LEE COUNTY HEARING EXAMINER

CASE NO. DCI2016-00024
APPLICANT: GULLY CREEK RPD

Transcript of proceedings before

Laura B. Belflower, Deputy Hearing Examiner,

1500 Monroe Street, Fort Myers, Florida,

on January 18th, 2018, commencing

at 9:00 a.m.

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THE HEARING EXAMINER: We will get started. If everybody can settle down we'll get started. Good morning. My name is Laura Belflower. I'm the hearing examiner for today's hearing. If everybody could settle down. Appreciate it. Thank you. This is the hearing for DCI 2016-00024, a request for a rezoning to Residential Planned Development. We have a lot of people here and we have a lot of forms already. Okay. So what's going to happen is the applicant is going to go first. They're going to put on their witnesses, and if staff or I have any questions we will ask questions of each witness. If members of the public have a question, write them down, note them, some way that you can remember them and you'll have an opportunity to ask them in the public portion. The members of the public cannot do cross-examination of each witness as they're standing up there, but you can ask questions and we'll get them answered.

After the applicant makes their presentation then we'll go to staff. Staff will make their presentation. We may have questions of staff, and then after the applicant and staff have gone it will be an opportunity for members of the public to speak.

You need to fill out one of these forms for those of you who have not if you wish to speak. You also can fill out the form if you wish to just receive a copy of the recommendation and a copy of the notice for the Board hearing. So I will take those forms and I'll call each person up. You will have the opportunity to ask any questions that you want, make any comments that you want to. There is not a time limit. I ask that you don't be repetitious. If somebody else has already said something and you have nothing to add to that, say I agree with what they said and then add whatever point you have that is different or ask any other question. It is not a matter of how many people say the same thing. It's the quality of what you're saying that I really need your input on.

After we go through all the names -- you will only be able to speak once, so if you forgot something, tell it to somebody that hasn't already spoken and have them ask it. You have to speak here to be able to speak before the Board of County Commissioners. So you need to actually provide input here in this hearing to be able to do that, and I really want you to do that because I want everybody's input and everybody's information so I can make the

best recommendation.

After the members of the public have finished speaking we will come back to staff to see if there's any changes or any points that they want to answer, any questions that the public had that they are the appropriate person to answer, and then we will go to the applicant who will do their rebuttal, answer any of the questions that are appropriate for the applicant to answer and summarize at the end.

Typically what we do is there are conditions that have been proposed for this. If I was to recommend approval I would put those conditions out to recommend to the Board. Typically we do the conditions after the members of the public have spoken. So if you want to suggest any conditions, et cetera, the opportunity to do that is during your presentation portion. We'll talk about the condition and then we will hopefully wrap up the hearing today. With this many people it's entirely possible we may need to continue this to another day, so we'll see where we are when we get to the afternoon session and it may need to be continued.

After the hearing is finally closed then I will take all the information -- I have not done a site visit on this one yet, so I will go out and do the

site visit and look through all the evidence and make a written recommendation to the Board of County Commissioners. Then that is sent to the Board and they will hold a second public hearing, but the public hearing is very limited. Each person will not have more than three minutes to speak, so you need to say what you want to say here and then it will be just a very quick summary of any points that you felt were not adequately addressed in my recommendation one way or the other. Then the Board will make the final decision on the case.

Okay. So everybody needs to turn off your cell phone if you have a cell phone, turn it off or put it in the quiet position. And everyone who is going to speak needs to speak under oath, so if you would please raise your right hand.

(Those persons wishing to speak were placed under oath by the Hearing Examiner.)

THE HEARING EXAMINER: When you speak for the first time please state your name and indicate whether or not you were sworn in. And with that we will get started with the applicant.

MS. MONTGOMERY: Good morning. Neale Montgomery for the record. Before you, you just touched the copy of the PowerPoint, which is an exhibit noted in

our 48-hour Letter. I'm assuming you have the 48-hour Letter.

THE HEARING EXAMINER: I do.

MS. MONTGOMERY: That indicates our areas of disagreement.

THE HEARING EXAMINER: Yes. And you had marked the Power Point presentation as Applicant's Exhibit 1 and it will be marked that way. The 48-Hour Letter is A.

MS. MONTGOMERY: Good morning. For the record I am Neale Montgomery. I'm the attorney. As the Hearing Examiner indicated, we will be presenting witnesses. It is the applicant's job to provide expert testimony in support of their application. Our first witness is an expert in planning and land use, Jennifer Sapen, and she's going to go through the planning issues. Following that will be Barrett Stejskal, environmental consultant. He will go through all the issues regarding the critters and the plants. Following Barrett is Wes Kayne. He's an engineer. I have heard some of you have questions about flooding and other civil engineering aspects and Wes will be addressing those issues.

I have also heard some of you have questions about traffic. Ted Treesh is here. He's our expert

in transportation and he will be addressing those transportation issues. And Ron Inge is here. He's an expert in a myriad of topics, so we'll stay tuned as to what Ron has to deal with as part of the consideration of the application.

I'm assuming everybody knows where we are, but this is a very large scale aerial just to orient you. I-75 is to the east, Bayshore to the south and the property has direct access to Slater Road.

This a narrower, more close-in look. Jennifer is going to elaborate. You're going to see, for the Hearing Examiner who read the Staff Report, the staff noted the C-1 parcel to the north with the outdoor storage. You can clearly see that outdoor storage immediately to the north. You can see the retention pond from the wastewater treatment plant to the south and a mobile home park. So Jennifer is going to elaborate on this, but it's definitely an area with a myriad of different types of uses going on.

So with that I'll turn it over to our expert in planning and zoning, Jennifer.

MS. SAPEN: Good morning. For the record, my name is Jennifer Sapen. I am LEED certified and AICP certified. I have presented before this panel before, and my resume is on file, but I brought a

copy with me if you would like that. And I ask to be accepted as an expert witness in land planning and site planning design.

THE HEARING EXAMINER: Okay. On your resume is it different from what has been filed with --

MS. SAPEN: No. It's the same.

THE HEARING EXAMINER: Okay. Then we don't need it. We already have it on record.

Staff have any objection to her being considered an expert?

MR. BLOCK: No, ma'am.

THE HEARING EXAMINER: So accepted.

MS. SAPEN: The request is a rezoning from AG-2 to RPD for 66 acres. The 66 acres is shown here on the slide. It's located in the North Fort Myers Planning Community. As required by Land Development Code Section 33-1532 we met with that planning community on July 7th -- or July 11th, 2017, at the North Fort Myers Recreation Center. The panel did recommend approval of the project.

As you can also see on the aerial, the property is predominately cleared to the east and the west. The middle of the site, there is some vegetation and there's a creek running through the middle of the site. There are -- there is an agricultural

exemption on the property and there are cattle on the property right now.

The project is in two Future Land Use categories. Mostly in a Suburban, shown here in a yellow color, and there's a portion of 11 acres of it is in the Rural Future Land Use.

Abutting the property is predominantly Suburban to the east, west, south and a portion of the project to the north, and in the northwest of the project is a continuation of Rural. As required by Policy 1.1.5 the Rural Future Land Use allows only one dwelling unit per acre. At 11 acres you are allowed 11 units in that portion of the project. Suburban per Policy 1.4.1 allows six dwelling units per acre. Applying that to 55 acres allows a density of 330 units. This means the total allowable density for the project is 341. The request today is slightly below that at 300, making the proposal and the requested density compliant with both of these land use policies.

Shown here is a zoning map. The subject property shown in pink is currently AG-2. Abutting the property are a myriad of different zoning categories and land uses. Starting on Slater Road on the north side of the property it's zoned C-1, and that is the outdoor storage that Neale referenced.

It appears to be an outdoor industrial type use storage facility.

Continuing on east along the north property line is AG-2, abuts the property. As you get to the east side of the project there is a development called Oak Creek, which is an RPD, a Residential Planned Development. Further to the east there's just a tiny corner of the site that touches Mixed-Use development. The staff noted in their report there was a mistake in the property appraiser's showing that as an Industrial Planned Development, but that is a Mixed-Use Planned Development.

Continuing south but along the east property line it is zoned AG-2. This is where the school is, and you can see in the back there's some ball fields. On the south side of the property there is AG-2. On the east side, directly on the east, the southern boundary but towards the east side there's a vacant area with a parking lot. That's for a recreation facility for Lee County and that's zoned AG-2.

Continuing on, there's some larger estate lots zoned AG-2, and then there's a mobile home community, the River Trails mobile home community, and that is zoned MH-2. And moving towards Slater Road it is also zoned AG-2, and the other side of Slater Road on

the left is AG-2.

The request complies with Policy 1.7.6, which allocates acreage towards a residential use. In this particular community, planning community in Suburban there are nearly 7,000 acres available. The request is only 55. For Rural there are 500 acres available and the request is for 11. The request, therefore, is compliant with Policy 1.7.6.

Some other policies the project is compliant with are listed here. Objective 2.1, Policies 2.1.1, and 2.1.2 and Objective 2.2, Policy 2.2.1 and Policy 5.1.3. All of these policies and objectives refer to existing infrastructure, meaning schools, police, fire, bus. And I have a few slides that I'm going to go through to show those.

We're also compliant with water and sewer standards 4.1.1 and 4.1.2. You do have letters of availability in the Staff Report and Wes Kayne, our engineer, will go through that in a little more detail, but I wanted to point out that it is in compliance with those policies, or those standards, rather.

So this map shows the police, fire, medical and EMS and the Lee Tran within the vicinity of the site, EMS Station 31 located on Garden Street just north of

Laurel. There is also a fire station pretty close to the site, Fire Station Number 3. It's within one mile of the site. You can see just a little bit further south of that is the bus stop for Lee Tran Route 590. That's about a mile and a half from the site. And the Lee County Sheriff's Office is located in North Fort Myers off Pondella Road, and across the Caloosahatchee River is the Lee Memorial Hospital.

There are several schools there are nearby to serve the site. Bayshore Elementary, of course, is right next to the site in the southeast corner of the project. North Fort Myers Academy of the Arts, which is grades K through 8, so that does include a middle school. And the North Fort Myers High School is a little bit off this slide off to the bottom left. There is a library and a senior center located in North Fort Myers, and that, that location there is where we had the North Fort Myers Community Planning meeting.

Residents of Gully Creek can enjoy many opportunities for shopping, employment and parks. There are several of them shown here. The soccer complex that I pointed out next to the project is very close. Caloosahatchee Creek Preserve is near I-75. There are opportunities for employment at

Raymond Lumber, a couple of different public shopping centers and Merchants Crossing. There's a nice disk golf facility which is just north of this pretty regional community center. So there's several different services and infrastructure establishments in place to serve the site.

Next I want to switch to looking at compatibility. I'll go through a few slides which will demonstrate compliance with Goal 5, Objective 5.1 and Policies 5.1.5 and 5.1.10. In doing that I'm going to look at the definition of compatibility as it's defined by the Lee County Land Development Code. That definition is stated here. Compatibility means describing the relation between two land uses, buildings or structures or zoning districts, the state wherein those two things exhibit either a positive relationship based on fit, similarity or reciprocity of characteristics or a neutral relationship based on a relative lack of conflict, actual or potential, or on a failure to communicate negative or harmful influences to one another.

