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LOCAL PLANNING AGENCY

LEE COUNTY, FLORIDA

Transcript of proceedings had at the public hearings conducted by the Local Planning Agency, Lee County, Florida, at Community Development/Public Works Building, Conference Room 1-B, First Floor, 1500 Monroe Street, Fort Myers, Florida, on December 17, commencing at 8:30 a.m.

MEMBERS OF THE BOARD:

Derek Burr, Chairman
Ronald Inge
Carleton Ryffel
Rae Ann Wessel
Noel Andress
Leland Taylor
Leslie Cochran

ALSO PRESENT:

Donna Marie Collins, Assistant County Attorney
Paul O'Connor, Director of Planning Division
Matt Noble, Principal Planner
Jim Mudd, Planner
Wayne Daltry, Consultant

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AGENDA ITEM

PAGE

CPA2007-01

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CPA2005-49

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1 THE CHAIRMAN: I'd like to go ahead and get this
2 meeting started.

3 Do we have the certificate of affidavit?

4 MS. COLLINS: Good morning. Donna Marie Collins,
5 Assistant County Attorney.

6 I have before me the affidavit of publication for
7 this morning's meeting. It is legally sufficient as to
8 form and content and I enter it into the record at this
9 time.

10 THE CHAIRMAN: Can we go ahead and do the pledge
11 of allegiance?

12 (Whereupon, the pledge of allegiance was recited.)

13 THE CHAIRMAN: This is a public meeting. Anyone
14 wishing to speak, I ask that you fill out one of the
15 blue speaker cards.

16 Next item on the agenda is the approval of the
17 minutes.

18 (Whereupon, a discussion was held off the record.)
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1 THE CHAIRMAN: The next item on the agenda is
2 CPA2007-01.

3 MR. MUDD: Good morning.

4 MS. COLLINS: Excuse me, if I could just interrupt
5 a moment.

6 Madam Chair, did you open up the agenda for the
7 public forum?

8 THE CHAIRMAN: Yes.

9 MS. COLLINS: And there was no one that came?
10 Okay, thank you.

11 MR. INGE: If you want to speak on an item that's
12 on the agenda, we'll have time for that.

13 MR. CICCARONE: That's all I want.

14 MR. INGE: The public forum is for items that are
15 not on the agenda that you may want to talk to us about
16 such as parking problems or things like that. Those
17 issues can come up at that time.

18 MS. COLLINS: Sorry for the interruption.

19 MR. MUDD: Good morning. Jim Mudd.

20 The item before you is unchanged from last month.
21 This is a request to add a single policy to Goal 21 of
22 the Lee Plan. It will require that a finding of
23 overriding public necessity is determined by at least
24 three members of the Board before a change from the
25 rural future land use category can be made.

1 We have included in your staff report the total
2 number of acres that would be affected, which is why
3 we're back this month; and it was approximately 3,189.

4 MR. RYFFEL: Where is that, Jim?

5 MR. MUDD: It's in your staff report.

6 MR. INGE: Page 4.

7 MR. MUDD: And I think there are some members of
8 the public that would like to speak to you about this.

9 MR. INGE: Jim, thank you very much for that.

10 Did you have an opportunity to look through that
11 3,189 acres and determine which areas might be
12 appropriate for commercial at some point in time
13 because there are intersections and such?

14 MR. MUDD: I don't think we did that level of
15 analysis.

16 MR. INGE: My concern would be that to designate,
17 if you will, somewhat of a permanence of rural ignores
18 the fact that as this area continues to have things
19 happen, there's going to be a need for commercial out
20 there. We have talked about wanting to make sure we
21 have adequate commercial throughout the county in
22 certain areas, and I'm a little concerned that we
23 missed that point.

24 MR. MUDD: I think from our perspective is the
25 fact that you can still request a change and the Board

1 has to determine what that level of necessity is that
2 we felt comfortable with it.

3 MR. INGE: Okay, thank you.

4 THE CHAIRMAN: This is pretty far south, too, this
5 hatching.

6 MR. INGE: The hatching is River Hall. It took us
7 awhile to figure the map out.

8 MR. O'CONNOR: Ron, I think you asked the wrong
9 question.

10 If there is a need in the community for the
11 commercial, then the Board, three members of the Board,
12 can find that there's an overriding public need to make
13 that change.

14 MR. INGE: Thank you, Paul; but if that's the
15 case, why do we need this policy, then, because it
16 simply says that if it's rural, it's rural unless the
17 boards changes it. Well, that's the way it is now.
18 Well, this would make it three members of the Board.
19 This would -- the policy would keep a Board meeting
20 where there are three members present and two-to-one
21 vote, that would prevent that from happening, you would
22 have to have at least three voting members saying aye.
23 Is that the difference here?

24 MR. O'CONNOR: I believe that it is.

25 MS. WESSEL: Isn't it also the underscoring the

1 aspect of rural character for a community just like has
2 been done in Buckingham and the other one?

3 MR. MUDD: Bayshore.

4 MS. WESSEL: Bayshore community. Because these
5 are areas that are subject to people coming in and not
6 respecting the rural character because it's just become
7 very commonplace to come in and change.

8 I think what this does is it underscores the
9 desire of the community; and this is a community-based
10 initiative, as I understand it, to emphasize the rural
11 character.

12 MR. O'CONNOR: I agree with your understanding a
13 hundred percent.

14 MR. RYFFEL: I have a question.

15 When we talked about this last month, I made a
16 comment about maybe looking at some ULI standards for
17 how much commercial you need for so many people and
18 what kind of commercial. Are you going to present
19 that, too, to the Board, some kind of information along
20 those lines?

21 MR. O'CONNOR: Well, I think an answer to that is
22 difficult because you need to look at a geographic area
23 in order to determine that and exactly what size
24 geographic area do you want to look at. When people
25 make a conscious decision to move into a more rural

1 area, they know they are going to have to drive farther
2 to get services. I mean that's what living in a rural
3 area is partly about. And I don't know of any cookbook
4 formula that says for every square mile of land you
5 need X thousand feet to go to retail and X thousand
6 feet -- I mean it just does not work that way. There
7 are certain areas where you're going to have an
8 abundance of office and commercial and retail and there
9 are other areas where you're going to have more
10 residential and then there are other areas where you're
11 going to have more of a rural character, and so I don't
12 think that there's a formula that can answer that.

13 MR. RYFFEL: Well, I'm not saying that I doubt
14 what you have done here; but I think -- it might have
15 been Matt that mentioned this, that within so many
16 miles there's a good deal of shopping, I think you said
17 like within two miles or something, so I think that
18 would kind of support that question, that you do have
19 this available and it's only two miles away or wherever
20 it was in Lehigh or somewhere. So that's my comment.
21 It's just a matter of reinforcing the point.

22 MS. WESSEL: Does anyone have the written
23 definition of rural community available?

24 MR. NOBLE: For Buckingham?

25 MS. COLLINS: You mean a rural future land use

1 category or the rural community? which one?

2 MS. WESSEL: I guess it would be the -- what we're
3 talking about here is the rural future land use, right?

4 MR. O'CONNOR: Yes. Actually, we have three
5 categories with rural. We've got the rural community
6 preserve, we have the rural land use category and we
7 have the coastal rural category.

8 MS. WESSEL: Do either of the first two
9 definitions give us guidance on this discussion?

10 MR. NOBLE: For example, Policy 1.4.1 is the
11 descriptor policy for rural areas and that policy
12 provides that the rural areas are to remain
13 predominantly rural, that is, low density residential,
14 agricultural uses and minimal nonresidential land uses
15 that are needed to serve the rural community.

16 MS. WESSEL: I think that addresses the need for
17 commercial.

18 THE CHAIRMAN: Do any members of the LPA have any
19 more comments or questions for staff?

20 MR. COCHRAN: Yes. I want to go back and try to
21 understand the map a little bit better. Could you
22 describe this? First I thought it was a different
23 area, so could you describe exactly what is River Hall,
24 has that developed and there is a road where that blue
25 line is going across? I'm trying to understand this

1 area.

2 Talking about this area up in here.

3 I'm trying to understand, Matt, what area are we
4 talking about on the map.

5 MR. NOBLE: It's hard for me. I don't have the
6 map.

7 MS. WESSEL: It's the area outlined in purple, as
8 I understand it, and crosshatched.

9 MR. MUDD: It's the bold line that outlines the
10 Caloosahatchee Shores area.

11 MR. NOBLE: The hatched area is rural and the
12 purple area as well.

13 MR. COCHRAN: River Hall is the pink.

14 MR. NOBLE: It's the hatched area on that map.

15 MR. COCHRAN: It's the hatched area.

16 What is the total area that we're talking about?
17 This whole thing or this purple part?

18 MR. NOBLE: The acreage figure that Jim put into
19 the record is all of the rural lands in the community.

20 MR. O'CONNOR: Which is the blue outlined lands in
21 the northern piece and the red hatched lands in the
22 southern piece.

23 MR. NOBLE: And River Hall is developing.

24 THE CHAIRMAN: As rural?

25 MR. NOBLE: That's correct.

1 MR. COCHRAN: I'm sorry to be dense this morning;
2 but, Paul, could you stand up and kind of show all of
3 us so we're all talking about the same thing?

