the State, and that if improvements are needed, that the SIS roads would get the priority and the urgency to have it fixed by the State.

MS. BELFLOWER: But that goes to through traffic.

MR. LEUNG: It goes through traffic. So I think that because it's designed, that intersection is considered to be working, yes, it's considered to be working well, but certain movement, like I said, the side streets will always be penalized. You cannot have perfect flow for the side street because it's not a priority for the system.

MS. BELFLOWER: I think staff report said that the intersection fails. I think they used those words if I'm not mistaken.

MR. LEUNG: Without the signal.

MS. BELFLOWER: Without the signal.

MR. LEUNG: Correct, in the future, because

we're looking at the buildout.

UNKNOWN SPEAKER: They said that in 2005.

MS. BELFLOWER: Please don't comment, sir, in the audience.

You're saying that the staff report statement that the intersection fails without the signal is in the 2030 time frame as opposed to currently?

I'm going to ask staff to come up and address it, but in most cases, we have a finding of adequacy, and then there's not a whole lot of dispute in question about it. In this case, we have a situation where it appears that the intersection need to be signalized now. What that means in terms of improving capacity, meeting better standards, whatever, I'm not understanding.

MR. SCHROPP: And the condition that's been proposed is that before the additional development above the 1,999 units could be -- could move forward, that the signal has to be installed and so the capacity at the intersection will operate at an acceptable level.

MS. BELFLOWER: Okay. Is that what the condition actually says that it has to be installed before anything can go over 1,999, or is it --

MR. COX: It had a time frame requirement.

MR. JACOB: We did a time frame requirement. I think my eloquent discussion yesterday revolved around the fact that you're not going to get to the 1,999 or the 2,000th unit in the time frame we're giving them. Let me back up. We're not giving them. That we've indicated in the condition. So assuming they can't build that many more units in 12 to 18 months, it's a nonissue.

MS. BELFLOWER: Okay.

MR. JACOB: Because we're not imposing the conditions, these new conditions on River Hall I, so in essence, it would only apply to the 2,000th unit.

MS. BELFLOWER: So to the degree that a traffic light is needed to justify the additional units to have -- be able to make a finding of adequacy, it will be provided either through the time frame, or if necessary, we could put a condition so that if somebody was miraculous and they built a hundred and, you know, all 1903 and got them done, that it would trigger at that point, and that can be tied -- I know that there was concerns, and I don't know if you all rewrote a condition or whatever, but there was concern

about the wording in the conditions, but if it's tied to the fact that for this project to be found to meet those findings, the necessary findings of capacity and appropriateness of those streets and the adequacy of the access, that it -- traffic light has to be prepared in accordance with X, Y, and Z.

MR. JACOB: Correct.

MS. BELFLOWER: Is that the direction you're going with the condition?

MR. JACOB: Well, I'll read the condition that we all agreed upon and slightly different than we had yesterday.

MS. BELFLOWER: Okay.

MR. JACOB: But from the technical, legal, and practical standpoint, we wouldn't be able to condition this application on you have to go and put the signal in today or tomorrow. There's a requirement in the permit when they have to do it and how it has to pass DOT.

Let me back up. Requirement of the permit, not necessarily their permit, it's a requirement of the permit that it has to be done.

From the county's standpoint, there is a question that I hear as far as the adequacy of

that intersection for the additional units that are being requested. Those additional units don't kick in until number 2,000, so from my standpoint and to address some of the concerns raised by staff, when tying it to a specific building permit, that we include the period of time they're referring to in the previous condition with the understanding that if it's not met within that time frame, then we are going to step in regardless of the number of units that are existing 12, 18 months from now, we're going to step in and say you cannot get another development order or building permit in River Hall II.

And I'll read the condition now if you want.

MS. BELFLOWER: Yes, please.

MR. JACOB: Condition reads based on the intersection improvements identified in the applicant's TIS as being necessary for the project, a traffic signal is required at the River Hall Parkway/State Road 82 [sic] intersection. Construction of the signal must be completed within 12 months of the date of this zoning resolution.

In the event the signal is not constructed within 12 months, issuance of local development

order approvals excluding development orders only authorizing construction of infrastructure or building permits within River Hall II development will not be granted until the signal is constructed.

The director of community development may authorize an extension not to exceed six months if the applicant demonstrates a good faith effort to complete the construction of the traffic signal, and here's sort of the note.

Please note this condition placed by Lee County as a part of this rezoning does not exempt the applicant from having to comply with the permit as approved by FDOT.

MS. BELFLOWER: So it's that -- that's just saying a signal, it's not saying close the intersections on either side. It's not saying anything else that DOT may require in terms of the permit, driveway permit that DOT has.

MR. JACOB: Correct.

MS. BELFLOWER: It's just saying there has to be a signal to allow turn movements out of River Hall onto --

MR. JACOB: And the practical effect of that as indicated by a number of individuals is that

FDOT is going to make them do whatever they're going to make them do as far as the intersection, the signalization, and what movements they have to restrict east and west.

MS. BELFLOWER: Okay.

MR. JACOB: If I could just jump in here because I'm already talking. There's a Florida Administrative Code with regards to some of the questions that have been asked with who's responsible for the permit and the conditions of the permit, and I'll read that into the record as far as so it gives some people some closure to this issue and maybe even a moment of pause for some of their positions.

This is Chapter 14-96, the Florida Administrative Code, State Highway System Connection Permits. And specifically -- get the actual number for you. 14-96.007. Specifically, Subsection 8. It's entitled Permit Conditions. Skip the first sentence. Just get to the point.

The permit requirement shall be binding on the applicant. In that case, it would have been whatever that entity's name was at the time, the applicant's successors, whoever that may be, heir and assigneds, the permit application signatories,

and all future owners and occupants of the property.

So I would caution people from their positions, all future property owners, everyone within the boundaries of the permit. That would be the CDD, HOAs, property owners, including, you know, whatever the entities are named in this application.

So from the standpoint of this project, hopefully put this to bed, the applicant in this case is saying they will do it. Regardless of whether they think they're required to because of the bankruptcy, they're going to do it, and they're going to do it in accordance with FDOT's requirements, and under their permit, we're not responsible for that.

I just caution everybody, especially the hearing examiner's office, from trying to impose other permit requirements from other jurisdictions in our land -- in our resolutions because you can imagine the floodgates when all the other applicants and property owners want to come in and say we imposed this condition, and now the County is in essence in an area where it doesn't want to be and places where it's preempted and doesn't

have jurisdiction to enforce certain things, but in this case, tie it to adequacy for the infrastructure which you need. I think we're in a safe place.

MS. BELFLOWER: Okay.

MS. DENNIS: Ma'am? Ma'am? Can I say one thing? I think he said Highway 82 instead of 80. Do we have to correct that?

MR. SCHROPP: He did, but it's written as 80.

MS. DENNIS: Okay.

MS. BELFLOWER: He's dyslexic. You have to forgive him.

MS. DENNIS: Just wanted to be sure.

MR. JACOB: I'm just wanting them to make improvements on Highway 82. It's rationally related to the units.

If you want, I can give you this because Rob gave it to me and it's highlighted. You can have it for the record. It's the Administrative Code. You can take judicial notice of it.

MS. BELFLOWER: Yeah. I can take judicial notice off of the citation, I think, and if you think that the highlights are inappropriate for what you presented it, or I can take the actual document.

MR. JACOB: I will give you -- the highlights are fine. I just -- now I just disorganized it, but I'll give it to you when I organize it that you can have it.

MS. BELFLOWER: Okay. So this is Florida Administrative Code on Roadway Improvements.

MR. JACOB: State system.

MR. DEPEW: Permits, connection permits.

MS. BELFLOWER: It's Exhibit 4 of the staff exhibits.

MR. JACOB: I'll just give you the specific section, not the whole chapter.

MS. BELFLOWER: Thank you. Do you have a copy of the condition you read into the record, or is that some cumulative document that you all have to present?

MR. JACOB: I have a copy for you, but it really depends on whether we're going to give you what we have or whether you're going to ask us to provide you a final.

MS. BELFLOWER: Written submission.

MR. JACOB: Written submission.

MS. BELFLOWER: Okay. Then we'll hold off on that then.

Okay. Let me ask a question on -- probably

already said this. What is the time frame for your study? How far out does it go? In looking at future traffic, you have to project that for certain.

MR. LEUNG: The analysis horizon is 2021.

MS. BELFLOWER: Okay. I think that addresses the intersection, and that's the end of the road. I think that was all the questions or several people hit on the same thing, but we may end up having to come back to that.

Are you going to address the secondary access in the roads there or --

MR. SCHROPP: I think in terms of capacity, he's addressed where the traffic can go. Dave Depew is going to want to go through the secondary access and the location and issues that Mr. Brookes raised with regard to the Lehigh network.

MS. BELFLOWER: Okay. And the connectivity.

MR. SCHROPP: Yes.

MS. BELFLOWER: All right. I guess one question we missed with the engineer, but we'll come back. I'm sure there's going to be several that we missed, so --

MR. SCHROPP: Okay.

MS. BELFLOWER: All right. Anything further that you want to add at this point?

MR. LEUNG: No, ma'am.

MS. BELFLOWER: All right.

MR. SCHROPP: Okay. Next, if I could get Ken Passarella back up.

MS. BELFLOWER: We're going to have to end in 35 minutes, but we'll take a five-minute break.

(A recess was held from 3:54 p.m. through 4:01 p.m.)

MS. BELFLOWER: Okay. The last point that was made about having witnesses available and continuing till tomorrow, rather than trying to cram things in and address points and missing things, and then I get back where I'm contemplating going, oh, we don't know the answer to that, I would rather continue it to a different day than tomorrow. So I'm having my office check, give us four or five dates.

I don't think it's going to take all day, but I asked her to look for days that the whole day is open, and as soon as she gets that list, we will see which day works.

I recognize that the public has spoken. I know that you all would like to be able to come

back, and you're more than welcome to be able to come back. We will do our best to get a date that at least most of you will be able to come back on, but at this point, it's going to be between the applicant and the county staff and my office as to availability.

So as just talking about it and magically did they appear. We're looking at January 20th, which is a Tuesday; January 21st, which is a Wednesday; January 27th, a Tuesday; 29th which is a Thursday; and the 30th which is a Friday.

MR. SCHROPP: What was the last one?

MS. BELFLOWER: The 30th. I'm thinking I had something on the 29th, but -- 20th, 21st, 27th, 29th, and 30th. Let me just make sure.

All right. 29th is out. We do have a potential hearing that day.

MR. DEPEW: 27th.

MS. BELFLOWER: 29th is out.

MR. DEPEW: How about the 27th?

MS. BELFLOWER: 27th is okay.

MR. BLOCK: I'll cancel my doctor's appointment which is on there.

MS. BELFLOWER: 20th, 21st, 27th, or 30th. The preference is the 27th.

MR. SCHROPP: It is. I'm hearing that Mr. Barraco and Mr. Passarella can't be here, so if I can get Ken up first. Will we need him and Carl to come back on the 27th?

MS. BELFLOWER: I don't know because I don't know what questions we may have missed.

MR. BARRACO: I can work it out.

MR. PASSARELLA: I'm in Tallahassee.

MS. BELFLOWER: 27th works for staff, is that what I'm hearing, except that you need to cancel an appointment. 27th is preferable for you all.

Mr. Brookes?

MR. BROOKES: I can't do the 28th. I can do it the morning of the 27th. I don't know that I can participate anymore at this point.

MS. BELFLOWER: No, you can't, but I do want to try to time for everybody who wants to come back to listen to be able to listen, so I'm trying to be as accommodating as we possibly can.

MR. BROOKES: Just for listening.

MS. BELFLOWER: Yes.

MR. BROOKES: Because I can always get the transcript, so I don't want to hold everybody up because I won't be able to say anything anyway.

MS. BELFLOWER: So we're looking at the 27th.

Would it be -- is there -- your experts are not available all day, or would the afternoon be better?

MR. SCHROPP: Ken's in Tallahassee.

MS. BELFLOWER: How fast can you drive back?

MR. SCHROPP: Carl can be available. Carl can be available.

MS. BELFLOWER: Okay.

MR. BLOCK: Madam Hearing Examiner, the only thing I'm hearing from staff is that Rob will have started his new position. If we could finish any questions, I think there was only one question among all the rest that I heard, there was one question from the member of the public, and I think it was Mr. Brookes who asked the question, raised the question about the through capacity, if a traffic signal happened at River Hall Parkway and SR 80, does that change the through capacity of the roadway, and that was the only question I've heard directly to county staff on transportation issues.

MS. BELFLOWER: I -- it's -- I can't guarantee that that's all the traffic questions that we have. If we can have --

MR. BROOKES: I think I asked about the Lehigh

road network too.

MS. BELFLOWER: We need to talk about the secondary access and the impacts on the road. Is there anybody else on the staff that would have familiarity or would be able to get up to speed on this issue to be able to address any of the points? Or I know the position is open.

Sorry, Rob, we're not going to let you go. Just all there is to it.

MR. BLOCK: Only thing I can say, Madam Hearing Examiner, is that the Lee County Department of Transportation staff has reviewed this application and has provided a report, but they are probably not up to speed and have not been participating with the public hearing at the public hearing, so I don't know how they would be able to answer any questions.

MS. BELFLOWER: Okay. We will go with the 27th. I'm going to ask Rob to come up to finish the rest of the day. Well, you've got a witness that can't be here on the 27th.

MR. SCHROPP: But I don't know that -- I don't have a whole lot for him to address unless you do.

MS. BELFLOWER: Very, very, very, quickly, Rob, if you could come up. I just want

confirmation if you were in agreement with the statements that were made by the applicant's representative about traffic and if you would differ on anything that he said, and then if you could just very quickly address the through traffic.

MR. PRICE: Yes, ma'am. Rob Price, Development Services.

For the most part, I think I'm agreeable to what Steve had to say. The only thing I would say is obviously, that the adequacy issue that you came up with, the signal is deemed necessary just to reach the 1,999 units, so the signal's clearly necessary to get to the 2,695, so there is some sort of a tie to the need to have that signal in order for the roadway to adequately be able to handle all the additional traffic, so I mean, I think with our condition and with the understanding the applicant's going to move forward with the signal, you know, we're -- I think we're on a good track, you know, to getting the signal constructed as soon as we can.

The other thing that I would point out is when you read the Administrative Code, it says they will build it -- the developer will build it or

his successors, and in the event they don't, the State can build it and bill all the owners. So if it ever came to that, the State could go out, I guess, and build the traffic signal, or more likely scenario would be close the median opening, which would be cheaper, and bill the applicants and all the successors for the cost of those improvements.

Hopefully it doesn't get to that, but so that's just something else that you'll notice when you read the Florida Administrative Code with regard to state access permits.

I think you've been given copies of our staff report for the transmittal hearing, and we -- I do talk in my staff report about the through traffic on State Road 80 and what happens when you put a traffic signal on a road. Adding signals absolutely degrades capacity on an arterial roadway. Capacity is determined based on delay and seconds of delay. When you add traffic signals, you're going to introduce more delay. It's just common sense, and that's how it works.

There are safety concerns that arise when you add traffic signals, but the important factor is you're going to have more fatal crashes and more

serious accidents when there isn't a traffic signal than when you add a traffic signal. Typically, you will see an increase in crashes when you add traffic signals, but it will be less of the T-bone variety and more of the rear-end collisions which are safer and less fatal. They're not as serious as the -- as your collisions when you have an unsignalized intersection.

So you see an increase in crashes but a decrease in fatalities is what generally happens and a decrease in serious injury, but yes, it will degrade capacity, but the road is set up for this intersection to be signalized. It's always been contemplated to be signalized ever since the connection was made to State Road 80, so I don't really think it's relevant as to whether or not you can approve the additional units for River Hall. That intersection is going to be a signal whether you approve additional units or not. So that's really all I have.

MS. BELFLOWER: Okay. Did you want to ask any?

MR. SCHROPP: No, thank you.

MS. BELFLOWER: Okay. Thank you very much,

Rob.

All right. Then just to settle that point, we will not be finalizing the hearing tomorrow. We will be finalizing the hearing on January the 27th.

MR. SCHROPP: 9 o'clock.

MS. BELFLOWER: 9 o'clock. Let me hand this to her.

Okay. You want to get your --

MR. SCHROPP: Mr. Passarella? If I could because I don't really think there's a whole lot for him to address, but there were issues raised regarding large mammal management plans and what would be involved in -- to sort of set the stage, that is one of the added conditions in the staff report that a large mammal management plan as well as updates to other protected species plans be provided as part of the new area, River Hall II, and so I -- so in large part, the concerns are being addressed and would be addressed at the time the development order for the submittal of a large mammal management plan addressing bear, panther, and anything else that would be considered a large mammal.

I thought I'd get Ken just to describe what

typically would be part of that large mammal management plan and also details worked out with staff.

MS. BELFLOWER: Okay.

MR. SCHROPP: If there's anything else you want him to go into, that's fine.

MS. BELFLOWER: I'm not -- the fact is there's a condition that says you have to have a large mammal management plan to limit potential negative human/wildlife interaction, so whatever that is required to be is consistently applied to all developments. This is nothing special for this project or anything, is there, that --

MR. SCHROPP: There really isn't as far as I know, and Ken may want to opine, but as far as I know.

MR. PASSARELLA: That's correct.

MS. BELFLOWER: Okay. I think that the question that was asked is, is there going to be one, and the answer is yes,

MR. PASSARELLA: Yes.

MS. BELFLOWER: The condition requires that there is going to be one.

There were comments made about the effectiveness of handing out documents to describe

how you interact with animals and don't interact with animals and et cetera, and if you have any history of how that has worked in other projects or how the state or federal agencies address those sorts of interactions, that may be helpful.

MR. PASSARELLA: Well, the handouts that are going to be handed out, these educational brochures are developed by the Florida Fish and Wildlife Conservation Commission and the US Fish and Wildlife Service. And the Florida Fish and Wildlife Conservation Commission is big on education, educating the public on these large mammal and large mammal potential conflicts with humans, and there's no way to actually prevent it. It will happen on occasion, and it's going to happen in the future.

Their hope is to educate the public on how they should react if they were to encounter a bear or a panther. And so in most developments we're doing today, we have a large mammal management plan or a human/wildlife interaction plan where we have these educational brochures that are developed by the state agencies to help educate the public, and again, that's their thrust, the State's thrust, the agencies to educate the public

on what to do if they were to encounter an animal.

So we're only implementing something that they're implementing at their state level, at their agency level, so we carry that through to the local level as far as these individual developments that are being done, so we try to educate the residents of those developments of what to do in case they were to encounter an animal.

MS. BELFLOWER: Okay. So the protection of the habitat, the interaction with the habitat, the habitat areas are already set, and this request is not changing that.

MR. PASSARELLA: That's correct.

MS. BELFLOWER: Okay. I'm not -- I'm not sure if you're the correct person to ask this question of is -- the deviation is asking for or one of the deviations, two of them actually, to reduce the setback from area, indigenous areas, and some of them that are subject to burning. I don't know how to ask this question.

From a safety standpoint or from a protection of those habitats, the interaction between the management of those habitats with burning or just having the separation between units, what is the

effect of the reduction of the setback on those habitats, on each individual parcel or cumulatively in your opinion?

MR. PASSARELLA: Well, from a standpoint of prescribed burning of these habitats, there's a lot of things that go into looking at when prescribed burning is done and coming up with a prescribed burn plan for these areas. Has to do with fuel loading in these areas, how much fuel there is for a fire, wind direction, humidity, numerous things that go into play in this as well as looking at, you know, what are you managing the habitat for, how often do you want to burn these areas, what type of wildlife are you managing it for, so there's a lot of factors that go into the development of a prescribed burn management plan.

I can tell you from practical terms, burning around houses is very tricky, as you can imagine, but it has been done. There's a development in Collier County called Collier's Reserve that has a lot of palmetto type habitat inter amongst a lot of the houses and the golf course, and very similar to the type of palmetto habitat you have here, and they have done prescribed burns.

They've actually burned areas between houses, so it can be done.

It has to be done by a professional, of course, and it's done with a very detailed prescribed burn plan as part of that, but those things can be done. So it has been done in the past on other projects.

MS. BELFLOWER: Okay. Okay. There was a question asked about the gopher tortoises and the burrowing owl areas in the area that is River Hall II, and there was a question of whether there is going to be a buffer area around those habitats.

MR. PASSARELLA: When River Hall was originally permitted and designed, there was these large preserve areas that were set up for gopher tortoises and burrowing owls. Those are the native habitat areas, the indigenous preserve areas, and those are the dark green on the illustrative plans that you saw.

In the area that's going to be developed as River Hall II, it's currently disturbed area. It's partially cleared, some of the lakes have been excavated, so it's disturbed land. There are tortoises that have moved back into those areas where future development is going to occur.

There are burrowing owls in those areas where future development is asking to occur.

There's no proposal to preserve in that area that's already been designated for development. So prior to the development, as part of our protective species management plan, a survey of those areas will be done. Any gopher tortoises identified within the development area will be relocated to the preserve areas, so they will be moved out of harm's way and moved over to the preserve areas.

There is a state Florida Fish and Wildlife Conservation Commission incidental take permit for the project that allows the taking of the burrows. This was done under the old state guidelines. The State no longer allows for that, and we don't propose to take the tortoises. We will relocate them into the preserve area out of harm's way.

With respect to the burrowing owls, the burrowing owls will move from place to place, year from year when they create their burrows for nesting, so what we do in those areas is during the non-nesting season, when burrowing owls are not nesting, you obtain a Florida Fish and Wildlife Conservation Commission permit for the

removal of those burrows. You check the burrows, make sure there's no owls in the burrows, there's no eggs or anything like that, and then the borrows are collapsed and development occurs. If there are any burrowing owls or nests or burrowing owls or eggs in the burrow, you would not be allowed to collapse it or take the nest at that time, so you would work around it at that point. But all this is done during the non-nesting season when the owls are not using the burrows for nesting.

MS. BELFLOWER: Okay. That's -- the enforcement of the management plans and the handing out of brochures and et cetera, like, how are those provisions enforced? What's the process?

MR. PASSARELLA: A lot of times the handing out of the informational information is built into the HOA documents so that when somebody purchases a lot, they're given all this informational information, and it's done through that process.

MS. BELFLOWER: As far as you have a condition that says you have to have these plans, you provide the plans, would the plans have in them how the County is to make sure that you're

following the provisions of the plan, or is that through the State and the County just monitors it or --

MR. PASSARELLA: Well, when we go for the protected species management plan that's implemented that we have to provide at the time of development order, we would prepare that management plan, that protected species management plan. It would be reviewed by county staff at the time of the development order, and then we would implement that plan prior to and during construction of the project, and the follow-up, if there's any follow-up monitoring after that, the County administers that, so we'd be dealing directly with the County.

If the management plan says you have to obtain a state permit for the burrowing owl burrows or the gopher tortoises, that we would then go to the State and get those permits. That requirement would be spelled out in the management plan.

MS. BELFLOWER: Okay. And if there was a provision that went beyond the initial construction, that would be enforced through typical code enforcement processes?

MR. PASSARELLA: That's correct.

MS. BELFLOWER: Okay. That was one of the questions about how is it enforced.

Let me see what else we had on animals. Don't want to lose you and come up with a question here. I think that was it.

I saw the County. Do you have any comments or anything that you wanted to add to what was said or have any questions on what he indicated?

MS. SWIGERT: No, ma'am, I do not. I agree with everything he said. Becky Swigert for the record.

MS. BELFLOWER: And you swear?

MS. SWIGERT: I swore yesterday, yes. I don't swear regularly though.

MS. BELFLOWER: Okay.

MS. SWIGERT: I try not to.

MS. BELFLOWER: So you agree with what he just described?

MS. SWIGERT: Absolutely, and the County does have enforcement measures, and we would go through the code enforcement process.

MS. BELFLOWER: Okay. All right. Then I thank you.

MR. SCHROPP: Just for the record, I'll note in Mr. Brookes's questions, he had denoted for

Mr. Passarella in terms of how many acres of wetland and things of that nature. We can answer those. I don't know that Ken needs to ultimately be here for that.

MR. PASSARELLA: I'd be happy to try to answer those if you need me to now at this point.

MR. SCHROPP: I guess in terms of what's there in terms of wetlands based on your ground and field surveys.

MR. PASSARELLA: Within the area that's under the zoning, there are no wetlands. The wetlands are all within the designated indigenous preserve areas.

MS. BELFLOWER: Okay. Okay. Some of these look like plan amendment questions.

MR. SCHROPP: They are. They are.

MS. BELFLOWER: Okay.

MR. SCHROPP: Just and the terms of the number of wetlands on the entire site, I think you calculated those 181.

MS. BELFLOWER: I think the 181 was designated wetlands under the Lee Plan, is that --

MR. SCHROPP: Which would also be under the RP as well, I believe.

MS. BELFLOWER: Okay.

MR. SCHROPP: Water management permit.

MS. BELFLOWER: Are you going to have Dr. Depew or Ms. Ekblad answer the question about the numbers and the change in numbers and the points that Ms. Thomas raised in terms of some confusion?