You can see here I have highlighted a few words in bold and colored them in yellow. Those are the portions of the definition I'm going to key on in the next few slides. Going to look at the relationship

between two land uses, the two land uses being what is proposed and what is either existing or already approved, and then we're going to look at the similarity of those two characteristics and determine whether or not there is a relative lack of conflict.

First we'll look at the density, and to study density I have studied all the residential projects shown here in blue. Not all of the residential in the area, but it is a good sampling of the residential in the area and the trends that are going on right now and the existing built communities.

You can see here shown in yellow is Gully Creek request. At five units per acre it's towards the top of this list of all these residential developments but it's not the greatest. There are other residential developments along Bayshore Road and along Slater Road that have similar higher density. Again, remember we're looking at relationship between the uses and if they're similar or relative lack of conflict. I would submit that even with the density towards the height of the chart there's a relative lack of conflict for a density request of four-and-a-half acres to five acres.

Next we're going to narrow the scope and look at only the Residential Planned Developments, two

Residential Planned Developments and one Mixed-Use Planned Development that abut the project and are contiguous to the east. These projects are Oak Creek shown to the north, Chapel Creek right along Bayshore and Bayshore 57 also along Bayshore.

The table here looks at first the residential type, so this category here. As you can see, the residents -- the residential type proposed by these three developments are the same, identical in every instance except Gully Creek is only proposing a two-family attached product. That product wasn't proposed in the other projects. They were approved several years ago and that wasn't a project that was trending. It is now in the market. It seeks a two-family attached, which is essentially a duplex, but it's a fee simple where each, each side of the structure is owned by a different landowner and the lot line runs through the middle. It's like a two-unit town house. So that product is added to the Gully Creek request.

So I have colored the cells in green where what is proposed is either the same or less intense than what is already existing. You can see the lot sizes, lot widths, depth, height and product type for these three projects abutting Gully Creek are equal or less

intense. This means that the proposed regulations and the proposed development type, residential type showing the relation between these two, they obviously have similar characteristics, very -- the exact same characteristics in several instances, meaning there's a relative lack of conflict.

Also want to point out there's some numbers here that are shown red. Those are where Oak Creek, Chapel Creek and Bayshore 57 are more intense than what Gully Creek is proposing. For example, if you look at the town houses, Gully Creek is proposing a 2,000-square-foot town house as a minimum size. Chapel Creek, Bayshore 57 and Oak Creek all propose town houses smaller than that. They also propose an 18-foot-wide town house. We are proposing a 20-foot-wide town house. So in several cases our request is less intense than the three projects that abut us that have already been approved.

Going back to that first map where we looked at a greater study area with more blue, this is the same map that we looked at for the density. Looking at that study map again, I have added in more projects. I have also added in a yellow cell. There is one yellow cell. When you add in Bayshore Commons the single-family lot width for Bayshore Commons is wider

than what we are proposing at 50 foot. I have also added in all the mobile home communities. These regulations are what is required in the MH-2 zoning district.

As you can see here, this table pretty clearly shows that the blue residential projects shown on this map are of similar characteristics to what is proposed and, therefore, there's a relative lack of conflict, proving that the proposed request is compatible with the existing residential projects.

Moving on to the site plan, we have colored in here generally the lakes are blue and the preserve is green. The main entrance of the project is off Slater Road. The entrance to the project, there's a throat depth of about 550 feet from Slater Road to that first intersection. This makes that lake shown there, that lake is about 400 feet deep from Slater into the first residential. That's important for the residents driving along Slater. They will be assured they're not going to be looking at the back of houses and back of pool cages right up along Slater. They'll have 400 feet of lake to look across before they see residential units.

Continue driving into the main entrance. Because it's the main entrance and the unique shape

of the project boundary, this road is single-loaded, so you'll have driveways on only one side of the road for a good portion of that main entrance road. You curve on around through and you can see in the middle the green. That's where the creek crossing is. And in that first aerial I showed you that's where the vegetation is and that's where our preservation and our indigenous preserve requirements are met in that green area.

Continuing on looking far down at the southeast portion of the site, that's our second entrance. That's access from Williams Road which goes along that school down there.

We have a third potential optional access. It's shown in the pink arrow here on the east side. This is for an optional potential future connection to Oak Creek. If that connection were to be made to Oak Creek, Oak Creek would need to amend their zoning plan. We wanted to allow this project to be able to connect to Oak Creek, provide the option for that in the future if Oak Creek was amended. We wanted to do that rather than needing to come through and amend both projects. We wanted to provide the opportunity for interconnectivity. There are goals in the Comprehensive Plan about interconnectivity between

projects, and we just want to provide that opportunity should Oak Creek amend their development.

You will also see on the slide these residential areas, R-2 and R-1, colored slightly different here. R-2 on the left side of the screen, that is the more intense uses. Both, both sides of the project allow single-family detached and fee simple two-family attached. However, only on the west side of the project in the R-2 will townhouses and multifamily be allowed.

We have a second Master Concept Plan. The west side is the same. The only change is to add a little more lake on the east side of the project.

Next I want to look at buffers and give you an aerial, zoom in a little bit so you can see how we're buffering and what the adjacent land uses are. Starting at the commercial area and C-1, the black indicates a Type A buffer, which is a five-foot wide buffer that will run along the lake. Then you hit a small area of pink. The pink buffer represents a Type C or F buffer. This is required when a road is within 125 feet of existing residential uses. The option would be a C buffer 15 feet wide, but a wall is required, or a Type F buffer which is 30 feet wide and it has twice as many trees.

Continuing on the yellow, this is where no buffer is required. Then we hit the CF buffer along the preserves. Of course, no buffer required. And continuing around the project anywhere where residential abuts residential there's no buffer required, but where the road gets near that project boundary that C or F buffer is required.

Looking down here in the blue, the blue indicates a Type B as in boy buffer as a 15-foot-wide buffer. And continuing on around, no buffer in yellow, CF in pink, and then a Type A buffer. This buffer Type A shown here and up here, that is not a required buffer. That triggers it in as a condition of a deviation that I'll go through in a minute. And then you round up with a CF buffer along the residential here, and then along Slater Road the green is a Type D, as in dog, buffer.

Earlier when I spoke about the R-1, R-2, that also ties into the open space calculation. The whole site is 66 acres. This R-1 category, no multifamily, and the residential lots, single-family, are a minimum lot size of 6,500 square foot, and both the two-family attached and the single-family are capped at 45 percent lot coverage. By doing that, pushing the larger lots on the west side, no open space is

required for that portion of the project. To calculate that we drew a line down the centerline of the creek, which is survey located, and separated the whole project in that way. So the east side of the project, the R-1 area, was 29 acres. We subtracted that from the total project, meaning that the portion of the project that requires open space is 37.3 acres and being the R-2 area. Applying that at 40 percent, 14.9 acres is required. We are providing slightly more at 15.7, almost an acre more.

This slide shows a zoomed-in and color version. This is shown on the Master Concept Plan. I think the colors help understand what's going on a little bit better. We comply with the Land Development Code sections listed here. The first one is 10-415(b). That's a section that requires that half of your open space requirements be met through on-site indigenous preserve.

The next code section listed here is 10-416(b)(3)(a), is a code which allows for incentive credits for contiguous preservation areas. We did purposely locate our indigenous preserve not only where the preserve is, but along the creek. It's a very pretty creek and it has some nice trees in here. This singular continuous vegetation will create a

good habitat, which Barrett Stejskal, our environmental consultant, can get into a little bit more. But the green area is what qualifies as indigenous preserve. The brown cross-hatched area is nonindigenous, so that doesn't count towards our indigenous preserve. However, it will be within the conservation easement. Those areas go towards our just general open space requirement.

The request also is compliant with -- and this, I apologize, this is the wrong code section. It should be 10-416(d)(9), and 416(d)(9) requires a 50-foot waterway buffer to natural waterways. That buffer is shown here in a black-dashed line. And you can see that that buffer doesn't extend into any residential lots and it also does not extend into the lake abutting the property or the preserve.

The 48-hour letter did include a proposed change to Condition 10A and 10B, both regarding the gopher tortoise. Barrett will go into that in a little bit more detail. I just wanted to explain how it applies to the site plan.

The light green area is all the area that would be inside of the conservation easement. The hatched area is where the gopher preservation area is. So he can explain why and how that applies to the gopher

tortoise. I just wanted you to understand from a site plan standpoint of where the gopher tortoise is located and that there would be additional preserve beyond the gopher tortoise preserve area.

I mentioned earlier there is 11 acres in the Rural future land use that's shown here with the cross-hatch. In accordance with Policy 5.1.10, no density may be allocated from the Suburban into the Rural. Therefore, this area of the project has a density cap of 11 units being 11 acres. You can see there's a small residential area here where those 11 units could be applied.

Getting into the deviations, the first three I'll do together since the reason behind them and the function of them are easy to group together. They apply to these small little dead-end roads you see here. There's two areas of the site where this occurs but they both function in the same way.

The first deviation is from 10-254, which requires that side lot lines be at right angles to streets. So this side lot line is at a right angle to the street. When you turn the lot sideways this becomes your front lot line, the edge, the terminal edge of the right-of-way, and this becomes your side lot line. This side lot line, then, is not

perpendicular to the road, it's parallel to the road, so a deviation is needed to accommodate this design.

The next deviation is from 10-296(p), as in Paul, (1). This is a code which requires cul-de-sacs at the end of dead-end streets. I'll get into that in a little bit more detail on justification to that.

The third deviation is just to determine how lots are measured. We have asked for this deviation in several other cases and have found that this graphic here just helps for future evaluation because it is unusual to have this as your side lot line and this is your front lot line. The graphics just help for future permitting to be clear where setbacks are measured and how lot size is measured.

Here is an example, a recent example. This is Camden Square. The zoning was approved in 2014 through Resolution Z14-015, and the same three deviations were requested and approved in that project. This is that lot, what it looks like. Your road comes and it terminates and then his whole lot is shown here in blue. It creates a premium lot for the project. Developers sell this lot for a premium and they're usually one of the first lots that are sold in the project. Part of the reason, it creates additional open space. You can see here there's a

lot of grass area. The road, this is where the road terminates, and then the private driveway begins here, a nice paver driveway.

An additional benefit to the project is that it requires less land because the road right-of-way doesn't have to get larger for the cul-de-sac. There's less land dedicated to the right-of-way and more can be privately developed or used for other purposes of the project.

Looking at public safety, the Florida Fire Prevention Code, they allow dead-end streets as long as the dead-end does not exceed 150 feet. It's the Land Development Code which has a greater criteria. The request is from the Land Development Code, but Florida Fire Code allows it. And if you look at our detail and as it's shown on the Master Concept Plan, we show that this must be less than 150 feet. As conditioned in the staff report it will require approval from the local fire district prior to Development Order. We wait until Development Order to get that approval because some of the questions that the fire department comes up with, they want to know where your fire hydrants are going to be and we just don't know that yet at this time. And this has proven success in other Lee County developments. I

have -- I listed Camden Square. There is also Three Oaks 106 RPD, Enclave RPD and Oak View RPD. I have copies of all four zoning resolutions. If you would like those I can give them to you.