4 MR. O'CONNOR: I have to apologize for this map.

5 This map assumed, since the Board transmitted the
6 River Hall amendment, that the River Hall amendment was
7 going to be adopted; but when it came to the adoption
8 hearing, the Board did not adopt it, so the area on the
9 map that's shown in the hatch is where River Hall was.
10 That was a pending plan amendment last year. It was
11 not approved by the Board of County Commissioners.
12 That land remains as rural lands.

13 The purple area immediately above it outlined in
14 purple and partly in red here, this is all currently
15 designated as rural, so the acreage figure is for this
16 entire piece, the red hatched piece and the piece to
17 the north of it. That's what is currently rural today.
18 Those are the lands that will be affected by this
19 policy change.

20 MS. WESSEL: And that total acreage is 3,189?

21 MR. O'CONNOR: That's correct.

22 And I will say that the River Hall project is
23 developing in accordance with the density limitations
24 that are set in the rural category. I don't know if I
25 would really consider it a rural development. It's at

1 the very high end. It's using the one unit per acre
2 almost to the maximum. And there is a road, the main
3 spine road for River Hall -- there's part of River Hall
4 also is suburban area that reaches up to State Road 80
5 and there is an entry road into River Hall up along
6 State Road 80 in this area.

7 MR. ANDRESS: And it goes through the hatched
8 area, the road?

9 MR. O'CONNOR: Yes. It goes through the hatched
10 area to access the residential development throughout
11 the development. It does not interconnect with Lehigh
12 Acres at this point; but there will be a back door to
13 the River Hall to Lehigh Acres, but I believe it will
14 be limited access.

15 MR. ANDRESS: Are you able to indicate on the map
16 there where the current town hall inside of River Hall
17 is located? Is it in the hatched area or is it further
18 south?

19 MR. O'CONNOR: It's in the suburban.

20 MR. ANDRESS: It's up under suburban? That's
21 where all that development is?

22 MR. O'CONNOR: Yes.

23 MR. ANDRESS: Thank you.

24 MR. INGE: Paul and Matt, did you have a chance to
25 review Rob Spickerman's memo, and what are your

1 comments relative to his concerns raised in his October
2 24th summary?

3 MR. O'CONNOR: Quite frankly, let me preface by
4 saying I'm not a lawyer; but as I see the Bert Harris
5 Act, I do not really see that this puts an inordinate
6 burden on these property owners. These property owners
7 purchased property designated rural. That property is
8 required to develop under the rural scheme unless it is
9 changed.

10 I don't believe that you should go into a purchase
11 of a property with the thought that I am going to get
12 this changed. Now, that's not to say that you cannot
13 get a change. Sometimes the Board will make a change
14 on it. But I don't believe you're squelching anyone's
15 property rights for an expectation that goes beyond
16 what the current rules and regulations allow on a piece
17 of property.

18 That's my personal feeling on it.

19 MR. INGE: Thank you.

20 MR. TAYLOR: Madam Chair, I have one question on
21 the Bert Harris Act.

22 From my reading of the statute, I thought that the
23 way it reads, there's only a one-year time frame where
24 an action could be brought once the County
25 Commissioners would entertain such a proposal. So

1 wouldn't that limit the exposure that we're looking at?

2 MS. COLLINS: It's one year after they apply for
3 the permit and have been denied. That's when the cause
4 of action arises, not when the ordinance is amended.

5 MR. ANDRESS: I would just like to say that I
6 concur with Paul's comments. I really don't think that
7 it's fair to other people that own property in that
8 area that you can buy property that's -- the land use
9 is rural and then people have been paying on a lot
10 greater density for a long period of time higher
11 property taxes because of the higher use, then all of a
12 sudden you come along and you buy a piece of rural
13 property and -- with any expectation that you're going
14 to be able to change that from rural to a more
15 intensive use; and I don't think that that -- I have
16 always been against that and I'm glad to see that staff
17 has taken that position. I concur with it.

18 MS. WESSEL: I also concur. I think that people
19 make decisions about purchasing property based on our
20 land use plan; and you make that assessment and the
21 fact that somebody else comes along later and changes
22 it, upzones it, really undermines the whole purpose of
23 having a map that identifies where these different uses
24 are going to be, like a tapestry across the landscape.
25 I think it's a very important tool and would preserve

1 that, that designation, and further underscore it, as
2 we have done in Bayshore and Buckingham, because we
3 seem to need to do that to remind ourselves that this
4 is -- we do want to retain rural communities within our
5 county.

6 MR. RYFFEL: I also agree with what Paul had to
7 say.

8 All of these Bert Harris cases are so complex that
9 they are all case-by-case basis, so you really don't
10 know. I understand the cautions that the County
11 Attorneys gave us; but, you know, if it ever came up,
12 it's going to be decided on its own merits.

13 I don't have a problem supporting it.

14 THE CHAIRMAN: Any more questions for staff at
15 this time?

16 MR. INGE: Just one point of clarification.

17 You know, we speak -- I think Rae Ann spoke about
18 people come in and change these things and so forth and
19 so on. Just remember that when someone applies for a
20 plan amendment, it has to go through the analysis by
21 the planning department, undergo review by various
22 departments from the county government, has to go
23 through this committee and the Board of County
24 Commissioners, so don't lose sight of the fact that
25 when those changes happen, they go through a fairly

1 rigorous process; it's not just a willy-nilly, I think
2 I'll change this today because that's what I want to do
3 proposal if I'm a landowner. It has to go through
4 review. So don't discount the fact that every one of
5 the plan amendments that have been made have gone
6 through a fairly rigorous process and that will
7 continue to be the case, regardless of whether this
8 plan amendment is adopted or not.

9 MS. WESSEL: And I would just like to respond to
10 that, and you're absolutely right. There is that
11 process. The troubling part is that we burden the
12 general public with an obligation to show up to defend
13 something. That is very complicated for people who
14 have -- who are working and have everyday lives:
15 Number one, to be aware of; number two, to understand
16 the process; number three, to effectively advocate for
17 what is the crux of the issue if you don't have a
18 planner or an attorney or somebody else to help you
19 weave your way through the process; and I think that
20 that puts an undue burden on the property owners that
21 had some assurance when they looked at the plan and
22 they bought their property or they built their lives in
23 that regard and I see it as really shifting some of
24 that responsibility. However, you're right; the
25 process does allow for pretty full review.

1 THE CHAIRMAN: Are there any more questions for
2 staff at this time?

3 Seeing none, I'll turn this over to public
4 comment.

5 I do have one speaker card, Chris Cella, if you
6 could state your name for the record.

7 MS. CELLA: For the record, Chris Cella, 17371 Oak
8 Creek Road; also a member of the board of directors for
9 the East Lee County Council, the sponsor of this
10 proposal.

11 And I kind of just wanted to remind everybody that
12 in our Caloosahatchee Shores plan we did in fact
13 designate our areas for commercial nodes, which would
14 be the Buckingham area and all along State Road 80 to
15 31, in addition to River Hall having some commercial
16 activities which are just on the fringe of this rural
17 area.

18 And it is a community-sponsored amendment. We
19 really are trying to preserve our rural character; and,
20 of course, in the rural category, land use category,
21 there are commercial uses to support the land use
22 around there, so we feel like we'll be able to
23 accommodate any kind of commercial that there really is
24 a need for.

25 We're strongly supporting this and we feel like we

1 do need to have just another level of scrutiny, if you
2 will, when somebody comes in for a land use amendment
3 so that the Commission knows by virtue of the
4 comprehensive land use plan that this community's
5 desire is to keep it a rural character. We're so
6 losing that in so many areas of the county. And we
7 have got River Hall out there, they are about 1,900
8 acres of the rural land use category; and for the most
9 part of the area that we're looking at, there's not a
10 lot of undeveloped land. Most of it is, like myself
11 and my entire neighborhood, we're one unit per two and
12 a half acres, that type of land use; and we would like
13 to keep it that way, so we appreciate your support.

14 Thank you.

15 THE CHAIRMAN: This is a public meeting. Does
16 anyone else from the public wish to speak at this time?

17 Seeing none, I bring it back to the LPA.

18 MS. WESSEL: I'd like to make a motion that we
19 transmit CPA2007-01, Caloosahatchee Shores,
20 BOCC-sponsored amendment, with the recommendation that
21 this go forward with staff's recommendation.

22 MR. ANDRESS: I'll second that.

23 THE CHAIRMAN: All in favor?

24 Aye.

25 MR. RYFFEL: Aye.

1 MS. WESSEL: Aye.

2 MR. ANDRESS: Aye.

3 MR. TAYLOR: Aye.

4 MR. COCHRAN: Aye.

5 THE CHAIRMAN: Opposed?

6 MR. INGE: Aye.

7 THE CHAIRMAN: Motion carries.

8 MR. INGE: For the record, my concern is simply
9 that just by indicating that three board members have
10 to make that decision, I think that's effectively the
11 case now. Most times plan amendments are -- the board
12 tries to well attend those, so I don't know that we
13 accomplished much by putting this in there.

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1 THE CHAIRMAN: The next item on the agenda is
2 CPA2005-49, update on Goal 10, mining.