MR. SCHROPP: Yes. That's not a Ken issue.

MS. BELFLOWER: That's not Ken. Okay. Okay. Thank you.

MR. SCHROPP: Thank you. You had one question for the engineer, Mr. Barraco.

MS. BELFLOWER: If I can find it again. Oh. The point was made about the infrastructure having been in the ground for ten years, some of it, and it's not been fully used. I'm thinking sewer lines, waterlines. What is the situation with infrastructure? In another life, I remember there were issues about you put dry lines in, and they deteriorate if they're not used and that sort of issue, so is there a concern with ten-year-old infrastructure?

MR. BARRACO: For the record, Carl Barraco.

No, there's not. I think the infrastructure they're speaking of would be the water and sewer primarily. Much of that has been turned over to Lee County Utilities for operation and

maintenance, and they're doing that. Any other infrastructure would have to be re-tested before Lee County Utilities would accept it for operation and maintenance, so I really wouldn't anticipate any problems with any of the infrastructure, and by the way, with today's common materials, ten years is really not a long time, if it was in fact done ten years ago.

A lot of this was done five years ago, six years ago, so it's not all ten years, but to answer your question, a broad view, I have no concerns at all with the condition of any of the infrastructure.

MS. BELFLOWER: If there was a failure of a facility that had been turned over to the County, is there some sort of bond or some time period in which it cannot fail without the applicant being responsible for maintaining it or --

MR. BARRACO: There is. It's generally a year.

MS. BELFLOWER: A year.

MR. BARRACO: So anything they have, again, anything they have, they make sure it's in operation. And if my memory serves me correctly, there are some waterlines which we did decide to

shut down and take off line and because there was no use, and the problem with leaving something like that on line is not necessarily deterioration of the facility, it's the deterioration of the water in the pipe, so and those will just re-tested. That's fairly common, and I really don't believe there's any issue with any of the infrastructure due to age.

MS. BELFLOWER: Okay. Thank you. Okay. At this point, there were several issues that we had last -- yesterday, in yesterday's discussion that we said that we were going to put aside. There are many questions that I have down that need to be addressed. Some of them weren't questions, but some of them were points that I would like your response to which you may be doing in your normal rebuttal anyway.

Do you want to go through them now?

MR. SCHROPP: Absolutely, if you have time and energy.

MS. BELFLOWER: Well, there's the question.

In terms of the points that I had that needed to be addressed, I need evidence of compliance with the Lee Plan and Land Development Code on connectivity without the trail.

MR. SCHROPP: Without the trail.

MS. BELFLOWER: So that needed -- we needed corrections of your narrative or changes given that.

The question about the two family and the zero lot line in the R-1 areas, as to whether you're intending that and how you need to change the conditions to address that.

The open storage in the RPD. If it's not shown on the master concept plan, I don't know if you found it on the master concept plan, if it's agreed that it's not a use allowed even in R-1, RH-1.

The wording for the traffic signal, you have that, but you're going to submit an actual copy of it.

The question about setbacks, the need for the deviations, whether they are vested or not vested or inclusion in this rezoning does something more than what you already have.

Amendments to the master concept plan to label uses. One in particular was the teal area that we talked about, and to be sure that there are no changes to uses that are allowed, and the one example was the one area that was shown as RH --

RMH-1 or RH-1.

MR. SCHROPP: RMF.

MS. BELFLOWER: RMF. And you had shown as R-1.

So those were the issues to address that I saw last night.

Confirmation that there is a condition on a hundred percent native plants, you may be able to answer that one very quickly. Is that a condition -- that's an existing condition, I thought, but I couldn't find it when it was being asked. So if you could just give me the condition number on that.

I think the issue about Hickey Creek Road being used for construction access was addressed. If you wish to say anything more on that.

We had several people that asked about the viability of the southern access as a true access both for emergency vehicles and as a practical connection for the people in the southern area, or if it's just a connection in name only.

There was a suggestion about progress report, I think. I believe that was with the traffic signal and requiring that there be some type of maybe every six months or something to report on

where the -- it stands in getting the traffic improvements in, and I think that would also apply to the secondary access as to where you stand, and this was just a suggestion I heard from a neighbor. So if you would respond to whether you think that's an appropriate condition.

The question that Ms. Daniels had late that Michael read for us that I didn't get down fast enough, but something about communication with some drainage entity that you may have the wording and we can get the transcript. I think he gave her back her copy, but that question needs to be answered.

MR. SCHROPP: As I recall, that was have we discussed with the East County Water Control District crossing the canal for the secondary access point.

MR. JACOB: Correct.

MS. BELFLOWER: I think we got the animal questions answered, I hope.

There was a discussion about using impact fees. I'm not sure that I heard the testimony the same way that the person that asked the question was, but it would be helpful to have some discussion about how the improvements, all the

roadway improvements that would -- may be needed, whether they come under impact fees, whether they're something that you count on or -- to the degree that it is relevant to the rezoning, if you are saying that you don't have to do anything more than your impact fees to pay for the improvements, and if there's not enough impact fees, then you don't have to pay for the improvements, then -- and I don't think that's what you're saying, but there was a suggestion that there was a tie between impact fees and paying for the improvements.

There was a question about how the promises that are made, the commitments that are made will be enforced. I think I know that it is through the code enforcement process. If you want to elaborate on that, I'm just telling you the questions that I heard.

There was discussion about reliance upon the zoning plan approvals in terms of the people who live in River Hall currently and the ability to change plans that you may want to address.

There were discussions from a couple of people about a large number of units having been built in the area, I mean, been approved in the area but

not been built, that there's an excess capacity or excess availability of units, and that their suggestion is that that does -- that indicates that no more should be approved until that capacity is used up. I think that was the gist of the questions. I don't know that there was a particular question, but there was a point made that I would like to have your point of view on that.

Okay. The point about infill, and your consultants did repeatedly use the word that this is an infill area. I would like to understand what the applicant's perspective is as to what that means. Is that a significant term? Is that a hurdle that has to be overcome to do something under the plan? Is it just a convenient way of describing? Is it just something that sounds good from plannerspeak? So I'd like to understand the applicant's perspective in calling those areas infill.

To the degree we do not have the acreage figures, and I think we do, the acreage of the actual zoning request as it currently stands and the acreage of the Lee Plan proposal as it currently stands, there was some concern about

different numbers found in different places, and I know this has been an evolving thing, so if we can get just a clear statement of what the numbers were that we're going with.

We talked about having a condition on the accounting of keeping things straight, so you may want to draft some language on that.

The question about shifting from suburban areas, I'd like staff also to weigh in on the question about whether or not if they don't own a suburban parcel, whether they can transfer density from -- if it gets to the point that it's possible to transfer density under that policy, whether they have to own the parcel that is transferring from or exactly how that works.

What the applicant's position is on what underutilization means because you did use that term and talk about underutilization as a justification.

Mr. Brookes asked for financial assurances on all the conditions. If you would just address that.

Address, again, the Table(1)(b) if the plan amendment is approved and where that would stand so that we can make the finding of consistency

with that.

The secondary access, whether or not you know at this point and whether it's appropriate to condition whether or not it will be manned or the emergency services have access. I believe I saw something in some of the documents about that, that the school buses will have an access clicker or some way of getting in, and then a KNOX-BOX, but if you would just address that.

And conditions to require full compliance with the indigenous area setbacks that don't get deviations and the six-to-one slope compliance. I think we have addressed that, and if you want to say you believe it's been addressed sufficiently, that's up to you.

The impacts of multi-family on -- in the CPD on the River Hall Parkway, whether or not that was taken into consideration in the density calculations, whether it would make a difference if those trips are up to the front versus in the southern area where they may be more likely to use the southern access. I just don't know the question, whether that was addressed in the TIS or whether it would make a difference.

MR. SCHROPP: Whether the potential use of the

CPD area for residential was taken into account as part of the TIS?

MS. BELFLOWER: Correct.

MR. SCHROPP: Okay.

MS. BELFLOWER: Now, those would be multi-family because that's all that allows, and I know multi-family has a lower traffic generation, so that may wash out, so just whether -- the question was raised as to whether that was addressed.

And then I think the rest were to do with the traffic light, and we addressed those.

Did anybody else have anything else that I missed that -- no? Silence.

MR. DUNN: There was -- and we can address it. There was some questions about Table 1(b), and there was -- they read from the staff report, the October 8th planning staff report.

MS. BELFLOWER: So if you'd be prepared to address that. Okay.

I think this will also give everyone time to review what we've been calling the hex document, the conditions. Be sure that the wording is as you had anticipated them and any changes that you think are appropriate to be made because we will

be discussing the wording on the conditions.

I will try to take in consideration all the things I've heard. I can't say leaving the hearing that I would not recommend some changes to these conditions based upon what I reviewed, but we can get them so that we at least have the staff and the applicant's agreement on wording of them so that I have that information to look at.

Okay. Anything else that anybody can think of at this point that we need to be prepared?

Do you want to have the transcript? You can pay to have it expedited if you would like.

MR. SCHROPP: Yes. In fact, I will do that now so that all we have to do is the last installment.

MS. BELFLOWER: Okay.

MR. SCHROPP: You understand. She can go ahead and do that now and expedite it.

MS. BELFLOWER: So you need to make the arrangements with Martina about paying for that. We will indicate that it is going to be expedited. And when it is prepared, they will provide a copy to us, and we will let you know, and the county staff and the public can have a copy of it at that point as well.

MR. SCHROPP: Great.

MS. BELFLOWER: Do you see any issue in having it expedited before the 27th?

COURT REPORTER: There's no problem with that. It should be by next week.

MR. SCHROPP: Will it come to you first or will you send it to both of us or how --

MS. BELFLOWER: I think it typically comes to us with a copy for you, but we receive your copy.

MR. SCHROPP: And then you send it to us.

MS. BELFLOWER: Yes, yes. Because she's -- they're under contract with us. So --

And I may be totally wrong about that, but close enough. Okay.

Then we will continue this hearing until 9 o'clock on January 27th.

MR. SCHROPP: Thank you very much.

MS. BELFLOWER: Thank you.

(The hearing adjourned for the day at 4:44 p.m.)

* * *

STATE OF FLORIDA)
COUNTY OF LEE)

I, Kathy Nicholson, Certified Realtime Reporter and Notary Public, State of Florida, do hereby certify that I was authorized to and did stenographically report the foregoing hearing; and that the foregoing typewritten transcript, consisting of pages 268 through 544, is a true record of the proceedings.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with this action, nor am I financially interested in the action.

Dated this 21st day of January, 2015.



Kathy Nicholson, RPR, CRR
Notary Public, State of Florida

* * *

LEE COUNTY HEARING EXAMINER

CASE NO. DCI2013-00003

APPLICANT: GreenPointe Communities, LLC
in reference to River Hall

Transcript of proceedings before Laura B. Belflower, Deputy Hearing Examiner, 1500 Monroe Street, Fort Myers, Florida, on January 15, 2015, commencing at 9:00 a.m.

WORD INDEX

VOLUME II

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LEE COUNTY HEARING EXAMINER

CASE NO. DCI2013-00003

APPLICANT: GreenPointe Communities, LLC
in reference to River Hall

Transcript of proceedings before Laura B. Belflower, Deputy Hearing Examiner, 1500 Monroe Street, Fort Myers, Florida, on January 27, 2015, commencing at 9:00 a.m.

VOLUME III

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JANUARY 27, 2015, DAY THREE OF HEARING

MS. BELFLOWER: Okay. We will get back on the record. This is -- what day are we? January 27th, DCI 2013-0003, the River Hall rezoning, and where we are at this point is that the applicant is in the midst of their rebuttal, and unless there's any housekeeping issues or anything that we need to address before we get started that you know of.

MR. SCHROPP: Not that I'm aware of.

MS. BELFLOWER: Anything, Chip?

MR. BLOCK: No, ma'am.

MS. BELFLOWER: Then we'll turn the floor over to you.

MR. SCHROPP: Good morning. For the record, Russell Schropp, Henderson Franklin firm here in Fort Myers, representing GreenPointe Communities which is the applicant in this rezoning request.

We commenced our rebuttal at the close of testimony on the 15th and would like to pick up now, and as you may recall, at the close of the hearing on the 15th, there was identification and recitation of about -- it actually turned out to be about 26 conditions that you picked up along the way.

MS. BELFLOWER: Or questions.

MR. SCHROPP: That were raised during the course of the hearing --

MS. BELFLOWER: Okay.

MR. SCHROPP: -- from various parties including the hearing examiner and those who spoke towards the application.

We looked at a way to organize the questions in some fashion that might provide some commonality to groups of questions, but we really couldn't find any, so some of them kind of naturally flew together and some didn't, so basically what we did, Madam Hearing Examiner, and the way we'd like approach today is we took those questions, we'll address them as they were identified at the close of hearing on the 15th in that order.

MS. BELFLOWER: Okay.

MR. SCHROPP: And it may be somewhat methodical, but it will at least make sure we cover everything and there's no jumping back and forth between questions if that's acceptable.

MS. BELFLOWER: That's fine with me. Of course, I rearranged them in a different way, but we'll get it all covered. That's all right.

MR. SCHROPP: We can go on the fly if you like, and we can adjust to how you like to cover.

MS. BELFLOWER: You had several witnesses that had not been able to present their rebuttal testimony.

MR. SCHROPP: Right.

MS. BELFLOWER: And if you want to have some of the questions answered in their portion of it, that's fine, or if you just want to go through and bring up people as you need to, it's totally up to you.

MR. SCHROPP: I would prefer to do that. I think that's how we organized, and honestly, I'm going to cover the bulk of the questions because most are them are factual, some are planning related, and Dr. Depew will cover them, and some are traffic related, and Mr. Leung will cover them.

I think we covered for the most part the environmental questions that were asked of Mr. Passarella, and there may be some others that we need to get up through the course of the discussion, but that's how we'll proceed then.

MS. BELFLOWER: Okay.

MR. SCHROPP: We did prepare an exhibit, a

rebuttal exhibit which basically takes the questions, provides written answers, which I'll go through to a certain extent today along with additional attachments to the exhibit. I was hoping this could be just a single exhibit with all the attachments to it that kind of identified the answers to the questions.

MS. BELFLOWER: Okay.

MR. SCHROPP: And if I could, I'll present that now.

MS. BELFLOWER: All right. So this is a composite exhibit, okay. GreenPointe's rebuttal exhibit.

MR. SCHROPP: Exactly.

MS. BELFLOWER: This will be Applicant's Exhibit Number 7.

MR. BROOKES: Are there any extra copies?

MR. SCHROPP: I have one.

MS. BELFLOWER: Has -- I take it staff has not seen this either?

MR. SCHROPP: Actually, I did provide copies to the county attorney and to Mr. Block yesterday afternoon.

MS. BELFLOWER: Okay.

MR. SCHROPP: About 1 o'clock, 1:30.

MS. BELFLOWER: So if you have an exhibit for Mr. Brookes, that would be great.

MR. BROOKES: Thank you.

MR. SCHROPP: The -- with any -- without any further explanation, we'll just move right into the questions.

The first question addressed the compliance with the Lee Plan and Land Development Code without reference to the connectivity arguments that were associated with the State Road 80 bike path trail that was part of the proposal, but was not included in the final version of the staff report. This one actually is a planning question, so I'd like Dr. Depew to address it.

I will note that the first two attachments in the exhibit, Exhibit A-1 or Attachment A-1 and Attachment A-2 is a revised narrative that addresses the arguments without the reference to the trail on State Road 80. A-1 is a clean copy. A-2 shows the red-line changes that were made, so I didn't know which one you prefer, so I gave you both.

MS. BELFLOWER: Thank you.

MR. SCHROPP: Dr. Depew.

DR. DEPEW: Do you want me to go up there or

do it from here?

MS. BELFLOWER: You can do it from there if you like. It's totally up to you.

Everybody gives you have grief; right?

DR. DEPEW: David Depew. I understand I'm still under oath, Madam Hearing Examiner. Here for the applicant.

As Mr. Schropp indicated, there's a revised Attachment A-1 and A-2. One is a clean version. One is the -- I'd like to say red line, but it's actually a blue line, I believe, instead of a red line, but it's the underline, strike-through modifications to the applicant's report based on removing any of the references to the bike path and trail along State Road 80.

In terms of providing testimony, I would note that both commercial, residential, and recreational uses that are part of the River Hall development have been designed internally to be interconnected by a series of multi-use trails, paths, as well as the roadways themselves. You'll find an internal system of pedestrian ways and bikeways throughout the development to promote internal connectivity, and that would be the first item that I would tell you in terms of

connectivity is a characteristic of this particular development.

It's intended to be a lifestyle type of development, allowing different ages and different demographic groups to reside in this particular development, and as such, it promotes that kind of healthy lifestyle. So the connections internally to the various amenity areas and the various recreational opportunities were clearly part of the overall design in this particular development.

The next thing I'd like to point out is the connectivity to the institutional uses which is the -- such as the school that's a part of the development have been also dealt with as part of the site plan and providing interconnections with the various elements of the community itself as well as providing opportunities for future connections down the road should ultimately the residents wish to do that.

Those future connections could, for example, be along the power and light -- the Florida Power and Light easement area going all the way over to the east to Buckingham Road. There is a way to connect up, a right-of-way to ultimately connect that to that in some point in the future should

the residents choose to ultimately do that sort of thing.

MS. BELFLOWER: To the west; correct?

DR. DEPEW: To the west.

MS. BELFLOWER: I was confused.

DR. DEPEW: Well, I'm sorry, I may have said east. I do that occasionally.

There is the possibility of running the connection over to the east. County staff hasn't been particularly supportive of that because the park that exists over here, the Hickey Creek Mitigation Park, they feel that there's generally a need to control access to that park, and so they feel that a connection of some sort coming along the north side of the development going over to the east side is going to be something of a security problem for them with Hickey Creek Park, but it does, nevertheless, exist if at some point in the future there is a potential for doing that as well, ultimately, to ultimately get into the water control area and Hickey's Creek for potentially for kayaking, so there is a potential for that at some point should the residents consider to work with that and work with the county on that.

Additionally, I would note with the approval of the Olga CPD across the north side of State Road 80, the internal connections through the project ultimately now have an option to connect with a commercial area on the north side of State Road 80. So from a connectivity standpoint, we think that's also an element that should be considered and is part of the overall design in terms of what ultimately could evolve as a commercial node at this particular location which in reality is an extension of the commercial node that exists at State Road 80 and Buckingham.

Again, without getting into responsibilities, the potential, ultimately, to connect along State Road 80 also still exists. That hasn't been removed from the options there. It's not part of this particular development, but there's been nothing to forestall any of the potentials for ultimately making those connections.

Finally, I would suggest that connectivity is also enhanced through the installation of the second access along the southerly side. The exhibits include Attachments D and -- I guess it's C and D.

MR. SCHROPP: C and D.

DR. DEPEW: C and D that talk about the connections through to the south. It gives you some admittedly small pictures, and I have to get my glasses out to actually read those and look at them, but when you do your site visit, you'll see that. I mean, the roads through that particular area of the Lehigh Acres development ultimately do connect along Cemetery Road over to Buckingham or to the west or to Sunshine to the east, and by advancing the provision of the secondary access as this particular request does, again, what this does is increase connectivity from the development itself to the south into that street network that is along the south side of the development.

Additionally, should the residents desire to use any of the forms of mass transit, again, there is the potential for doing that. LeeTran shows that they are -- have a little bit over 80 percent excess capacity in this particular route. The bus stop is eight-tenths of a mile to the west of the intersection of River Hall Parkway and State Road 80, and so that -- this development also provides for the potential, ultimately, to connect over to the mass transit stop and also provides the opportunity, if and when mass transit becomes an

issue, to accommodate mass transit actually within the public sections of the roadway for River Hall Parkway.

The roadway design itself is robust enough to handle a mass transit stop, and so it is feasible, ultimately, should the demand exist that the bus route could be routed down around the school and then back out to State Road 80. The intersection improvements should facilitate any kind of connection like that if, ultimately, that is desired and the residents deem that is something they would like to work with LeeTran about.

Right now, frankly, there aren't enough residents, I suspect, to warrant that, but ultimately, if this amendment is approved, we believe that that certainly would be a potential and, again, assist with this issue of connectivity.

That's all I had on the connectivity issue. I don't know if you want me to go into anything else at this point.

MR. SCHROPP: I have no questions. If you have.

MS. BELFLOWER: Does staff have any questions?

MR. BLOCK: I do not have any.

MS. BELFLOWER: Just real quick, and I'm not sure whether you're the right person or the transportation person. You mentioned about the potential connectivity along State Road 80. Do you know whether or not sidewalks are required to be a portion of the roadway improvements that have to be made with the traffic signal, the turn lanes, and whatever that have to be -- does that include sidewalks?

DR. DEPEW: I do not know for sure. I would doubt that will be the case, but Steve may be better able to answer. Yeah, it's not part of it. Normally, sidewalks are not part of signal design.

MS. BELFLOWER: Okay. And the Attachment C and D that you referenced in the connectivity to the south, is that going to be your answer to the one question about the viability of the secondary access connectivity?

MR. SCHROPP: That's part of it.

MS. BELFLOWER: But there will be more discussions?

MR. SCHROPP: There will be more.

MS. BELFLOWER: Then I'll save my question until that comes up. All right. Thank you.

MR. SCHROPP: We go on to question two. The

question was asked whether there was any plan for two family or is there a lot line units in the single-family areas of the project, and the answer is no. The two-family and zero lot line product would only be constructed in the RMF-designated portions of the project.

The third question was whether there was any open storage RPT portion of the project. If so, can it be deleted from the schedule of uses?

We're aware of no areas within River Hall, the RPD sections of River Hall that are used for open storage at this point. There is a golf course maintenance facility which would have attendant storage to it for that type of equipment, but that area is actually in River Hall, what you refer to as River Hall I. There are no areas in the RPD area of River Hall II that will be used for open storage, so if you want to include a condition, something to the effect of open storage is not a permitted use within the RPD portions of River Hall II, that would be fine with the applicant.

I don't think you'd want to address River Hall I since that is not part of the application here today, but that would be our suggestion.

MS. BELFLOWER: Okay. And if you don't mind,

I want to turn to staff on the question because the way it's written in the schedule of uses, it says open storage as shown on the Master Concept Plan. If there is no open storage shown on the Master Concept Plan that was approved in 2005, then that is not a use that is allowed under even the River Hall I; is that correct?

MR. BLOCK: For the record, Chip Block.

Madam Hearing Examiner, I would take the same position as Mr. Schropp from the standpoint of if you want to delete it out in River Hall II because that's the property that we're talking about. The intent is -- as part of this process as I've understood it -- is not to make any substantive changes to River Hall I, and I do not want to put the County in any position by a deletion of a use that might be in River Hall I by taking away a right that they still might enjoy, so I would just -- if I could suggest we concentrate on River Hall II and changes, and we would have no objection to a condition as Mr. Schropp has stated.

MS. BELFLOWER: So in the schedule of uses, when it mentions storage open, that would be added, limited to locations shown on the MCP which it says right now and then on the MCP in the River

Hall I area.

MR. SCHROPP: Right.

MS. BELFLOWER: And then that way if it's not shown in the MCP and River Hall I area, which it isn't currently, then it wouldn't be allowed.

I mean, arguably, if they came in and changed the Master Concept Plan and convinced the staff they should be allowed to change the Master Concept Plan to add outdoor storage.

MR. BLOCK: I understand where you're going with this, Madam Hearing Examiner. I don't have any problem with still saying that it's allowed in River Hall I, but I probably -- in an overabundance of caution, I would still maybe suggest following Mr. Schropp's proposal and saying it's not permitted in River Hall II.

MS. BELFLOWER: Okay. That's fine. So we'll put that qualifier in, River Hall I, and not permit it in River Hall II. Okay.

MR. SCHROPP: The fourth question got to the affording for traffic signal condition that we had a lot of discussion on the 14th and 15th, and it's Condition 10 in your Exhibit Number 2, Text Exhibit Number 2.

Mr. Jacob and Mr. Price during the hearing

last -- two weeks ago prepared some modified language for that condition that we've reviewed and acceptable as reproduced in the written answers to the questions here, but it basically reads, based on the intersection improvements identified in the applicant's TIS as being necessary for the project, a traffic signal is required at River Hall Parkway/State Road 80 intersection.

Construction of the signal must be completed within 12 months of the date of this resolution. In the event the signal is not constructed within 12 months, issuance of local development order approvals, excluding development orders only authorizing construction of infrastructure or building permits within River Hall II development, will not be granted until the signal is constructed.

The director of community development may authorize an extension not to exceed six months if the applicant demonstrates a good faith effort to complete the construction of the traffic signal.

Please note that this condition placed by Lee County as part of this rezoning does not exempt the applicant from having to comply with the

permit as approved by FDOT.

The intent here was to give deference to the permitting process that FDOT controls and not the County, but also to ensure compliance with the condition on behalf of the applicant by holding up development orders and not allowing issuance of additional development orders or building permits in River Hall II if the signal is not constructed within 12 months or as extended.

MS. BELFLOWER: Okay. Staff have anything you want to add to that?

MR. BLOCK: No.