THE HEARING EXAMINER: If you would like to submit them, yes.

MS. MONTGOMERY: They would be Exhibit 3?

THE HEARING EXAMINER: Yes, since you had numbered your Number 2 already. Number 2 is going to be a letter from Ron Inge to Richard Shine, and this will be Number 3 as the composite exhibit of multiple approved RPD projects?

MS. SAPEN: Correct.

MS. MONTGOMERY: With those CDs.

MS. SAPEN: Correct. Yeah.

THE HEARING EXAMINER: Okay.

MS. SAPEN: Next deviation, Deviation 4, is from Land Development Code Section 10-329(d)(1)(a)(3). This requires an excavation setback to a property boundary where there is a separate ownership. It requires 50 feet. The request is to allow 30 feet. This section of the code requires excavation setbacks not just to the property boundary under separate ownership, but also along public right-of-way. I wanted to point out that there is no request for a

reduced excavation setback to Slater Road. There will be a 50-foot excavation setback to Slater Road. The deviation does apply where the yellow four triangles are shown here in the project. As conditioned by the staff, there will be a five-foot-wide Type A buffer provided there. The earlier slide you can see that there was a Type A buffer required wherever the excavation setback is less than 50 feet. This will protect from pedestrians. It will delineate where the project boundary is so that it eliminates safety concerns. The benefit to the project is through the enhancement and optimum use of the land. It increases the on-site lake excavation material which is a cost saving to the developer, but it also reduces construction traffic on public roads. From a public safety standpoint the applicant agrees to the safety barriers that staff has recommended in their conditions, and, therefore, there's no detriment to the public safety, health or welfare through approval of this deviation.

The next deviation, Number 5, is from Land Development Code Section 10-285(a). This requires an intersection separation of 440 feet. The request is to allow 170 feet. This is to Bee Charmer Lane shown

here on this slide. We located the proposed access shown here in black. We located where it is as far south on the project as possible to achieve an equal distance between what we are looking at as more intense uses along Slater Road, whether it be from a traffic trip standpoint or just from the type of vehicles coming and going.

Here we have the industrial storage yard where you can see there would be large tractor-trailer type vehicles coming and going. Similar with the dense landscaping down here. We would expect they would have trucks with trailers. So our intent was to locate the access point halfway between these two more intense scenarios. Those two yellow lines shown here are about 800 feet each one. Bee Charmer Lane, shown right here and shown here on this slide, we do think the intersection separation to this road is not a detriment to the public safety, health and welfare because the road essentially functions as a private driveway. You can see here it's a dirt road and it is not County maintained. Shown from an aerial view, it's also not a detriment to public safety, health and welfare because it is a low traffic generator. You can tell by the dirt road. And it's also good to note that there is no through connection of that road

to Shelby Lane. The benefit to this deviation by moving this access point as far south as possible, it allows the opportunity to put a very large water management lake to separate and buffer our main entrance where we intend to landscape and it will look very nice, we wanted to separate that as much as possible from the outdoor industrial storage yard.

That concludes my presentation but I am available for questions.

MS. MONTGOMERY: I have a couple questions.

Jennifer, can I get you to go back to slide 20? I kind of want to go around this one more time. You indicated earlier that it's over 400 feet from Slater Road to the closest house, but when I look at this slide it's over 400 feet, plus you have a Type D buffer. Is that correct?

MS. SAPEN: That's correct. Well, you have over 400 feet of lake. The lake is set back 50 feet from the right-of-way as required by Land Development Code.

MS. MONTGOMERY: I don't think none of the folks know what a Type D buffer is. Is that one of the more intense buffers in the County code?

MS. SAPEN: A Type D, as in dog, buffer is 15 feet wide. Let me find the slide. It is 15 feet

wide and it requires five trees for every 100 linear feet, you have to provide five trees. There's also a requirement for a double hedge. So you would see every 100 feet five trees, double hedge, and behind that you would see a lake for 400 feet. Then behind that would be the backside of these residential houses.

MS. MONTGOMERY: So since very few residences appear to actually live next to this property, it's going to be minimal impact -- will it have a minimal impact on the traveling public on Slater Road?

MS. SAPEN: Correct. If anything, the traveling public on Slater Road will be enhanced by having the landscape buffer that will be maintained by the homeowner's association and you will have a lake, a lake view. From an esthetic standpoint it will improve this area.

THE HEARING EXAMINER: If I could ask, if there's going to be comments or conversations please take them out in the hall. The microphones pick up very well and it's very distracting. I would appreciate it. Thank you.

MS. MONTGOMERY: You have public recreation facilities noted there. Is that outdoor recreation filled with kids and noise and traffic?

MS. SAPEN: Correct. That was -- was it the Bayshore soccer complex that we had on one of the public service slides? Yeah, the Bayshore soccer complex, and there's a pretty good size parking lot right here with the outdoor play field here and then there's a play fields here as well.

MS. MONTGOMERY: So this site abuts a myriad of uses, some very intense, like the C-1 and the soccer fields and the mobile home and the RPD and some less developed with the AG-2 residential uses, but there's no house immediately adjacent to this property.

MS. SAPEN: Along this portion of the site and in the south towards the east, these residential houses are set back very far away. I would guess at least 300 feet or so from the property boundary of open space. None of these houses are near. There is a house right here that is somewhat near. You can see it here, and it's a single-family house. There are several different additions added in the back here with sheds, but that is the only residential home that is near the site, single-family, other than the mobile home community down here.

MS. MONTGOMERY: So the two places where the public can actually experience this property are going to be Slater Road and Williams Road, and will

this development change the character visible from either of those roads?

MS. SAPEN: It will not negatively change the character. If anything, it will improve the esthetics along Slater.

MS. MONTGOMERY: I don't have any other questions.

THE HEARING EXAMINER: Staff have any questions?

MR. BLOCK: I have one, if I may, Madam Hearing Examiner. Chip Block with Department of Community Development.

Jennifer, if I could get you back to the previous slide, slide 20, where you had the colored buffers. Just for purposes of making sure for the record, the peak that you have there is a proposal for either a C or an F buffer? A D or an F buffer? I apologize. D or F buffers. Am I correct?

MS. SAPEN: A C.

MR. BLOCK: C or F.

MS. SAPEN: C or F, correct.

MR. BLOCK: The F is 30-foot wide.

MS. SAPEN: Correct.

MR. BLOCK: Are you, having looked at this as part of the design aspects, are you sure that a 30-foot buffer will be achievable within that area?

I just want to make sure that for purposes down the road that we're not looking at a possible deviation request down the road. I wanted to make sure it was achievable.

MS. SAPEN: If for a design reason the 30 foot would not be achievable, then the applicant would then be required to use a Type C buffer, which is only 15 feet wide, but a wall would be required with landscaping on the outside of the wall. Any time a wall is proposed by a new planned development the landscaping must be on the outside of the wall towards the public.

MR. BLOCK: Thank you. The only question I had.

MS. WORKMAN: I have one question. Beth Workman for the record with the Zoning Section. The deviation, I believe it was Deviation 4 - we can keep it on this slide - was for going from a 50-foot excavation to a 30-foot, correct?

MS. SAPEN: That's correct.

MS. WORKMAN: The condition that was proposed in the staff report, you had mentioned a Type A, and a Type A buffer is five feet wide with five trees every hundred feet, but the condition was an enhanced Type A, which then provided shrubs, a single hedgerow, which our code is a Type A with just trees. Is that

correct?

MS. SAPEN: I got an e-mail at 3:30 this morning where that was noticed. Your memo has on there a double hedge, but I don't believe it was in the staff report in conditions, and we didn't notice it until 3:30 this morning. The applicant would agree to an enhanced buffer where that deviation is applied, so that the Type A buffer would include a double hedge.

MS. WORKMAN: Okay. Madam Hearing Examiner, I'm looking at my environmental report and it reads prior to Development Order approval the development or plans must illustrate a five-foot-wide enhanced Type A buffer. That includes five trees per 100 linear feet and a hedgerow installed at 48 inches in height. Where lake excavation is 30 feet from the property line, if an optional project wall or fence is proposed, then a seven-and-a-half-foot buffer must be provided, and that was in the environmental staff report.

MS. MONTGOMERY: Yes. And the simple answer is Beth is correct, that condition is recommended at the end of her staff report. It's not included that I could find it in the list of conditions, and so we saw that and emailed each other and go what about this, and so it's an oversight, needs to be included.

THE HEARING EXAMINER: So, Chip, do you know whether that was just an accident that it was missed or --

MR. BLOCK: No, ma'am, it wasn't missed, as a matter of fact. If you would, please go to page four of Attachment C, which is the conditions and deviations of the staff report. If you go to page 4 under Deviation 4, the condition is recommended there under the approval of Deviation 4. Same language --

THE HEARING EXAMINER: So it is in the Staff Report. Okay.

MR. BLOCK: At least we found it. Sometimes you do see it in the conditions of the staff report specified, sometimes you see it in the conditions, under the deviations. In this case the condition is in the deviation action.

THE HEARING EXAMINER: Okay. All right. So we don't need to change that. I did notice on your graphic that the lake that is to the north yet, so that should be black.

MS. SAPEN: Correct.

THE HEARING EXAMINER: And in Option 2 it would be the enhanced Type A along the whole northern part of that lake that you were proposing in the second option, correct?

MS. SAPEN: Correct. And the Master Concept Plans, I am looking at them now, they are labeled correctly. Just the coloring on this graphic is not correct.

THE HEARING EXAMINER: I have a couple of questions. Are there any existing large lot residential subdivisions around this property as defined under the North Fort Myers Chapter 33 provisions that would require adjustments to the site?

MS. SAPEN: Subdivisions. There are several AG-2 larger residential lots on the west side of Slater Road. Of course, there are the two that are on the east side of Slater Road directly south of the project and there's some over here. So there are larger residential lots. The study area that I showed was just the blue area. So there are larger lots in the area. I would say this is a transitional area. There's a lot going on here. There is a trend. You can see with the Residential Planned Developments that have been approved in the last 10 or so years of a higher density residential.

THE HEARING EXAMINER: Okay. The definition under Chapter 33 under 1537 says existing large lot residential subdivision means a residential

subdivision where the minimum lot size is 1,400 -- 14,520 square feet and is either or has been approved as of January 2012. So the key, I guess, in that is the word "subdivision".

MS. SAPEN: Right.

THE HEARING EXAMINER: So to your knowledge these metes and bounds lots, they have not been subdivided as a large lot subdivision; is that correct?

MS. SAPEN: That is correct.

THE HEARING EXAMINER: Okay. So the -- it's your opinion that the North Fort Myers standards relative to large lot residential subdivisions don't come into play with this project. Is that correct?

MS. SAPEN: Correct.

THE HEARING EXAMINER: Okay. And I'm going to ask staff to confirm that.

MS. MONTGOMERY: While you're looking for that let me ask Jennifer another question.

Jennifer, you gave an example of when you were talking about some of the deviations about Camden Square, and those lots would be comparable to some of the lots here?

MS. SAPEN: Correct.

MS. MONTGOMERY: And to the north of Camden

Square is that five-acre tracts?