3 MR. RYFFEL: Madam Chairman, I'm going to abstain
4 from voting on this comp plan amendment. I filed the
5 proper papers with the secretary. I will participate
6 in the discussion, but I'll abstain from voting.

7 MR. NOBLE: For the record, Matt Noble, Division
8 of Planning.

9 CPA2005-49 is somewhat of a holdover amendment
10 from last year's amendment cycle. We had just barely
11 begun talking about it when we were essentially out of
12 time.

13 The direction from the Board hasn't changed. It's
14 still included in this year's amendment cycle and
15 that's why we're here today to discuss it.

16 I believe Ron Inge had a few concerns last time.
17 I think we'll go over some of those again today.

18 Just so you know, that one of our subconsultants
19 for the DRGR work has reviewed this amendment and did
20 have a couple of comments. For the most part, they
21 felt the amendment was pretty good.

22 Two specific comments came forward that they would
23 like us to consider.

24 Concerning Policy 10.3.1, they believe that we
25 should be looking at historic flow levels in the

1 basins.

2 Considering Policy 10.3.2, that we should look to
3 further define the phrase connectivity; and what that
4 means is that wildlife connectivity, hydrology, they
5 believe we're talking about both. Maybe we should
6 clarify that.

7 And I think I would like to introduce Wayne to
8 talk a little bit more about the amendment.

9 MR. DALTRY: Good morning, Madam Chairman, members
10 of the LPA.

11 Love the surroundings. Under other business, I'd
12 recommend you bring up a more permanent home.

13 The recommendation before you is to further these
14 proposals to DCA for their review. Fairly simple.
15 Whatever gets sent forward to the Department of
16 Community Affairs, they review it according to Chapter
17 163 and 9-J-2 and whatever else they have to review by,
18 they send back their recommendations to the Board and
19 the Board then undertakes its own actions and if those
20 are inconsistent with the DCA recommendations, they may
21 change the amendment. That's the technical procedural
22 part.

23 So before I go into any more detail, do you want a
24 technical review of the amendment before you or do you
25 want an informative review?

1 MR. ANDRESS: Informative.

2 MR. DALTRY: Okay. In that case let me first take
3 you back in the way back machine four years ago.
4 That's when this subject came up. It came out of the
5 Smart Growth Committee and it went to the Board of
6 County Commissioners and they asked for a review of the
7 groundwater resources of the county. It started in a
8 discussion of a density reduction area but became a
9 groundwater resource review for the county and also
10 mining. That's 2003.

11 The reason why it took us so far back -- four
12 years doesn't seem that far -- is because in the
13 activity that's been going on as far as public policy
14 and the technical issues regarding water management and
15 mining management, this is like describing a Currier
16 and Ives lithograph, what is before you now, because
17 the intervening two years since the draft report came
18 out upon which the recommendations are based, we have
19 had extensive discussion on mining, groundwater
20 resources and the DRGR and there are many aspects of
21 that discussion moving forward on a coordinated track,
22 so instead of this being basically a stand-alone series
23 of recommendations for mining, it is now one point of a
24 14-point effort upon which you have been briefed that's
25 addressing the density reduction/groundwater resource

1 area.

2 Now, mining as such is not limited to the DRGR;
3 but the work that is going on in that major study will
4 reflect back on each of the subjects being discussed,
5 whether it's agricultural permanence or agricultural
6 conversion into another land use, whether it's mining
7 permanence or mining as a transitional use or mining
8 exclusive use or mining isn't going to take place at
9 all because we're going to put in another use. All
10 those discussions are going on at the same time as the
11 drought is demonstrating the importance of Lee County
12 being self-sufficient in water resources is driving a
13 lot of our decisions and in which mining can be looked
14 at as a very positive component or be looked as a
15 negative component, depending upon which policies we're
16 following. And, finally, the issue of water quality
17 pops up because of the issues that came from -- that
18 were crystallized by the big splurge out of Lake
19 Okeechobee but are more focused for every one of our
20 water sheds is that we're having to go back and improve
21 our water quality; and the primary way of addressing
22 water quality is through storage; and what is a mine
23 but a huge well that stores water.

24 So the informative part is to say that the request
25 still holds, launch the process; but while that's going

1 on, we're still going to be engaging in a lot of other
2 discussions, not in part -- not the least of which is
3 the committee that kicked off last week with the DRGR,
4 so if DCA -- whatever you forward to the Board, if the
5 Board forwards to DCA and DCA undertakes the review, we
6 may be going back into some of the seminal issues of
7 the original discussion and coming up with
8 recommendations that further refine what is before you,
9 so why would we not wait?

10 well, because the legislature in part is helping
11 drive the immediacy of the issue by threat of
12 preemption; and we would rather not have them
13 preempting because that has yet to work out right
14 anywhere, but it does give us the impetus to go ahead
15 and try and least make the improvements we know are
16 needed.

17 So before you then is the recommendations. There
18 are on Page 3 of 12 a series of proposed transmittal
19 language that extends onto the Page 4 and there are one
20 objective and one, two -- eight policies -- seven
21 policies. You have received some recommendations for
22 revisions, which I think were presented to you by staff
23 on particular point by point; but I think the key note
24 is right now what is facing us is an effort to insure
25 that we at least put in place in at least the adoption

1 process for the refinements to current county policy we
2 think address the currently known issues related to
3 mining.

4 THE CHAIRMAN: Members of the LPA have questions
5 for Wayne?

6 MR. ANDRESS: Yes. Wayne, the LPA had made some
7 recommendations to the BOCC about items that need to be
8 considered when you're looking at the impacts of mining
9 in the DRGR area and I just wanted to make sure that
10 the policies that are being proposed will include a
11 review of those items.

12 One of them was the contaminant migration rates
13 through mine pits and open water bodies into the water
14 resources, two was the effect that mining pits and open
15 water bodies have on potable water body resources and
16 three was the future revision of the well field
17 protection model to include all water bodies, natural
18 and man-made, influencing the wellheads.

19 When a proponent comes in to mine in that
20 particular area, are those issues being addressed by
21 these policies?

22 MR. DALTRY: I'm trying to reduce the echo factor.

23 Part of that effort is coming back through the
24 separate analyses that are supposed to be under way in
25 examining the interaction between mining and the normal

1 well fields, which is also part of the DRGR efforts, so
2 let me get to your specific, which means I'm reading
3 along with you to see if in fact that is done.

4 On the pure water supply part itself, the intent
5 of Policy 10.3.2 is to address that. On the well field
6 protection revisit, that's a separate Board direction.
7 That will happen, whether or not we have this as a
8 policy or not. It should in fact be finished before
9 the -- or as coinciding with the adoption of these
10 recommendations should these move forward.

11 So that leaves water quality.

12 I don't see something specifically relating to
13 that part of it. That part of it is supposed to be our
14 analysis going on in the -- as I said, the one year,
15 now nine months time period we have left for the DRGR;
16 but it's not specifically mentioned here.

17 MR. ANDRESS: So we don't have it?

18 MR. DALTRY: We don't have that point.

19 MS. WESSEL: And with respect to the two comments
20 that staff had brought forward about historic flows for
21 10.3.1, historic flow levels and the type of
22 connectivity, would that -- is that acceptable to be
23 added? Do you have any --

24 MR. DALTRY: That which you deem suitable to add,
25 I would recommend adding. If I reread 3.2, the

1 connectivity and travel time to well fields does
2 emphasize the point mentioned but doesn't get -- by Mr.
3 Address but doesn't get into the short time period
4 we're operating under; but as the comments you have
5 received from the public, as brought forward to staff,
6 I would add them to the recommendations for review
7 because that is the process. This is trying to get
8 these policies out for the more public review.

9 THE CHAIRMAN: I had a question for staff on
10 10.3.6. It mentions during mining or post mining. I
11 wanted to know if post mining had a specific time
12 period such as six months, a year. What exactly is
13 post mining?

14 MR. DALTRY: Without a time line, it would be
15 eternal.

16 THE CHAIRMAN: Thank you.

17 MR. RYFFEL: Who's going to define what
18 connectivity means?

19 MR. DALTRY: Unless it's otherwise defined, it
20 becomes a term of art; and as a term of art, it's in
21 each of our views. My concept of connectivity is as
22 identified in the Root report, groundwater resource
23 mining study as supplemented by whichever modeling
24 takes place for water resources, which is also part of
25 14 points; and that would be the key.

1 If the water -- water is the connection and its
2 movement from one point to another indicates the
3 connectivity of the activity.

4 MR. RYFFEL: That's pretty open, isn't it, Wayne?

5 MR. DALTRY: Yes. That's why it's a term of art
6 unless it's otherwise defined; and term of arts evolve.

7 MR. RYFFEL: Isn't that a geological term or a
8 hydrological term? I mean it must have some meaning
9 somewhere.

10 MR. DALTRY: It has meaning by whoever applies it.
11 If you ask me on a transportation, transportation
12 connectivity means production and attraction. Applied
13 to groundwater movement, it would be the same thing.
14 It would be from the activity of pumping or causing
15 water to move from one location to the next. But, as I
16 said, unless we otherwise define it or ratchet it to a
17 particular definition, whether it's of a profession or
18 a dictionary, it becomes a term of art.