MS. BELFLOWER: What do we do with the existing condition which controls River Hall I which the last portion of the sentence or the last sentence of it that existing condition says, additional conditions consistent with the Lee County LDC may be required to obtain a local development order. So there is a limit in River Hall I development orders. There's a reference to the developer must pursue this access approval with Florida DOT. Approval of the zoning request does not address mitigation of the project's traffic.

It's very general, very open, but it does have

a reference to the fact that additional obligations may be imposed on development orders in River Hall I which does that have a role? Should that remain as controlling in River Hall I?

MR. SCHROPP: Certainly, there's the potential for additional development orders in River Hall I or modifications to development orders and things of that nature, and yes, so I would think that condition still needs to be in there, but can you help me find it?

MS. BELFLOWER: Yeah, the wording that I have is approval of this rezoning request does not address access onto State Road 80, comma, since Lee County has no jurisdiction over that roadway. The developer must pursue this access approval with the Florida Department of Transportation. Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the Lee County LDC may be required to obtain a local development order.

That's from the 2005 resolution.

MR. SCHROPP: And that's fairly standard language in every PD zoning that I think I've seen in the last 15 years probably, and I don't know

why it would need to change.

MS. BELFLOWER: Okay.

MR. SCHROPP: I think it's entirely consistent with what the County's policy is and the way it's been addressed.

MS. BELFLOWER: So that should stay for River Hall I and II?

MR. SCHROPP: And II.

MS. BELFLOWER: Okay. And then this will be an additional condition specifically addressing the traffic signal which is only an obligation of the River Hall II developer.

MR. SCHROPP: Would only impact potential issuance of development orders and building permits for River Hall II.

MS. BELFLOWER: That portion of it would, but the first condition said the developer must pursue an access approval with FDOT, which they did.

MR. SCHROPP: Which has been approved, yes.

MS. BELFLOWER: But that is an obligation for the successor developer entities that may not only be your client.

MR. SCHROPP: I understand, but it always has been, and I think the condition has essentially been -- that requirement has essentially been met.

The access was granted onto State Road 80.

MS. BELFLOWER: Okay.

MR. SCHROPP: If you want to view it that way, yeah, that particular portion of the condition is probably a nullity at this point.

MS. BELFLOWER: Okay.

MR. SCHROPP: But it has been complied with.

MS. BELFLOWER: And the enforcement of the conditions on that access approval is up to DOT?

MR. SCHROPP: Yes. I would view it that way.

MS. BELFLOWER: Does staff have an opinion on what, if any, portion of this condition should remain and whether it should apply to River Hall I and/or II?

MR. JACOB: Delete it.

MS. BELFLOWER: Delete it?

MR. JACOB: It's just commentary. It's not even a provision.

MS. BELFLOWER: What about the provision about additional consistence may be -- conditions may be required to acquire a local development order?

MR. JACOB: That's just staff's commentary. It may be required, may not be required. It's under development standards, anything may be required as additional conditions. So it's just

staff making an attempt, it looks like, to just state the obvious. Has no more effect as far as the access point, as Russell already indicated, and the rest is just commentary.

MS. BELFLOWER: Okay. That's Michael Jacob for the record.

MR. JACOB: I'm sorry.

MS. BELFLOWER: So you are in agreement with the way I had originally drafted it in the Hex Exhibit 2 of just taking that out completely and replacing it with this new language that Mr. Schropp just read?

MR. JACOB: That's correct.

MS. BELFLOWER: Okay. Okay. Do you --

MR. SCHROPP: That's fine with us.

MS. BELFLOWER: You don't care either way. I just didn't know whether this created an obligation under the existing River Hall I that you -- that your client is not relieving that obligation. I don't think your client is a developer of all of River Hall; correct?

MR. SCHROPP: Not anymore. No, actually not. To me, it was a condition that has already been in substance fulfilled.

MS. BELFLOWER: Okay. All right. That

perhaps is the answer, and Mr. Jacob's point about whatever obligations there are, they exist with or without this condition.

MR. SCHROPP: Correct.

MR. JACOB: Similar to this condition. You say you have to comply with the LDC at the time of development order. Okay. You have to comply with the LDC.

MS. BELFLOWER: You don't know how many cases people argue that they don't though.

MR. JACOB: I know.

MS. BELFLOWER: Okay.

MR. SCHROPP: All right. The next question in the series was whether GreenPointe really needed or wanted the additional deviations for the setbacks that were requested. What is GreenPointe's position on this?

From a legal standpoint, there was some discussion, I think, at the hearing as to whether the setback deviations were actually needed because the lots existed and were platted and would be potentially vested from the setback requirements that came into effect around or after the approval of the plat.

And Mr. Jacobs expressed the opinion that

platting in itself and by itself is not going to vest these units from those setback requirements without anything else because there were no building lines shown on the plan or anything that would denote where the building would go or dwelling unit would go.

As you know, the application of vested rights case law is extremely fact sensitive is probably the best way to put it, and you can make the case, I think, either way, but I actually concur with Mr. Jacobs -- Mr. Jacob. In the grand scheme of things, I think it would be hard to say that these lots are vested from the requirements of the setbacks from which we've asked for deviations, so our legal position or our position is that we would request that they be considered as requested at hearing and the application.

However, if you determine that you think you can make a determination that they are vested from the requirements and want to deny them on that basis, I request that you express that in your recommendations so that that can be carried through to the zoning resolution ultimately, so for posterity sake, there's no issue as to whether we need to comply with the zoning setbacks.

Otherwise, we'd request that they be approved.

MS. BELFLOWER: Okay. Staff want to add anything to that point?

MR. JACOB: No, ma'am.

MS. BELFLOWER: My two concerns, number one, I don't think that I can declare that they're vested one way or the other, so I think that that's outside my ability to do that. If there is not going to be a reliance on the concept that these were platted and developed with the idea that they would not be held to the standard, that's what the deviation has justified.

Basically, the deviation says, well, we're really vested, but we just want you to put another stamp on it saying yes, we really are vested, so if the vested character of it is not enough to control the day, then I'm going to need a little bit more evidence on the justification for why this is necessary under the criteria for the deviations. So I don't know if you want to do that now or if you want to hit it later.

MR. SCHROPP: I could give Mr. or Dr. Depew and Ms. Ekblad a little time to think. We can come back to that.

MS. BELFLOWER: We've got lots that had a

specific situation, and then I think there was a more general everything else, and how do these lots stand different from the lots that are in River Hall I that also perhaps was some sort of expectation, and if they're not locked in based upon the status -- if they're not vested, then what's the justification for them?

MR. SCHROPP: Okay.

MR. JACOB: May I jump in here? I'm trying to read from the language that you had in your conditions. It looks like this question applies to deviation five and six. It says deviation five is already --

MS. BELFLOWER: Six.

MR. JACOB: ADD 2007, deviation sought relief. Seems that was already approved.

MS. BELFLOWER: I think six and seven. Six and seven.

MR. SCHROPP: Five and six on the Master Concept Plan, but six and seven in the hearing examiner's --

MR. JACOB: Nevermind.

MR. SCHROPP: -- write-up.

MS. BELFLOWER: Yes, the five was -- actually, they haven't been approved. The way the staff

wrote it up, they wrote it up as approved, but five has not been approved --

MR. JACOB: Okay.

MS. BELFLOWER: -- either. It's proposed. Well, now, let me clarify that. It was approved in the ADD.

MR. SCHROPP: In the ADD, yes.

MS. BELFLOWER: So it is approved by staff. It has not been recognized in the PD. It was done through an ADD. So five is approved. And six is new completely --

MR. SCHROPP: Yes.

MS. BELFLOWER: -- to address the lots that are in River Hall II that have this situation. So those are the two that we need to address.

MR. SCHROPP: Okay. That's accurate. And we'll have one of our planning team come up and address the need for the deviations and compliance with the requirements.

There was an issue at question six, there was an issue regarding labeling of amendments to the Master Concept Plan.

MS. BELFLOWER: Wait a minute. Did we address the question about whether or not the two deviations are being deleted, or is that --

MR. SCHROPP: Six and seven, which are the setback deviations, are not being deleted or withdrawn by the applicant.

MS. BELFLOWER: Okay.

MR. SCHROPP: The other two, and I think that's a subsequent question or maybe it was a question from Mr. Brookes, have been withdrawn.

MS. BELFLOWER: They have been withdrawn.

MR. SCHROPP: They were withdrawn at the hearing last week. And that would be in your exhibit, that would be deviations 8 and 9.

MS. BELFLOWER: Okay. All right. You noted the deviation numbers are different on the Master Concept Plan. I also believe that previously granted deviations may not be shown on the Master Concept Plan. There's a requirement that we have to have an overall plan.

MR. SCHROPP: Uh-huh.

MS. BELFLOWER: I think it's page one or two in the Master Concept Plan that you all have submitted. Does it have all the deviation numbers on it? And all the ones that were in the ADDs?

MR. SCHROPP: Do we know? I don't -- we'd have to look that up.

MS. BELFLOWER: Okay. We just need to note

that if it's going to be necessary to do a written submission to submit a revised Master Concept Plan by the time we get done with all this, that your overall sheet needs to have all the deviations shown on it with the -- whatever the final number is.

MR. SCHROPP: Okay. And the renumbering occurred because the ADD deviation was thrown in as number five.

MS. BELFLOWER: Yeah.

MR. SCHROPP: And that moved everybody else, all the other deviations down.

MS. BELFLOWER: Right.

MR. SCHROPP: But we did a modified MCP is the next issue that I'm getting into, and perhaps we're going to have to modify it again.

MS. BELFLOWER: I don't know that we will. The question is whether one, three, and four --

MR. SCHROPP: Are shown on the plan.

MS. BELFLOWER: -- are shown on the overall Master Concept Plan. And we can look at that at a break and see what the answer to that is.

MR. SCHROPP: Okay. In any event, we'll probably have to renumber them to comply with or to comport with the numbering system in the --

MS. BELFLOWER: And this isn't locked in stone. If it's easier to renumber these. If that's the only change that you need to do on a Master Concept Plan, I see no problem with renumbering these.

MR. SCHROPP: We'll figure that out as we go.

The next issue does deal with the Master Concept Plan or the next question that came up does deal with the labeling on the Master Concept Plan. There were some areas that were designated RMF and some areas that were not designated RMF that we went ahead and corrected per the discussion at hearing, so we were consistent with the testimony at hearing.

If you look at Exhibit B-1, it's a little hand-drawn sketch of the -- or a little hand-labeled sketch of the Master Concept Plan there in red. We showed the changes. This is our red-line version of the Master Concept Plan. We showed the changes that or the additional labeling that we put on which was to add RMF-1 up in the northeast part of the project which addresses the CPD portion as well as what we called the teal area from the previous hearing. We referred to another exhibit.

So that's been placed on the revised Master Concept Plan, and then circled some areas down on the southeast part of the project that were amended or we sought to have amended from the R to the RMF designation, and that was part of the original Master Concept Plan.

The revised Master Concept Plan that we submitted over the counter is attached as Exhibit B-2 or Attachment B-2, and if you go to page four of the revised master plan, those changes are reflected -- those handwritten changes are reflected on the master plan.

MS. BELFLOWER: All right. And the mislabeled northwesternmost portion that's in River Hall I, that's been corrected on both sheets?

MR. SCHROPP: Yes.

MS. BELFLOWER: Okay.

MR. SCHROPP: I think the Master Concept Plan is now consistent with the testimony.

MS. BELFLOWER: The overall Master Concept Plan still shows town center. This is sheet two, the previously approved Master Concept Plan, so it shows town center in the teal area.

MR. SCHROPP: Would you prefer we move it up --

MS. BELFLOWER: No.

MR. SCHROPP: I think the intent was -- well, that's the way it was originally shown.

MS. BELFLOWER: Right. Okay. So if this was to be approved by the board and the Master Concept Plan is certified as the approved one, page two, what you had called Previously Approved Master Concept Plan, would be the overall Master Concept Plan, and since that area, that teal area is part of your development and will no longer say town center on it, it will say RMF-1.

MR. SCHROPP: Right.

MS. BELFLOWER: Okay. Okay. Okay.

MR. BLOCK: Madam Hearing Examiner, if I may, just -- I want to make sure that we're -- staff is clear as to that statement. If I may, Chip Block for the record. If they remove the town center designation, which I thought I heard was the answer, that removed the possibility of what the uses are that are in town center in the schedule of uses if I'm correct.

MS. BELFLOWER: I don't think he said --

MS. EKBLAD: No.

MS. BELFLOWER: -- town center would be removed completely. It would be removed from the

teal area.

MR. BLOCK: Okay.

MS. BELFLOWER: Which there was a statement last hearing that that -- it just was a very large label that kind of expanded down, and it was supposed to be pointing to the north, and the teal area had no label. It had no uses listed. It wasn't even clear to me that that was in the RPD. I thought it was part of the CPD.

MR. SCHROPP: Right.

MR. BLOCK: I just wanted to make sure that we did not lose out on the possibility of what the applicant had proposed and staff had supported which was a mixed-use area up in that area of the development.

MR. SCHROPP: No.

MR. BLOCK: I just did not want to lose that possibility.

MS. BELFLOWER: So the town center is just the CPD area; correct?

MR. SCHROPP: Dave?

DR. DEPEW: Yes.

MR. SCHROPP: Yes.

MS. BELFLOWER: And that was your understanding of what was always intended?

DR. DEPEW: That's what we understood the original Master Concept Plan to approve, yes, ma'am.

MS. BELFLOWER: Is that what staff understood as well?

MR. BLOCK: Yes, ma'am.

MS. BELFLOWER: Okay. We're all on the same page then. Okay. All right.

MR. SCHROPP: Moving right along.

MS. BELFLOWER: I didn't promise I wasn't going to interrupt this presentation.

MR. SCHROPP: That's fine. I'm glad we actually organized it this way.

Is there a requirement in the existing conditions to use a hundred percent native vegetation buffers? If not, can we include?

It is included already in the resolution. It's Condition 19 of Resolution Z-05-051. And this would remain applicable to the entire project although it's renumbered as Exhibit 17 in your Hex Exhibit Number 2.

MS. BELFLOWER: Okay.

MR. SCHROPP: The next issue was please confirm that Hickey Road, Hickey Creek Road access is not being used and is prohibited by existing

conditions.

I think this was adequately addressed by the testimony of Mr. Price in response to Mr. Stilwell's testimony that really the traffic that has been seen utilizing Hickey Creek Road is actually FP&L traffic and not project traffic. To the best of our knowledge, no project traffic, construction or otherwise, uses Hickey Creek Road, and there are conditions.

There is actually two conditions in the resolution that are proposed to be continued forward that prohibit use of Hickey Creek Road. Those are Conditions 9 and 16 in the existing resolution being renumbered to Conditions 8 and 14 in Hex Exhibit 2.

MS. BELFLOWER: Okay.

MR. SCHROPP: The next question gets into -- Dr. Depew touched on briefly in his initial presentation -- which is the second access and the viability of the second access into the Lehigh grid system to the south. The condition, both the current zoning conditions and the proposed zoning conditions, require that the southerly access connect to 75th Street West, and the proposed access point shown on the Master Concept Plan

would provide this connection to 75th Street West at Ruth Avenue.

Now, 75th Street West runs parallel to the southern boundary of River Hall, I think practically the entire boundary, but a good portion of it. There are numerous stub outs, one of which is Ruth Avenue. The improvement that's contemplated here would connect River Hall across the canal to Ruth Avenue. Ruth Avenue would be improved to current standards and would connect up with 75th Street West.

Now, the question was what kind of roadways are we connecting up with, and there was a picture that was submitted by one of the residents that showed that -- not a very flattering condition for some of the roadways out there, but if you look at the travel route that's being proposed or that has been identified, and I took this route myself, so I'm familiar with it, leading from this intersection point at 75th and Ruth, the travel route is shown going -- can get you to Cemetery Road and ultimately to Buckingham Road via the route shown on Exhibit C or Attachment C.

The travel route is entirely over paved roads within the Lehigh grid system and then outside of

the Lehigh grid system at some point. The condition of the roads seems to be travelable. I don't know any reason, we're not aware of any reason why they could not be used by emergency vehicles or school buses.

Pictures actually depict a representative sample of the condition of the roadways on this route for every roadway. Interestingly, in my travels, the one rough spot, which has seemed to be the subject of repair, is actually shown in one of the pictures there. It's number four, and if you go out and do this route, you'll discover it, but that portion of roadway seems to have from some reason or another had to have repeated repairs to it that can you see, but it is travelable, and in general, the travel route out to Buckingham Road is no different than any other travel route through the Lehigh grid system, the Cape Coral grid system, and that kind of -- those kind of roadways. They are local roads until you get to Cemetery Road which is a collector, and then ultimately Buckingham which is an arterial.

You can also get out to Sunshine Boulevard, and that route is shown on Attachment D, and the roadways that would be accessed and utilized,

there's pictures of those roadways as well. Again, same quality paved roadway that ultimately leads to Sunshine.

Now, I indicated in the response, Sunshine is an arterial. On the point where it actually hooks up on this drawing, it's actually a collector. It becomes an arterial further to the south as it approaches Lee Boulevard, so with that minor notation, it does lead to a collector which is Sunshine, which Sunshine becomes an arterial.

The requirement to construct the southern access is a requirement of current zoning conditions, and it -- the timing of which is set back until the 1,598th certificate of occupancy for the project. What was asked of the applicant was to expedite this construction for the purpose primarily of providing access not only for River Hall residents, but also because both EMS and the school district had expressed a desire to utilize the system. I assume they feel comfortable that once they get access to the grid system, it is travelable and usable for their purposes.

So what the applicant has tried to do in good faith as part of this rezoning application is to expedite the construction of this connection.

Now, at the same -- by the same token, the southern access connection will provide alternative means of access for residents of River Hall, whether they're traveling to the southwest, over the grid system out to Cemetery Road and then Buckingham, and then to points probably south on Buckingham would be the normal travel destination, we think, or traveling to the southeast out to Sunshine and then out towards Lehigh's city center, and ultimately, potentially to State Road 82 because Sunshine does go all the way down to State Route 82 which provides you access to Daniels, the interstate, the airport, and so it could be a secondary means of travel for residents of River Hall as well.

That being said, the traffic analysis, as Mr. Leung testified to, did not assign a great deal of traffic along the system even once the connection is made, but it would provide an alternative means of access for River Hall residents as well that could be utilized.

In summary, the southern access is desired by EMS and the school district based on our communications with staff and will provide quicker access to and from Lehigh Acres for school buses

and EMS vehicles than what is presently provided.

The southern access also provides alternatives for River Hall residents to access the Lehigh Acres grid system and southeast and southwestern areas, southeast and southwest of River Hall, and would be expedited as part of this zoning approval.

If good faith, we think we're complying with the intent and the desires of the County and the other agencies that have asked for this, and that's the route and the usability of the route, but we could encourage you during your site visit to go out and drive both of these routes. People find a way. And I discovered that when I was out there was that there is a route that leads to -- from Buckingham Road all the way over to Sunshine that is usable and people follow.

MS. BELFLOWER: Okay. Does staff have any questions or comments on that?

MR. BLOCK: No, ma'am.

MS. BELFLOWER: My only question that I had earlier, and I think you have answered it, is that these two routes reflect roads that cross the canals because that seems to be the biggest obstacle is roads don't connect.

MR. SCHROPP: Correct.

MS. BELFLOWER: So all of these are --

MR. SCHROPP: You don't have to swim.

MS. BELFLOWER: No jumping cars required. Okay. All right.

MR. SCHROPP: The 10th issue was, would it be a good idea to provide progress reports for compliance with the traffic signal and southern access construction? If so, can we draft a condition?

We have no objection to providing progress reports on a periodic basis on either of these improvements. We would suggest quarterly would be a meaningful benchmark until the project is actually constructed, so I've prepared a condition.

The applicant will provide quarterly monitoring reports to the director of community development on the status and progress of this traffic signal, Condition 10, and the southerly access point, Condition 23. The first quarterly monitoring report will be due three months after the date of this resolution and will be submitted every three months thereafter until the signal is placed into operation by FDOT, and the southerly

access receives a certificate of completion from the County. I don't know if that's certificate of completion or some other thing that you issue, but whatever you would issue that says it's ready.

Each monitoring report will identify the current status of the improvement through the design, permitting, and construction stages, and will identify any issues that may affect completion of the improvement within the time specified in its applicable condition. If that helps monitor the progress and also helps demonstrate our good faith compliance with the conditions as drafted, then we're all in favor of it.

MS. BELFLOWER: Has staff reviewed this and have any comments on this condition?

MR. BLOCK: First of all, the certificate of completion is the correct term.

MS. BELFLOWER: Okay.

MR. BLOCK: So we believe that that's correct. It's just a -- it will be a development order for infrastructure effectively.

MR. SCHROPP: Yes.

MR. BLOCK: So staff's okay with that.

The only other suggestion I would have is

maybe the applicant may want to consider copying the homeowners association, master homeowners association on the report.

It's a suggestion only, and reason doing that, suggesting that is that becomes a clearinghouse so the residents don't have to be contacting the county staff to try to find out if the report was submitted. They could actually receive it, put it on their website, make it available to the homeowners within the development just so they know what's going on and the status of it.

MS. BELFLOWER: I don't think that that's a bad idea as a suggestion. I don't think we can put that as a condition because if they fail to do that, we don't want them to be in noncompliance for failing to do a suggestion, but --

MR. BLOCK: That's why I used the word suggestion, Madam Hearing Examiner, not part of the condition.

MS. BELFLOWER: So it would not be part of the condition, but strongly suggested. Okay.

MR. SCHROPP: The next issue was Ms. Daniels at the hearing on the 15th submitted a written question that was read into the record regarding whether there had been contact with the East

County Water Control District about crossing the canal to construct the southern access.

Mr. Barraco is our designated contact person for the East County Water Control District, and I'd like him to -- so I don't get involved in any hearsay, for him to testify.

MR. BARRACO: Good morning, Madam Hearing Examiner. Carl Barraco for the record, and I understand I am under oath.

Our most recent communication with the East County Water Control District, and I will refer to that as -- them as the district, was an e-mail on November 26th of 2014, regarding the approval process for this second access. Our -- my last communication was as recent as yesterday. That was with Michael Cook, the assistant district manager.

We discussed the process. We both agreed that it would be approved through the normal course of business, and that his two major issues would be sizing of the conveyance in the canal and the applicant providing any easements that the district may request. So that is the essence of our most recent communication with the district regarding the second access.

MS. BELFLOWER: Okay. And the control district owns the land where the canal is or is an easement for where the canal is?

MR. BARRACO: The best way I can say is they control it. I have not researched the records to see if they own it or they have a controlling easement, but they do control that, and they would be the entity that would issue the approval for this as well as the County through the development order.

MS. BELFLOWER: Okay. Okay. Does staff have any questions?

MR. BLOCK: No, ma'am.

MS. BELFLOWER: All right.

MR. BARRACO: Thank you.

MR. SCHROPP: Thank you.

There was a question regarding traffic improvements and how they are paid for and traffic signal and whether it's in addition to or extra from impact fees, roads impact fees, and how the developer, what the developer actually is paying for. This is all covered by county ordinance. We submit in writing a three-part response.

The River Hall Parkway T intersection signal including all relevant turn lane modifications and

directional median modifications at South Olga Drive and Linwood Avenue that are required by FDOT as part of the signalization process are considered site-related improvements and will be funded by the developer separately from road impact fees. Site-related improvements will not be credited and cannot be credited against road impact fees under the County's road impact fee ordinance.

Under the County's roads impact fee ordinance, roads impact fees are paid as building permits are pulled and are -- and the fees are deposited in the County's fund for this impact fee district. The County is divided into a number of roads impact fee districts, and the funds from impact fees for this project, all of River Hall would go into that fund.

Road impact fees may be applied to the County for any off-site mitigation that's been identified for the project which is the recommended turn lane improvements that Mr. Leung covered at the hearing on the 14th and 15th. It is up to the County to determine what transportation improvements will be funded with road impact fee revenue.

So that's the coverage of funding of

improvements and impact fees.

MS. BELFLOWER: Okay.

MR. SCHROPP: There was a general question as to how zoning conditions are enforced. I think we covered that at the prior hearing. There are standard zoning enforcement procedures that would be used to enforce zoning conditions. I would also note that several of the conditions, most notably the signal and the southerly access are conditions, so the development orders can't be approved, so in terms of enforcing those conditions, rather strong hammer that the improvements be provided before any further development orders can be issued.

Move on to 14. Address whether the residents were justified in relying on the previous zoning approvals and the applicant's ability to change plans.

This is a response that I prepared in writing there. I'll go through it.

From our position, from the typical land owner's position, the applicant in this case, zoning is not a static force. It's not -- it is susceptible to change. Every landowner has the right, including the residents of this project,

have the right to request changes to the zoning district and regulations that affect their property. And that includes changes to plan development rezonings by which a Master Concept Plan was approved.

Modifications to long-term residential projects during the course of a buildout for a project like this or this size are not uncommon. In fact, they're pretty common. I can think of a number of projects that I've handled through 30 years that have come back for modifications. Mr. Block sees them all the time.