MS. SAPEN: Yeah. The example site that Neale is referring to off of Plantation Road is very similar in residential type that was approved, and just to the north of that project are very large estate residential projects -- or residential homesites. That is not a subdivision similar to here. They're meets and bounds residential lots.

MS. MONTGOMERY: And that was found compatible by the Board of County Commissioners.

MS. SAPEN: Correct. It was found compatible and it's constructed and it looks very nice.

THE HEARING EXAMINER: My question was not about compatibility at that point. It's whether the North Fort Myers requirements kick in place.

MS. MONTGOMERY: I know. You reminded me of that. I wrote that question down and forgot it, so you were just helping me out.

THE HEARING EXAMINER: Okay. Glad to do that.

If we can go back to one of the slides that shows the R-1 areas versus the R-2 areas. And my question is, the R-2 area you said is more intensely developed. What was the thought in putting the more intense development to the west versus to the east closer to the existing RPDs or existing planned

development?

MS. SAPEN: I think that is best shown in our zoning map. Here we go. This area here are large residential lots and this is a cleared ag area, lower intensity on this side of the site from existing standpoint from the north and the south. When you get over closer to Slater Road you have the C-1, more intense use, and you have the treatment pond. Also that's the main project access, is on Slater Road. And there are goals and design parameters to put the more intense, higher density closer to the entrance of a project rather than the backside of a project.

THE HEARING EXAMINER: On your site plan it shows optional private recreational area, and this may not be a question for you. Let me know. And my question is are those optional private recreational areas counted toward open space, in the open space calculations, and can they be recreation areas and still count as open space.

MS. SAPEN: Yes, they are counted as open space. The intent of those, and they're pretty small, little areas like this, the intent of those are really just pocket parks, mostly able to be nothing but sodded green open space, maybe a gazebo there, a small common area for people to walk their dogs.

During the Development Order review and approval we will go through a process where we have to show on a plan what is open space and what counts as open space and that will follow the Land Development Code. There are criteria there that will allow sidewalks to be in open space. You can even have tennis courts in open space. So it's not necessarily relative to pervious or impervious. It's more of a use.

THE HEARING EXAMINER: Okay. Again, you may not be the person to ask this, but there was in your 48-hour letter you raised a question that I was going to raise as well about the existing agriculture and listing that as a use, and staff's response is -- are you the right person to talk to about that or do you have another witness that's going to talk about that?

MS. MONTGOMERY: No.

THE HEARING EXAMINER: She's the right person?

Okay. So the 48-hour letter, the applicant asked that it be listed in the schedule of uses, the agriculture; is that correct?

MS. SAPEN: Correct.

MS. MONTGOMERY: Existing.

THE HEARING EXAMINER: Existing agriculture. Okay. And staff has indicated it's not necessary because of Note 48, and we'll let staff get into it.

First of all I would note, I would think that existing ag, even existing ag can't be listed as a use in the schedule of uses because it's not a use allowed in RPD, but it's been handled in the past as a separate condition. Is that what you were thinking of how it's been handled in the past and how --

MS. MONTGOMERY: Well, yeah, and the problem is the staff has pointed out that the regulations have changed, and when you read the regulations it indicates that if you are existing ag you're okay. So whether that be in a separate condition or the list of uses, it acknowledges that there's existing ag. Somehow what the applicant is seeking is the protection of not having a debate later about whether there was or wasn't existing ag, but acknowledging that there is, in fact, existing ag.

THE HEARING EXAMINER: So you are just wanting to get that clarified so that it's not something has to be debated each time.

MS. MONTGOMERY: We don't want Chip to get hit by a bus, but if he does we don't want there to be any question about whether there's existing ag.

THE HEARING EXAMINER: Okay. And I will note, and when we talk to staff about it, that there is still a requirement in the code that there be an ag

affidavit submitted, and I saw that there was. That's what raised it in my mind, wait a minute, where is the ag. Okay. So we'll talk to staff about addressing that.

Okay. That's the questions I have of you. Thank you.

MS. SAPEN: Thank you.

THE HEARING EXAMINER: Do you think you're going to be more than a half hour?

MR. STEJSKAL: No, ma'am. I have two slides. I'll be quick. Good morning. My name is Barrett Stejskal with BearPaws Environmental. I have been previously identified as an expert witness in wetland and wildlife ecology.

THE HEARING EXAMINER: Any objection?

MS. WORKMAN: No, ma'am.

THE HEARING EXAMINER: So accepted.

MR. STEJSKAL: First I'm going to talk about the on-site wetlands. The on-site wetlands are located within the central portion of the property here. Basically the creek on both sides are the extent of the wetlands that currently exist on-site. These wetlands, as you can see here, have been incorporated into the preserve and include indigenous and nonindigenous areas.

The next information I will discuss is regarding the gopher tortoise. We have discussed with staff and come up to this condition, revised Condition 10A. Prior to the issuance of a Development Order an off-site management plan will be prepared which will address all gopher tortoises that will be relocated within the development footprint --

THE HEARING EXAMINER: Slow down just a little bit.

MR. STEJSKAL: -- to an off-site FWC approved mitigation bank. Also prior to Development Order an on-site protected species management plan will be prepared which will address both on-site and off-site relocation of gopher tortoise to the preserve areas and nonindigenous preserve areas.

MS. MONTGOMERY: Mr. Stejskal, what we're trying to clarify here I believe is we want it to be clear that some of the tortoises will be relocated off site; is that correct?

MR. STEJSKAL: Yes, ma'am, correct. Any gopher tortoises located within the preserve areas, whether it's indigenous or just classified as nonindigenous preserve will remain on site. Gopher tortoises located outside of the preserve areas within the development footprint will be relocated to an offsite

FWC recipient site.

MS. MONTGOMERY: And you will have to do that in accordance with their permitting criteria.

MR. STEJSKAL: Have to do the permit and get a permit to do that from FWC.

THE HEARING EXAMINER: And that's consistent with the current County requirements as well.

MR. STEJSKAL: Yes, ma'am. Yes, ma'am.

THE HEARING EXAMINER: Staff have any questions?

MS. WORKMAN: No, ma'am.

THE HEARING EXAMINER: Thank you.

MR. STEJSKAL: Yes, ma'am.

Next condition is Condition B also discussing the gopher tortoise. Prior to a clearing permit pursuant to the vegetation removal permit the gopher tortoise fence will be installed around the limits of the preserve to ensure that no impacts will occur to any gopher tortoises' burrows located within the preserve. Gopher tortoises located within the 25-foot buffer area of the preserves shall either be relocated into the preserve or relocated off site in accordance with the FWC criteria. And, again, it's just as we discussed, this will all be mandated within the FWC permit for the gopher tortoises.

As discussed with staff, no machinery or

mechanical excavation of gopher tortoise burrows can occur within the indigenous preserve or on-site preserve areas.

MS. MONTGOMERY: Before you leave that let me just clarify that.

MR. STEJSKAL: Yes, ma'am.

MS. MONTGOMERY: And, Mr. Stejskal, what I believe we're trying to clarify here is that there was uncertainty about the 25-foot buffer and there was some suggestion that it was going to end up really becoming a de facto preserve and the tortoises would have to be retained in the buffer area just like they would in the conservation area. So we're trying to clarify that?

MR. STEJSKAL: Yes, ma'am, correct. That's exactly why.

THE HEARING EXAMINER: Any questions?

MS. WORKMAN: No questions.

MR. STEJSKAL: Madam, that is it.

THE HEARING EXAMINER: All right. Thank you very much.

MR. STEJSKAL: Yes, ma'am.

MR. KAYNE: Good morning. My name is Wes Kayne. I'm a Professional Engineer licensed in the State of Florida, and I have been previously accepted at

previous hearing examiner. My resume is on file and I have copies with me in case you need it, and I have been sworn.

THE HEARING EXAMINER: Have you been recognized as an expert in -- as a Professional Engineer?

MR. KAYNE: That's correct.

THE HEARING EXAMINER: Okay. Staff, have any objection?

MR. BLOCK: No, ma'am, we do not.

THE HEARING EXAMINER: So accepted.

MR. KAYNE: So I'm going to discuss the drainage out here existing and then propose the general concept and then also the utilities. So the proposed development is located in Daugherty Creek watershed. The existing conditions consist of ag and pastureland bisected by the existing creek. The site primarily drains via sheet flow generally towards the creek. The creek runs south eventually crossing Bayshore Road and into the Caloosahatchee River. The proposed drainage, I show both of the MCPs up here with generalized flow arrows. The lakes will be interconnected, and essentially there will be -- the RPD will maintain the existing flow pattern. Stormwater will be treated and stored within the proposed stormwater management system in independent

basins on either side of the creek. You have a basin on either side of the creek. The stormwater management basins will discharge to the existing creek through the respective control structures. The storm water management system will be designed to accommodate the 25-year storm event by storing the associated depth of rainfall and discharging to the creek at the allowable discharge rate for the Daughterly Creek watershed. The allowable discharge rate is based on the expected runoff from the site based on characteristics of the overall contributing watershed. So we will be generally maintaining the existing runoff rates of the watershed and property as required by Lee County Land Development Code and the South Florida Water Management District Applicant's Handbook.

For utilities we have received letters of availability for potable water from Lee County Utilities and wastewater from the Florida Governmental Utility Authority. There's a 12-inch water main located approximately 1,000 feet south on Slater Road, a 12-inch water main along Myakka Drive adjacent to the site and 16-inch water main adjacent to the site along Williams Road.

Florida Governmental Utility Authority has a

four-inch, eight-inch and sixteen-inch force main located along Williams Road, Bayshore Road and Mellow Road respectively. The development will be designed to connect to and utilize these available existing utilities. These are the letters of availability that we have received from Lee County Utilities and FGUA.

So I'm available for any questions or comments.

MS. MONTGOMERY: I have a couple questions. Mr. Kayne, I believe you indicated that we will have to develop this property in accordance with the criteria of the South Florida Water Management District. Is that correct?

MR. KAYNE: That is correct.

MS. MONTGOMERY: It's my understanding that South Florida indicates that your postdevelopment runoff can't exceed your predevelopment runoff. For folks worried about flooding, what does that mean in common terms?

MR. KAYNE: That means this site should not have any detrimental impact on any of the surrounding properties.

MS. MONTGOMERY: So those folks who think the development of this site is going to cause flooding, do you have an expert opinion on that?

MR. KAYNE: That is the requirement by the Land Development Code and the Applicant's Handbook of the South Florida Water Management District, and obviously our firm would -- whoever the design firm is would want to comply with that at the time of development.

MS. MONTGOMERY: Would want to. Would have to comply with that.

MR. KAYNE: Absolutely.

MS. MONTGOMERY: And would not be allowed to cause flooding; is that correct?

MR. KAYNE: That's correct.

MS. MONTGOMERY: I know there's been a lot of discussion since Irma, and I have seen various people write things that say we all know that new development causes flooding, and it's my understanding that that's not correct under the rules that are in place. Is that correct?

MR. KAYNE: That's correct.

MS. MONTGOMERY: And you or the design consultant would have to design this site to meet presently the 25-year, three-day storm event; is that correct?

MR. KAYNE: That's correct.