19 MR. RYFFEL: Well, these two things that Matt
20 mentioned that the -- I guess their hydrologist --
21 connectivity was one and there was another point that
22 you made -- are these going to go with it? Would these
23 go with the -- if we transmit this, would those two
24 comments be included in the recommendation?

25 MR. DALTRY: If you recommend transmitting with a

1 definition of connectivity, as it transmits, there will
2 be a definition of connectivity put in place probably
3 through consultation with the original writer of the
4 recommendations or someone already on staff who has the
5 general technical definition for the term; and we would
6 attach it so there would no longer be a term of art but
7 a term of definition of policy.

8 MR. COCHRAN: And would those be in the policy
9 statement or in the narratives, just so we know what to
10 recommend?

11 MR. DALTRY: It would be a supplemental narrative
12 and then I think in the comprehensive plan itself where
13 there are definitions that under question, they end up
14 being added to the definition section of the glossary.

15 MR. COCHRAN: Second question. Does -- in
16 Objective 10.3, is there a specific reason that you
17 have the word "future" in that statement?

18 I guess --

19 MR. DALTRY: Yes.

20 MR. COCHRAN: Because other parts of the
21 subsections it talks about existing and you can't have
22 existing neighborhood uses when you're talking about
23 future residential activities.

24 I'm trying to sort out specific reasons why the
25 word "future" is there.

1 MR. DALTRY: Typically -- well, in this particular
2 case one of the things that have been of issue is the
3 conflict between existing residential and proposed
4 mining and existing mining, too.

5 Existing residential, I'll just make a presumption
6 and say is a fixed activity. Areas that are already
7 existing residential are presumed in the future to be
8 ongoing. But when we talk about mining as a future
9 activity or mining converting into another use,
10 commonly residential, we're increasing the likelihood
11 of friction as well as the public health and safety, so
12 when we have a term there, "future," we want to start
13 gaming what are the options out there, particularly
14 with regard to mining, as a compatible strategy with
15 mining for mining to transition to when completed or in
16 lieu of mining.

17 That's three different futures and part of the
18 effort that's under way under the DRGR, that 14 point;
19 and last week the board hired a planning firm to
20 undertake some futures, where residential is probably
21 the great discretionary land use, so futures by which
22 we can see how mining activity, agricultural activity,
23 conservation activity and various residential
24 activities can be compatible with each other through
25 better design or through better denials. That's the

1 approval/denial process.

2 So I think that's why we focused on the future is
3 because existing residential is one we're trying to
4 accommodate now and protect; but future residential is
5 the one that creates the biggest long-term conflict
6 with the biggest activity here, which is mining.

7 MR. COCHRAN: I understand that; but is there
8 another policy statement, then, that deals with
9 existing?

10 MR. DALTRY: In the comprehensive plan itself,
11 there are policy statements for protecting existing
12 residential areas from adverse impacts of you name it,
13 airports, roads, and so forth, so I can't pass the quiz
14 on identifying the policy by name, but they are there.

15 MR. COCHRAN: In Policy Statement 10.3.4, it talks
16 about existing neighborhood uses which are related to
17 residential activities, so you really can't talk about
18 that under subsection 10.3 because 10.3 limits the
19 discussion in the subpoints to future; and so I'm
20 still --

21 MR. DALTRY: I think you have got me.

22 MR. COCHRAN: I was waiting for you to open the
23 door so you could put the foot in it. So my suggestion
24 is to eliminate the word "future" unless you want to
25 talk about coordinate future mining, which were -- all

1 the examples you gave us were future mining activities,
2 not future residential activities.

3 MR. DALTRY: Well, part of that existing mining --

4 MR. COCHRAN: Maybe not to answer that question,
5 maybe just to eliminate the word "future."

6 MR. DALTRY: Well, we can eliminate the word
7 "future," but just -- existing mining often includes a
8 post mining plan of how to put future housing around
9 the rim of it and for water supply protection. That
10 perhaps that isn't the best way to do it, particularly
11 if there's no real attention paid to the runoff from
12 the residential areas into the mine pit, which isn't a
13 pit anymore, it's now a lake. Now, some of our
14 developments have been very good on preventing that
15 kind of activity; but often that activity then leads to
16 drainage elsewhere. It goes to the neighbor's mine.
17 We haven't really protected much.

18 MR. COCHRAN: And you gave other examples. Are
19 there other policies, then -- I know we haven't maybe
20 had conflicts now, but we're trying to set up a policy
21 to avoid future conflicts with agriculture, commercial
22 in addition to residential activities? Are -- should
23 all of those activities be included or some phrase
24 rather than residential, dealing with residential,
25 commercial, agriculture and all others?

1 MR. DALTRY: What has not come to fore to us in
2 our discussions is particular conflicts with
3 agriculture. And conservation, a big issue is we're
4 trying to address through the water management regime
5 where the policies such as we're proposing here would
6 have a positive impact on the water management regime
7 and they would have a positive impact upon conservation
8 areas that are basically driven by the water cycle for
9 that particular area and our concerns of being
10 overdrained because without a better water management
11 regime, the mine just becomes a negative to the water
12 supplies of the area.

13 MR. COCHRAN: But is there a -- in other Board
14 policies are there also items related to mining and,
15 for example, agriculture or commercial in addition to
16 residential?

17 MR. DALTRY: I do not believe there's a 10.2 or
18 10.1 that says agriculture or commercial is ancillary
19 to residential; and typically with commercial, it's
20 being driven by a marketplace.

21 MR. COCHRAN: Okay.

22 MR. ANDRESS: I have a question on Policy 10.3.4.

23 This is a great statement, but the problem is who
24 determines whether or not -- the problem is you have a
25 proponent coming in to you and he says I want to do a

1 mine that's 110 foot deep and the restricted layer of
2 the aquacludes in that area is highly variable and as a
3 result of that staff does not know without detailed
4 information like a test well being drilled what that
5 depth is, if they are going to encounter that layer
6 that's going to restrict the pollution of the above
7 aquifer with the below aquifer, so as a result of that,
8 how in the world do you enforce Policy 10.3.4 when you
9 have no idea where that layer is in relation to that
10 proponent's application?

11 MR. DALTRY: The answer would have to be in our
12 own regulations we would have to focus in on the nature
13 of mining being unique enough that we would require
14 more frequent tests to determine where the aquaclude
15 is. Whenever someone comes with a mine that, shall we
16 say, is perceived as safely above where the aquaclude
17 is, we would probably wouldn't have been as demanding;
18 but something where it's a debate, we would be
19 requiring I believe under land development regulations
20 more frequent test wells. And given the example that a
21 mine is a big well and knowing that we have the 93
22 wells that the board just agreed to start plugging and
23 those wells are this big, you can imagine the impact of
24 a breached aquaclude, particularly with a more
25 contaminating layer, so we would have to follow up with

1 land development regulations that got more specific in
2 areas of debate.

3 MR. INGE: Noel, an applicant has to provide
4 fairly rigorous core boring throughout the property
5 both to Lee County and to the water management district
6 to analyze that very issue that you're talking about.

7 MR. ANDRESS: Do they have to provide that before
8 the permit is issued?

9 MR. INGE: They have to provide that as part of
10 the application, yes, sir.

11 THE CHAIRMAN: Are there any more questions for
12 staff at this time?

13 Thank you, Wayne.

14 MR. DALTRY: Thank you.

15 THE CHAIRMAN: I do have two speakers' cards. The
16 first one is Ellie Boyd.

17 And this is a public meeting. Anyone else wishing
18 to speak, I ask that you fill out a blue speaker card.

19 If you could state your name for the record.

20 MS. BOYD: I'm Ellie Boyd. I'm speaking for the
21 Responsible Growth Management Coalition and I'm in a
22 very strange position.

23 We have been working with the people from Estero,
24 Don Eslick's group; and actually it was an e-mail from
25 him to his group and to the RGMC board asking for

1 somebody to appear today and impart to you Peggy
2 Schmidt's critique analysis of this comp plan
3 amendment; and I seem to be it, all by myself.

4 I have gone through her analyses, and I think you
5 have heard these amendments before in November of 2006
6 and I don't want to bore you and I don't want to go on
7 and on. There are some specific changes in language
8 that she would like to see. I think some of these are
9 more important than others.

10 I did not have time to prepare a handout with her
11 proposed changes and the rationale for these changes.
12 I don't know if there's any way I could have this
13 accepted into the record that would go on to the County
14 Commission. I realize I should have had it for now;
15 but I ran out of time, so I'm not quite sure what to
16 say.

17 Is there any way if I prepare something from
18 Peggy, could I give it to Paul and have it accepted
19 into the record?

20 I mean Peggy couldn't -- she doesn't have the time
21 to do this. I think I should be able to get a letter
22 to Paul that would then become part of the record and
23 go on.

24 THE CHAIRMAN: Does staff have an answer for that?

25 MS. COLLINS: Yeah, I have an answer.

1 To the extent it's not going to be incorporated --
2 you can't incorporate it into your recommendation to
3 the Board unless you hear it all, the change and the
4 rationale, and decide among you whether you wish to
5 incorporate it into your recommendation of the Board.
6 Without that, it's not going to be incorporated into
7 your recommendation of the Board and it will be just
8 part of the background record. Now, I don't know how
9 effective that's going to be, quite frankly.