These projects need to be able to react to changing conditions, fluctuations in the economy, market changes, the desires of the developer, and other factors for the good of the overall project.

The original zoning plan for River Hall was actually adopted in 1999. It was modified in 2005, and that right there shows that there's a potential and obviously a need on occasion to amend and change master concept plans and zoning conditions.

Since 2005, this project has commenced development, got waylaid by a failed economy, fell into bankruptcy, and was acquired out of

bankruptcy and revived under new ownership. To deprive a landowner of the ability to react to these types of conditions and others by solidifying whatever zoning plan may have been approved in 2005 or 1999 or whenever runs the risk of not only substantive and procedural due process issues, but also potential takings.

The reality is if the changes comport with the local government's comprehensive plan, meet development regulations, they should be able to be approved after due consideration at a public hearing.

Further, we'd note that any reliance on the approved Master Concept Plan that was approved in 2005 and the zoning conditions by residents or others in the community I think has to be tempered by an understanding that zoning plans can and do change on occasion. And the possibility of this change is recognized on the face of the approval document, Resolution Z-05-051.

At least four instances, there's recognition that development plans or the parameters of the plans or the conditions of approval may in fact change if the applicant comes back and says we need to modify something, we need to address

something that wasn't thought of at the time, or there's been changing conditions or whatever, but that's expressly recognized in the terms of the actual zoning document. So assuming that people would have verified zoning and would have inquired and looked at the approval document as to the status of approvals, a review of the document itself would have put anyone on notice that changes in density, uses, and other aspects of the project could occur as time moves on.

This is not an uncommon request. We've been through many changes with many planned developments, residential and otherwise, through the years, and zoning needs to be reactive to changing conditions, needs, and desires of the applicant.

That's our response.

MS. BELFLOWER: Okay.

MR. SCHROPP: The next question I'd like to get Dr. Depew up here for. It was addressed the issue of the approved inventory of lots in the area and the argument that no more units would be approved until the existing or should be approved until the existing inventory is used up. If I could just ask Dr. Depew to come up, and I may

have a few follow-up comments on that one.

DR. DEPEW: David Depew. Once again, I understand I'm still under oath.

This was an item that was brought up and used as some sort of justification saying that this is simply not needed, it's not necessary, and first off, I point out that this is -- this kind of demand argument is not one of the criteria that should be normally considered, but in any event, I would submit to you that there is actually to some measure a demand element that is considered for this area.

The process of planning is a longer-term process than one normally looks at for a market consideration. It goes out further beyond one year, two year, five years. In terms of the Lee Plan, for example, we've got time horizons now that are 2030, 2035, and it's even supported in terms of the statutory justification for population projections for counties saying that you have to have sufficient land available for a healthy market to operate.

In Lee County, the Bureau of Economic and Business Research has done projections, estimates and projections. In April of 2013, their estimate

was that the total population was 643,367 for the County. That jumps using their median estimate in 2040 to 1,044,300. This is a significant jump in population. It's not quite doubling, although if you go to the high estimate which was -- Lee County has had characteristically growth in the high range rather than the medium range in its past history over the last 30 years that I'm aware of. The high estimate was 1,300,000, so that would be a doubling.

And what I'm suggesting to you is that it's time now to plan for that kind of -- that kind of growth in terms of what ultimately is available as part of the housing stock. Different residential projects, however, address very different market demands, and we think that the River Hall demand is a unique composition, as I indicated before, of a range of target residents.

It's a lifestyle community. It includes young adults with and without children. It includes families. It includes older adults that are empty nesters. It includes seasonal residents as well as full-time residents, and it includes retirement-aged individuals. It's a project that can satisfy a broad sector of the market, a series

of sectors of the market and meld them into a single community.

There isn't another community quite like this in this particular portion of the county. That's not to say that something like this may not develop in this portion of the county, but it is a unique development for this particular area, and the developer wishes to establish the buildout parameters that are going to be ultimately used for this project for its purposes of long-term planning and prudent business operations. Again, this isn't -- there's nothing wrong with doing this. This is the normal sort of business operation that's undertaken.

And in this particular instance, it's a little bit unlike some of the other residential developers that have occurred or that have been involved in this particular area. This is the developer of a project that essentially had failed. The developer had gone out of business and is being revived from a bankruptcy, so GreenPointe really is unique in this particular instance in its need to establish this buildout parameters that we're discussing in this project, not only for its financial interest, but also for

the project itself and the community itself.

The success of the community in general, we believe, depends on the ability to plan for the future and to add these units to this project in order to be able to adequately finance the recreational amenities and the long-term maintenance that is ultimately going to be shifted over to the homeowners association and not the developer. So we think this is all critical.

We also say that -- would suggest that the information that is relied upon by the opponents to this zoning amendment was provided in the staff report for the transmittal, CPA 2012-00001 for River Hall, and was considered by the county commission who then voted to transmit the plan amendment to the State for its evaluation. So the record would suggest that neither the board nor any state agency felt that this information somehow constrained or had a negative impact on the viability or the validity of the plan amendment, and I think that utilization of this kind of argument to somehow justify opposition to the zoning amendment is really misplaced because that's already an item that has been looked at by the board and by the state agencies considering

all this and essentially dismissed.

As I said, the state statutes have already been amended significantly in recent years. 163.3177(6)(a)(4) was amended in 2011, to provide that the amount of land designated for future planned uses shall provide a balance of uses that foster vibrant, viable communities and economic development opportunities and address outdated development patterns such as antiquated subdivisions.

It goes on to talk about the ability to allow the operation of real estate markets to provide adequate choices for permanent and seasonal residents and that these kinds of operations in the markets need not be solely limited by permanent and seasonal populations, but rather have a connection to how the market itself is operated, and that's what we think we've got here, situation with River Hall that is, as I said, a unique type of development and is connected better to the kinds of market operations that are ultimately taking place out here as opposed to anything else, and that the simple inventory of the number of lots does not give you the full picture of the qualitative rather than just the

quantitative type of development that's occurring at this particular location.

So given that we've generally tried to anticipate the population growth, given that we think that what we're doing out here attempts to address a segment, really an integrated segment of the market demand that the developer's identified, we believe that reliance on simply this listing of the number of lots that may be available in this area is insufficient to adequately understand why this project is requesting the amendments that we're requesting.

That's my response to that particular question.

MS. BELFLOWER: Did you want to --

MR. SCHROPP: I have nothing further to add. He covered what I was -- make sure he got in the record.

MS. BELFLOWER: Does staff have anything they want to add at this point?

MR. BLOCK: I don't.

MS. BELFLOWER: Okay. I think I heard, if not -- that you made this point specifically. It was under there that the over-built issue, if that is an issue of consideration, is a Comprehensive Plan

issue versus a zoning issue; is that correct?

DR. DEPEW: I would say that's probably true. If it is an issue, I mean, we'll set it aside just for the sake of argument, say if that's going to be an issue, that should be a planning issue rather than a zoning issue in this particular case because what we're suggesting here is that the analysis that just gives you a quantitative look at the number of lots available in this area does not fully address the issue of what's in demand and what's being offered as part of this.

For example, if we look in Lehigh Acres, we can say that we've got -- I don't know what the number is, but it's in multiple hundreds of thousands of lots available. Now, I don't think that anybody can tell you just looking at it quantitatively that you need anymore lots in Lehigh Acres, and Cape Coral has made this argument in many respects about their lot inventory as well. They have many thousands of lots. They don't really need more single-family standard subdivision lots.

However, in Lehigh Acres and in the Cape, there is a significant recognition that there are certain other types of residential opportunities

that probably aren't sufficiently addressed by solely the number of lots. So a review simply quantitatively of this particular issue is not going to give you the full richness of the response that's necessary with a qualitative review, and the qualitative review is what I'm suggesting is more appropriate in this instance as it would be in Lehigh Acres or in the Cape because it's not just a matter of counting up the number of lots that are available.

We have to look at what resources are available to service these lots, whether these lots are properly located to provide access to commercial and recreational opportunities, whether or not we have an integrated community that provides these kind of multimodal connections, these are the kinds of qualitative issues that I think are a little bit more important, and they include things like whether you're trying to produce this range of housing options for a range of different market folks so that you can get, you know, a family whose grandparents are living in one part of the community, and the family and the grandkids are living in another part of the community, and you provide all of these different

options for folks that want that kind of a lifestyle. And that's why the simple recounting of numbers, I think, is insufficient to adequately address this question.

So from the standpoint that it's more of a Comp Plan issue, I would say, yes, ma'am, I would put it over there more so in this instance, but I would also tell you that even there, you've got to look at more of a qualitative question than simply looking at the numbers.

MS. BELFLOWER: Okay. Thank you.

MR. SCHROPP: Don't go away.

DR. DEPEW: I was going to say, I think you've got another one of mine coming up.

MR. SCHROPP: The next question, actually, this is where I did lump two questions together. 16 asked, why do we call it in fill? By calling it infill, does it make it more approvable? Is it a requirement for it to be designated as infill in order to be approved? And that's -- 20 asked similar questions about the term underutilization which was used. What does underutilization mean when you say the infill areas are underutilized? So we lumped those two together, and I'd like the planner, Dr. Depew, to address them.

MS. BELFLOWER: Okay.

DR. DEPEW: And I'm going to try and just do this without saying, you know, this is 20, this is 16. It's combined in both of them.

And when we first started looking at this back in 2012, we looked very seriously at, you know, what we were doing and what we were trying to do on this, and I would say that in terms of your specific criteria by which you're judging this particular request, that making a finding of whether this is infill development or not is not a requirement.

Nevertheless, infill is an issue that we think you can look both to the plan and the Land Development Code for guidance as to what it is. It's defined actually in the Lee Plan, and that definition states that it is the use of vacant land within a predominantly developed area for further construction or development. These lands already have public services available that may require improvements to meet current development standards.

Okay. Land Development Code actually defines infill development as well. And it states that it is the development, redevelopment, or reuse of

vacant land and underutilized sites surrounding -- surrounded by existing development and where street access is available. Okay.

Underutilization is not actually defined in either the plan or the Land Development Code, so I went out and looked just in general, what is underutilization defined as, and it's defined as generally, the state of not being used enough or not being used to full potential. Okay.

If we look at the subject property, which is the gray area in the Master Concept Plan, and I'm not going to bring up anymore aerial photographs or anything because I know the hearing examiner has seen enough of them, but if we need to, let me know. I'll be happy to do it. I've got them over there, and I'll just pin them up there. But, you know, I think that's already in the record, and I think the hearing examiner is well aware of where the site is and what it's surrounded by.

Okay. So the subject property, first -- one of the first criteria, is it in an area, is it vacant land? I think we can all agree that it's vacant land. There's nothing on it right now. It's been cleared and it's vacant. Within a predominantly developed area. Okay. I would

submit to you that this is predominantly developed.

It has development in River Hall Country Club to the north. It has development in Hampton Lakes to the north and northwest. As Portico has been scraped down and certain of the improvements have been put in to Portico, it's not at this point constructed, but there are improvements in there that would class as development, and to the south, we've got Lehigh Acres which, again, you've seen the grid, and if we need to refer to Attachment C or D, you can see in the aerial photographs in there what the grid is to the south. Okay. To the east, we have the preserve area and ultimately, the Hickey Creek Mitigation Park.

But what the definition says is whether the land use is vacant and within a predominantly developed area. Predominantly developed. I would submit to you that this is a predominantly developed area. Predominantly simply means in terms of general parlance, whether it is -- lapse into objective criteria -- more than 51 percent developed. I would submit to you if you look at an aerial photograph, it is 51 percent or more developed in the area where this particular

rezoning site is located. So I would tell you from my analysis as a planner, that it meets that first criteria as found in the comprehensive plan.

The second criteria is these lands already have public services available. Okay. We've done a whole bunch of testimony on this telling you about where the stub outs for all these services are, what the road system is that serves this, what the drainage system is that serves this, where the irrigation system is that serves this, so again, I would submit to you, and in addition, our second access that goes down into Lehigh Acres, I would submit to you that public services are available.

It says but may require improvements to meet current development standards. Well, I'm not sure how much in the way of improvement we need, but whatever improvements are going to be required will be picked up as part of the development order, and clearly, we've got to extend the utilities down into this area pursuant to the normal requirements in the ordinances, but again, I would submit to you that from my analysis looking at this as a planner, it would appear that we meet those particular standards, that we have

them. So that's the plan definition of infill.

Let me go to the LDC. Describes infill development as development, redevelopment, or reuse of vacant and underutilized sites. Okay. This is a vacant, I believe, it classifies as vacant. There's nothing on it. I believe it's additionally underutilized. Underutilized, again, is defined as not being used enough or not being used to full potential.

I would submit to you that from the standard of a planner, that if this is sitting vacant with stub outs for roadways, utilities, with the drainage improvements made in there, that that is not being used to its full potential, and as such, I would submit then that from my review of this, it is vacant and underutilized, and what we're proposing here is development, redevelopment, or reuse of this vacant and underutilized site.

The next component of that is whether it's surrounded by existing development, and again, without going through the litany, it's got development on three sides of it.

And finally, where street access is available. Again, we have access into the River Hall street system itself as well as one of the conditions

which provides access to the south.

Okay. We also believe that the intent of infill definition is to some extent addressed by the Lee Plan and articulated by the Lee Plan as something that is desirable. For example, in discussing Alva, the Lee Plan states that infill development in the historic core produces a compatible mix of residential, professional office, small shops or cafes, and bed and breakfast lodging. Okay. So clearly, infill development is deemed to be compatible in the historic core of Alva.

Regarding San Carlos Island, the Lee Plan states San Carlos Island area which is nearly built out today will continue to develop its infill areas while maintaining its marine-oriented nature. Again, the Lee Plan would suggest that infill development is indeed compatible because they're talking about how with regard to the San Carlos, infill is going to take place while still maintaining its marine-oriented nature.

In talking about North Fort Myers, the Lee Plan states, first-time home buyers, recent retirees, and new investors are fixing up older housing stock, building compatible infill housing,

sprucing up yards, and working together to ensure properties and public rights-of-ways are well maintained, safe, and attractive. Again, clearly infill as housing is going to be compatible in areas of North Fort Myers, and it's deemed to be something that the plan can support.

Finally, the discussion in the introduction of the plan of northeast Lee County, it indicates infill development in the rural village produces a compatible mix of residential, professional office, small retail shops, cafes, and bed and breakfast lodging. That's, again, a restatement of what the Alva section of the plan would indicate, but I would submit then that based on these articulations in the Lee Plan, infill development is deemed to be something that is desirable, that's something that is encouraged, and I'd go so far as to say that if you look at the second numbered item in Lee Plan Policy 2.2.2, it would encourage infill development as part of its efforts to create cost efficiencies in the utilization of infrastructure which is, again, what we think we're doing with this particular request.

So in answer to your question about infill and

underutilization, no, we don't think that's a critical finding. We do think it's something that is encouraged by the Lee Plan. We do think it's something that's encouraged by the Land Development Code. We don't think that it's just something that sounds good in plannerspeak.

We think that it's actually a concept that has been supported by this request and has been deemed by the County to be something that they're looking for in terms of creating these cost efficiencies, and from that standpoint, we would say this is just one of the characteristics of this particular development that would suggest it should be supported and approved as part of what we've done with the various conditions that would apply.

MS. BELFLOWER: Okay.

DR. DEPEW: Do you have anything more you want to ask?

MS. BELFLOWER: Staff have anything they want to add at this point?

MR. JACOB: Dave, just to expand a little bit more on the infill in the Lee Plan analysis, are there benefits to providing the units in this area that would support other areas of the Lee Plan that don't necessarily address infill

specifically?

DR. DEPEW: Well, yes, sir, I believe that is true, there are a number of other elements that can be induced from the Lee Plan to support this particular project. That references back to my original testimony. I know we don't want to go back and do all of those again, but I would simply refer you to the transcript and the comments that I made in my earlier statements and the staff report which lists some of the Lee Plan policies that are supported by putting residential development in this particular area.

MR. JACOB: All right. Thanks.

MS. BELFLOWER: I just want to clarify what I -- to make sure I didn't hear you saying this. You talked about infill, and you talked about compatibility. You're not saying that by meeting the definition of infill, it automatically equates to being compatible; are you?

DR. DEPEW: No, ma'am. I'm not saying there's an one-to-one correspondence. In this particular instance, I believe it is compatible, but I'm not saying that infill automatically means compatibility.

MS. BELFLOWER: Okay. The concept of

underutilization, and that came from the Land Development Code definition of infill, is that term used anywhere else in the Lee -- is it used in the Lee Plan, and do you know of it anywhere else in the Land Development Code?

DR. DEPEW: I did not find it when I did a word search in the Lee Plan, and I don't know of anywhere else in the Land Development Code, but there may be some of the utility sections -- I didn't do a word search in the Land Development Code, so there may be some in there.

MS. BELFLOWER: All right.

DR. DEPEW: Are you doing this one or am I?

MR. SCHROPP: I've got the next one.

MS. BELFLOWER: And I think after we get through with this one, we might want to take a quick break.

MR. SCHROPP: That would be a good point.

The next issue was a series of questions primarily came from the conservancy regarding acreages in the amendment area and in the project itself. What is the actual acreage of the zoning amendment and the actual acreage of the plan amendment? Address the acreage changes raised by the conservancy from the original zoning to the

current request. Number of acres of wetlands, number of acres of suburban have changed between the two -- between the request, and do the existing dwelling units exceed what is allowed in rural?

To a large extent, we covered this in our direct testimony, and so for what -- a lot of what I'm going to recite here was stuff that I covered, Ken Passarella covered, and probably Dr. Depew as well, but we'll summarize it here so it's all in one place.

With regard to the actual acreages, I included in your package as Attachments E and F the actual legal descriptions that are submitted for the zoning amendment which is 552.99 acres, and the actual acreage for the future land use map plan amendment, which is slightly higher at 585.59 acres, so the actual legals there, they're verified by a surveyor, and the actual amount of acreage is reflected on those descriptions if you're interested.

The actual acreages reflected in the various land use classifications have changed between the 2005 approval that was granted in Resolution Z-05-051 and the current request, and as I stated

at hearing, this was primarily the result of actual ground truthing and permitting with appropriate ERP jurisdictional wetlands, of the wetlands on the site, and if they're not wetlands, they're something else, and in this case, they morphed primarily into the rural land use classification, but also, I think there was some adjustments in the wetlands that were within the suburban, but that was the primary reason why the acreages have changed from 2005 to the current request.

It was actual jurisdictional determinations by the South Florida Water Management District which is what the County goes by in terms of those comprehensive plan and zoning, and those acreage determinations, I think, have been verified or reviewed by DES staff, and I believe they concur with them. And the amended amount of wetlands or the revised amount of wetlands that everybody agrees on right now is 181.0 acres of wetlands. Mr. Passarella testified to that, I think, in direct response to a question that you asked.

So I tried to summarize what we had testified to on a table there that was submitted. It's on page 11 of the narrative request. And it kind of

compares the acreages that were identified in the 2005 zoning approval in the resolution with the current future land use map with what will exist after the adoption of Comp Plan Amendment 2012-00001, and you can see the changes that have occurred.

The original with regard to -- I don't know whether to go down or across, but with regard to the zoning resolution in 2005, those are the numbers that were reflected in Section A of that resolution. I think you have that as one of the exhibits. There were 647.55 acres of rural, 79.47 acres of suburban, and 251 acres, .42 acres of wetlands. There was no sub-outlying suburban.

As part of the current future land use map and after the jurisdictional determinations were done, as I've indicated, wetlands goes down to 181.0, which increases the rural to 1725.9, and suburban is adjusted to 71.5. Major adjustment there primarily was a result of using actual survey data rather than county GIS data as I explained during my presentation and hearing.

Now, I'm going to digress a minute, and attached as Attachment G is a very nice diagram that breaks this out in each land use

classification. That was prepared by the surveying and planning department of Barraco and Associates, and Jen Sapen is here, and she headed up the effort. If you need testimony as to how this was created or the process that was done, I'm perfectly -- I can certainly get her up here to tell you that, but I've summarized -- this exhibit does an excellent job of summarizing the acreages that -- and the adjustments that were made. Also goes on to talk about the dwelling units in each land use classification based on existing permitted development orders that exist for River Hall.

Flipping back to the narrative answer, the table that I prepared based on the information, after the plan amendment that's currently pending, what will happen would be that the amount of rural decreases and the amount of sub-outlying suburban increases by 585.6 acres in each direction. No changes to the wetlands. No changes to the suburban land use classification.

So that's -- that explains, I think, the changes between the 2005 data that was used in the zoning at that point and what actually has turned out to be on the ground, and based on survey, the

actual determinations of the current land use -- future land use map.

In our rebuttal testimony, I think it was our rebuttal testimony on the 15th, we presented or made note of a table that was included in one of the submittals that explains the number of dwelling units that are located in each land use classification, and this gets to the question of how many units -- do existing dwelling units exceed what is allowed in the rural land use classification that was asked.

And on page 12, this is the table that I pointed to in our rebuttal testimony to explain how many units is in each land use classification, and it goes through -- basically assumes a post-adoption, post-plan amendment adoption scenario as far as the acreages are concerned with regard to the rural, the sub-outlying suburban. We can see the number of dwelling units allowed, and also in the fifth column over, the number of dwelling units that are already permitted by plat and development order.

Within the suburban land use classification, there's about -- there's 186 approved by plat. In sub-outlying suburban, the areas that will move

from rural to sub-outlying suburban, there's 598. In the rural classification, there's presently 1,119, and there's no units located in the wetlands classification.

So in terms of what's allowed or what's actually in the rural land use classification presently, or excuse me, after the adoption of the plan amendment, there would be 1,119 dwelling units on 1,140 acres for a density of approximately .98 units per acre. Again, the information from these tables really is summarized and the data is provided in Attachment G from Barraco.

MR. BROOKES: Madam Hearing Officer, can I ask a follow-up question? Just one question?

MS. BELFLOWER: Yes. We'll allow it once. You're going to need to come to a microphone.

MR. BROOKES: Russell, if you take the second table that you have and also the text, I think in here you say that you have 1717 dwelling units permitted within the existing rural area.

MR. SCHROPP: That are currently under development order and plat. Is that the question?

MR. BROOKES: In the Resolution Z-05-051, Condition 5 said you could have no more than 1,648

dwelling units may be constructed in the rural designated areas. So have you already exceeded what the resolution's maximum cap was for the rural?

MR. SCHROPP: No.

MR. BROOKES: And then why?

MR. SCHROPP: Because the condition says that no more than 1,648 may be constructed, and there's not more than 1,648 constructed.

MR. BROOKES: But they were platted in the DOs?

MR. SCHROPP: There are plats in DOs that reflect more than 1,648.

MS. BELFLOWER: And the -- hang on. The numbers of units, say again the number that are platted within the rural areas currently. 1,717?

MR. SCHROPP: 1,717.

MS. BELFLOWER: Okay. And currently, with the --

MR. SCHROPP: Excuse me. I want to make sure. Yes, 1,717.

MS. BELFLOWER: This says 1,119.

MR. SCHROPP: That's in the post-plan amendment.

MS. BELFLOWER: Okay, okay.

MR. SCHROPP: And the way you get to 1,717 is you would add -- I hope this works out. You would add the number of units that are in the sub-outlying suburban category, that's presently rural, --

MS. BELFLOWER: Okay.

MR. SCHROPP: -- which would be 598 plus 1,119.

MS. BELFLOWER: And the 1,717 is consistent with -- it is less than the one-to-one rural density under the amount that is actually in rural after you have done the analysis?

MR. SCHROPP: That's correct.

MS. BELFLOWER: Now, whether the County was aware of that when they approved the plats or not, you're saying that the reality is, the fact is that it is still under the one to one -- the County may have approved more than the -- would be suggested, although you're pointing out that the condition says cannot be constructed.

MR. SCHROPP: Right. The condition under the current resolution, Condition 5, actually is a two-part condition if you look at it.

It says, the portion of the property within the rural future land use category must maintain

densities of one dwelling unit per acre or less. Well, it has. Even under the permitted scenario, 1,725 acres and 1,717 dwelling units. It's 0.99. And then the second part of the condition says no more than 1,648 dwelling units may be constructed within rural. And at this point, there has not been an exceedance of that condition.

Now, obviously if development was to occur in accordance with the development orders, the plats that would be, you know, that allow the maximum, it would exceed, but -- at some point, but it hasn't as of yet, and development orders can change, lots can be combined, things of that nature. So there's no technical violation or any violation at all of the condition that I can see at this point.

The other thing I'd note is that the plan amendment will actually remedy any kind of concern with this condition because the plan amendment would result in 1,140 acres of rural existing after the plan amendment, and within the rural area after the plan amendment, there will be 1,119 dwelling units.

Actually lowers density to 0.98 in the rural classification as a result of the amendment, and

the reason for that is that areas that were -- that have been platted, that are -- some areas that have been platted that are in rural are actually going to sub-outlying suburban.

MS. BELFLOWER: Okay. Which I would like follow-up on. That was one question that I did not get a clear understanding, is how many lots or units are -- already have development orders within the rezoning area, and how much of the rezoning acreage do they occupy?