MS. MONTGOMERY: Now, I do know, or keep hearing

that Lee County, Estero, Bonita all have ongoing water management studies. Is that correct?

MR. KAYNE: To the best of my acknowledge, yes.

MS. MONTGOMERY: And we don't know what changes, if any, will come out of that, but there may be different standards.

MR. KAYNE: That is correct.

MS. MONTGOMERY: Okay. I don't have any other questions.

THE HEARING EXAMINER: The follow-up question to that is will this project have to meet whatever new standards come into place before it is developed.

MR. KAYNE: Whatever the standards are for the Land Development Code at that time and also the applicant's handbook, that's correct.

THE HEARING EXAMINER: Staff have any questions?

MR. KAYNE: Yes, sir.

MR. LEE: For the record, my name is Sam Lee, Lee County Natural Resources.

Would you look at the slide of existing condition and proposed, that back and forth, that one. Existing for now the larger arrow that's indicating the flow in the creek, Daugherty Creek, right?

MR. KAYNE: Say that again.

MR. LEE: The larger arrow --

MR. KAYNE: That's correct.

MR. LEE: Right. That it flow into Daugherty Creek mainly from north to south.

MR. KAYNE: That's right.

MR. LEE: And the smaller one from the site is existing sheet flow pattern from what's toward the creek is and then from the east portion of the property toward the west for the extent of the creek, right?

MR. KAYNE: Yes, generally.

MR. LEE: And the proposed condition, next slide, please. Now you are changing the local, that component of a sheet flow. For example, the southernmost lake under -- right. That one you're sending toward the north and dumping into the creek. I hope you design capture that -- in other words, in general sheet flow-wise toward that creek from the western portion and then northeastern portion same pattern kind of distributed along the progress of the river, now you combining it into north up to one point.

MR. KAYNE: Yeah, and that's something, you know, at the time of development will be considered. That will be based on the final site plan and grading

of the site, but I do understand your concern. And that's not to say that, you know, maybe we don't discharge this way or multiple points of discharge. It would all just kind of come out in the development process.

MR. LEE: Okay. So that means you don't have an ERP permit yet?

MR. KAYNE: No, we do not.

MR. LEE: Okay. So this is a conceptual.

MR. KAYNE: Yes, it is.

MR. LEE: And also --

THE HEARING EXAMINER: Wait a minute. You asked do you have an ERP yet? Is that what your question was?

MR. LEE: Yes.

MR. KAYNE: This site does not currently have an Environmental Resource Permit.

MR. LEE: And that's with the South Florida Water Management District.

THE HEARING EXAMINER: Okay. That's what I thought you were -- yeah.

MR. LEE: So I just want to point out that I see there was a change. Even if you got the ERP, they consider as, and you mentioned that pre versus post under 25-year, three-day storm that's a state

regulation.

MR. KAYNE: That's correct.

MR. LEE: But that's another concern that in reality, especially that last summer hurricane is more than, it's quite possible, it's already been, we're experiencing a 25-year, three-day storm rain event would be many cases higher, but that's what we got as regulations. So as a County having ERP permit is okay. You may satisfy our state permit, but in the residence as engineer, responsible engineer, you are mindful that, yes, we can get permit, but still in reality rainfall, in observing more higher than three-day rainfall, a 25-year, are you willing to consider that extra?

MS. MONTGOMERY: The answer is -- I'm going to answer that. The project is going to comply with the regulations. I asked Mr. Kayne about the fact that regular -- there's studies going on because we're mindful of the fact that there may well be changes to all the local regulations, and that relates in part to our concern about the condition that the staff has recommended because we don't want to get trapped saying you have to comply with these rules which have been changed, and they're different and in conflict. So what we're trying to do to satisfy Mr. Lee and the

public is this project is going to comply with the rules that are in effect at the time. And we recognize in light of the things that Mr. Lee has pointed out those regulations may very well change. We know that three local governments are all working towards that.

Mr. Kayne, if you have anything different you wanted to add, but --

MR. KAYNE: No, that's the direction I was going.

MR. LEE: I agree with that one. The reason I wanted to bring it up would be you mentioned a minute ago that as long as meeting predischarge versus the postdischarge, postdischarges less or equal to the pre, then you are kind of assuring there would be no adverse impact, but in practical terms, you may testify with the ERP state regulations, but in practical term we have a more frequent rain. So we don't have --

MS. MONTGOMERY: Some years we do.

MR. LEE: Right. That's a higher intensity that we don't have now the tool in the Land Development Code in our hand. So as a licensed engineer and member of the public aware of that may you may meet that state regulation, but that's not, as she

implied, that one is not absolute guarantee. Not only this particular project, every -- we are living in this environment and location and the climate change area, that's what we are now, so I want to remind everybody. We do review, rely, many of them rely on state review process, but we also rely on that one, yes. I know, clarify that clearly communicate with the county staff and the citizens. That was my point.

THE HEARING EXAMINER: And I share somewhat of the concern in that there was a statement made that you're going to meet the county and state requirements and therefore there will not be flooding.

MS. MONTGOMERY: Okay. That wasn't implying that.

THE HEARING EXAMINER: I think, I think the assurance, the assurance cannot be given that there will not be any flooding because of this development. Even if this development was not there there could be flooding.

MS. MONTGOMERY: Yeah. And let me clarify. I'm not saying there won't be flooding. Obviously if you're in Houston you have a thousand year storm event you're going to have flooding. What I was

trying to get at is a lot of things that I see people write is that new development causes this, and I was trying to distinguish between the fact that flooding is not caused by new development because most often it's designed to a higher standard than a lot of the existing development in terms of how it has to be designed and elevation and a variety of factors.

THE HEARING EXAMINER: Okay. And I think whether -- new development as the current standards must meet the predevelopment relative to a 25-year, three-day storm. If there is a higher storm, because the ponds are designed for a certain level where there were not ponds before, those ponds may flood and that development because it's collected together differently. But, on the other hand, there has to be some standard, some level to develop to, and it sounds like the County is looking at changing the regulations. So whatever the regulations are you're committing that they will be met and --

MS. MONTGOMERY: What I was trying to do in the 48-hour letter is not put ourselves in a Catch-22 between current and changing regulations.

THE HEARING EXAMINER: Right. And we will ask staff to respond to those suggested changes.

MS. MONTGOMERY: In light of that you raised a

question that Sam is apparently raising a question about sheet flow versus ponds. I do need to ask Mr. Kayne a question.

Mr. Kayne, water management ponds are included because we need to provide water quality --

MR. KAYNE: That's correct.

MS. MONTGOMERY: -- and storage. Is that correct?

MR. KAYNE: Attenuation storage, that's correct.

MS. MONTGOMERY: And so I'm assuming nobody would give you a permit to just let the site sheet flow into Daugherty's Creek without providing some kind of pond; is that correct?

MR. KAYNE: That's correct.

THE HEARING EXAMINER: The question, and I would assume it would be to you, is the reason for the second option with the larger lake on the eastern side, or larger lakes, plural, on the eastern side from a drainage standpoint because of the --

MS. MONTGOMERY: No. It's for extra fill.

MR. KAYNE: It could provide additional storage volume also.

THE HEARING EXAMINER: Okay. So it provides fill to be used on site to raise up the site levels on the western side from on the eastern side.

MS. MONTGOMERY: It's an option.

THE HEARING EXAMINER: So it's not a stormwater reason for --

MS. MONTGOMERY: I'll let Wes answer that.

MR. KAYNE: It could provide some additional benefit to the site as far as additional storage, but there's, you know, the few reasons would be that, and then also to generate fill for the site.

THE HEARING EXAMINER: Well, if the two sections are divided from a drainage standpoint by Daugherty Creek going down the middle, if you had a larger lake on the eastern side that could provide more storage because of the development, the dirt is taken out -- well, the dirt will be put in on the western side whether it comes from on-site or whether it comes from off-site, the amount of fill will be the same, correct?

MR. KAYNE: That's correct.

THE HEARING EXAMINER: So the extra storage that it would provide would only be for the amount of rain that falls down the eastern side or could it be designed so that if Daugherty Creek starts flooding it could pop off into that lake to store or not?

MR. KAYNE: Well, you know, if our site is still required to be designed at a 25-year storm event that

means there's going to be berms around the site at a 25-year storm event, and the control structure will also be built to that elevation. So if the flood waters flowing through the floodway were to peak that 25-year, then it would pop off into that lake.

THE HEARING EXAMINER: Okay.

MR. KAYNE: Speaking on just relative elevations and 100-year storm versus 25-year storm.

THE HEARING EXAMINER: Okay. So that would all be something that would be looked at at the design stage, Development Order stage of how it can best be used to maximize --

MR. KAYNE: That's correct.

THE HEARING EXAMINER: -- the hydrological or the stormwater management.

Okay. I don't think I had --

MR. LEE: I had one more question.

THE HEARING EXAMINER: Okay. One more question.

MR. LEE: Also are you aware that there was a creek, Daugherty Creek, there was a national flood insurance program administered by FEMA, there is a special regulation and restriction on your site?

MR. KAYNE: Yes, we are aware there's a FEMA floodway that transects the site along Daugherty's Creek.

MR. LEE: And so far from the first slide to now I didn't see that one shown anywhere in the Master Concept Plan or anywhere. Why is that?

MR. KAYNE: My answer for that would be the current flood insurance rate map panels that are available are from 2008 unless there's been revisions, but they're always subject to change and revision. So if this site is developed in one year, five years, ten years, the limits of that floodway could change, so we wouldn't want to depict something so certain that could change in the future. The same with the development standards.

MS. MONTGOMERY: And just for the record, LDC 6 -- or 4 -- 6-479 defines a floodway. The channel of a river or other riverine water course and adjacent land areas that must be reserved in order to discharge the base flood without communitively increasing the water surface elevation more than a foot. There's a lot of regulations that, you know, discuss what happens if you have one of those. And I believe what Mr. Kayne just described is, you know, you have to look at the FIRM maps and that sort of thing. So, but I don't think this definition is going to change in terms of whether that creek is a floodway Is that correct?

MR. KAYNE: That's correct.

MS. MONTGOMERY: Just the width of it may change.

MR. KAYNE: That's correct.

THE HEARING EXAMINER: There was a previous drawing that showed a heavy dashed line going through on either side of the creek. That was the buffer as opposed to the floodway? I assumed it was a floodway.

MS. SAPEN: Jennifer Sapen for the record. That heavy dashed line is the 25-foot waterway natural buffer. The blue shown there, that is the survey located at top of bank of the creek right now. Of course, that can change, and that 25-foot line is offset from that. So that's correct, we don't have any references in our Master Concept Plan to floodways because of the concerns that Wes Kayne brought up about the changing map. This is just for the buffer.

THE HEARING EXAMINER: Okay.

MR. LEE: So about the changing map, you said the existing flood map in that area been finalized and issued by FEMA in 2008, right?

MR. KAYNE: Yes, to the best of my knowledge.

MR. LEE: So ten years past. Have you seen

anywhere during the ten year any map change in that Daughtrey Creek?

MR. KAYNE: I have not researched since that time, so I haven't seen if there's been any revisions.