10 Ms. Boyd will have an opportunity to represent it
11 in a more organized fashion at the Board transmittal
12 hearing; but to ask for you to incorporate this in any
13 way into your recommendation, it's really not
14 appropriate unless she's prepared to go through each
15 change and the rationale for the suggested change and
16 have you all decide whether you wish to incorporate
17 that into your recommendation or not.

18 THE CHAIRMAN: But she could present that at the
19 BOCC meeting?

20 MS. COLLINS: Yeah. She is not precluded -- the
21 record is not closed today, only insofar as you
22 incorporating it into your recommendation. Do you know
23 what I'm saying?

24 MS. WESSEL: Could we at least hear what comments
25 there are?

1 MS. COLLINS: Certainly. I think that she
2 should --

3 MS. BOYD: I don't really think it will take that
4 long. When I first read Peggy's analyses, it seemed
5 overwhelming; but I think I can make it more concise.

6 why don't I begin?

7 On Objective 10.3, Peggy suggests adding that
8 regional impacts and cumulative direct and indirect
9 impacts be considered. She points out that frequently
10 mining activity can cause subsidence in adjacent lands
11 that can cause flooding, that can impact trees and so
12 on on neighbors' properties; and cumulative impacts,
13 just by way of the more you do it in an area, the more
14 likely you are to have adverse impact.

15 So much for Objective 10.3.

16 She suggests adding to Policy 10.3.1 the term,
17 "and surrounding properties". That would be at the end
18 of the policy.

19 Policy 10.3.2, she suggests inserting the term,
20 "adjacent lands". In other words, "will include
21 baseline monitoring on site, adjacent lands and
22 regional assessments," and so on.

23 And then she points out that this policy seems to
24 limit attention being given to concentrations of
25 domestic, self-supplied users and points out that at

1 the one dwelling unit per ten or 20 acres, you're not
2 going to have concentrations of domestic self-supplied
3 users or in ag probably and that these wells should
4 also have protection.

5 Policy 10.3.3, she would like to see inserted,
6 "impacts to -- resulting from lake design and post
7 mining impacts, including runoff or groundwater flow,"
8 and then add, "primary and secondary porosity, creation
9 of preferential flow paths in Karst, groundwater
10 contamination, flooding," et cetera.

11 She also just as an overall comment objects to the
12 use of the word "lake" to describe a mining quarry pit;
13 and I have to admit this term has bothered me, too.
14 The use of a lake is something natural in my mind and
15 also in hers, and she points out that the EPA
16 distinguishes in their definitions reservoirs that are
17 man-made from naturally occurring lakes.

18 Policy 10.3.4, she suggests in the second to the
19 last line inserting after, "tied to existing
20 neighboring uses," the term, "mining materials,"
21 transport routes to provide for consideration of the
22 trucks and so on that are used to carry the mined
23 material away from the site.

24 10.3.5 doesn't seem to have anything related to
25 it, no comments.

1 10.3.6, I think her comments here are referring
2 strictly to adverse impacts by the mine, not adverse
3 impacts on the mine; and she says if such are
4 identified during mining or post mining, they will
5 result in immediate cessation of mining, commencement
6 of reclamation and withdrawal of the permit. And
7 withdrawal of the permit seems to me to be rather
8 harsh; but she points out that the applicant, the
9 miner, has to assert in the application for permission
10 to mine that there will be no adverse impacts to the
11 surrounding area.

12 Again, in Policy 10.3.7 she would like the word
13 "lakes" changed to quarry pits; and I don't really
14 have -- oh, I have missed one. One more, and then I
15 quit.

16 In Policy 10.3.4 she would like to see a sentence
17 specifying how far a mine has to be -- the edge of the
18 mined area, in other words, from any residence; and she
19 suggests 1.25 miles. One of their members in Estero
20 apparently had adverse impacts to his house which was
21 one and a quarter miles from the mining site. This was
22 from blasting, I think.

23 And I thank you for your patience. I'll try to
24 answer any other questions that you have.

25 THE CHAIRMAN: Thank you, Ellie.

1 Do any members of the LPA have questions for Ellie
2 at this time?

3 The next speaker card I have is Mike Ciccarone.

4 MR. CICCARONE: Good morning. Happy holidays,
5 Merry Christmas.

6 I can think of better things to be doing during
7 this week; but since we're all here, I'll proceed.

8 My name is Michael Ciccarone. I'm an attorney
9 with Fowler, White, Boggs, Banker; and I'm here on
10 behalf of two owners who are caught up in the current
11 mining moratorium. One of those is the applicant for
12 what is called Gulf Rock Mine, which is on the north
13 side of Corkscrew Road adjacent to the ongoing Westwind
14 Mine. The other is the proposed Schwab materials mine,
15 which is two sections east of Six-L Farms Road on the
16 south side of Corkscrew. And to the extent that either
17 of these should decide to challenge what might emerge
18 from this comp plan amendment, and I need to appear
19 today to object on their behalf in order to preserve
20 their standing to do that, that's why I'm here.

21 But since I am here, we ought to have a little bit
22 of fun; and I would suggest that this entire process is
23 an example of life imitating art. And I'm reminded of
24 the scene in Casablanca; but to put it in Lee County
25 terms, now that we have designated for the last 17

1 years that mining will be directed to the DRGR in
2 southeast Lee County -- and indeed that's the only
3 commercial viable use there -- I'm shocked, shocked to
4 learn that people actually want to mine there. But
5 that's what we have and that's what is driving all
6 this.

7 And I would suggest to you that what you're doing
8 here today is worthwhile, but it may be
9 counterproductive and in any event it's premature.

10 Let me explain the counterproductivity of it.

11 Last year the legislature came very close to
12 preempting Lee County out of this business. I can
13 assure you that an even greater effort is going to be
14 mounted in the next legislative session. I have
15 already seen drafts of three separate bills that will
16 render whatever you're doing today completely
17 irrelevant. That's not to suggest you shouldn't pursue
18 it; but what I have to tell you is that Lee County is
19 perceived to be hostile to mining and every effort that
20 Lee County makes to further refine its control of
21 mining is perceived to be a display of that ongoing
22 hostility, which is leading some at the very highest
23 levels in Tallahassee to conclude that Lee County needs
24 to be taken out of the mining game.

25 That may happen this next legislative session; but

1 if it doesn't, I still would suggest that this is
2 premature and maybe there are three statements to be
3 made.

4 One is I don't understand why it's limited just to
5 mining. I just went through an 11-day zoning hearing
6 where the opponents were vociferously arguing that
7 digging a mine was no different than digging a cattle
8 pond or golf course lake or any other kind of
9 excavation; and to the extent that they sincerely
10 believed that, I don't know why they would be content
11 to direct this particular goal to mining and leave all
12 of the other excavations free to do whatever it is they
13 would do. Golf courses to my knowledge require quite a
14 bit of dirt to be moved around, lakes to be dug,
15 drainage to be altered. I don't see any language
16 directed to that and yet that's probably the only other
17 viable commercial use you can do in the DRGR. So it
18 seems to me that this is incomplete.

19 I think it's also premature in that you are in the
20 process of undertaking once again a massive study of
21 the DRGR. You're hiring planners and consultants and
22 so forth, all of whom have been directed to return by
23 September with a grand plan. How does this fit into
24 the grand plan? How do we know that when we don't have
25 the grand plan yet? It seems to me that this sort of

1 activity should postdate the publication of the grand
2 plan; but instead we seem to have the process with the
3 cart before the horse, so I would suggest it's
4 premature.

5 And, third -- and I don't think I see any
6 discussion in the staff report on this -- is I can
7 assure you that with respect to mining, the horse is
8 not only out of the barn and galloping into the next
9 county, but Bert Harris is standing in the stirrup as
10 it happens. The amount of money that is involved in
11 these potential mines is so staggering that it's an
12 absolute certainty these matters are going to wind up
13 in litigation at some point if new regulations -- and
14 this is a new regulation -- are used as the basis for
15 denying any mining application in the DRGR.

16 I'm not suggesting you don't do this, but I am
17 suggesting you ought to at least think about it as
18 you're doing it; and I haven't heard any discussion at
19 all of how this would fit into any kind of Bert Harris
20 defense strategy that the county ought to be
21 considering as part of good public policy. If you're
22 going to adopt new regulations, whether you like it or
23 not, Bert Harris is the law of the State of Florida.
24 You can't be oblivious to it. And although it may be
25 politically appealing to adopt regulations which slam

1 the door in the faces of uses which may not be
2 perceived to be all that popular among certain portions
3 of the electorate, the fact of the matter is Bert
4 Harris is there; and part of my job is to find every
5 way to exploit it in cases like this whenever the
6 county uses new regulations which postdate Bert Harris
7 as the basis for denying an application, so I would
8 respectfully suggest that as a matter of good public
9 practice, not only in this case but every case, that
10 Bert Harris must be an integral part of your analysis.

11 I agree with Paul that in the previous case Bert
12 Harris probably has no great risk because you're not
13 really talking about changing anything. You were rural
14 before, you're rural now. But in this case you are
15 changing things. When you start talking about
16 restoring historic flow-ways, cut activity, wildlife
17 corridors, limiting the depth of excavation based upon
18 new standards yet to be articulated, you're making
19 legislative changes that are going to result in
20 regulatory changes. That is Bert Harris.