MR. SCHROPP: I don't have that number off the top of my head, but we can probably calculate it.

MS. BELFLOWER: Okay. Because we were talking last time about 96 units being left, but that -- it's not 96 units across 500 acres because you already have some number of units that are already approved within the -- within that area.

MR. SCHROPP: We may be able to get partly to the answer to that question or that concern or that issue. On page 11, under three, there's some discussion of what's left to be -- what would be left to be permitted, and, you know, if you look at -- in the post-amendment, if you look at the pre-amendment, the current condition of future land use map, there's 1,725 acres of rural and

1,717 dwelling units permitted by plat or development order. So essentially, you'd have only eight additional units that could be permitted by plat or development order in the rural classification and 96 units overall as we testified to on 15th. On the 15th.

Now, the plan amendment ameliorates that issue, but that's under the current future land use map.

MS. BELFLOWER: So if the plan amendment was not approved, although there are 96 units in the total number that are available given the way it's been platted out, and under the different plan categories, there's only eight units left in the rural which all that you're asking to change is currently designated rural.

MR. SCHROPP: That's correct.

MS. BELFLOWER: Okay. Okay. If you can -- if you can get the number before we finish up or --

DR. DEPEW: It's in the next table.

MS. BELFLOWER: It's in the next table?

MR. SCHROPP: Let me let Jen verify.

MS. BELFLOWER: Because in the 500 and whatever acres we're looking at as the acreage for this rezoning, how many platted lots are already

in there?

MR. SCHROPP: Okay. Is the question how many platted lots are --

MS. BELFLOWER: How many approved units are already in the area that you're looking to rezone right now?

MR. SCHROPP: I think the answer is 598.

MR. JACOB: That's what you said earlier.

MR. SCHROPP: Because that's the land that's moving from rural to sub-outlying suburban.

MS. BELFLOWER: Okay. So it's pretty much one to one, so there's -- okay. If there's only eight units left, then it's somewhere around the same as the acreage 598 or 500 --

MR. SCHROPP: 598.

MS. BELFLOWER: 598.

MR. SCHROPP: Subject to verification, I'll go with that.

MS. BELFLOWER: Okay. Because you're rezoning 585 acres.

MR. SCHROPP: Correct.

MS. BELFLOWER: But that would be taking bits and parts.

MR. SCHROPP: Yes.

MS. BELFLOWER: And not the amenity areas that

are left that makes the density lower in the others. Okay. So --

MR. SCHROPP: Actually, we're rezoning. Not to confuse the issue further, but we're rezoning 552.99 acres.

MS. BELFLOWER: Right.

MR. SCHROPP: The plan amendment area is 585 point --

MS. BELFLOWER: Yes, yes.

MR. SCHROPP: -- 59.

MS. BELFLOWER: Yes. Thank you.

MR. SCHROPP: Thanks.

DR. DEPEW: It's not easy juggling these numbers.

MS. BELFLOWER: And they're way too close to each other. Okay. If you can verify then, but we will operate under the understanding there's 598 units approved with development orders currently in the area that is being rezoned.

MR. SCHROPP: Yes, if you give me the opportunity, I think we can verify that.

MS. BELFLOWER: Okay.

MR. SCHROPP: This -- I'm sorry.

MS. BELFLOWER: The other question that I had about the acreage was the -- there were two little

roadway segments that were still left in there. Are you keeping those in?

MR. SCHROPP: At this point, we haven't removed them.

MS. BELFLOWER: Okay. Because you don't want to redo the numbers all over again?

MR. SCHROPP: Got it.

MS. BELFLOWER: Okay. All right.

MR. SCHROPP: This gets -- and I will digress here a little bit because you asked me or you asked us if the plan amendment is not -- I have not discussed this with staff, so they may react otherwise. If the zoning or if the plan amendment is not adopted, you asked whether there should be anything move forward as part of the rezoning request, and I think, if -- I think I responded no. If I did address it with you, not -- we talked about it amongst ourselves, and the answer was no. We just moved forward. We had just as soon not have -- and I think you relayed that at hearing. I'm not sure if I did or not, but if I did, there may be one change you want to consider if the plan amendment doesn't go forward, and that is just the issue that we addressed which is the modification of the wetlands numbers have resulted

in an increase in the rural, and technically, the rural land use classification could and should permit up to 1,725 dwelling units. And that would clarify that issue.

MS. BELFLOWER: Okay.

MR. SCHROPP: That's in Condition 5A.

MS. BELFLOWER: Okay. But in terms of putting recreational opportunities in the CPD --

MR. SCHROPP: I don't really see -- it's not going to help us a whole lot. It just would not resolve anything.

MS. BELFLOWER: Okay. By correcting the numbers, you still would only be talking about eight units --

MR. SCHROPP: Yes.

MS. BELFLOWER: -- that could be built over what's platted?

MR. SCHROPP: That's the math.

MS. BELFLOWER: Okay. Okay. Do we want to take a break at this point? Or are you through with that question?

MR. SCHROPP: I am if you are.

MS. BELFLOWER: All right. We will take a break until 11 o'clock.

(A recess was held from 10:47 a.m. through

11:01 a.m.)

MS. BELFLOWER: Okay.

MR. SCHROPP: All right. Picking up where we left off which was number 18 in the list of questions or issues. Do we need a condition requiring an ongoing accounting of the number of units being constructed in the project and in each land use classification? If so, please prepare.

Probably wouldn't be a bad idea. We prepared a condition that I think has been used in other projects. The developer of land within River Hall II must submit with each development order a cumulative land development summary table indicating the future land use classification and the number of residential units and square footage and acreage of commercial retail and commercial office.

Obviously, we're not wed to that condition, but anything that would require reasonable submission of cumulative tables for each development order moving forward would be fine.

MS. BELFLOWER: Let me ask staff. I know in DRIs, there's some sort of process, and then there's that plan process, the blue sheet, yellow sheet. Different developments have the different

sheets that they keep. How do you all handle plan developments in general?

MR. BLOCK: Madam Hearing Examiner, Chip Block for the record. I believe Rob Price actually spoke to that in his last part of his testimony in the last hearing date, and he pointed out that development services representative staff now for the most part are asking for these cumulative totals on these larger projects of this nature. This is in keeping with the way that they are attempting to do it now. It just formalizes it in a condition, and it also addresses the Lee Plan densities, so I think the combination of the two actually provides for a good accounting of the cumulative totals of residential units within this project and keeps everybody on the mark of whether or not they've exceeded the number of units or not.

MS. BELFLOWER: Thank you for that. My only thought and concern is the River Hall I portion of it, and there is a process. The County requires them to provide information or the County keeps track of it as they're going.

MR. BLOCK: Madam Hearing Examiner, I think you're -- I'm hearing your concern about River

Hall I, and I think the fact that our development services staff in the review of development orders has now come as far as they have come from the standpoint of, as Rob pointed out during his testimony, that they are now doing this as part of development orders.

I think you'll find that it's happening in River Hall I if they would come in for a new development order on any of the tracts in there. So I think we'll be able to keep up with it in River Hall I. The condition just formalizes it in II.

MS. BELFLOWER: Has there, as far as you know, been any going back and capturing where things stand right now to catch up, to compare any future request coming in against, or does that have to get recreated each time one comes in?

MR. BLOCK: For this project, I don't know the answer to it. For another project that I'm familiar with, and unfortunately, it goes to a commercial development but has the same issues related to it; how much retail intensity has been granted, how much office, things like that. I know that we have done it on that commercial project where we've -- where we've actually gone

back, staff in one instance, we've gone back and looked at the totals that were granted and then projected out with the new development order coming in to make sure it didn't exceed, but we've actually asked in another commercial project to do the same thing, a larger commercial project to do the same thing, and so we've gotten those answers both from developers and staff doing the same research.

MS. BELFLOWER: Okay. I'm just wondering if we might take this language and add something that this information has to be provided to be used in conjunction with an accounting, a total accounting of the entire pro -- River Hall project or some wording to that effect, not that this developer has to submit the information on the final project, but that it's going to be used as a part of the total accounting calculations that you're indicating that staff is doing. If staff has to go back and do it the first time to collect the information, I'm just trying to put this in context of the whole project.

MR. BLOCK: Madam Hearing Examiner, I just confirmed with Brandon, when we were going through the Comprehensive Plan amendment, that actual

accounting for all of River Hall was done by staff, and we have that number as part of the Comprehensive Plan research that staff did.

I don't think we need to go back and redo it. It's there. It was done by -- in conjunction between the planning staff and development services staff, and we know what those numbers are.

MS. BELFLOWER: So if we added some wording to the end of this to just say to be used in the accounting of the total River Hall project, then that doesn't put any obligation on staff to go back and do anything. You're already saying it's actually already been done, but it's laying out the idea that the project needs to be considered as a whole in reaching these maximum numbers.

If there's only eight units or 96 units left, it will be a pretty much all in River Hall II from the sound of it if this was approved, but to just throw in some wording to that effect.

MR. SCHROPP: That's fine. I think there's a natural coordination that would occur anyway to do that.

MR. BLOCK: No objections.

MS. BELFLOWER: Okay. And you're fine with

the proposed language that he has?

MR. BLOCK: Yes, ma'am.

MS. BELFLOWER: Okay. Thank you.

MR. SCHROPP: The next issue, moving on, is 19 which was address the transfer of units under Policy 5.1.10 from suburban to sub-outlying suburban. Do you have to own property in the suburban to transfer units to the sub-outlying suburban, and does GreenPointe own any lands in the suburban classification?

The table -- and I'm working off of page 12 of our narrative response. The table at the top of that page actually reflects that there's 243 dwelling units remaining in the suburban land use classification that would be above and beyond what's already been permitted in suburban. 186 currently been permitted, 429 could be potentially developed in suburban. That leaves a difference of 243.

Under staff's proposed Condition 5, these units could be transferred to the sub-outlying classification so long as the requirements of Lee Plan Policy 5.1.10 are met. GreenPointe and its related entities; River Hall I, River Hall I, River Hall III ventures, do not presently own any

land in the suburban land use classification in this project, but that is not a requirement of Policy 5.1.10 with regard to ownership of land. Policy 5.1.10 only requires that the property have been under common, contiguous ownership at the time that policy went into effect, which was 1992.

I know because I was the applicant for that policy. Mr. Block and I were working on a project at that point where we needed to do exactly what it allows.

So it was adopted in 1992, and the policy was written to require that there be common, contiguous ownership of the property at the time the policy was written.

While we don't own any land in suburban, we would point out that the rights to the additional suburban units were expressly reserved by GreenPointe's predecessor in title, by recorded instruments that actually run with the land, and we are the -- now the beneficiary of those recorded instruments. Those are attached as Attachments H-1 and H-2.

If you flip to H-1 and H-2, you can see what was actually contemplated, and this was even before the 2005 zoning resolution when the then

owner was parcelling off what is now Cascades to Levitt and Sons who was the developer of Cascades, and the developer at this point of the whole project was an entity called Hawks' Haven Developers.

And I've highlighted some language there that kind of points out the first document is the memorandum of agreement that was recorded in the public records, and it says the parties recognize that there should be 570 units allocated to the Cascades or Levitt property. And it even gets in and says which are presently divided amongst 182 suburban units and 388 rural units. Again, reference to the Comp Plan classification.

And then goes on to say, and to the extent that pursuant to existing governmental approvals, any rezoning amendment or any such comprehensive plan amendment allocates additional residential units in excess of 570 necessary to develop the Levitt property in accordance with the plan development. Such excess units shall be allocated to the HHD property, which is the remainder of the River Hall property, and GreenPointe is now the successor to HHD.

There's another provision, I think, in here

that I've highlighted that says it runs with the land and goes to the benefit of successors in interest, et cetera.

That was the memorandum of agreement, and then this next document is a declaration of covenants and restrictions which flowed from this agreement which expressly reserved to the Cascades property 570 residential units, of which 182 would be suburban and 388 would be rural. You read these two documents together, the remainder of the units in suburban are available to the remainder of the project.

So the developer at that point essentially reserved the excess units available in suburban land use classification for ultimate transfer to other parts of the property which at that point would have been entirely rural or wetlands.

So the answer to our question is or the answer to the question is while we don't own any property in the suburban classification, we do own the rights to the excess suburban lands by virtue of previous documents recorded which pass through to the ownership presently, and that current ownership is not a requirement, it's what was in existence at the time the policy was adopted and

whether the properties were under common, contiguous ownership, and if we need to transfer the units, we believe we can demonstrate that.

MS. BELFLOWER: Okay.

MR. SCHROPP: Dr. Depew addressed number 20 as part of the answer to 16, the underutilization issue. There was a question as to whether we needed financial assurances for the improvements that are required by the zoning amendment, primarily the signal and the secondary access.

I respectfully request or suggest that no financial assurances or bond or letter of credit is required. The conditions ensure that they'll be done or no development orders are issued, and that's, I think, going to be far sufficient to require that the developer proceed diligently and accomplish the improvements without requiring them also to post a bond at this point.

Do you want me to move on or do you have a question?

MS. BELFLOWER: Well, I believe when you're doing platting and, I guess, other development orders that involve improvements that the county ultimately will take over, there's a bond requirement that has to be posted. Does roadway

improvements, do they ever have to have a bond in place with them?

MR. SCHROPP: Certainly, certainly they do as part of subdivision, and I may be wrong, but also, I think some off-site improvements do.

DR. DEPEW: Site related.

MR. SCHROPP: In this one, I think what we envision is not -- let's focus on the southern access point. The southern access point will be its own development order. It won't be tied to subdivision improvements, I don't believe. At this point, it will just move forward as its own separate development order, and so the hook or the guaranty, if you will, that it's going to be constructed is that it will hold up issuance of future development orders if it's not done. The relation to any kind of plat at that point is not going to exist.

MS. BELFLOWER: The bond typically, my experience has been that the bond is because the County is going to be taking over the infrastructure, and the County doesn't want to be stuck with subquality materials and -- or are they bonds to assure that you're going to do what you said that you were going to do?

MR. SCHROPP: Well, I had read the question to say that they are bonds to make sure that we do what we say we're going to do.

MS. BELFLOWER: Right.

MR. SCHROPP: You raise an interesting point, and I'm going to defer to Michael Jacob and maybe Carl Barraco because they -- they know more about the guaranties that come before turnover to Lee County, and I'm not the one to answer that.

MS. BELFLOWER: The financial assurances that the County does require in other situations, I'm trying to understand whether there are financial assurances to be sure that improvements are put in as opposed to the quality of them.

MR. JACOB: Both. The answer is both.

MS. BELFLOWER: Okay. There are requirements?

MR. JACOB: We actually, and I specifically helped draft the new bond language to allow for both the maintenance provision extends beyond the completion of the work and for the work itself to be completed. So there's different types of bonds depending upon the project, and from the County's standpoint, if they're taking over maintenance of something, they require a bond that covers a maintenance period of typically a year after

completion.

It's not always that you're going to have a maintenance bond that goes with it, but -- and you're not always going to have a right-of-way permit that requires a bond, but just really depends on the improvement.

MS. BELFLOWER: The request, I think, was -- I think it was made generally for enforcement of all the conditions, but I'm assuming that the real concern is the traffic light and the secondary access. Is that sort of improvement, especially improvements in a roadway that the County doesn't control on the traffic light but say even the secondary entrance which would be more under the County's control, is that the kind of project that is typical to have bonds?

MR. JACOB: Well, no, and what I would indicate to you is to take a step back and look at what the County's interest in these two items are. What are those interests? From the standpoint of the secondary access point, I wouldn't require a bond for that. The County as an entity doesn't have an interest in that access point. That's for the residents.

For the signal, that's not our road, so if

FDOT requires a bond, they may require a bond, but --

MS. BELFLOWER: Okay.

MR. JACOB: -- I don't know the answer to the FDOT question.

MS. BELFLOWER: It's a question of whether or not the County's interests are going to be affected if the improvement is not completed as laid out versus a code enforcement issue of them making the commitments versus the restriction on the developer that they can't go forward and get building permits unless they met the conditions. I mean, those are the three, from what I'm hearing, and financial assurance is a financial assurance to protect the County's interest typically.

MR. JACOB: It really depends on what we're doing. More often than not, you're going to find that the County's going to require a bond when they're taking over ownership of that item. We do have bond requirements for certain improvements, some off-site improvements where you're going to get impact fee credit, so we want you to bond that to make sure either you do it or you don't, but if you're going to get credits for it and you don't

do it, then we're going to go ahead and call the bond.

I don't know what criteria we would use to draft a bond as far as these conditions. We would have to in essence create a new bond just for this, and then you're opening the hearing examiner's office up to providing conditions -- providing financial assurances through bonds or some type of surety for zoning conditions, not just this case, but how this moves forward.

I don't recommend doing it, and I'm not sure what the County's interest in either one of those improvements would rise to the level of requiring a bond, but Carl might be able to tell you how FDOT deals with bonds or somebody.

MR. BARRACO: Actually, I'd rather not go into the FDOT issue. My understanding and my experience is that any off-site improvements would require a bond at development order time, and my understanding the reason for that is the County really doesn't want half-built infrastructure that the public could be subject to.

If you'd like, I can step out and research the section of the Land Development Code that addresses that, but based on my experience, all

off-site improvements do require a bond as part of development order process.

MS. BELFLOWER: Whether there's a condition in the zoning or not?

MR. BARRACO: Whether there's a condition of the zoning or not. And my suspicion is that it's so that there aren't partially built portions of infrastructure that subject the public to danger.

MS. BELFLOWER: Okay. All right. So the -- it sounds like both the applicant and the staff are saying that whatever the requirements are, they are, that would apply to any development, and that there's no need for an additional condition to address that.

MR. JACOB: My recommendation is not to include any sort of surety requirement when it comes to zoning conditions.

MS. BELFLOWER: Okay. All right.

MR. SCHROPP: Question 22, I'm going to need Dave to come back up. This is address consistency with zoning requests with Table 1(b) as amended, and I need to apologize initially. Part of the confusion, I think, over Table 1(b) was caused by I inadvertently used the wrong graphic during part of my presentation on the 14th and referred -- I

used the graphic that was something that applicant had proposed, but what actually, I think, was transmitted was what the staff suggested as an alternative, which different numbers for the Table 1(b) amendment. So with all due apologies, I'd like to bring Dr. Depew up to address the consistency with Table 1(b) using the right version of the transmitted amendment. Thank you.

DR. DEPEW: I'm going to try and make this simple, but I will just tell you that anytime you deal with Table 1(b), there's nothing simple about it, and I'm not going to try and get into a lot of the details about how some of this stuff is calculated because frankly, I'm not sure I can provide competent testimony on that, but I will tell you what was forwarded.

To do that, let me first direct your attention to the map of the planning communities out of the Lee Plan. And at this point, you will see that there is this pink area here, and that is the planning community that we're talking about. Here is the future land use map which tells you the various categories of land use, and what I've done here is blow up a segment of the future land use map, and actually in my own crude fashion because

I was never really good at drawing, just one of the reasons why I try and do everything on AutoCAD and not by hand, I have attempted to outline the Fort Myers Shores Planning Community on that map.

The reason I did that is because I wanted to show you that there are some areas in the Fort Myers Shores Planning Community that include rural, sub-outlying suburban, outlying suburban, commercial nodes, but it also includes some intensive right in there along Palm Beach Boulevard.

What I've also done is provide you with an aerial photograph because I'm going to talk about a couple of those elements along Palm Beach Boulevard that are intensive because clearly when the applicant submitted its Comp Plan amendment, the applicant was simply worried about transferring the area of the Comp Plan amendment out of rural and into outlying suburban.

Staff took a little bit more of a comprehensive look at this. Where they got their numbers, I'm not exactly sure. As I said, I'm not sure that I could testify because I've actually been through that calculation a number of times, and I'm not sure I understand how they got there,

but let me simply state that this is a blowup of the table that was transmitted as part of the Comprehensive Plan amendment.

And what I've done is taken a yellow highlighter and highlighted the rows that are different from the existing table to that which was transmitted. And what happens is there is a reduction in intensive development -- there's a reduction of intensive development from 20 down to 5. There is an increase in sub-outlying suburban from 367 up to 547. There is an increase in the total residential from 4,500 up to 4,665. So that's an increase of 165 acres of total residential allocations, 15 of which come from intensive development and 150 of which come from the sub-outlying suburban. There is a corresponding decrease in vacant of 150. 160, I'm sorry.

So that's where -- see, you're getting the same look on your face that I get on my face when I have to sit down and go through this stuff.

What happened was there was 15 acres taken out of intensive development, and there's density associated with that.

MS. BELFLOWER: 15 acres of development or 15

acres of Comp Plan category?

DR. DEPEW: 15 acres of Comp Plan category taken out.

MS. BELFLOWER: With this plan amendment?

DR. DEPEW: With the proposed plan amendment that was transmitted to the State.

MS. BELFLOWER: Okay.

DR. DEPEW: Because the staff went back and did a reanalysis of their inventory, and some of the stuff they discovered when they did their reanalysis was that, for example, there's a little chunk of intensive development right there, right at that corner of I-75 and State Road 80. That's a retention pond. That's about five acres worth of retention pond. That's never going to be residential development in the intensive development category. So why should it remain in the intensive development category?

So five acres of those 15, and I'm just -- I'm reconstructing this, went out of intensive because it's never going to be developed residentially as intensive.

If you go through on the aerial photograph and compare it to some of the pink areas that you find over here within the Shores Planning Community

area, you're going to find that there are other areas that are very similar to that. They're either developed as the Northshore Shopping Center or outparcels that are clearly going to be commercial and will always remain commercial, or they're water retention or they're something else.

In staff's inventory, there was apparently 15 acres of that that was never -- remember, this is residential categories. Doesn't mean that they lost the intensive development. What it means is the acres to be developed as residential were never going to be developed as residential, so they can take those acres out and reassign that density which, as you know, with bonuses goes up to 22, I think, units to the acre. That density could be reassigned under Table 1(b) and reallocated into the area out here that's being requested.

Now, the other thing to remember is that when you allocate acreage under 1(b), you're not allocating gross acreage. You're only allocating acreage actually used for lots. So the roads, the water retention, buffers, all this, that's not part of this allocation. It's only the area -- so those acres, when you try and make a comparison

between what's in here and what's in Table 1(b), aren't going to match up because that's not how 1(b) is calculated.

1(b) is calculated off of development orders and the actual lots themselves. They're going to tell you if I'm making a mistake and screwing this up, but I've looked over this carefully and practiced this three or four times, and I think what I'm telling you is correct, but I'll let Brandon tell you if it's not. But I'm pretty sure that that's how they backed into the acreages in 1(b), and I'm pretty sure that that's all consistent because when we looked through it, it looked like it was all consistent. The numbers all work out when you recognize that you're not looking at a one to one between the acres that are being zoned and the acres that are in Table 1(b).

MS. BELFLOWER: Okay.

DR. DEPEW: I think that explains it as best I can, and if I'm wrong about it, I'm going to let staff correct me, but I think that's the best way I can analyze the Table 1(b) issue for you.

MS. BELFLOWER: Okay. We actually have an opportunity for staff to do a rebuttal, but I think it makes sense to do it at this point and to

discuss that, so Brandon, if you would like to.

MR. DUNN: Brandon Dunn with Division of Planning. I was sworn in.

I would agree with what Dr. Depew has stated. That is how the table is used. We do actually look at the areas that are used for -- the actual residential calculation, the lots. Don't count the roads, don't count the water retention areas, other such types of infrastructure that are used in a residential development.

And the reason this table was actually put in place is the future land use map actually allows a lot more -- a lot more development than what's beyond the plan provided in the Lee Plan, so the State requested -- I'm not sure exactly when it happened, but the State requested this table so we could kind of control the development to be consistent with the planning horizon of the Lee Plan.

I'm not -- I wouldn't even try to get into as much detail as Dave did about it, but I do have the transmittal document that was sent to DEO. I have highlighted a couple of things, and it does confirm that that is what was transmitted.

It also has what they had originally shown a

couple of weeks ago as their Table 1(b), and there's a brief analysis of that, and staff said, "Well, we have some concerns with this," so staff did put in their own recommendation for Table -- the Table 1(b) amendment, and then later on in the document, it shows that is what the board transmitted.

MS. BELFLOWER: Okay. Do we already have that in the record?

MR. SCHROPP: Yes.

MS. BELFLOWER: The transmittal plan.

MR. SCHROPP: It's a transmittal document, yes.

MS. BELFLOWER: Okay. If the plan amendment, if the board denies the plan amendment change for the River Hall area, would staff still ask that Table 1(b) be amended to not including the River Hall, but to make those corrections that were just pointed out about the adjustments that you've made elsewhere, or are you just going to leave it and wait till next time?

MR. DUNN: That correction might be made at a later date, but we probably wouldn't continue this for those little corrections.

MS. BELFLOWER: Okay. So if the board decided

to deny it, it would be the whole thing, and everything would look exactly as it's currently adopted in the code. That would be staff's recommendation at this point if they chose to deny the River Hall portion to increase the density allowed in River Hall.

MR. DUNN: I believe so.

MS. BELFLOWER: Okay.