MR. LEE: According to my memory there's been no change made on that Daughtrey Creek. So your notion that FEMA flood map keep changing --

MR. KAYNE: I didn't say keep changing, but they're subject to change. I don't know when the site is going to be developed.

MR. LEE: So in my opinion that because --

MS. MONTGOMERY: Can Mr. Lee testify during his time and restrict just to asking questions?

MR. LEE: All I want would be, I want to have a floodway boundary loud and clearly showing on the Master Concept plan with a note with the development process we have to comply with the FEMA requirement, but so far I don't have anything shown in here.

MS. MONTGOMERY: We have a creek shown on the Master Concept Plan. At time of DO we're going to have to comply with LDC Chapter 6.

THE HEARING EXAMINER: Okay. We'll, Mr. Lee, we'll let you present that in the staff portion and explain what it is that you think needs to be shown

and why you think it needs to be shown on there and if there's some provision of the code that requires it to be shown or suggests that it should be shown or something like that, that would be helpful if you have the section that you can talk about when we get to the staff portion.

Okay. Thank you.

MR. KAYNE: Thank you.

MR. TREESH: Good morning. Ted Treesh with TR Transportation Consultants. I have been accepted as an expert witness in transportation planning-related matters and ask to be accepted this morning. My resume is on file and I have been sworn.

THE HEARING EXAMINER: Any objection?

MR. BLOCK: No, ma'am.

THE HEARING EXAMINER: So accepted.

MR. TREESH: I'll just briefly go through the transportation analysis that was conducted as part of our application and I'll expand on some of my comments for the benefit of the public. Our traffic study that's required at this stage of the process looked at the maximum intensity that could be developed on this site based on our zoning request. And right now based on the Master Concept Plan that maximum development intensity includes 120

multifamily dwelling units and 210 single-family detached dwelling units, and the multifamily units are simply units that are more than -- two or more units that are attached. So it would be a typical, like a townhome type product or something similar to that.

As Jennifer indicated, the access to the property, we have two means of ingress and egress on this site. One is provided to Slater Road which will be the primary entrance and exit to this facility or to this project, and then an access, basically the extension of Williams Road. Williams Road extends to the south and connects to Bayshore Road.

So what we do as part of the traffic study, we look at the operations of the roadways as they currently exist and then we project the operations at the potential build-out of this property. In this case we looked at the year 2022, and all the volumes we looked at in this analysis are based on peak season conditions. So it's that -- the traffic volume during the peak season of the year which is typically February or March here in southwest Florida.

Currently in today's conditions both Slater Road and Bayshore Road are operating at a Level of Service

C, and our analysis showed that in 2022, based on increased traffic growth, based on historical traffic patterns that we increase the background traffic to look at growth in trips that will -- anticipated to occur between now and 2022. When you add the background traffic growth in both Bayshore and Slater are still shown as a C, and then when we add the trips from our project in, those roadways will continue to operate at a Level of Service C. And as you're aware, the Lee County Comprehensive Plan indicates that an acceptable level of service on the roadways is a Level of Service E. So we're well above the minimum recommended levels of service that the County's Comprehensive Plan evaluates and requires in terms of projects in terms of meeting the transportation evaluations.

There will have to be another traffic study done when this project comes in for final site plan approval, the local Development Order process. At that time we'll know exactly what's being proposed to be developed, how many single-family, how many multifamily, et cetera, and at that time we look at any specific off-site improvements that need to be done, specifically would we have to do any turn lanes on Slater Road at the site entrance, and there's

administrative code provisions that we must follow that identify when and if turn lanes will be required based on the conditions at the time that this project comes in for development.

That leads me to the last point, and I just want to say the staff report had Attachment H, which is the memorandum from Development Services from Mr. Evans, and we're in agreement with everything that's in that report. His conclusions match and mirror my conclusions in my traffic report in terms of the impacts of this project on the surrounding roadway network. But one thing I wanted to bring up was in his memo he recommended a condition that's included in the conditions as Condition 5 in the staff report. I just wanted to read that condition. It's Condition 5 called Turn Lanes. The condition that is in the staff report reads: Turn lane deceleration length designs for corresponding design speeds will be the greater of that described in the Lee County Administrative Code 11-4, which is titled Turn Lane Policy, and the Florida Department of Transportation Design Standard Index 301, which is called Turn Lanes. Then it goes on to say design speed as applied to deceleration length design in both documents will be not less than 5 miles per hour

greater than the higher of the legal speed limit and, if available, the 85th percentile speed as determined by Lee County approved traffic engineering study. And that's the wording of the condition.

The issue we have is I have not seen this language before and I'm not sure if it's been proposed in other zoning cases, but there is an administrative code that the Board of County Commissioners does identify that addresses turn lane requirements at the Development Order stage. In our opinion this is more of a general policy statement and our opinion is this project isn't any more -- it doesn't require anything specific to be called out that would require us to look at something above and beyond what is included in the administrative code. In my opinion, if the County wants to require this, the 85th percentile speed, that language is not in the administrative code or other language, they should amend the administrative code so it applies to every project that's coming in. And, again, this goes to the condition just as we described earlier that if there is a change in the administrative code between now and the time this project seeks Development Order, you know, now we're saddled with a condition that may be in conflict with the

administrative code. It may be the exact same language. We just don't know at this time. So our contention is that there is an administrative code that the Board has adopted that we must follow to look at turn lanes. This condition is really going above and beyond that. And I'll say from my experience every turn lane that I have recommended in traffic studies on a Lee County roadway is always based on the design speed of the posted speed plus five. So that's just been our working order since I have been down and doing traffic studies in Lee County since 1999. So if staff's concern -- and we'll have to hear from them on what their issues are in terms of why they want to include this condition, but we should be subject to the administrative codes that are in force at the time that we come in for Development Order. And, again, having language in the zoning condition that might conflict with something that's in a future administrative code, that's just what we're trying to avoid.

So that's my comments. I would be more than happy to answer any questions.

MS. MONTGOMERY: I just have one question, Mr. Treesh. Did you find anything in the staff memo that justified a different standard for this project?

MR. TREESH: No.

THE HEARING EXAMINER: Staff have questions?

MR. BLOCK: Madam Hearing Examiner, I do have maybe a single question. It might be a two-part question for Ted.

Ted, when you did the background traffic for this particular project was part of that background traffic just looking at what, what amount of traffic was on Slater Road as part of your analysis, what was existing on Slater Road?

MR. TREESH: Yes.

MR. BLOCK: And can you give an idea, when I said the word "existing", can you give an idea of when that -- where that information came from from a date standpoint?

MR. TREESH: We take it from the Lee County Concurrency Report that's published every year. Our traffic study looked at -- at the time our TIS was completed was the 2015 report. The 2016 -- or the 2016 report. The 2017 is now out. And that information was included in Marcus's memo, but it didn't have any change in our analysis in terms of the levels of service.

MR. BLOCK: To your knowledge of the roadway systems out there -- I apologize I've got one other

question. To your knowledge of the roadway system out there was the connection of Del Prado Extension to Mellow, to Slater in existence in 2015, in 2016?

MR. TREESH: I believe it was, yes.

MR. BLOCK: Thank you. That's all the questions I have, Madam Hearing Examiner.

MS. MONTGOMERY: I have one more question.

Mr. Treesh, will another traffic analysis be required before Development Order can be obtained for this project?

MR. TREESH: Yes.

MS. MONTGOMERY: Whatever date is available at that point in time.

MR. TREESH: Yes. We'll have to use the most current traffic data available.

MS. MONTGOMERY: Thank you.

THE HEARING EXAMINER: Okay. So you said that the studies are done in February, March to get the peak information each year?

MR. TREESH: Well, the studies aren't necessarily done, but because of the volume of data that's collected, even if we collect data in July or August, we have adjustment factors that we can apply based on historical traffic data that is collected for a 12-month period. We apply that adjustment

factor to the data if it's collected outside those months to raise it up to the peak season levels.

THE HEARING EXAMINER: Okay. No other questions from staff?

MR. BLOCK: No, ma'am.

THE HEARING EXAMINER: Thank you.

MR. TREESH: Thank you.

THE HEARING EXAMINER: Do we want to take a real short break?

MS. MONTGOMERY: Yes.

THE HEARING EXAMINER: Okay. We will take a break until quarter till 11.

(Brief recess.)

THE HEARING EXAMINER: All right. We will get back on the record. I apologize for that. We had a technology issue that made it run a little bit longer.

Okay. Does the applicant have another witness?

MS. MONTGOMERY: We call Jennifer for the conclusion.

THE HEARING EXAMINER: Okay.

MS. SAPEN: I just have a small conclusion, a couple slides.

THE HEARING EXAMINER: Okay.

MS. SAPEN: First of all, we agree -- for the

record, Jennifer Sapen. First of all, we agree with staff findings and the recommendation of approval of this project. We find that it is compatible with existing or planned uses in the surrounding area. We have demonstrated that the request will not adversely affect environmentally critical areas or natural resources and that urban services are available to the site and are adequate to serve the site. The request will not place undue burden on existing transportation or planned infrastructure facilities, and the site will be served by streets with capacity to carry the traffic generated by the development. And these deviations enhance the proposed development and protect the public health, safety and welfare through the conditions and regulations provided in the staff report. We find that those provide sufficient safeguards to the public interest. Thank you.

THE HEARING EXAMINER: All right.

MS. MONTGOMERY: And the applicant, of course, reserves the right, as I pointed out earlier, for rebuttal.

THE HEARING EXAMINER: For rebuttal, right. Okay.

Chip brought to my attention that there are some

people that would like to speak before we break for lunch.

MS. MONTGOMERY: I believe the Administrative Code --

THE HEARING EXAMINER: Indicates that that is not generally the situation that is allowed. We don't interrupt the applicant's presentation at all. How long does staff think their presentation is going to be?

MS. WORKMAN: Twenty minutes, 20 minutes.

MR. BLOCK: You're 20? So I'm probably about 10 to 15 minutes, 20 minutes. So we're talking less than an hour potentially.

THE HEARING EXAMINER: We probably won't go to lunch until 12:30 or so anyway, so we should be able to get in a couple of people. If there are people who want to be heard first from time limits or whatever other reason, if there's a particular order that they would like to be heard in they can come and -- or let me know when we get to the public section and then we can go from there.

Okay. So now we'll come to staff.

MR. BLOCK: Good morning, Madam Hearing Examiner. I'm Chip Block. I'm with the Department of Community Development. I'm a principal planner

within that department. I have been accepted as an expert witness in the Lee County Land Development Code, Lee County Comprehensive Plan and land use planning in this forum in the past and would like to again be accepted as an expert witness in those fields as part of this zoning case.

THE HEARING EXAMINER: Any objection?

MS. MONTGOMERY: I have no objections.

THE HEARING EXAMINER: So accepted.

MR. BLOCK: Madam Hearing Examiner, I will try to be as brief as possible. The applicant has done a very good job in the things that I was going to be pointing out to the Hearing Examiner, so rather than trying to duplicate their efforts I would like to first state that there was nothing that I heard that was presented during the applicant's presentation in the areas that I'm concerned about that I would like to correct or provide any further clarification. I had the one -- or the series of questions for Ted for clarification purposes. I think I had one for Jennifer, but beyond that point I do not need to add anything else. What I would like to say is, and it's always been done this way, the staff report is -- we would like to have accepted and placed into the record, public record, for this particular case. It

is for the Gully Creek RPD DCI 2016-00024. The staff report goes into what the request is all about.