21 So I would respectfully suggest that what you're
22 doing is premature and not fully thought out. It's not
23 to suggest that this isn't worthwhile. I'm a proponent
24 of planning. Planning is necessary. It's irrational
25 not to plan. But unfortunately, or I suppose in the

1 minds of some people, fortunately, we're in an
2 environment where you can't plan in a vacuum. We have
3 very significant legal constraints placed upon us when
4 we do these sorts of things; and I can tell you, having
5 sat through depositions with mineral rights appraisers,
6 you're looking at a hundred million dollars a section
7 for mining out there. That buys a lot of litigation.
8 And all I can tell you is that if you're confronted
9 with growing oranges or spending a million dollars to
10 try to develop a mine, you will spend the million
11 dollars; and if you're going to try to curtail that,
12 and it may be good public policy to do it, for heaven's
13 sakes, do it with your eyes open. Think it through in
14 advance. Don't just rush into these things because
15 they seem to be a good idea for the moment.

16 So that's my message for you today. I'm just
17 being straightforward with you. Obviously, I'm going
18 to have some employment in these cases whatever happens
19 here; but as a friend of many of you and just as a
20 citizen of Lee County, I can tell you that this is
21 risky business and I would like to see you put a little
22 more effort into liability analysis, if you will.

23 Thank you. If you have any questions, I'll be
24 happy to answer them.

25 THE CHAIRMAN: Thank you.

1 Does LPA have questions for Mr. Ciccarone?

2 MS. WESSEL: Thank you for your comments.

3 You were concerned about this new legislation
4 really changing the way the evaluation is made and I
5 think you referenced the water flows and the
6 connectivity.

7 Isn't that something that's already being reviewed
8 for at both the federal and state levels in mining
9 permits?

10 MR. CICCARONE: Well, if it is, you're not liable
11 for it. Once you start reviewing it at your level and
12 basing a denial on your regulations, then you do have
13 potential liability. I don't believe that either the
14 federal or state regulations would go to the level of
15 restoration that Lee County envisions here. I think
16 this is designed to lead toward new regulations which
17 would cause a lot of existing water flow patterns to be
18 reversed, probably back to historic levels; and that
19 may be a very good idea from an ecological point of
20 view, but I think it is a new regulation.

21 MS. WESSEL: But that's not necessarily
22 contemplated by the words on these pages.

23 MR. CICCARONE: Well, I don't know. When you talk
24 about addressing interconnectivity and historic flows
25 and so forth, I think it's just a short trip to the

1 next stage, which means implementing these through
2 appropriate regulations that establish the standards
3 the staff would need to apply these plans and policies.
4 Otherwise, they don't do any good; they are just words
5 on paper. I assume the county intends to implement
6 these; otherwise, why do it?

7 MS. WESSEL: But I got the impression you were --
8 you felt these were somewhat new review criteria.

9 MR. CICCARONE: They are.

10 MS. WESSEL: Well, for the county; but they are
11 review criteria -- would you disagree that they are
12 review criteria that are being reviewed at the water
13 management district and --

14 MR. CICCARONE: No, they are not. They are not.
15 The review is completely different at the state and
16 federal levels.

17 MS. WESSEL: It's different; but they do look at
18 connectivity, they do look at historic flows, they do
19 look at hydrologic patterns.

20 MR. CICCARONE: Well, with all due respect, if Lee
21 County was comfortable with that level of review, we
22 wouldn't need this language here. I think it is naive
23 and shortsighted to believe that Lee County would adopt
24 this language and then merely sit on it while the state
25 and federal governments go about doing what they are

1 doing. I think that if history is any guide, we can
2 anticipate that within a year you will see changes in
3 the Land Development Code designed to implement this.

4 And that's fine. If that's what the county wants
5 to do as a policy, then by all means implement it. I
6 don't like regulations that just sit on the books and
7 look good on paper but don't do anything. But I don't
8 think the county is happy with the current state of
9 regulations or we wouldn't be pursuing this. We
10 wouldn't be spending I don't know how much on further
11 studies of DRGR if the county staff thought that what
12 was occurring now is adequate. I think they would
13 agree.

14 MS. WESSEL: Thank you.

15 THE CHAIRMAN: Maybe I'm overlooking it, but I
16 don't see the word "historic views". I see
17 predevelopment, and that is not necessarily historic.

18 MR. CICCARONE: Well, that's part of the debate
19 that's been going on outside of this particular
20 setting. In the hearings I sat through, we spent a
21 considerable amount of time trying to figure out what
22 predevelopment means. Does it mean the farm fields as
23 they currently exist where the water levels have been
24 drastically altered? I don't think the county's too
25 happy with that idea. I think when this county talks

1 about predevelopment, they are talking about some sort
2 of restoration of historic flow-ways designed to
3 enhance wetlands and put the land back where it was
4 before it was raped and pillaged through agricultural
5 drainage.

6 Again, staff is here to answer that; but in my
7 impression, that -- that is a hot button issue yet to
8 be defined.

9 MR. ANDRESS: You mentioned that you think this
10 particular set of policy changes is premature, so you
11 think it would be better if we do the DRGR study and
12 then after that study is completed we look at the list
13 of recommendations from there and then take a look at
14 the policies that are being proposed here?

15 MR. CICCARONE: Yes. I think that's rational. I
16 assume that the study is going to come back with a
17 whole set of recommendations that may very well include
18 this verbatim, possibly, even -- I don't know -- but I
19 assume that whatever happens, you intend to implement
20 it and the implementation will have to start with the
21 comprehensive plan, so why are we amending it now when
22 we don't have the study?

23 But that's the point I would make. I'm not saying
24 it's a bad idea. I'm just saying it's premature.

25 THE CHAIRMAN: Any other questions from the LPA to

1 Mr. Ciccarone?

2 MR. CICCARONE: Thank you for indulging me.
3 Merry Christmas.

4 THE CHAIRMAN: Thank you.

5 Seeing none, I'll bring it back to the LPA unless
6 there's anyone else from the public that wishes to
7 speak.

8 MR. ANDRESS: I would like to have staff clarify
9 why we are considering this right now because it does
10 seem to me that it is premature, especially in light of
11 the fact that the Commissioners just declared a mining
12 moratorium, so there really isn't going to be -- other
13 than the four mines that were exempted from the
14 moratorium, there's not going to be any other mining
15 activity out there for a year in that area and that
16 would give us time to get the results of the study and
17 make sure that what we're doing with the mining
18 ordinance is something that we're not going to be
19 having to completely alter in another year from now.

20 MR. O'CONNOR: Noel, quite simply, okay, the
21 reason this is in front of you today is because last
22 November you made a recommendation to the Board that
23 they put this in the next round of amendments. We went
24 to the Board with that recommendation, we agreed with
25 that recommendation; and the Board made a motion and

1 put it into this round of amendments. I have not
2 received Board direction to take it out of this round
3 of amendments, so we're processing it like any other
4 amendment; and when it gets to the Board, if the Board
5 concurs that it's premature and we should be waiting
6 for the results of the study, then the Board won't
7 transmit it and then I'll have a vote and I'll know
8 what I'm doing. So I'm just moving.

9 And I think my other point is we have a 14-point
10 action plan that we're implementing as part of this
11 whole DRGR issue and one of those points is to do the
12 study. The other 13 points are things that we are
13 working on in other matters and working on today, so
14 we're not waiting for the end of the report to come up
15 with all of our answers.

16 And then the third thing that I would like to say,
17 and Wayne said this in his comments early on, we are
18 facing the possibility of preemption by state action;
19 and if this amendment stays in the cycle, when we get
20 to our adoption period we may be able to use this as an
21 opportunity to get some policies into the plan before
22 any new state legislation would take effect, which I'm
23 assuming would be July 1, which is the normal effective
24 date.

25 MR. ANDRESS: So what you're saying, then, is that

1 if we were to move this forward and the Commissioners
2 were to transmit this on to the DCA, that there's an
3 opportunity possibly to get something on the books that
4 would be on the books no matter what the state
5 legislature does in terms of mining?

6 MR. O'CONNOR: Perhaps, because I don't know. The
7 state may make it retroactive. I don't know what the
8 state is going to do.

9 MR. ANDRESS: Okay.

10 MR. DALTRY: I would just add, based on the
11 previous comments, it might be used as an excuse to
12 push the preemption because look at all the evil things
13 Lee County recommends. The flip side is maybe somebody
14 will actually read those evil things and say what is
15 wrong with this.

16 MR. INGE: The last time this was considered, in
17 November of '06, we were concerned about this not being
18 right to bring forward. I know that the recommendation
19 was to move it to the next cycle.

20 Based on the comments that some of the confusion
21 that we had in trying to define things when Wayne was
22 speaking with terms that staff had brought up, some of
23 the comments that Ms. Boyd brought up, some of the
24 points that Mr. Ciccarone brought up, I think it's
25 still too early, the DRGR effort is under way. I think

1 it would be premature to address this at this time and
2 I would move that we table this until the completion of
3 the DRGR study as opposed to moving it into the next
4 round.