DR. DEPEW: Madam Hearing Examiner, do you want these as exhibits, or do you want to just leave them as demonstrative?

MS. BELFLOWER: I think that the only issue from the zoning perspective, the only portion of that question that is relevant to the zoning question is what is Table 1(b) going to look like if the plan amendment is approved, and does this development request meet it.

DR. DEPEW: And I believe you have the Table 1(b) that shows you as part of the plan amendment request, so it shows you what Table 1(b) would look like, and I believe that both staff and I have testified that we would be consistent with the adopted Table 1(b), so I don't think you need these, but if you want them, I'll be happy to give them to you.

MS. BELFLOWER: I don't think so. I think they go more to the plan amendment, but they do help to explain why there are different numbers and why it's not possible to match up the numbers and make them all work. Okay.

MR. SCHROPP: If I may before -- let me ask the question just a little bit differently, and that is if the amendment, the Table 1(b), and future land use map are adopted, will there be sufficient allocation in Table 1(b) to accommodate the dwelling units and the development that's anticipated by the future land use map amendment and this zoning?

DR. DEPEW: I believe there will be.

MS. BELFLOWER: Okay. All right.

MR. SCHROPP: The next question was whether the -- how is the school bus and EMS through the second access going to be handled? How is the access going to be handled? Is it going to be a manned gate, an automatic gate?

It's our anticipation, I think we indicated this in our application, that the gate will be an automatic or unmanned gate at this location which will have an override for emergency access.

I don't -- I would not suggest a condition at

this point being anymore specific. It will allow us to work with staff as well as EMS and the school district based on whatever is the best technology that they feel comfortable with and the best availability for type of manned access to meet their needs, and we don't have a specific type of control or manned -- remote control or override in place, but there will be some sort of control given to EMS and school district to go through the access.

The next question was whether we needed to have conditions to require the six-to-one slopes and the 20-foot and 30-foot setbacks if the deviations are denied or withdrawn, and the answer to that from a legal perspective is no. These are requirements of the Land Development Code. They will apply if the deviations are denied or withdrawn, and this is already reflected in Condition 1 of Resolution Z-05-051 and would be carried through, so whatever is not granted, the deviation would have to comply with.

25, and I'll answer in part, and if you want to hear more from Steve Leung, I'll be happy to get him up. Question 25 was, was the addition of multi-family to the CPD addressed by the TIS? And

the answer is the TIS assumed that the multi-family in the CPD portion, there would be residential in there, and it was actually calculated from a traffic generation rate at single-family rates, so it was actually over-assumed and over-accounted for in terms of the TIS.

The only multi-family that was considered as part of the TIS was the 102 units that have been both approved by development order and for which a condo plat has been recorded.

Even the site that has an approved development order for multi-family was treated as single family because it's not been submitted to condo plat, so he analyzed worse case scenario. I don't know if you want to hear further from him. Okay.

And then the last question on the list was review the hearing examiner conditions and advise if any changes, modifications are necessary or appropriate. And Attachment I contains a memorandum from me to you that addresses some of the changes that I think might be appropriate. Some are just edits and a little explanation in red as to why they might be necessary, but

Condition 1, we -- I'm sorry. Go ahead.

MS. BELFLOWER: I think that it's going to be appropriate to go through the conditions in fair amount of detail holistically, so I'm thinking that might be something we do at the end. I wanted to make sure that there were no other questions that were raised or shades of questions that were raised.

MR. SCHROPP: Yeah, and that's fine. We can do that at the end. During the course of the testimony, there was -- you did want some additional input on the deviations --

MS. BELFLOWER: Yes.

MR. SCHROPP: -- and the justification for the deviations, I believe.

MS. BELFLOWER: Yes.

MR. SCHROPP: Ms. Ekblad is ready to do that, and there were also a series of questions, written questions provided by Mr. Brookes that most of which have been, I think, addressed to some degree or another in this presentation, but there are a few that probably need to be elaborated on.

MS. BELFLOWER: Yes. And I would like for you to do that.

MR. SCHROPP: Okay.

MS. BELFLOWER: So in terms of timing, why don't we save the conditions till after lunch when --

MR. SCHROPP: The Brookes?

MS. BELFLOWER: No, this Attachment I --

MR. SCHROPP: Okay.

MS. BELFLOWER: -- document, to go through that, and if you want to address the deviations and then go through Mr. Brookes's list, might be the time to do it now.

MS. EKBLAD: For the record, Tina Ekblad. I remain sworn in from the previous days of hearing. I don't think there's anything else I need to put on the record.

I'm just going to talk a little bit about deviations five and six as they are represented in the application and on the Master Concept Plan. I believe within the hearing examiner's exhibit, they're actually labeled six and seven.

I wanted to start with a little bit of history. The section of the code that these deviations are from specifically is 10-415, Subsection B, Subsection 1-C. At the time that the application for River Hall was going through and the public hearings were held, this particular

provision was not in the Land Development Code.

So if you look at the existing approval and the side setbacks and the rear setbacks associated with the single family, the two-family attached, and those types of units, you'll note that the side setback is five feet and the rear setback is 15 feet. There is no additional setback from indigenous preserve. That, as I mentioned, that wasn't in the land development code at the time.

So when you consider that within River Hall, the existing portion of River Hall that we have platted residential units, and you've heard a multitude of testimony about that, and that those plats exist, and that we have committed to not replatting those lots. They will remain as they are today within our proposal. We will not make any changes. And you take into account that the code now requires us to provide a minimum setback of 20 feet from buildings and a 30-foot setback from indigenous plant communities, you've increased that setback.

Now, is there a -- what I'd like to do is walk through a specific example so you can understand the impact of that on these platted lots. In this portion of River Hall right here, that tract is

platted, and the setback that is or the lot line that is adjacent to that indigenous preserve is actually a side lot line due to the configuration of the roadway, so that's where deviation five comes into play.

Our current setback is five feet. The average lot width is approximately 50 feet. So when you consider the 50-foot width, that the required 30-foot setback from indigenous communities, you reduce the lot width at that time to 20 feet.

When you consider the side setback on the other side where it would adjoin to another residential lot, that's five feet. So you've effectively reduced the lot down to 15 feet of developable width, and I would argue that that does not enhance the plan development and that does not promote the general intent of the code and of the section.

If the developer were to develop that lot, it would not be consistent. It would not promote the aesthetic of the planned development as it occurs today, and I would ask you to remember that in this particular case, we have existing residential development adjacent to platted lots that have not been developed, so the pattern of the developable

area in that location on the lot would change if this deviation request was not granted.

Now, for the side setback, we are not asking for -- for the five feet to remain. We are asking for 17 feet, and we have limited that deviation to very specific lots where this type of situation occurs. That 17 feet is adequate to provide access to those indigenous communities, and the specific concern is -- I'm going to call it fire-wise. They do prescribed burning, and you want to be able to access those plant communities, and we acknowledge that, and so we are not asking for that five feet to remain. We are asking for 17 feet.

The same situation occurs when you consider the rear setback. And the example I would like to give is right here in the Hampton Lakes community. Where this gray shading is for our amendment area, these lots are currently developed. They're also adjacent to an indigenous preserve.

The depth of the lots, my understanding the average is approximately 130 feet in depth. So again, you would take these lots which are platted but are not developed, and if the deviation is not granted, you would reduce the lot depth to 100

feet at the rear. We're required to have 20 feet at the front. You only have 80 feet left of developable area.

So when you consider that these lots are developed with a different developable area, and we would pull a building permit on the lot next door, you would not have a consistent pattern of development. It would change. And again, you would not be enhancing the plan development at that point. You will be altering the pattern of development.

So what we've done is we've taken a look at the situation. We've taken a look at the plat. We are not asking for that rear setback of 15 feet to remain in those instances. We are asking for relief down to 20 feet. Again, that is to provide that access to those indigenous communities and to provide access where fire management is provided. We believe that that is adequate, and that promotes the intent of the provision.

Do you have any questions regarding that?

And I would add that this would only be for the existing platted lots.

MS. BELFLOWER: The -- your testimony -- take the ones with the side yard situation.

MS. EKBLAD: Uh-huh.

MS. BELFLOWER: Have any of the lots that have the side yard situations anywhere in River Hall been built on? Do they actually have units on them?

MS. EKBLAD: I don't know the answer to that.

MS. BELFLOWER: Well, then let's go to the rear yard ones. You indicated that the portion just to the west of the part you were pointing out has units currently on it for the rear yard.

MS. EKBLAD: Yes.

MS. BELFLOWER: Under the current land development code requirement, they would have to be back 30 feet because those areas are subject to burning; is that correct?

MS. EKBLAD: Under this provision, yes.

MS. BELFLOWER: Well, under the Land Development Code, the way it's written right now?

MS. EKBLAD: Yes.

MS. BELFLOWER: Okay. When those lots were developed, they were allowed to build as close as 20 feet? The ones to the west that you said have buildings on them?

MS. EKBLAD: I don't know the building permits that were pulled on those lots to be able to give

you those specific setbacks.

MS. BELFLOWER: Okay. My question is how has this been handled in River Hall in general? If we don't have a vesting determination, if it's just sort of something everybody knows the way it's done, when people come in to get building permits and the zoning desk looks at what the setback requirements, are the environmental people looking at what the setback requirements would apply because of its location next to an indigenous area? Have they been getting administrative reductions? Do we know what sort of process? Do we have any information on that?

I'm trying to understand your point of that it would be a difference in development.

MS. EKBLAD: And I understand that. Unfortunately, I don't handle those development orders and building permits to answer the question.

MS. DERHEIMER: I might be able to clarify. Is this a good time or do you want to wait for rebuttal?

MS. BELFLOWER: If you have information on what has been done in the past in River Hall, that would help.

MS. DERHEIMER: And not -- for the record, Susie Derheimer with Environmental Sciences.

It's not just within River Hall, it's how we handle this situation generally. When the LDC is applied to the setbacks is at the time of development order. And what's looked at at the time of development order is the code requirement which would have been at that time, these lots that are currently platted have a development order prior to this new code.

MS. BELFLOWER: Apparently, they weren't. The zoning was prior to the new code, but the development orders have been since the new code, but they were -- is that not correct?

MS. DERHEIMER: No, that's not correct.

MS. EKBLAD: I don't believe that's accurate.

MS. DERHEIMER: So when we talk about -- you're talking about vesting by the platting, not really. They're vested by the development order.

MS. BELFLOWER: Okay.

MR. DERHEIMER: So -- and legally, I don't know if they're comfortable with it, but these lots that are -- that they're asking for the deviation on have development orders that require the setbacks per the old code.

MS. BELFLOWER: Okay.

MR. DERHEIMER: So they really are vested. Environmental Sciences has consistently reviewed it to that fact. If they had a development order prior to the code, then they need to meet the code at the time of the development order. Does that make sense?

MS. BELFLOWER: Yes. Well, that helps because I was thinking that it was the zoning, that it changed right after the zoning.

MR. DERHEIMER: No.

MS. BELFLOWER: But you're saying it changed right after the development orders.

MR. DERHEIMER: It's changed since they had development orders, so they actually -- their development order project development regulations are per the old code.

MS. BELFLOWER: When was this provision adopted? Was it not 2005?

DR. DEPEW: I believe that's correct.

MR. DERHEIMER: Yeah.

MS. BELFLOWER: Which would make it at the time of the zoning, not at the time of the development orders.

MR. DERHEIMER: But I did research. At the

time of this deviation, I did research, and a development order was prior to the old code.

MS. EKBLAD: We --

MR. DERHEIMER: The 2005 zoning I think --

MS. EKBLAD: And Tina Ekblad for the record.

We have development orders that predate this particular zoning for this property.

MS. BELFLOWER: But not all of them. But some of them do.

MS. EKBLAD: I'm looking at one, two, three, --

MS. DERHEIMER: Most of them do.

MS. EKBLAD: -- four that have a 2004 date and two that have a 2005 date within -- two of them being within the Country Club and two of them being within Hampton Lakes.

MS. BELFLOWER: Has this applicant since this applicant took possession of the part of River Hall that they have, have they filed for any development orders?

DR. DEPEW: Yes.

MR. SCHROPP: Not for residential.

MS. BELFLOWER: Not for residential lots. So all the residential lots that are platted were done right about the time either before or about

the time of the 2005 zoning. They were done under the original '99 approval, and then some perhaps right after the 2005.

MR. DERHEIMER: Based on the dates, yes.

MR. JACOB: Platting comes after development order.

MS. BELFLOWER: I understand, so the testimony that I'm hearing is that the development orders are all vested.

MR. DERHEIMER: Right.

MS. BELFLOWER: And it's not a matter of the hearing examiner or the board making a determination whether they're vested, the staff has already made the determination based upon the way you treat development orders. If you got a development order approved under one set of regulations, you are allowed to go forward.

MR. DERHEIMER: Correct.

MS. BELFLOWER: These are legally nonconforming lots which are allowed to meet the setbacks --

MS. DERHEIMER: Right.

MS. BELFLOWER: -- under the old requirements.

MR. DERHEIMER: That's how we consistently reviewed that, so again, I'm not sure if --

MR. JACOB: I'm not going to go based on what you may have done, but typically, and I've looked at this ordinance. The ordinances indicate when they're effective and what they apply to. I have to go back and look at this specific ordinance that adopted the regulation we're talking about, but under the normal process, ordinances that change the Land Development Code do not apply to projects that are found incomplete prior to the ordinance actually being adopted.

Assuming that's the case here, it would not apply to this development if it already had been -- as far as the development order is concerned, completed or in this case sounds like actually issued.

MR. SCHROPP: And then the additional question, not to confuse everything or elaborate on, but the concern that we had was by going through this process that we're in right now, are we somehow waiving the applicability of staff's interpretation of these requirements to the existing platted lots?

MS. BELFLOWER: To the degree that you're not amending the development orders for the individual developments, and that is an interesting legal

question, the rezoning doesn't change that.

MR. JACOB: No, the rezoning doesn't change it, but when you go to develop in accordance with the zone, the rezoning, if you have to amend your current development order, there's apparently numerous ones, you then are going to open yourself up to what you're amending under the current regulations that you do what -- when you amend your DO, but at the zoning stage, you're correct, you're not changing those development orders.

MS. BELFLOWER: Okay. So basically this request would be an in the abundance of caution, if this rezoning triggers anything that would cause the existing vested nature of the development order approval, then this deviation would kick in.

MR. JACOB: Remember, he just indicated they have not pulled any DOs for units, so in the gray area, there would be no vesting to the extent --

MS. BELFLOWER: Correct. They're asking for this -- these deviations for very specific lots, and those are already platted lots which apparently were platted -- were -- received development orders prior to this setback regulation going into place. We've seen the term

vested, and they're legally nonconforming lots under this provision, so this deviation they're requesting is only if this rezoning action in some way, if they had to go back in and amend the development order in some small part, that they wouldn't lose the vesting.

MR. SCHROPP: I think that's what we've come down to, and just one correction, there are -- some of these lots are in the gray area because they are part of this rezoning, so --

MS. BELFLOWER: All of them are in the gray area.

MR. SCHROPP: Yes, they are.

MR. DERHEIMER: They're in the gray area, but they're -- there's some areas in the gray that are platted and some are not, and we're only talking about the gray area platted.

MS. BELFLOWER: They're all in the gray area. That's the point.

DR. DEPEW: The other thing, I'd just like to make sure that the testimony and the record is correct. I don't think we're trying to tell you that there have been no development orders by anyone pulled on any of the other parts of the development. I don't think we know that for a

fact sitting here. Just this developer hasn't pulled any residential development orders on that.

MS. BELFLOWER: So in the area that we're talking about under the zoning application, any platted lot, any lot that has a development order approval, any unit has a development order approval, those predated this setback regulation.

DR. DEPEW: That is my understanding.

MS. BELFLOWER: Okay. All right. Then we will take the deviation information and request. It does go -- it does rely on the vesting as the justification, and it is just in an abundance of caution situation.

MR. JACOB: Yes.

MR. SCHROPP: That's what we've come down to, yes.

MR. JACOB: I just want to be clear, Madam Hearing Examiner, because you have to analyze the requested deviation under the criteria that's laid out for you under the code, and I don't know of one that indicates vesting as a basis for granting a deviation.

MS. BELFLOWER: I think --

MR. JACOB: It may be as far as for moving forward, you'd have to go back and look at the

ordinance to verify what I indicated was true, that those provisions that created the new setbacks would not apply to those development orders that have previously been issued, but if they go and amend those previously issued development orders, they may trigger some need to come into compliance with the current regulations.

MS. BELFLOWER: Right. And as it relates to those specific setbacks, I think we've heard testimony about why it's necessary, why it would enhance this --

MR. JACOB: Right.

MS. BELFLOWER: -- plan development and why it would not harm the public health, safety, and welfare which are the criteria. So yes, there's not a criteria that says if you had it before, we can give you in an abundance of caution one, but I think I've heard enough to address that issue.

MS. DERHEIMER: Just to elaborate a little further just for justification on staff's recommendation of approval, the condition is that if they are to replat, then that's when the deviation would no longer apply because they can come in and amend the development order, but if they're not changing the lot configurations, it

really wouldn't be affected by this setback, but if they come into the amended development order and change the lot configuration, they'd have to replat to the new proposed lot configuration, so now that would -- the deviation would no longer apply.

MS. BELFLOWER: Okay. So to make the deviation only --

MS. DERHEIMER: Yes, for what exists today. That's why the --

MS. BELFLOWER: Okay.

MR. SCHROPP: That's a good clarification.

MR. DERHEIMER: -- replat condition was put on there. That it's not. It's only granted if they don't replat.

MS. BELFLOWER: Okay. Yes, any replat of these lots will be required to meet the 30-foot structure setback to the preserve.

MS. DERHEIMER: Yes.

MS. BELFLOWER: And that raises the point that you had committed to not replatting those lots and incorporating that as a condition. I think I added the qualifier in a way that will increase the density because I thought that's what you were going for, but I think in reality, you just are

committing to not replat the lots, period.

MR. SCHROPP: We don't anticipate replatting.

MS. BELFLOWER: Well, what's anticipated and what's allowed. So if you found some sort of error that was a calculation error, and you need to adjust the lot line a little bit or something like that, that would require a replat, correct the plat; would it not?

MR. SCHROPP: I'm sorry, can you direct me to the language?

MS. BELFLOWER: I'm trying to find the item.

MS. EKBLAD: The replat item was in Condition 1.

MS. BELFLOWER: Yes, in the middle of no currently platted lands within River Hall II may be replatted, and I had added to increase density. Are you comfortable with striking "to increase density" or do you want to add a qualifier to --

MR. JACOB: If I could speak on behalf of the applicant and part of the people who reviewed the plats, you did not want to limit it to no replatting because you can have a, you know, as an easy way of addressing drainage easements, replat certain property that has nothing to do with density or anything that has to do with anybody,

and that would be a --

MS. BELFLOWER: I would agree with that.

MR. JACOB: -- cost effective way of dealing with it. Otherwise, you would have to do a petition to vacate for everything that's shown on the plat if you had to make a change.

MS. BELFLOWER: I don't disagree with that.

MR. SCHROPP: I concur with that. Great analysis.

MS. BELFLOWER: So no currently platted lands within River Hall II may be replatted to increase density or -- and then we would need something to effect the setbacks relative to the preserve areas or something to that effect. That you're not going -- you're committing to not change, well, if you get the deviations, it's not going to matter.

MR. SCHROPP: Well, but the deviations are conditioned on if we replat, we've got to comply with the current conditions.

MS. BELFLOWER: True.

MS. EKBLAD: Could we put something in about replatting against the indigenous preserves because that's where it would apply?

DR. DEPEW: But I think the language addresses it. You can't replat to increase density. That's

really the issue; right?

MR. SCHROPP: And if you replat, you've got to comply with current regulations.

MR. JACOB: Increasing density means any increase in the overall lot size, anyone of those lots.

MS. BELFLOWER: Decreased.

MR. JACOB: I'm -- sorry, yeah, deceased, yeah. I'm going the opposite way. Which means in essence, you cannot change the lot boundaries with those lots without triggering the new requirement.

MR. SCHROPP: Well, no. The way I'm interpreting it is if you had a ten-acre lot, ten lots in a row, you could replat them into ten or less lots, as long as you complied with all the regulations.

MS. BELFLOWER: Right.

MR. SCHROPP: You would not be increasing density.

MR. JACOB: That's where I was going. You could increase the size of the lot, but you also --

MS. BELFLOWER: You couldn't make 11 lots.

MR. SCHROPP: But you could make nine or ten.

MS. BELFLOWER: You could make nine or eight

or whatever, but the way staff's condition is written, it says if you replat it for any reason, you're going to have to meet the 30-foot setback. Even if an error that was made or to add a drainage easement down the side of one that has nothing to do with indigenous preserves or anything else, so ponder that at lunch.

MR. SCHROPP: I'll do that.

MS. BELFLOWER: And about how you -- how you want to address that and those lots and any other vested setback or thing that you think you may have as to unintended consequences.

MR. SCHROPP: I understand that.

MS. BELFLOWER: Okay. Thank you for that evidence, that information.

All right. Do you want to run through answering the questions on the Brookes list?

MR. SCHROPP: It's not going to be all that short. I didn't mean to imply that -- it would probably take a hour.

MS. BELFLOWER: An hour? Then let's break for lunch. Okay. So Michael won't have to eat the microphone again.

MR. JACOB: Hey, I can leave.

MS. BELFLOWER: All right. We will break

until, well, it's going to be an hour, you think, on that. We're not going to go all the rest of the afternoon do you expect?

MR. SCHROPP: I don't expect so.

MR. JACOB: Staff has no presentation.

MS. BELFLOWER: Okay. All right. Let's go till 1:30.

MR. SCHROPP: Thank you.

(A lunch recess was held from 12:05 p.m. through 1:31 p.m.)

MS. BELFLOWER: We are back on the record then. And I think we are to the point where you wanted to go through Mr. Brookes' list.

MR. SCHROPP: Yes. Actually, before we do that though, you asked a question during some of my rebuttal about the number of units in the zoning amendment area.

MS. BELFLOWER: Uh-huh.

MR. SCHROPP: And we have that calculated. Again, Ms. Sapen calculated this if you need her to explain how, but it's pretty self-explanatory. There's the exhibit. It's actually not the 598 that we represented. There was actually -- there's, as you may recall, there's two areas of existing platted lots that are in the sub -- that

are going to the sub-outlying suburban but are not included in the zoning amendment. They're up in the -- using this, they're up in this area here.

MS. BELFLOWER: Uh-huh.

MR. SCHROPP: And they were not included in the zoning amendment area, and they actually have 114 units. So the total zoning amendment area is 484, and that's broken down by what's shown on the map here.

I don't know why the number was important or why we calculated it, but that's what it comes out to be.

MS. BELFLOWER: Okay.

MR. SCHROPP: I don't know if you have any further questions to go to that.

MS. BELFLOWER: 500 and whatever it is acres, there are currently 484 units platted or approved.

MR. SCHROPP: Correct.

MS. BELFLOWER: Okay.

MR. SCHROPP: That's correct, yes.

MS. BELFLOWER: We will take this as Applicant's Exhibit 8.

MR. SCHROPP: Thank you.

MS. BELFLOWER: And it is zoning amendment existing density exhibit. Okay.

MR. SCHROPP: Proceeding to Mr. Brookes's questions, I'd like to start with the traffic or transportation-related questions or actually the last set of questions that Mr. Brookes provided and call Steve Leung to address those.

I have -- do you have the questions, a copy of the questions?

MS. BELFLOWER: Somewhere.

MR. SCHROPP: We're just going to go through them, I guess, the way we did before. I've got them here if you want.

MS. BELFLOWER: If you have an extra copy.

MR. SCHROPP: I do.

MS. BELFLOWER: Wait. I've got it. I made a copy, lost a copy, made another copy, so yes, I found it.

MR. SCHROPP: Okay. And then flipping to the questions that are on the last page under Steve Leung, traffic.

MS. BELFLOWER: Okay.

MR. SCHROPP: I'll just read the question and ask Mr. Leung to address it, and I think the first word actually should be "were" rather than "where."

Were traffic impacts of additional units

analyzed to determine how River Hall Parkway will be additionally impacted during school traffic a.m. and p.m. hours?

MR. LEUNG: Good afternoon. For the record, Steve Leung with Plummer and Associates, and I'm still under oath.

To answer that question, yes, we included the buildout of River Hall, the school traffic in the traffic analysis, and we concluded there's plenty of capacity on River Hall. As I mentioned in my last testimony, the capacity of the existing four lane cross-section of the collector road of River Hall Parkway, the capacity in peak direction is 1,530. The highest estimated traffic volumes coincident with buildout of River Hall is estimated at 1,130. So that's about a 70 percent volume to capacity ratio. So there's plenty of capacity on River Hall Parkway, and it's expected to be operating at acceptable levels of service throughout this project.

MR. SCHROPP: Second question was, does traffic on River Hall Parkway become what is commonly called a, quote, standstill slash stop and go, closed quote, during school traffic hours?