THE HEARING EXAMINER: Hang on, hang on.

MR. BLOCK: Certainly.

THE HEARING EXAMINER: We will accept the staff report as Staff Exhibit Number 1.

MR. BLOCK: Thank you, Madam Hearing Examiner.

THE HEARING EXAMINER: Officially in there.

MR. BLOCK: Thank you.

The staff report goes into the request language, goes into the summary. The summary itself indicates that staff is supporting the granting of this request for Residential Planned Development zoning with up to 330 units on the subject property subject to the conditions and deviations which are found as Attachment C to the staff report.

We have looked at this subject property and have determined and agree with the applicant that the subject property and the proposed development, it meets the Lee County Comprehensive Plan regarding density, density associated to the property, the intensity associated to it. We do recognize there are two Future Land Use categories on the subject property, that being Suburban and Rural. Their design on their Master Concept Plan sets out the area

that is Rural and limits that to only 11 units because that's roughly 11 acres in size, and they cannot exceed the density provisions under the Comprehensive Plan when we're talking about the Rural category. So, again, that's consistent with it. And as conditioned, we believe that this is consistent and compatible with the surrounding land uses. We will discuss the 48-hour notice after the public presentation as you discussed in the initial presentation that you had made to let the public know the general process.

We have gone into the history of the parcel, giving you the zoning history of the property. Our staff report discusses the character of the area, and the characteristics of the subject property and the area have been discussed by the applicant. We have nothing else to add regarding it. We know what the surrounding uses are, what the surrounding zoning is, and we concur with what the applicant has stated during the course of that review.

The Master Concept Plan, you have heard from the applicant, involves two separate designs, Alternative 1, Alternative 2, and either one of the two alternatives are essentially the same with, as the applicant pointed out during their presentation, the

fact that there is a much larger lake on the eastern side of the project reducing the amount of area that can be developed for residential purposes. That is essentially the difference between the two. You have an R-2 area on the west side, R-1 area on the east side, and they have specific land uses associated to it.

Staff has reviewed this in relationship to the Lee County Comprehensive Plan, and as I previously stated, we're finding it consistent with the Lee County Comprehensive Plan, and we have identified various policies under the Lee County Comprehensive Plan. I would also like to note that during the course of our review we also took into consideration the requirements of the North Fort Myers Planning Community both within the Comprehensive Plan and within the Land Development Code, and in our, in our review the project is consistent as conditioned within the staff recommendations with both the Lee County comprehensive planning efforts in North Fort Myers and the Land Development Code provisions in Chapter 33 of the Land Development Code.

I know you had a specific question regarding that earlier, regarding the large lot residential, and it's a large lot residential subdivision, so you

correctly pointed that out. Staff review of the surrounding properties points out that the properties that predominantly are to the south where we have residential immediately abutting it, those are in metes and bounds descriptions. And as I had the opportunity since I could get to the computer, I double-checked that during the course of the public hearing to make sure that I was accurate in my review on that, and I am. There is no approved residentially platted large lot subdivision that surrounds the subject property. Therefore, those provisions of Chapter 33 of the Land Development Code would not be involved as part of this application.

I have with me today, I also have Beth Workman from the Zoning Division, our environmental planner. I have Sam Lee from Natural Resources, and I also have Marcus Evans from Development Services. Each one of those reviewers will be getting up to make a particular statement and presentation to you. Beth is saying she's 15, 20 minutes long. I think the others are not going to be quite as long as that. So I just wanted to let you know each will get up to speak as part of the presentation of staff.

Staff has reviewed the proposed deviations as requested by the applicant. We are recommending

approval of the deviations. In some instances we are recommending approval with a condition, and we have recommended that these are to be found under the findings and conclusions that they help achieve the intent of the planned development, while in staff's opinion they do not adversely impact the public health, safety or welfare, which are findings that have to be necessary as part of the approval of any deviation, and in staff's opinion it does not -- any deviation does not adversely impact the public health, safety and welfare, but it is helping to achieve the intent of the planned development.

The applicant is correct about the location of the transit facilities and other urban infrastructure that is available in the area. They had several different slides showing you the location of where the bus route was located at, other community facilities that are found in the North Fort Myers Planning Community and area, location of EMS services and fire services. They also indicated where you would be able to find the stormwater management, how the effect of the stormwater management is on the site. In our opinion there is adequate urban services to support the development.

In short, Madam Hearing Examiner, staff is

recommending approval of this request. We have offered considerations throughout the entirety of the staff report for findings and conclusions as required under the Lee County Land Development Code sections in Chapter 34 of the Land Development Code, and staff does recommend approval of this request with the conditions as outlined in the staff report, which may also be discussed later on during the course of the discussion of the 48-hour notice. With that being said, I will leave the floor open for questions from the applicant, yourself.

MS. MONTGOMERY: I have no questions.

THE HEARING EXAMINER: Just a couple. You noted in the staff report that the zoning map is in error. Are you going to provide a corrected zoning map so that we can attach that for the Board of County Commissioners?

MR. BLOCK: I will discuss that with -- during the break, if we have time for a break on lunch to come back to here. If I do have that time I will check with our staff to see if we can produce a new map that shows that correction from an IPD to an MPD zoning district. If not, I'll get it done in short time. I did ask them to look at that when I first noticed it in preparing my staff report. It should

be updated by now.

THE HEARING EXAMINER: So if we can't get it today we can get it before the recommendation goes out.

MR. BLOCK: It would be my intent to do that, yes, ma'am.

THE HEARING EXAMINER: I think you answered -- the existing agriculture, staff doesn't have any concern with the existing agriculture staying on the site in accordance with the Note 48. It's just a question of whether it needs to be addressed in the conditions. Is that basically the position?

MR. BLOCK: That is the position. My concern is if we start -- this is my professional concern. If we start writing a condition we're writing a condition that affects a note that affects the use, the uses permitted under Note 48 of the planned development districts. So existing agricultural may be allowed as long as they can demonstrate it. We have the agricultural affidavit, which you have seen which is part of the staff report. I'm concerned if we start writing conditions that offset that we may be actually creating a use variance. That is my professional opinion. Because the use would be allowed under the note, but then all of a sudden we

start qualifying that note with further conditions, could that be considered a use variance, which, as you know, the Land Development Code does not permit use variances. I think it's a simple matter of allowing the agricultural affidavit to speak for itself, let Note 48 speak for itself and we stay there.

THE HEARING EXAMINER: Okay. My concern is that Note 48 doesn't say anything about the affidavit. The code still requires the affidavit. There's no tie between the affidavit and what is allowed under Note 48. I agree with you that it should not be listed in the schedule of uses because that would be creating a use that is not allowed under the RPD. But having a condition that attaches the affidavit to the zoning approval would then -- you know, to say then it will be as implemented by Note 48 of blah, blah, blah, I mean, the condition could be as simple as that and just attaching the affidavit as an exhibit to demonstrate the amount of agricultural activity and the type of agricultural activity that exists at the time of zoning.

MR. BLOCK: I understand what you're saying. I think that could be achievable because it only establishes what the applicant has affirmed is the

existing agricultural use of the property and the extent of that agricultural use on the property.

THE HEARING EXAMINER: Okay. So I think just having some sort of tie. We can talk about that when we get to the specific wording to the conditions, but that was my thought of having -- it can't be in the use list, I agree, but having a condition that makes reference to the fact that there is existing agriculture, it is recognized under the code that it can continue, and then say here's the amount of it and what type it is as shown in the exhibit.

MR. BLOCK: Correct. In direct answer to your question, I have a tendency to speak too much in answer to a question, but in direct answer to your question I have no objection to maintaining the existing agricultural uses on the property.

THE HEARING EXAMINER: Okay. Thank you.

MR. BLOCK: With that, Madam Hearing Examiner, I will turn the podium over to Beth Workman who will be discussing some environmental issues she would like to present to the Hearing Examiner. Thank you.

By the way, followed by Beth in order would be Sam Lee and then Marcus Evans. Thank you.

MS. WORKMAN: For the record, Beth Workman with the Zoning section. I have been in this forum before

and I have been accepted as an expert witness in the Lee Plan Policy -- in the Lee Plan as it pertains to environmental protected species as well as the Land Development Code, and I wish to do so today.

THE HEARING EXAMINER: Any objection?

MS. MONTGOMERY: No.

THE HEARING EXAMINER: So accepted.

MS. WORKMAN: Thank you. Staff doesn't disagree with the 48-hour letter. We agree with the revisions to conditions for the protected species.

THE HEARING EXAMINER: 10A and 10B.

MS. WORKMAN: Yes. I'm sorry. 10A and 10B.

THE HEARING EXAMINER: Okay.

MS. WORKMAN: And I wanted to take the time to kind of go over a little bit about the gopher tortoise because we do have federal guidelines with FWC that must be adhered to with the state guidelines, but we also have a Lee plan Policy, and the Lee Plan Policy is 107.8.1 and it goes over the protection of gopher tortoises within the County as long as we follow state guidelines. So with that the concern with those conditions were that we have an indigenous area which meets the indigenous definition for native plant species that it is right along Daugherty's Creek, but then we also have an area that

the applicant is preserving that doesn't meet that definition in 10-1 of the Land Development Code and they're setting that aside as well for a nonindigenous preserve area to meet open space requirements. The gopher tortoises don't follow lines. They will burrow wherever they want. They're currently burrowing out there in the development footprint as well as in these areas that we're setting aside along Daugherty's Creek. The problem is when we draw a line this is preserve and this is development we might have some burrows that are on the cusp, and this is going way down in detail and I apologize, but this is very important because we have an FWC regulation that says you cannot impact within 25 feet of a burrow. So if you have a burrow on the edge of a preserve and that 25 feet extends into the development footprint where clearing or berming is going to be done and then you have the other 25 part within the preserve what are you doing with that burrow?

Staff does not want mechanically clearing because when they excavate a tortoise burrow it's a big gaping hole. So that would be an impact to the indigenous taking away square feet from an indigenous preserve which wouldn't meet the open space,

indigenous open space requirement. So that's why we put a condition in their saying at time of veg, vegetation removal permit, they're going to be required to provide what's going to go on, whether it's another means of, you know, getting the gopher tortoise out of the preserve to relocate off-site by means of bucket trapping, which is allowed by FWC, a nonmachinery type of action so that it doesn't impact the indigenous. So that's why that condition is very important so that the reviewer at the time can follow that knowing that the staking either has to bow out for the preserve to preserve that burrow and then kick it back in once we have development going in there or to bucket trap that tortoise. So I wanted to kind of go over that a little bit because we're trying to adhere to a Lee Plan policy to save the gopher tortoises that are within the preserve areas that aren't going to be in the development footprint, and that saves the applicant money on relocation off site, and then following FWC guidelines for the area within the development footprint to move the tortoises off the site. So that's why that was important to kind of clarify a little bit.