5 MR. O'CONNOR: That would be a recommendation to
6 the Board to table?

7 MR. INGE: Yes, sir.

8 THE CHAIRMAN: Any other members of LPA have
9 comments at this time?

10 MS. WESSEL: Wanted to ask a question.

11 If we tabled it, would we have the option to look
12 at it in three months or six months if that's when
13 something came out of the DRGR study?

14 MR. O'CONNOR: No. If the Board concurred, it
15 would come out of the round of amendments and it would
16 have to wait until next September's round of amendments
17 to go back in or into a special round of amendments if
18 the Board initiates one as a result of the planning
19 study.

20 We have a motion on the floor. Was there a
21 second?

22 MS. WESSEL: I had a second question then about
23 the Bert Harris implications that were brought up.

24 Does the staff, County Attorney's Office, have any
25 comments for us?

1 MS. COLLINS: Well, when I reviewed the proposed
2 policies as part of this amendment, I really felt the
3 only issue with Bert J. Harris was in Policy 10.3.7;
4 and further clarification of what would be involved
5 here would be needed to determine what the scope of the
6 liability might be, as the language of this policy
7 seems to anticipate land development regulations that
8 would define the scope of what restoration activities
9 would be involved, okay, because that's where you're
10 going to start raising the issue of it's costing a lot
11 more to pursue something or may result in a property
12 owner not being able to pursue mining. That's the only
13 one that I see potentially of what's proposed in this
14 list that raises a possible issue, but it would be more
15 in the implementation phase of this; and I think that
16 that particular policy could probably benefit from more
17 clarification.

18 But certainly there's going to be risk involved.
19 If the county takes this on, there's going to be
20 liability under Bert J. Harris. We have too many land
21 developers poised to pursue mining activity that have
22 already invested money in consultants and what have
23 you, permitting and whatever else. Anything that we
24 adopt at this point, they will have potential to file a
25 claim against the county because they are so far down

1 the road.

2 THE CHAIRMAN: Donna Marie, as Paul pointed out,
3 we have a motion on the floor. Do we have a second for
4 a table?

5 MS. COLLINS: It's able actually not a table.
6 What you're recommending -- the proper motion would be
7 that you recommend that this be removed from this round
8 and brought forward along with the recommendations of
9 the DRGR study.

10 MR. INGE: I'll amend my motion to state that,
11 just what was iterated.

12 THE CHAIRMAN: We have a motion on the floor. Is
13 there a second?

14 MR. TAYLOR: Second.

15 THE CHAIRMAN: All in favor?

16 MR. COCHRAN: Well, I have a question.

17 THE CHAIRMAN: Go ahead.

18 MR. COCHRAN: I'm a little torn, I guess, by the
19 motion because so often in public life we have studies
20 that go on and recommendations, but in the meantime
21 everything doesn't stop. You keep working on things
22 and you try to make your policies and your procedures
23 better; and then if the new study comes out a year from
24 now, two years, whenever it comes out, you take that
25 study in the context of what you have as your best

1 goals and objectives. And so I'm a little torn because
2 in some ways, part of me says we ought to make it the
3 best we can at this point, recognizing that all this is
4 under review; and if the Board wants to consider it as
5 a matter that's premature, let them decide that it's
6 premature, but part of me says then we ought to go
7 forward and make our suggestions, changes and give them
8 the alternative, this is the best we could do. We may
9 in fact raise in our motion that -- the question that
10 it may be premature; but taking that action on ourself
11 and then leaving an incomplete policy statement out
12 there kind of bothers me.

13 MR. ANDRESS: I concur with Les's comments. I
14 think that we put this off a year ago and I think that
15 staff has done a good job of revising it and bringing
16 it back to us and I think we -- myself, I would like to
17 see us revise here today some of the objectives and the
18 policies and go down the list here and do each one and
19 make the revisions and send it on to the Commissioners
20 and the Commissioners are in a position to where if
21 they think that it's still not good enough, then let
22 them make a decision whether they want to transmit it
23 to the DCA.

24 MR. INGE: Madam Chair.

25 Having listened to Les's points, I understand his

1 concern there. However, if you look at it globally, we
2 have this round of amendments that there have been
3 questions raised by a couple members of the public and
4 by members of the LPA on what does this mean, how does
5 that apply, how large is that, how small is that, does
6 it apply to just mining or does it apply to other uses
7 that might have impacts here, don't know, so we have
8 those questions raised; but then keep in mind that we
9 have a moratorium in the DRGR area over any
10 comprehensive plan amendments for one year, we have a
11 moratorium in the DRGR area over not just mining
12 applications but I believe all zoning amendments or
13 applications in the DRGR area, so that -- those are
14 pending for one year anyway. The DRGR study committee
15 is tasked with trying to be done in about June or so,
16 so right before the next round of amendments, which I
17 think gives us enough time to review items such as this
18 or other items that may come out of that and get it in
19 the next cycle, so for that reason I think that just to
20 say well, we need to do something and let's get this
21 out there so we'll do something, I don't know that this
22 something is the proper thing to do at this point
23 because of the questions that have been raised; and
24 that is why my recommendation is to table it pending
25 what happens out of the committee's review, because

1 we'll learn something from that. That's what they are
2 tasked to do.

3 There are not going to be any more mining
4 applications coming through the process for the next
5 year, so we have -- we're not running the risk that all
6 of a sudden folks are going to come in and try to do
7 things that this policy may prohibit if in fact it does
8 prohibit things. I don't know. So that's the reasons
9 for my recommendation to hold this off, because we need
10 to gather more information.

11 MR. ANDRESS: well, I think the elephant in the
12 room is the fact that we need to do something proactive
13 here and then the legislature needs to have an
14 opportunity to review the actions that we've taken here
15 to see that we're not -- maybe we have been stereotyped
16 here incorrectly and that what we're proposing isn't so
17 bad. They are all reasonable things to protect the
18 citizens of Lee County and that's all we're trying to
19 do here is do what's best for everybody, not just what
20 is best for one group. So therefore I think we need to
21 move something forward so the legislature has something
22 to look at.

23 MS. WESSEL: I would like to echo that. I think
24 it's a step in the right direction. I don't think that
25 there's -- there's nothing that jumps out at me as

1 being unreasonable; and despite the veiled threat that
2 there might be litigation brought or preemption
3 brought, the legislature hasn't been shy about trying
4 to preempt local municipalities from doing all kinds of
5 things, so I don't think that's a valid reason to not
6 move forward.

7 I do think there's a public health, safety and
8 welfare issue that this starts to deal with, which is
9 why I say a step in the right direction.

10 I am concerned that we heard a lot of interesting
11 input this morning, that I would like the benefit of
12 both in our discussions and in the public discussion I
13 would like the opportunity to see integrated by staff,
14 the fact that their policy about a water quality
15 condition or working water quality, to clarify some of
16 the comments about historic flow-ways and levels and
17 connectivity and then some of the public comments that
18 were made.

19 So I would be more inclined to see if we could
20 bring this back next month with that input in front of
21 us so that we could take a look at it in a
22 comprehensive way and not try to cobble something
23 together here today. I'm not very comfortable with
24 that. But I don't think it's wise to put this off
25 entirely, although I do understand making this --

1 integrating this with the results of the DRGR study, I
2 think this is definitely a step in the right direction.

3 MR. ANDRESS: What does the staff think about
4 those comments? Is it possible to table this for one
5 month and then address some of the issues that were
6 raised here today?

7 MS. COLLINS: Right now there's a motion and a
8 second on the table, so there must be a vote unless
9 there's an amendment to the motion.

10 MR. INGE: In further discussion, my concern is
11 that for the staff to adequately address some of the
12 issues that are raised not only in the suggested
13 policies but also some of the comments we're going to
14 have, we're requesting that they create the work that
15 the DRGR committee is tasked to do in a short period of
16 time; and I think that's an irresponsible thing to do
17 because there's been a committee that's been formed to
18 address these very issues; and if we say to staff go
19 off for a month and make all these changes based on
20 what you've heard, regardless of that other, larger
21 effort that is going on, I think is improper.

22 MR. COCHRAN: Does staff have any insight -- I
23 know you're acting because the Board told you to do
24 this a year ago.

25 Do you have any insight or would it be possible

1 for us to ask the Commissioners do they want us to
2 continue to review this item or should it be deferred
3 along with the others? Is there so middle ground, I
4 guess, that if they are really going to say it's
5 premature, okay, then let's not do anything; but if
6 they say they really want to think about something or
7 they want to take action on something, then we ought to
8 act. So I'm a little bit thinking about maybe deferral
9 from another reason of finding the sentiment of the
10 Board on this item.

11 THE CHAIRMAN: But you could make a
12 recommendation. It's going to be the BOCC that's going
13 to decide if it's going to be deferred or not.

14 MR. O'CONNOR: In answer to Les's question, we
15 went to the Board of County Commissioners with our
16 14-point action plan.

17 Wayne, is this Number 4?

18 MR. DALTRY: This is one of the numbers.

19 MR. O'CONNOR: It's one of those 14 points is to
20 move forward with this plan amendment, so we have
21 received additional direction from the Board that they
22 want to do this; and as I said, we're not waiting for
23 everything to be done before we do things. We have
24 several short-term items in our list in the action
25 plan, we have mid-length items and we have long-range

1 items within that; and this was one of the short-term
2 items, to get this amendment through the process.