MR. LEUNG: I'm not understanding that term,

but if the -- if it's implied that there -- it might be busy during the school drop-off and pickup hours along with school buses, yes, that's expected and that's a common occurrence. Again, going back to my answer to question number one, there's plenty of capacity on River Hall Parkway.

MS. BELFLOWER: Could I interrupt with a bit of a follow-up question?

Does the school board have typically a traffic plan for their schools, the lane that the bus is supposed to -- the way the bus is supposed to come in and the way the parents are supposed to come in and a plan for how that's addressed, and do they normally have a police officer during the school hours? Are you familiar with --

MR. LEUNG: Yes, there are three access points to the school off of River Hall Parkway. It flows perfectly fine, meaning that the plan is to actually utilize all three access, the school buses using a different entrance and exit way, but it works perfectly fine within a short 30 to 40 minutes of the hour in the a.m., as I mentioned, between the hours of 8 to 9 which is the peak period of this drop-off and then during the afternoon between the hours of 3 to 4 would be the

pickup and then the exiting of the school traffic at that time.

MS. BELFLOWER: Generally though, schools will have a traffic design plan that they had laid the schools out, and there is a plan in place for how it interacts with the street adjacent to the school; is that correct?

MR. LEUNG: Certainly, certainly.

MS. BELFLOWER: Okay.

MR. SCHROPP: Third question was, is the intersection at River Hall Parkway and State Road 80 failing under current conditions?

MR. LEUNG: And as I spoke about the last week, the intersection is not failing currently. You had specifically asked that question, Madam Hearing Examiner, and normally we do not report the overall intersection for an unsignalized intersection, but in this case, I think I decided to provide the printout of the intersection analysis which gave an overall intersection level of service which I'd like to submit for the record so that you have these documents.

MS. BELFLOWER: This will be Applicant's Exhibit -- I think 9. Yes. And it is State Road 80 at River Hall Parkway analysis.

MR. LEUNG: And title is given at the bottom of the page.

MS. BELFLOWER: Synchro 8.

MR. LEUNG: Yes. It's technical, but it does give us an overall intersection. As you realize, the entire intersection includes the approaches on State Road 80, both eastbound/westbound as well as the minor approach as represented by River Hall Parkway, and looking at the volumes, the northbound movement, which we've discussed that it's having some delay because of the need for the exiting vehicles to go west when they come out of River Hall Parkway, but those volumes represent less than ten percent of the overall intersection volumes, and so we agree and we're happy that the FDOT has basically recommended a signal there, and I think with the signal, we're going to improve the capacity of that northbound movement, and we're going to -- and the signal will maintain acceptable level of service with buildout of this project. So we're happy to proceed with the signal.

MS. BELFLOWER: Okay. The two pages --

MR. LEUNG: Yes. Let me explain. The first page is representing the a.m. peak hour, which is

between 7 and 8, and that's denoted at the bottom right of the page.

MS. BELFLOWER: Okay.

MR. LEUNG: As you can see, just near the middle of the page, it says intersection summary, and it has an ICU level of service A. That's indicating that about only 41 percent of the intersection capacity is being utilized during the a.m. peak hour.

And the second page represents the p.m. peak hour in the afternoon of between 5 and 6, which is the highest peak hour of the day in the afternoon, and that's indicating utilization of about 45 percent of the intersection's capacity. That's under existing conditions.

MS. BELFLOWER: Do you have a report like this on the school board, the school hours, the 8 to 9 that you mentioned and the 2 to 3 or 3 to 4?

MR. LEUNG: Well, as a matter of fact, I do.

MS. BELFLOWER: Because that was one of the questions that was raised is whether or not that was actually the peak.

MR. LEUNG: And as I mentioned last week, the peak hour of the school, it's a different peak hour than what you just -- what I just presented

here, and again, the a.m. peak hours corresponds between 8 to 9 in the morning, and then the p.m. peak hours between 3 and 4 in the afternoon, and I'll present that as an exhibit.

MS. BELFLOWER: Okay. We will actually add this to your Exhibit 9.

MR. LEUNG: Again, coincident with the school's trip generation peak hour between 8 and 9 a.m. suggesting that the volumes are occupying about 36 percent of the capacity in the a.m. peak hour, and then in the afternoon, it's occupying about 35 percent of the capacity.

Again, this is where you have to consider that there's higher percentage of school trip generation, like school buses, parents drop off, pick up, and compare it to the River Hall traffic as well as the overall total traffic, so meanwhile, the school traffic has increased, but the overall traffic has decreased, and that's why you see the difference in the up and down between the peak hours.

MS. BELFLOWER: Okay. So the actual peak usage at this point is in the traditional p.m. and a.m. peak hours?

MR. LEUNG: That is correct.

MS. BELFLOWER: Okay.

MR. SCHROPP: Next question was, how will traffic enter and exit and turn across State Road 80?

MR. LEUNG: And assuming that's at the River Hall Parkway intersection, currently, it's a full median opening allowing all movements including the eastbound right turn into the project, the westbound left turn into River Hall, and then the outbound traffic of both lefts and rights, and that's a full movement intersection.

If I could just elaborate for the ultimate built-out conditions, we had assumed that the Olga Square development would have a connection opposite River Hall Parkway, so we looked at it as a four-lane intersection for planning purposes when we did the TIS, so just to make sure that we covered all possible developments and traffic impacts.

MS. BELFLOWER: Okay.

MR. SCHROPP: Are there turn -- excuse me. Are there turning lanes in median openings on State Road 80? Subquestion, how many cars can be accommodated in turning across State Road 80 lanes?

MR. LEUNG: And I'm assuming that's related to existing geometry of the intersection and turn lane. For the eastbound right turn into the project, I think we could -- it's a free flow movement, and if absolutely necessary, that has to be stacked and somehow wait for some clearance. We could do between ten and twenty vehicles just assuming that there's absolutely no movement and which it's very unlikely, and we've never seen that happen.

For the westbound left turn into the project, we can stack ten vehicles approximately to wait for the opportunity to do that, but I think that's all going to change once the signal comes in. And I think we'll be even looking at two turn lanes. For example, dual turn lanes would be needed going north into the Olga Square project and perhaps just to match up the geometry, we may be providing dual left turn lanes into the project, so that way we'll get more capacity, and it will maintain a very good green time along State Road 80.

MR. SCHROPP: I think question six was answered at -- during my testimony this morning. Will the southern entrance to Lehigh Acres be gated? If so, will there be a full-time security

guard? And we're not anticipating a security guard. It will be an unmanned gate with electronic control and emergency override.

Question seven and eight just ask the design status of River Hall Parkway, is it a collector, and State Road 80, is it an arterial?

MR. LEUNG: Yes, River Hall Parkway is a four-lane collector. Capacity during the peak direction is 1,530 which is a very high number.

MR. SCHROPP: And State Road 80 is an arterial?

MR. LEUNG: Yes, State Road 80 is an arterial.

MR. SCHROPP: Simply add also that as we indicated, I think Ms. Ekblad in our original presentation, River Hall Parkway is constructed to urban collector design standards under the LDC.

MS. BELFLOWER: Okay.

MR. SCHROPP: I think that was the traffic questions.

MS. BELFLOWER: Okay.

MR. SCHROPP: Thanks.

I'm going to try and go through the questions, the remainder of the questions. If I need to get anyone else up here, I will, but I think a lot of the questions have already been touched upon on

rebuttal, so I'll go through them fairly quickly.

The first is starting on page one, number one under my testimony. Are any of the current principals or members of this corporate LLC applicant, which knowingly purchased the land in bankruptcy, former members or principals of the prior application? In other words, is this the same LLC?

Mr. Mairs, as I indicated at the original hearing, he is the current president of GreenPointe Communities. He was also a vice president under LandMar which was the previous developer. He was hired by GreenPointe after GreenPointe acquired the property. There is no relation between GreenPointe and LandMar. They are completely different entities, not that that has any bearing, I think, on the zoning.

Does this rezoning exceed one dwelling unit per acre on lands currently designated rural on the Comprehensive Plan?

We went over ad nauseam this morning the density on the rural classification. It is 0.99 presently.

How many total dwelling units have been constructed out of the 1999 units approved for

River Hall? What is the percentage at buildout, and why is the increase needed at this time?

The testimony at the first day of hearing was that there's about 333 dwelling units currently constructed. That's about 16 percent of 1999.

As to why we needed this at this point, we covered that in our rebuttal earlier today. Like any developer of a large-scale residential development, this developer desires to establish the buildout parameters for the project for planning purposes, for financial purposes, and also to ensure long-term planning and business operations for the project. Dr. Depew elaborated on many other reasons why it's a reason for going forward at this point.

Has the amendment to Policy 21.1.5 been officially withdrawn? And if not, there's a number of sub-questions with regard to the cap that was included in 21.1.5.

As I indicated at the hearing at the beginning of our presentation, this was covered. Policy 21.1.5 is part of the transmitted plan amendment, and theoretically could be adopted by the board, would still -- when it comes back for final adoption.

That being said, the cap established in that policy of 2850 is greater than what can be accommodated under the plan amendment as modified by the removal of the CDD lands. In effect, the CDD's decision to withdraw their authorization has obviated the need for the density cap of 2850. In fact, the maximum that can be accomplished under the future land use map amendment as presently tailored would be 2,749. All that was explained at the hearing.

MS. BELFLOWER: Let me ask, has -- has the plan amendment been officially amended from what was transmitted? Is what's going to the board the transmitted, and then they would act on it in pieces, or has it actually been added to be sent to the board?

MR. SCHROPP: I'm not sure what you mean by officially nor was I sure what he meant by the word officially. To respond, and I'm not trying to dodge a question, but, you know, and I'll look to Michael because he may have a different or -- and Brandon as to how this might actually end up getting to the board.

The lands were officially withdrawn from the plan amendment request by the River Hall CDD.

They passed a resolution. The CDD sent that resolution to DEO as well as to the County saying our lands are out. So we have adjusted the maps and the supporting documentation to reflect the lands that are remaining in the plan amendment which are our lands. Now, those, I expect, will be the only lands that move forward for consideration by the board when this goes for transmittal hearing sometime later this year.

MS. BELFLOWER: Well, in terms of the plan amendment that we're looking at affecting this zoning and to know what all the words would be, the applicant asked for the plan amendment originally; correct?

MR. SCHROPP: Yes.

MS. BELFLOWER: And then there have been some adjustments, like we talked about Table 1(b), that staff has made some adjustments while we're at it kind of thing. So what is the application for a plan amendment that the applicant intends to present to the board as the plan amendment, and not only the maps, but the text?

MR. SCHROPP: I think I understand what you're saying, and maybe this will clarify the applicant's position, I guess. We withdrew

certain parts of the plan amendment application request by letter dated December 17th, and that's included in your packet, and I think it's an attachment to the staff report Chip had, if I'm not mistaken, and I don't know which one it is.

MS. BELFLOWER: I don't think it was attached, but I do think you presented it at some point.

MR. SCHROPP: Okay.

MS. BELFLOWER: Okay. So that's the -- if I can find it. It's the December 17th, I think you said, letter?

MR. SCHROPP: Yes. On December 17th, we were -- submitted amendments to the Comp Plan amendment application as well as to the zoning application. And in the Comp Plan amendment, what we said was in response to -- I think the County requested that we address the withdrawal of the lands by the CDD and submit whatever modifications we thought were appropriate. In response to that request, GreenPointe submits the following modifications to the plan amendment:

Future land use map amendment is modified to reflect the configuration shown in Attachment A. Now, that's the attachment that we presented first day of hearing. Shows the areas that remain after

the CDD lands have been withdrawn.

MS. BELFLOWER: Okay.

MR. SCHROPP: Go on to say the CDD lands have been removed from the future land use map amendment. All of the land remaining in the future land use map amendment was included in plan amendment transmitted to DEO. That is, no land has been added to the future land use map amendment that was not included in the transmittal to DEO, the same material that I went through the very first day, and then inserted the table as to what the maximum density could be calculated. That's the table that we've pointed out to you repeatedly through the hearing.

So with regard to the map amendment, we did request a modification to the map amendment to delete the CDD lands as requested and made necessary by the CDD's resolution.

MS. BELFLOWER: Okay.

MR. SCHROPP: Other changes that I noted in the application, proposed Policy 5.1.11 is no longer necessary and is hereby withdrawn.

MS. BELFLOWER: Okay. So that's off the table.

MR. SCHROPP: That's off the table as far as

we're concerned.

MS. BELFLOWER: Okay.

MR. SCHROPP: County may have a different position as to whether -- I mean, it was transmitted up there. It's still in the transmittal package. Could the County approve it? Could the county commission go forward and approve it? I think yes, and Michael's nodding his head, but the reality is we don't need it anymore. As far as we're concerned, it's withdrawn from our application. And that's the best I could do given the legal standing of where everything was at the time the CDD passed its resolution. Anyway, proposed Policy 5.1.11 is withdrawn.

All lands originally proposed to be placed in the conservation wetlands and conservation uplands categories are actually owned by the CDD and have been removed from the future land use map amendment, so therefore, the policy as proposed really has no applicability or could have any applicability to River Hall in any capacity. There's no conservation lands going to exist within the boundaries. So from our perspective, we withdrew it.

Number three. The proposed amendment to

Policy 21.1.5 establishing a dwelling cap for 2850 for River Hall is no longer necessary and is hereby withdrawn. Again, we have withdrawn it from our application. It is still part of the transmitted plan amendment that could be adopted, I presume, legally. It would just be a nullity because you can't get 2850 in the plan amendment.

And then the proposed amendment to Table 1(b) of the Lee Plan remains as transmitted today. Dr. Depew corrected my error this morning.

So that's a roundabout way of saying we have withdrawn it from our application, but it is still, I think, technically part of the plan amendment process. When it goes forward to the board, we're going to respectfully request that those two policy changes not be adopted.

MS. BELFLOWER: Okay. And at this point, when we met before and discussed this, staff had not formed a formal recommendation. Does staff consider those two provisions withdrawn? Are you treating them as being withdrawn? Do I not need to address them as to whether or not the zoning hits it or not?

MR. JACOB: There's two implications here. One, practically, the reduction in the actual

application that's before you takes the proposed amendment to 5.1.11 out of consideration.

MS. BELFLOWER: Right.

MR. JACOB: That being the conservation lands, the other CDD lands are no longer part of this application for the Comp Plan.

From the standpoint of if the County were to decide, yeah, we really like that policy, which Becky's probably listening, they don't. If they were to decide to do that and leave that in, it wouldn't have any effect on your actual decision in this case.

MS. BELFLOWER: Would it not because even though the CDD owns that and this applicant doesn't, the testimony was that the ability to transfer density doesn't go by ownership. It goes by that it was contiguous at the time which this was.

MR. SCHROPP: No, that's applicable to Policy 5.1.10 which is the existing policy in the Lee Plan. It still exists. It's still there.

MS. BELFLOWER: If this was approved with the wetlands --

MR. SCHROPP: With the conservation wetlands?

MS. BELFLOWER: With the conservation

wetlands, and they were redesignated, and it allows the upland portion to get density equal to the surrounding areas for those that are -- would be surrounded by the SOS category, would -- you would be able to transfer the density from them even if the applicant did not own those?

MR. SCHROPP: That would require that the lands that are owned by the CDD remained in the application, but they have been withdrawn.

MR. JACOB: They would then have -- actually, they would have to come through and do a similar type rezoning to RH-1 to then utilize the benefit of that.

MS. BELFLOWER: Okay. So even if the Comp Plan allowed the uplands to count, they can't be transferred onto this property.

MR. JACOB: Remember, you still have your limitations that are in the zoning that still have -- still apply, the RH-1. Stuff we've been avoiding, that all still applies to River Hall RH-1 land which that's what it would be.

DR. DEPEW: In addition, the CDD lands are not being redesignated under the plan, and they would have to be redesignated under the plan to conservation uplands and conservation wetlands,

but they're not anymore.

MS. BELFLOWER: Okay. So if this policy existed --

MR. JACOB: They would then have to refile their own Comprehensive Plan amendment and their rezoning just like we initially were going to do in this case, they would have to then do that.

MS. BELFLOWER: And if there's anywhere else in the county that has conservation wetlands and conservation uplands, they may get advantage of it, but this project would not because there are no conservation uplands because the CDD withdrew it?

MR. SCHROPP: That's correct.

MS. BELFLOWER: So even if the County decided to keep in the Policy 5.1.11 and the Policy 21.1.5 changes that were originally transmitted, they don't affect?

MR. JACOB: Stay with the 5.1.11 first. I think we're all on the same page now as far as 5.1.11 is concerned and its lack of the dark gray on that map. As far as 21.1.5 is concerned, as it currently exists, 2850, that would not affect this property.

MS. BELFLOWER: Because it can't even achieve

the 2850.

MR. JACOB: You can't even achieve the 2850, and technically, we would have to change that to whatever the -- if the board were to decide to keep that in there, we would have to change it to the maximum that's permitted under the future land use categories that are actually adopted because 2850 would then give somebody the impression that they could go up to 2850 regardless, and we don't want to get into that. So from the standpoint of what you review, you're reviewing the maximum that this request is for, and the cap won't affect that because it's far in excess of what you would actually do.

MS. BELFLOWER: Okay.

MR. JACOB: On the other hand, if the board wanted to amend 21.1.5 and say we only want to put 2,500 unit cap on here and leave the cap in there, I think you have issues with it, but from the standpoint of the board, that's something that they could consider at the transmittal hearing. Then they would --

MS. BELFLOWER: The adoption hearing.

MR. JACOB: I'm sorry, the adoption hearing. So that's how those two, and then the rest of it

is just the map amendment for sub-outlying suburban and Table 1(b) amendments we painfully went through this morning.

MS. BELFLOWER: Okay. So the applicant, from the applicant's perspective, those two policy changes are -- you've withdrawn them from consideration. The board may consider them, but it will not do anything that would allow anything greater than what has already been addressed in this rezoning.

MR. SCHROPP: That's the best way to put it. As we withdrew them from the application, what the County does, I can't control. I have learned that through the years.

MS. BELFLOWER: Much to your chagrin, I'm sure.

MR. JACOB: And as I indicated, if the County were to move forward with those amendments as they are, they would have no effect on your review of the request that is before you now.

MS. BELFLOWER: Good. I needed to know what I had in front of me. Okay.

MR. SCHROPP: There's a couple of subparts to that question about whether the text amendment was presented.

MS. BELFLOWER: I think we can set that whole thing aside.

MR. SCHROPP: Thank you. And the same thing for question five. We just covered whether the text amendment was officially withdrawn.

Six. Do you have the Thanksgiving conceptual drawing showing the 2,695 units, how they can be placed on the site? I think that's a reference to our internal planning that we did to determine what number it was that we really felt we could achieve realistically on the site, and the number was 2695.

To the extent that any drawings or conceptual drawings were done, they were not part of the zoning record. They were not submitted. They were not far enough along to even be reviewed by the County, and they really are subsumed into the Master Concept Plan for purposes of this rezoning request.

MS. BELFLOWER: Okay.

MR. SCHROPP: Do the post CDD withdrawal acreage and total unit numbers match what was transmitted to DEO? Have the numbers been officially changed?

Again, the post CDD withdrawal or the CDD

withdrawal occurred after transmittal, so obviously, numbers that are reflected in this acreage in the plan amendment were not the same as what was transmitted. They couldn't be unless we were -- had ESP.

Had the numbers been officially changed? I think we just covered that, and I have trouble with the word officially. I'm not quite sure what that means, but we withdrew them from the application.

Does the current future land use map amendment create pockets of sub-outlying suburban within the rural lands category?

MS. BELFLOWER: One moment. If the board chose to, they could change the plan for the CDD lands without their permission; correct?

MR. JACOB: All day long.

MS. BELFLOWER: Okay. So officially and what the applicant did, again, it's the same situation that you've said what you -- the applicant is looking for, and the board can act as they wish.

MR. SCHROPP: Thank you.

MS. BELFLOWER: Okay.

MR. SCHROPP: Question eight was withdrawn. Apparently, it was stricken through.

Question nine. Does the current future land use map amendment create pockets of sub-outlying suburban within the rural lands classification?

We presented a map of the future land use map amendment. As to whether pockets were created, we don't have a definition for that.

MS. BELFLOWER: And I think that has to do with plan amendment, so --

MR. SCHROPP: Yes, it does. That was my next point.

And ten. Is the applicant officially withdrawing the two deviations from which staff recommended denial?

We withdrew the two deviations. There are two other deviations, the setback deviations that we discussed at length this morning that are still being requested.

MS. BELFLOWER: Okay.

MR. SCHROPP: The next areas identified under Ms. Ekblad, but in reality, the questions are kind of all over the place, so I'm going to start, and if I need to get Tina or somebody else up here, I will.

The first question was asked -- actually answered in our rebuttal on the 15th. Carl

Barraco addressed it. Does the storm water lake enter the canal at the southern border, and is the new Hampton Lakes access point location in a flow-way? Those were specific questions that either you asked or somebody asked, but if you have the transcript, the exact --

MS. BELFLOWER: Previous answer.

MR. SCHROPP: Yeah, it was answered on pages 485 to 487.

Does the rural land use category allow multi-family as an allowable use?

Rural allows residential as an allowable use within the classification. Overall density is one unit per acre. My understanding is multi-family is a permitted under residential, and there are parts of River Hall that have multi-family approved in the rural classification.

Are we using the roadway for acreage to calculate available density for total dwelling units? This also was covered at -- during the original presentation. I believe staff responded, density calculations do take into account acreage used for roadways. I do not know, and we do not know how much acreage is that ultimately going to be used for right-of-way until we actually do the

layout.

Number five is actually my question. I'm probably the one that was involved with EMS along with Mr. Block and Mr. Dunn and how the condition came about that was proposed in the staff report.

The question asked whether -- I think it means whether EMS can meet their time of response goal, and then there's questions about how it will be funded, how the temporary would be funded, constructed, operated, that kind of thing.

The EMS did a memo. It was part of the Comp Plan application addressing response times, and we met with EMS. By we, I mean Mr. Block, Mr. Dunn and I met with Mr. Abes? Was it Ben Abes?

MR. DUNN: Yes.

MR. SCHROPP: From EMS in November, I think it was to address EMS concerns with the plan amendment and then how to follow through with implementing it through the zoning here.

In a nutshell, the key points that came out of that discussion was EMS response times from their existing facility which is on State Road 80 further to the west, response times are adequate into the entrance of River Hall, but they become inadequate the farther into River Hall that you

go. In other words, they become greater than what the goals are for EMS response time and for the County.

Ultimately, EMS anticipates co-locating a facility within the fire station for -- is it Fort Myers Shores Fire Department? That is going to be within River Hall. It's going to be up at the entrance to State Road 80 within the River Hall project, and the fire district has the property. So ultimately, that -- the long-term solution to increasing or decreasing response times in River Hall is to co-locate within the fire station which they anticipate being able to do.

But until the fire station is constructed, what we worked out and what we agreed to do was provide a temporary EMS facility that will be provided at the -- by the applicant at the sales center parcel which is on the -- near the entrance to the project. You'll see it when you go out there. It's on the west side of River Hall Parkway just after you go in the entrance.

To answer the questions about funding and staffing, under the condition proposed by the applicant that was approved and -- reviewed and approved by EMS, Mr. Abes, the construction of the

temporary EMS facility within River Hall will be funded by the developer, actually will be accomplished by the developer, actual construction as detailed in -- I think it's Condition 27 of your exhibit.

Funding and timing of -- funding and timing for operations and staffing is really a County function. It's not up to us to provide funding for the operations and funding for the staffing and how much staffing will be done at that facility. Lee County EMS will be responsible for that aspect of it as they are at all their EMS facilities. So that was the condition and how we developed the condition to address EMS, and we believe it will result in adequate response times throughout the project.

MS. BELFLOWER: The aspect of that question goes to something that I've wrestled with every time I go through a zoning analysis in a future land use, future urban land use category, and that's the finding that urban services are available and adequate.

MR. SCHROPP: Uh-huh.

MS. BELFLOWER: And when you're looking at -- since the proposed development will all occur

within a suburban or a sub-outlying suburban area, they both are future urban categories, the -- those categories though say that -- I'm looking for the language. Generally the requisite infrastructure needed for higher density development is not planned or in place, and I think the suburban has similar language that you basically aren't going to have urban levels of facilities and services.

Given the requirement for the finding, given that -- and I think EMS is the only one that I saw that there was any question about the adequacy of the service, if you provide the facility, but it's not necessarily known whether it's -- can be funded to staff it and et cetera, in the category that there's not an expectation of having urban levels of services or as much as there would be in a more urban area, and I don't know if this is a Tina or Dave question or how -- in terms of my being able to make a finding, I can say that it would be available and that a facility will be available for them to use, but whether or not it's adequate for -- the County has plans to staff it or the ability to staff it at this point to provide adequate services. Do you understand

where I'm going?

MR. SCHROPP: I do, but I don't see it as any different than any other rezoning or any other request. The funding of EMS services is a function of the County. You could have that funded, and I anticipate that it would be funded. I don't know why they would want a facility if they don't anticipate they'll be able to fund it or provide the staffing for it ultimately, but certainly the provision of any EMS facility in any location is subject to County's operating budget during the course of any particular year and could fluctuate but would not be anticipated to.

I think you have to anticipate that this facility is going to result in a staffed EMS facility that will provide adequate response times, and that ultimately, the long-range solution is something that's also in progress which is the co-location with the fire and EMS or with the fire station.

I don't know if Dave or Tina have anything to add.

MS. BELFLOWER: But basically, you're saying we don't even have to go to the question as to whether sub-outlying suburban needs the higher

level of services, or is -- there's an expectation of it. You're saying that it meets, that it will be available and adequate to meet the Lee Plan requirements.

DR. DEPEW: Yes, ma'am.

MS. BELFLOWER: Okay. That was a yes from Dave Depew.

Okay. Then we won't even go down that road.

MR. SCHROPP: After the EMS question, what is the development density of the proposed development on the land that is currently shown as rural on the future land use map?

Again, covered this morning and is addressed. The current development density of rural is 0.99. Under the Comp Plan amendment, it would go to 0.98.

And the last question, does the existing rezoning specify that lands designated rural be limited to one unit per acre?

And yes, it does. That's one of the conditions that will remain.

There are some questions directed to Ken Passarella. The first one was addressed by Ken at the last hearing which is, where are the future land use map wetlands and how many are there?

Ken went through that. In terms of the changes, I went through that this morning.

MS. BELFLOWER: The answer is none; right?

MR. SCHROPP: There's none in the zoning amendment area, that's correct.

And then I explained the differences in how the land use calculations were done.

MS. BELFLOWER: Okay.

MR. SCHROPP: Classifications. And last question for Ken, which is something he would know absolutely nothing about because he wasn't there when this plan -- when the plan amendment went to the --

MS. BELFLOWER: I think that's a plan amendment question.

MR. SCHROPP: Thank you. And I think that's it.

MR. COX: Excuse me. Could we get an answer to question four about the connections to the Lehigh Acres roadways and what types of roads those are?

MR. SCHROPP: We answered that at length this morning. You weren't here.

MR. COX: I just wanted to make sure. Thank you.

MS. BELFLOWER: Yes. About the street pattern in Lehigh that it connects to, yes.

Okay. Let me go through, make sure that all this matches. I think you're 95 percent, 99 percent there.

We need to talk about the conditions. At one point, I asked you all to check to see if the four AD -- ADDs were completely addressed in the condition draft, whether we've picked up so that we have one document that we're dealing with and not having to look at multiple documents.

MR. SCHROPP: We looked at that after the hearing, and yes, as far as we're concerned, I think it picks up all the ADDs that were approved for the -- I think Chip picked them all up.

MS. BELFLOWER: Okay. Okay. I had one -- that's going to come in the conditions. I'll ask that during the conditions. I think that's it. Very comprehensive. Thank you.

MR. SCHROPP: Thank you. Thank you for your patience.

MS. BELFLOWER: I'm here all day.

DR. DEPEW: I can provide more planning testimony if you like.

MS. BELFLOWER: Okay.

MR. JACOB: As long as it's full and rich.

MS. BELFLOWER: Does staff have anything they want to add at this point before we go into the conditions? Any rebuttal points or clarifications?

MR. BLOCK: No, ma'am.

MS. BELFLOWER: Okay. All right. Then you had in your document, Attachment I, I think it is, on your comprehensive notebook.

MR. SCHROPP: Yes.

MS. BELFLOWER: Exhibit 7 where you went through the conditions, and if you want to just run through those.

MR. SCHROPP: Yes. These are, as I started to say this morning, most of these are just edits, some minor corrections. Some are a little more substantive.

In Condition 1, the sentence that references the -- hold on a second. There we go. Okay. With all the strike throughs and underlines, I was having trouble finding it.

The sentence that references the MCP, we did submit a new revised MCP that made the corrections with the RMF, went through this morning.

MS. BELFLOWER: Okay.

MR. SCHROPP: And we had it stamp dated, and I was going to suggest that the stamp date needs to be January 23rd, 2015. Based on our discussion this morning about deviations and showing deviations on the plan, we may need to do a further revision, but that's what the purpose of my change to Condition 1 was, was simply reflecting an update of stamp date.

MS. BELFLOWER: Okay. All right. And if staff wants to jump in when we're going through the conditions, if you have anything you need or needs to be address.

MR. BLOCK: Will do.

MR. SCHROPP: Also, under Condition 1, while it's not on the list here of Attachment I, we did talk this morning about some language on the platting and replatting --

MS. BELFLOWER: Uh-huh.

MR. SCHROPP: -- that probably needs to be discussed, so I don't know if you want to do that now or you want me to go through Attachment I and come back.

MS. BELFLOWER: No, I think it would be better if we just go through all the conditions and address it as we get to it.

MR. SCHROPP: That's fine. Okay.

MS. BELFLOWER: If you have alternative language.

MR. SCHROPP: And honestly, I -- the existing language that's there is no currently platted land within River Hall II may be replatted to increase density. I think that's -- from the applicant's standpoint, that's probably the best language we could suggest.

MS. BELFLOWER: Okay. And the juxtaposition of that with the environmental sciences language on the deviation saying you can't replat without meeting code?

MR. SCHROPP: It says if we replat, then we have to meet the requirements of those setbacks is the way I read it.

MS. BELFLOWER: Any replat of these lots will require the lots to meet the setback.

MR. SCHROPP: Correct. And I think --

MS. BELFLOWER: So you're comfortable with that?

DR. DEPEW: There's only a few lots.

MR. SCHROPP: You know, I think the limited applicability of that to those lots, I think we'll be able to work around --

MS. BELFLOWER: Okay.

MR. SCHROPP: -- with -- I say that, and you never know, but I think we'll be able to work around it with those lots in particular, the replatting language for the entire project, I think, or for the -- in Condition 1 there --

MS. BELFLOWER: Okay.

MR. SCHROPP: -- I think is acceptable with us, and we can, I think, work around and work with the language on the deviation approval.

MS. BELFLOWER: All right. Threshold issue, are you all okay with calling it River Hall I and River Hall II? Michael pointed out there's a phase one and phase two issue.

MR. JACOB: We're fine with it.

MS. BELFLOWER: You're okay with that?

MR. JACOB: (Nodded head in the affirmative.)

MS. BELFLOWER: All right. All right. Next point.

MR. SCHROPP: In Condition 2, there's a notation under dwelling units in the town center that says that dwelling units limited to townhouse and multi-family, comma, two units per residential acre, and only in River Hall II. It's the two units per residential acre that causes us some

concern. I think the testimony from staff primarily back in the first day of the hearing was that you can treat all areas within sub-outlying suburban as interchangeable, and so we could technically, I think, move some units that would cause that area to exceed two units an acre.

MS. BELFLOWER: Okay. And I think my point in that was that the density is calculated on residential acres so that you can't count the commercial acres.

MR. SCHROPP: That's -- yes.

MS. BELFLOWER: And I just said two because that's what the density for that category is, but I understand your point that it's not net two units per acre, but it is units per residential acre --

MR. SCHROPP: Right.

MS. BELFLOWER: -- calculated based upon the residential acreage or calculated excluding the commercial areas or however you want to word that.

MR. SCHROPP: Okay.

DR. DEPEW: Isn't that a little bit like saying you have to go get a development order when you go to get a development order? I mean, you can't exceed the density of the plan category no

matter what, and the way they calculate density because it's not an MPD, if you extract land for the CPD, it's no longer available to calculate residential density.

MS. BELFLOWER: Well, we're only talking in the CPD area.

DR. DEPEW: Uh-huh.

MS. BELFLOWER: And the fact that it's the commercial area, and you're saying you can put residential in there, my concern was the suggestion that because you're putting residential into the commercial area, that you could count any portion of the CPD towards your density calculations, which I think you all agree, you cannot --

DR. DEPEW: Right.

MS. BELFLOWER: -- if it's actually designated as being used for commercial.

DR. DEPEW: Right.

MS. BELFLOWER: So I guess your point is it is what it is, that's what's required, --

DR. DEPEW: Right.

MS. BELFLOWER: -- and so there's no need to restate it, and I don't disagree with that as long as everybody is in agreement that that's what the

requirement is. I have had other situations where it has been argued that commercial does get to count or commercial activities.

DR. DEPEW: Right.

MS. BELFLOWER: I don't have any problem with striking that. Is staff okay with striking that provision, the two units per residential acres?

MR. BLOCK: That's fine.

MS. BELFLOWER: Leaving in the "and only in River Hall II," which perhaps that's redundant as well because the town center is solely in River Hall II, but I think given that elsewhere we're breaking the things out. And although, actually, there is a portion -- is there a portion across the street, I thought, that was not in the zoning that is designated CPD? Across River Hall Parkway?

MS. EKBLAD: It's in the amendment area. It's shaded.

MR. SCHROPP: I'm looking for the map I just passed out.

MS. BELFLOWER: Okay. There is, perhaps, it's only wetlands, so --

MR. SCHROPP: Yes, you're talking about this area here.

MS. BELFLOWER: Yeah.

MR. SCHROPP: It's west of River Hall I.

MS. BELFLOWER: Right. So all of that is --

DR. DEPEW: Is the sales center in there?

MS. BELFLOWER: All of that is included?

MR. SCHROPP: That's included.

MS. BELFLOWER: Okay. So okay. But you're fine with leaving that in in the abundance of caution. Okay.

MR. SCHROPP: Condition -- the next one we had was Condition 5C.

MS. BELFLOWER: Okay. You're in agreement with the changes?

MR. SCHROPP: Yeah, all the changes. I'm just -- I'm working off my Attachment I, and so this is the only changes that we had suggested.

MS. BELFLOWER: Had issues with?

MR. SCHROPP: Yeah.

MS. BELFLOWER: In 2B, minimum lot area under single family, depth of lot and then those exceptions under the ADD, the word minimum, it says minum, so there's a typo there that I missed as well, so we'll correct that word.

And in the water body setbacks, I don't know exactly which water body we're talking about, but

you all had asked at one point for zero water body setback, and staff kept it at 20 foot. I don't know their reasons. I don't know whether you're fine with that. Are you okay with the setbacks that are listed?

MR. SCHROPP: That was the -- was that deviation?

MS. BELFLOWER: I don't know. I can't remember where it came from.

MS. EKBLAD: We pulled it from the deviation and made it an amendment to this, and then we decided it wasn't worth it.

MR. SCHROPP: Sounds like we've dropped it.

MS. BELFLOWER: Okay. Okay. So we're on Condition 5.

MR. SCHROPP: That's the next one that I have.

MS. BELFLOWER: Okay.

MR. SCHROPP: And this gets to the issue that I discussed this morning regarding the potential transfer under Policy 5.1.10 which is the existing policy in the Lee Plan, and the way that the condition was structured when you broke it out between River Hall I and River Hall II to read units within the suburban land use designation may be transferred to lands within the sub-outlying

suburban pursuant to Policy 5.1.2. By having it only under River Hall II caused us some concern because there's no suburban lands in River Hall II. It's all sub-outlying suburban, and so what we're doing, as I explained this morning, is the developer, his predecessor has reserved the right to transfer units from suburban into sub-outlying suburban.

The only requirement in invoking Policy 5.1 -- or not the only, but the main requirement in invoking Policy 5.1.10 is that the lands had to be under contiguous, common ownership at the time that policy was adopted, which is what we would have to demonstrate. And so the change to the policy simply says units owned or controlled by the developer within the suburban land use classification in River Hall I may be transferred to lands in River Hall II designated sub-outlying suburban.

The result of this is that only lands in suburban or excuse me, only lands in River Hall II were affected. You can't transfer units back into River Hall I, so you're not increasing or affecting any development rights in River Hall I. You're only transferring units out, and those are

units that have been reserved specifically.

MS. BELFLOWER: But where does that leave the existing condition which is what's listed here as for River Hall I, densities may not be shifted between future land use categories unless a new public hearing occurs, and the allocation of density, would that not require an additional review to take it out of the suburban?

I think that the language that I had for River Hall II was actually the language that was in the staff's recommendation.

MR. SCHROPP: It was.

MS. BELFLOWER: But I think that they intended to do away with River Hall I language so that it would replace it.

MR. SCHROPP: Correct. And when we've gone to this River Hall I, River Hall II dichotomy, and I see the point you're making, it's the same argument that I just said as to why we need to have it distinguished in River Hall II.

MS. BELFLOWER: Would it be possible to say except as in provided by B, 5C?

MR. SCHROPP: C. That's what my immediate thought was, and I was looking for a better way to say it, but that might be the best way to do it

because that in effect has no effect on existing development rights in River Hall I. You're not transferring any -- that's all been platted in the suburban areas, so the rights are already there attendant to the plat, and you're not transferring anything into -- you would not be transferring anything into River Hall I, increasing the density that way.

MS. BELFLOWER: Staff have any concerns one way or the other? If we make B say "except as provided in C," and then use the proposed language for C.

MR. JACOB: As y'all were talking, I was trying to scribble out suggested changes that will address all of it without getting us into the owner controlled by the developer language. My suggestion is to your condition changing B, densities may not be shifted between future land use categories within River Hall I unless a new public hearing occurs, and the rest of that stays the same.

Under C, working off of your document, Madam Hearing Examiner, units within the suburban, that all stays the same, and then you add another line at the end of that. If permitted under Lee Plan

Policy 5.1.10, units within River Hall I may be shifted into River Hall II.

MS. BELFLOWER: Okay.

MR. JACOB: Because they may for whatever reason may want to pull density units out of some rural -- you don't have rural density.

MR. SCHROPP: Yes, we do.

MR. JACOB: You want to pull it out of River Hall I and put it in something down in the suburban, the sub-outlying suburban area, or if they have suburban, they want to put it down there, that would accomplish that.

With regards to changing anything that has to do with River Hall I, this is just a clarification, it doesn't do anything to the rights and obligations of residents or owners in River Hall I by clarifying the limitations within shifting to densities within River Hall I which was -- when you take your step back, all of this was just River Hall, and that was intended to clarify how you shifted densities within those categories. So it's not changing the language in a substantive way.

MS. BELFLOWER: Okay. So B would just say densities may not be shifted between future land

use categories within River Hall I unless a new public hearing, and then the language would continue.

MR. JACOB: Yeah, it seems to accomplish a goal.

MS. BELFLOWER: And then C would be exactly as written, but has Exhibit 2, but add a sentence?

MR. JACOB: Add a sentence at the end there just to make it clear because what you don't want to do is keep the applicant from taking density out of River Hall I and putting in River Hall II, and some residents would probably prefer that, but what you would end up doing is adding a sentence, if permitted under Lee Plan Policy 5.1.10, units within River Hall I may be shifted into River Hall II, and that covers at least everything I heard them say they might want to do.

MS. BELFLOWER: Okay.

MR. JACOB: And even things that I thought they might want to do.

MS. BELFLOWER: Okay. Maybe instead of shifted, we'll say transferred or -- or it talks about shifted. Yes, it does talk about shifted, yeah.

MR. JACOB: I was using the same words.

MS. BELFLOWER: Same words. Okay. Applicant have anything?

MR. SCHROPP: Can you read the -- how C would end up?

MS. BELFLOWER: Add a sentence at the end of C, if permitted by Policy 5.1.10, units may be shifted from River Hall I to River Hall I; is that --

MR. JACOB: Yes.

MS. BELFLOWER: -- basically it?

MR. SCHROPP: Okay. And the first part would be units within suburban and sub-outlying suburban future land use designations may be shifted between these future --

MR. JACOB: Yes, stay the same.

MS. BELFLOWER: Stay the same as Hex Exhibit 2.

MR. SCHROPP: What's that?

MR. JACOB: Brandon was saying there is no suburban within River Hall II.

MR. SCHROPP: That's what led to my change, and that's what I'm having some pause about. You know, you can almost go with the sentence that Michael came up with, in lieu of all of C and just say if permitted under Policy 5.1.10, units may be

shifted from River Hall I to River Hall II.

MS. BELFLOWER: Yeah.

MR. JACOB: Yeah, because if it's all sub-outlying suburban, there's no shifting between categories in two.

MR. SCHROPP: Right.

MR. JACOB: That makes sense.

MS. BELFLOWER: Okay. So we'll strike the red language in that draft and just add the sentence that Michael indicated.

MR. SCHROPP: Correct.

MS. BELFLOWER: Okay.

MR. SCHROPP: Thank you for that.

The next one we had was Condition 10 which I've just suggested inserting the language on the signal that staff and the applicant agreed on.

MS. BELFLOWER: Okay. All right. So we've got the revised in your document?

MR. SCHROPP: Uh-huh.

MS. BELFLOWER: Okay. Your previous revision is out, the 48-hour revision and the one we discussed before?

MR. SCHROPP: Yes.

MS. BELFLOWER: There's been about four versions, so this final version we're talking

about.

MR. SCHROPP: The language that's in here now is the same language that I went over this morning in my rebuttal exhibit. Just cut and pasted, and it's a condition that Mr. Jacob and Mr. Price developed.

MS. BELFLOWER: Okay.

MR. SCHROPP: The next one we had was just Condition 26, a few minor edits. East County Water Control District rather than East County Water Management District, the initials, and then down in that sentence beginning with documentation. Documentation of compliance with this requirement will be provided by the developer to the County prior to the issuance of any residential development orders for River Hall II. I added that language. I think it's implied from the context of everything, but just to make sure.

MS. BELFLOWER: Yeah. Okay. Okay.

MR. SCHROPP: 27, the only change there is in the first line where I've added River Hall II instead of just River Hall, so it would be the developer of lands within River Hall II must provide at developer's expense a temporary modular unit for EMS.

And then the only other suggestions we've had or I put in, well, were in the deviations. Deviations 8 and 9. Those are the ones that were withdrawn officially by the applicant on the first day of hearing, and I just added a line on each of those saying the applicant withdrew this deviation request.

MS. BELFLOWER: Okay. And we had two new conditions, two or three new conditions.

MR. SCHROPP: There were two or three, yeah.

MS. BELFLOWER: So those would just be added at the end?

MR. SCHROPP: I think so.

MS. BELFLOWER: Your thoughts?

MR. SCHROPP: I don't know that they were added to existing conditions. I think they just go at the end.

MS. BELFLOWER: Okay.

MR. SCHROPP: Or wherever you deem them appropriate.

MS. BELFLOWER: Okay. I don't want to worry about having to renumber something. Okay. And I -- just for the record and for everyone on all sides of the issues, understanding, in going through these conditions and working out wording

of these conditions does in no way suggest that I am definitely going to recommend approval of this. It's if I do recommend approval so that we have the wording, and it also doesn't mean that if I see something that I'm going through that needs to be addressed, that there may not be some additional changes, but I tried to keep them to the minimum, especially on technical issues that we hash through.

MR. SCHROPP: Right.

MR. JACOB: That sounds familiar.

MR. SCHROPP: We understand that. On the conditions that we suggested be added this morning, fumbling through them here, but I think there's three, and I think you're right, two of them can just be added at the end. The first one was on the open storage, and that gets added to an existing condition.

MS. BELFLOWER: Okay.

MR. SCHROPP: The other two were the quarterly monitoring reports and the cumulative land summary table with each development order. Those could probably just go at the end.

MS. BELFLOWER: Well, I thought it might be appropriate to put that relative to number five or

at least the land. We have sub-numbers under five, but I'll look at that as to whether it's appropriate to put it there.

MR. SCHROPP: Wherever the most appropriate place would be.

MS. BELFLOWER: Okay. All right. At this point, do you wish to make a final summary statement or --

MR. SCHROPP: No. I think we've covered --

MS. BELFLOWER: Should I ask Mr. Depew if he would like to make a final statement?

MR. SCHROPP: No.

MR. JACOB: No.

MR. SCHROPP: In all seriousness, I think we've covered everything that needed to be addressed in the rebuttal testimony. I think you understand the nature of the request and what we're asking for, so I'll leave it go at that. Thank you.

MS. BELFLOWER: Okay. Staff have anything further? All right.

MR. BLOCK: Just as a reminder, we have to leave the record open from the standpoint of getting a new Master Concept Plan with the deviation numbers on it. Other than that point,

nothing else to add.

MR. SCHROPP: And you should submit that through the calendar and just let you know when it's been done?

MR. BLOCK: You can do that, and do you have a staff available in your office just if they deliver it to your office?

MS. BELFLOWER: Yeah.

MR. BLOCK: See, what we'll do, Russell, is if you want to drop off the copies necessary for the county files, you can do that with stamp received.

MS. BELFLOWER: My only hesitancy is we would like to have a stamped copy, so if he takes it downstairs first and stamps it and then brings it directly to us, that's fine, but we would like to have a copy that has a stamp date. Whether it comes from you after you get it stamped or whether it comes through the staff, we're not concerned.

MR. SCHROPP: I don't think they'll give it back to us once we pass it over the counter, so it's going to have to come up from internally, I think.

MR. BLOCK: It's not a problem if the hearing examiner, if you want to submit it through the zoning counter, stamp it through, let me know that

it's coming through, I'll make sure a copy gets to the hearing examiner.

MR. SCHROPP: And we will do that. Thank you.

Just a question on format. We were discussing internally how you want the deviation shown on the Master Concept Plan, and I guess that's the question. There's page two of the Master Concept Plan is the existing master concept plan. Page four is the change areas, the amendment area primarily that shows that.

Is it your intention or your desire to have all of the deviations shown on one or the other map or on a new map? How would you like to do this because I don't want to run afoul of -- I think the line that we're drawing here is we're not trying to effect River Hall I. Some of the deviations clearly that are already approved are applicable in River Hall I.

MS. BELFLOWER: I would suggest that your page two that shows the existing approval shows the existing deviations.

MR. BLOCK: Yes.

MS. BELFLOWER: And then the second one should show both the existing ones and the proposed ones so that it is a comprehensive list showing where

with those little triangles with the numbers in them.

MR. SCHROPP: Okay. That's fine.

MS. BELFLOWER: It's my understanding because if the first page is supposed to show existing, then if you've got existing deviations that are already approved, you want them to be reflected.

MR. SCHROPP: Okay. That's fine, and I think we can do that, and the one deviation which is number five which is the one that was approved by ADD, we'll put on the second page.

MS. BELFLOWER: Yes. Because it's not the original that was approved in 2005.

MR. SCHROPP: I'm sorry, page two or page four?

MS. BELFLOWER: No, the -- I'm sorry.

MR. SCHROPP: Yeah. The second page is what I was referring to.

MS. BELFLOWER: It is already approved, yes. The existing one, it probably should be shown on the existing one.

MR. SCHROPP: On page two.

MS. BELFLOWER: Yes. And show it as the existing approved Master Concept Plan because that's what it is.

MR. SCHROPP: Uh-huh.

MS. BELFLOWER: It's reflective of all your existing approvals. I think that the intent is to have what will come out to be probably a two-page document. If this is to get -- if this is approved, you're going to have just the plan and then your sections where you show the view lines and et cetera. That is the second page of the document rather than having that third or fourth page, whatever we have.

MR. SCHROPP: Okay. Did you understand that?

MS. SAPEN: Yeah.

MR. SCHROPP: She understands it, I'm happy.

MS. BELFLOWER: All right. So let's look at a date that you need to get those to me. The 12th? That's a Thursday, the 12th, by 4:30?

MS. SAPEN: Yeah.

MS. BELFLOWER: And it is just a revised Master Concept Plan that is date stamped in, revised to show the deviations. That's the only change that needs, okay, to show all deviations. And if you -- do you want to keep the numbering that you all had proposed before in terms of the numbering deviation, or are you okay with five going in there as five, the ADD going in as five?

MS. SAPEN: I think we should renumber them with the ADD as five.

MR. SCHROPP: Okay. We'll go with your numbering system then.

MS. BELFLOWER: Okay. All right. Then we will get that. That's the only thing that we need the written submissions for, I believe.

MR. SCHROPP: Okay.

MS. BELFLOWER: Do that by 2-12.

MR. SCHROPP: The transcript for the first two days has been transcribed, and I believe you have a copy of it.

MS. BELFLOWER: Yes, we do.

MR. SCHROPP: So we'll go ahead and expedite this transcript for today's hearing as well.

MS. BELFLOWER: Okay.

MR. SCHROPP: And get that to you as soon as we can.

MS. BELFLOWER: Okay. With the understanding that unlike used to be in the past, expediting transcripts doesn't mean an expedited hearing examiner's recommendation.

MR. JACOB: We'll give you till February 15th.

MS. BELFLOWER: Given the number of cases in front of this one.

MR. JACOB: Best we can do is 17th.

MS. BELFLOWER: Okay. Thank you, Michael. You're so very, very nice. Okay. Then that being everything, this hearing is closed.

(The hearing adjourned at 2:48 p.m.)

* * *

STATE OF FLORIDA)
COUNTY OF LEE)

I, Kathy Nicholson, Certified Realtime Reporter and Notary Public, State of Florida, do hereby certify that I was authorized to and did stenographically report the foregoing hearing; and that the foregoing typewritten transcript, consisting of pages 546 through 744, is a true record of the proceedings.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with this action, nor am I financially interested in the action.

Dated this 1st day of February, 2015.

Kathy Nicholson, RPR, CRR
Notary Public, State of Florida

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