3 MS. WESSEL: So it's part of a continuing
4 discussion on this.

5 It's then possible if we move this forward that
6 these discussion issues could come forward or be
7 resolved -- can the language be changed between here
8 and the Board of County Commissioners to include any
9 clarifications, any additional language as we heard
10 today?

11 MS. COLLINS: I don't think that would be
12 appropriate.

13 MR. ANDRESS: We have got to vote on the motion
14 that's on the floor.

15 MS. WESSEL: I'm trying to get an understanding.

16 MS. COLLINS: I want to remind you of a motion and
17 second on the floor, okay?

18 Secondly, it is really not appropriate for you to
19 move forward any recommendation anticipating future
20 land use changes that you have not considered. What
21 would be a better course of action is for you to have
22 the amendment come back to you at another LPA meeting
23 with these changes if you wish to discuss it further.

24 THE CHAIRMAN: I would like to go ahead and take a
25 vote with the motion that's on the floor, please.

1 will you restate your motion?

2 MR. INGE: Yes. The motion is to delay any action
3 on this pending the results of the DRGR study
4 committee.

5 THE CHAIRMAN: All in favor?

6 MR. INGE:

7 MR. TAYLOR: Aye.

8 THE CHAIRMAN: Opposed?

9 Aye.

10 MS. WESSEL: Aye.

11 MR. COCHRAN: Aye.

12 MR. ANDRESS: Aye.

13 MR. RYFFEL: Abstain.

14 MR. NOBLE: I have four-two.

15 THE CHAIRMAN: Motion fails.

16 MR. ANDRESS: I move that we transmit CPA2005-49
17 with the following changes: Objective 10.3, we
18 include -- where it says, "future residential
19 activities," we include the words, "future and existing
20 residential activities and review the regional and
21 cumulative impacts".

22 Policy -- that's on the Objective 10.3.

23 On Policy 10.3.1 we add at the end of -- after
24 subbasins, "and surrounding properties".

25 Policy 10.3.2 --

1 MR. O'CONNOR: A little slower.

2 MR. NOBLE: Okay.

3 MR. COCHRAN: It's being recorded.

4 THE CHAIRMAN: You can get that CD, Paul.

5 MR. O'CONNOR: Got me.

6 MR. ANDRESS: On Policy 10.3.2, where it says,
7 "concentrations of domestic self-supplied users," we
8 also include, "and protection for single residential
9 wells".

10 Policy 10.3.3, we revise the language, "lakes," to
11 state, "quarry pits"; and also we add after, "land uses
12 surrounding the site," "and consideration of the
13 primary and secondary impacts".

14 Policy 10.3.4, we add at the very end, "and also
15 consideration of the transportation routes and the
16 impacts that that will have on those routes".

17 Policy 10.3.6, add the word after, "adverse,"
18 "mining," "any significant adverse mining impacts".

19 Policy 10.3.7, we add we change "lakes" to say
20 "quarry pits" and then we add -- we need to have staff
21 add a definition of connectivity.

22 And we have in Policy 10.3.4, we have -- we
23 already have in there water quality, so I think that
24 that's covered.

25 THE CHAIRMAN: There's also I think a scrivener's

1 error on 10.3.5. It says "swale" instead of "which";
2 also at the top, "future," R-W, it needs to be R-E.

3 MR. O'CONNOR: Caught those. Thank you.

4 THE CHAIRMAN: I have a motion on the floor. Do I
5 have a second?

6 MS. WESSEL: Second.

7 THE CHAIRMAN: All in favor?

8 MR. INGE: Wait. Discussion.

9 THE CHAIRMAN: Discussion? Go ahead, please.

10 MR. INGE: I have even more concerns than I had
11 previously where we had language that was put forth by
12 planning staff that had gone through some level of
13 review. Now we have made substantial changes to the
14 language without having any review by staff with any
15 substantive discussion on those issues for the sake of
16 trying to get something out the door because we feel
17 obligated to do so. I still think it's premature to do
18 so. I think that we're making a mistake by
19 incorporating language we haven't had a chance to have
20 adequate review by staff to understand the implications
21 of those, and I will not support the motion.

22 Furthermore, I would like to -- for the motion
23 maker to consider whether we should change our regional
24 park to Quarry Lakes Park from Lakes Park.

25 You're supposed to laugh at that, Noel. Because

1 that's what that is. It's an old quarry.

2 MR. COCHRAN: Madam Chair, I have I guess a
3 concern from a different mode. Even though I support
4 most of the recommendations made, I do believe that
5 staff has recommended that the supplemental narrative
6 would include -- sorry -- supplemental would include
7 historic flow levels as a definition and also a
8 definition dealing with connectivity.

9 I would just as soon see those definitions, I
10 guess, before action is taken; and I would also like to
11 see the recommendations, as we have time -- there's no
12 rush on this, apparently; that we have a new document
13 that incorporates the recommendations that -- I'll call
14 them tentative suggestions that have been made in this
15 motion; and that staff would have time to deliberate
16 those. And so I am speaking against the motion and
17 would be -- welcome a motion later on to defer until
18 next meeting an incorporation of a document that would
19 embrace all of the concepts that have been alluded to
20 by the motion.

21 MS. COLLINS: Are you suggesting an amendment to
22 the main motion where this item would be deferred until
23 next month and be discussed further with regard to this
24 additional language?

25 MR. COCHRAN: I don't think so. I think that I

1 would like to have -- vote no on the existing and then
2 a new motion, hopefully made by the same person, that
3 would recommend that next month we consider a motion
4 that completely describes the new changes.

5 MS. COLLINS: Right now we have a motion, no
6 second?

7 MR. O'CONNOR: We have a second.

8 MS. COLLINS: Okay.

9 MR. COCHRAN: And that we would see the narrative
10 with the two definitions that have been talked about,
11 historic flow levels and connectivity, rather than
12 having all these pieces going; and that we would also
13 have a staff recommendation regarding all of the things
14 that were incorporated, so I would like to hear staff
15 recommendation relating to all those things, so it's a
16 different motion. I'm speaking against the motion.

17 THE CHAIRMAN: So if he amended the motion to
18 bring it back next month, that would not be
19 accomplishing what you want?

20 MR. COCHRAN: If it embraces and legal counsel
21 says his motion embraces the concepts, I'm for that,
22 too.

23 MS. COLLINS: His motion is to transmit today.

24 THE CHAIRMAN: I realize that, but I said if he
25 amended it.

1 MS. COLLINS: That's why I suggested that Mr.
2 Cochran offer a friendly amendment to the motion and
3 either the motion maker accepts it or does not accept
4 it, in which case if the motion fails, then Mr. Cochran
5 would have the ability to make that motion on his own.
6 But once Mr. Andress's motion fails, he cannot make a
7 new motion to that effect.

8 MR. COCHRAN: But it is -- I'm not sure if I can
9 make a friendly amendment -- I guess it would be a
10 friendly amendment. I couldn't make an amendment to it
11 because it's substantially different than transmitting
12 to the Board; and so deferral is --

13 MR. ANDRESS: Your amendment would be for a --
14 table it for a month until the staff makes the
15 revisions and gives a definition of those two terms?

16 MR. O'CONNOR: I think the friendly amendment
17 would be to incorporate all the changes that were made
18 in the original motion; but instead of sending it as a
19 transmittal document to the Board, to bring it back for
20 further review by the LPA.

21 MR. COCHRAN: Would the mover and the second
22 accept a friendly amendment?

23 MR. ANDRESS: Yes.

24 MS. WESSEL: Yes.

25 MR. COCHRAN: Do they have to restate it?

1 MR. O'CONNOR: I think it's understood.

2 MS. WESSEL: I think it's recorded.

3 MR. ANDRESS: It's recorded.

4 THE CHAIRMAN: Can I have a vote on the current
5 motion, please?

6 All in favor?

7 Aye.

8 MR. ANDRESS: Aye.

9 MS. WESSEL: Aye.

10 MR. COCHRAN: Aye.

11 MR. RYFFEL: Abstain.

12 THE CHAIRMAN: Against?

13 MR. TAYLOR: Aye.

14 MR. INGE: Aye.

15 MR. NOBLE: Four to two, one abstain.

16 THE CHAIRMAN: Motion carries.

17 (Proceedings concluded.)

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1 STATE OF FLORIDA)

2 COUNTY OF LEE)

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4 I, John F. Martina, Jr., Notary Public and
5 Contract Court Reporter for the Circuit Court of the 20th
6 Judicial Circuit of the State of Florida, do hereby certify
7 that I was authorized to and did stenographically report the
8 foregoing proceedings and that the typewritten transcript,
9 consisting of pages numbered 1 through 70, inclusive, is a
10 true record.


11 IN WITNESS WHEREOF, I have hereunto set my hand
12 this 8th day of January, 2008.

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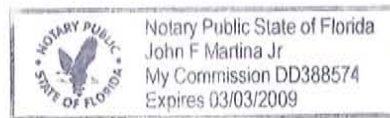


John F. Martina, Jr., Notary
Public, State of Florida at
Large.

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