Open space. There was a question, Madam Hearing Examiner, about the optional recreation areas as it

applies to open space. The Land Development Code has a section in use of open space. It's in 10-415(d) as in dog, two parentheses, (d) and (e). So they read as follows: The use of open space at active and passive recreation areas, and they give example such as playgrounds, golf courses, beach frontage, nature trails, bikeways, pedestrian-ways and other similar open spaces can be used as open space as long as not more than 20 percent of the recreation area accredited to open space consists of impervious area. And that governs so that if you do a basketball court or you do a sidewalk, that kind of thing, you're not paving the whole area and calling it open space. You at least have some impervious areas.

And I believe that with the proposal that's on the table between the two, Master Concept Plan A and Master Concept Plan B, through the use of the buffers that are required, the lake maintenance easement, the pocket parks that are part of the recreation component and the lakes, which in our code you can claim the lakes as open space capped at 25 percent of the required open space, the applicant will meet the eight acres that needs to be provided to create an open space that's not indigenous and part of the 50 percent requirement. So I don't think that's an

issue in this application between Master Concept Plan A or B.

The other item I wanted to go over was buffers. The natural waterway buffer is in our buffer section of the Land Development Code. It's in 10-416(d), I believe. And in my staff report I mentioned the code section but I didn't state what was required in that natural waterway buffer. So it's 50 feet. There's been a dimension kicked around of 25 feet and 50 feet. The code requires 50 feet, and that is measured, the 50-foot-wide vegetative buffer must be landward of nonseawalled natural waterway as measured from mean high waterline or top of bank, whichever is further landward. So that's how we measure that 50 feet. And in reviewing this there were questions asked about mean high water or top of bank, and the measurement that you see which was, I believe, that heavy black-dashed line was the measurement for the 50 foot. And within that buffer there's planting requirements, so if you have native plant species, which this does, you can claim those to meet that requirement in the code. Otherwise, you must plant, and there's planting provisions in there for this area and they just involve the six native canopy trees and 50 native shrubs every hundred feet unless

you have things in there you can claim as a one-to-one credit. So I wanted to make sure that component isn't just going to be cleared of exotics and left, you know, barren. It's going to actually have some requirements in there to offset any water rising or falling, and they must meet the soil types that are in there. So if it's, if it's top of bank but you have an offshoot of transitional in there, transitional wetland areas, then the plant species will be according to whatever the soil type is in there, and that will be done at time of review because there's more detail at time of -- the engineered drawings will be done and things can be looked at at that level.

One more thing and then I'm out of here. Lake setback. The lake setback deviation, I believe it was Deviation 4, code requires 50 feet, applicant wants 30 foot in certain areas according to the Master Concept Plan, and staff conditioned the enhanced Type A. The thought process behind that is that when you have a lake excavation that's your slope coming up and then the lake starts. By just having trees in there it doesn't deter any wayward or folks falling in or folks wandering in, so if you have a shrub material going underneath at 48-inch and

then allow it to grow you kind of have that deterrent in there. Plus, I believe the code has anything -- 25 feet is the code, so handrails don't apply there. So the 30-foot would just have that enhanced Type A buffer with the shrub material underneath. It's a single-hedge row and not a double. And that's all I have unless you have particular questions.

THE HEARING EXAMINER: Do you have any questions?

MS. MONTGOMERY: I don't have any other questions.

THE HEARING EXAMINER: I think you have answered all the ones that I had.

MS. WORKMAN: Thank you.

Sam Lee from Natural Resources is up next.

MR. LEE: Good morning, Madam Examiner. My name is Sam Lee, Lee County Natural Resources. I have been accepted as an expert witness in stormwater management in prior cases.

THE HEARING EXAMINER: Any objection?

MS. MONTGOMERY: No.

THE HEARING EXAMINER: So accepted.

MR. LEE: In the natural resources and stormwater management, as I mentioned before, what I want to be, 48 hours applicant submitted two days ago

that want to eliminate Condition Number 4. I believe it's Number 4. That's regarding the floodway encroachment issue. Now that we don't have any floodway marks under their submittal under Master Concept Plan, if we eliminate that wording and approve a condition, then my concern would be during the time of Development Order staff at that time when or whoever it would be, my concern would be somebody will forgot -- would forget that enforcing that floodway encroachment. Granted, that floodway and subsequent to our future study in that area things can be changed, but personally I feel comfortable to put whatever effective existing limitation and regulation which is the floodway be clearly shown on the Master Concept Plan and also clearly stated, as I initially suggested, there was a way of addressing floodway encroachment in terms of FEMA regulation. So I'm not expecting to do it right now, but at least noting as approval condition so that it not slip out in the later time during the Development Order.

THE HEARING EXAMINER: Let me ask for clarification. So if it is shown on the Master Concept Plan that there is a floodway through this project showing the boundary as it existed in the current FEMA map, would you feel comfortable with

letting the land development regulations control? Because it's noted and it will be on the plan and everybody will see that it's on the plan that there is one there and that would alert any reviewer that they need to check the plans or do you want it on the plan and as a condition?

MR. LEE: That's what other cases similar to this we added on the plan noting that FEMA floodway encroachment boundary and encroachment issue will be addressed DO on the map and also a zoning condition saying with a little bit more text language, there was A or B options, how to address that one, detail, we have been including that one as approval condition in the staff report. So my wish would be if that is too much repetition, then I want at least one, either Master Concept Plan clearly indicating future has to be addressed for the floodway encroachment issues either on the Master Concept Plan graphically or on the staff report.

THE HEARING EXAMINER: Okay.

MR. LEE: But my wish would be addressing both two places.

THE HEARING EXAMINER: Did you have further presentation or is that your presentation or do you want to speak on other issue?

MR. LEE: That's the only issues. As applicant's engineer stated there was no detail calculations in terms of surface water management. The South Florida Water Management ERP permit has not been issued yet, so conceptually I can agree with the applicant general understanding of existing and proposed condition of potential change of drainage, but still everything before Development Order stage for the detail, number crunching, and Water Management District probably plays major role and also FEMA regulation of a floodway encroachment. That's those two. And so I am engineer to protect the public safety and property, but there's only I can do. The regulation given to me was the Land Development Code, and at this point I agree that the applicant is meeting that Land Development Code at this point with the condition of extra emphasis on that floodway boundary.

THE HEARING EXAMINER: Okay. Do you have any questions?

MS. MONTGOMERY: No. I'll have discussion later but I don't have questions.

THE HEARING EXAMINER: Okay. And I don't know whether you know this or not. Is there a provision in the description of what is to be included in the

Master Concept Plan that talks about floodways in the Land Development Code?

MR. LEE: Yes. I couldn't recite the specific chapters.

THE HEARING EXAMINER: I know the Land Development Code talks about floodways, but is there something that says -- because I agree, I have seen the floodway indicated on other master concept plans. I guess my question is whether or not there is anything that says it has to be shown there.

MS. MONTGOMERY: I would like to point something out. If we're going to talk about a floodway we need to talk about what that actually is, and it's defined, as I noted earlier, in Section 6-479, and it's defined as a channel of a river or other riverine water course in adjacent land areas that has to be reserved. Now, if you look at our Master Concept Plan in light of the discussion we've had with both Chip and Beth, and I would ask you to turn to Exhibit E, the Master Concept Plan, the creek is shown, the 50-foot water buffer is shown and a preserve area. So if what you're worried about is that that area has not been properly set aside, it has. And where you get to this issue, as Sam has noted, is at the DO stage, because if you're going to

encroach, which the road does, then there's an extensive permitting process that you have to go through and analysis that has to be done. As Mr. Kayne indicated, we haven't gotten to that part of the process yet. So what I don't want to do is at this stage predetermine what it takes to comply with the FEMA regulations, the South Florida regulations and the County regulations. And I know Mr. Lee indicated that things don't necessarily change, but the ordinances they reference, which I have a copy of if you want this, is 1509, so clearly the regulations just changed two years ago and are likely to change again. So what we're trying to avoid is being -- and what they have done is they haven't exactly precisely quoted the code. We have paraphrased it, and every time we paraphrase a code provision we get into trouble later. It's like, well, what does it mean when it's slightly different than what the code says. I'm trying to avoid the collector problem at the time of DO, acknowledging that we have to get a permit for that encroachment, and if we need to be that simple in the statement that there's going to be a roadway encroachment in the floodway and it's going to have to be permitted in accordance with the County's and South Florida regs I'm good with that, but what I

don't want to do is paraphrase what they say, have it not be exactly correct and then have them changed and we can't get from Point A to Point B.

THE HEARING EXAMINER: And I understand your point about the wording of the conditions and that's why I asked and he clarified that if it has to be one or the other he would rather see it on the Master Concept Plan, and it might be that at the point that the bridge, the road crosses that area that there be a note on the Master Concept Plan that says floodway encroachments will comply with all applicable regulations.

MS. MONTGOMERY: And what happens is we end up having to sanitize these Master Concept Plans and taking everything off because you can't read them later, which is why I say have a condition, if you feel you have to do something, I mean, I think it's obvious there's a creek there, but if somebody is confused I'm okay with saying per this section of the code there's a floodway and per that, you know, this ordinance if you're going to encroach in it you've got to go through that process and analysis. And what you're going to see if you look at the other code sections, I'm happy to give them to you, there's extensive technical analysis that goes into the

information that the flood plan coordinator is going to require as part of that analysis. So I know he thinks somebody is going to forget. I think the staff is way smarter than that. I don't think they're going to forget there's a creek there.

MR. LEE: I will be retired at the time.

MR. BLOCK: Madam Hearing Examiner, were you looking for a direct answer to your question on the Master Concept Plan?

THE HEARING EXAMINER: Well, I think that the Master Concept Plan, I think what has been indicated is that if it's on the Master Concept Plan, you would like to have it in both places, but you would prefer it to be on the Master Concept Plan rather than a condition, or would you agree with the proposal of having a condition that says any encroachment into the floodway area must meet all applicable requirements?

MR. LEE: Either way, but my version would be --

MS. MONTGOMERY: Okay. We can do that.

MR. BLOCK: That's fine. Thank you.

THE HEARING EXAMINER: Thank you.

Marcus.

MR. BLOCK: As Marcus is coming up, Madam Hearing Examiner, Chip Block again for the record,

all four of the county staff that are speaking today have been sworn in during the initial swearing-in.

THE HEARING EXAMINER: Okay. Yes, I saw he was here and jumped up and left us.

MR. EVANS: I was, yeah. I had some other work I needed to complete at my desk. Marcus Evans, Lee County Department of Community Development. I'm a licensed Professional Engineer in the State of Florida, and in the past have been accepted as an expert witness in transportation planning and traffic engineering in this forum. My resume is on file, and I have been sworn in. Would like to be accepted as an expert witness in this case as well.

THE HEARING EXAMINER: Any objection?

MS. MONTGOMERY: No.

THE HEARING EXAMINER: So accepted.

MR. EVANS: Through the process of the different submittals for this project I did review the Traffic Impact Statement and provided a memorandum of my review, and in that memorandum I did recommend a condition that was indicated by Mr. Treesh as well, and that condition states that turn lane deceleration length designs for corresponding design speeds will be the greater of that described in Lee County Administrative Code AC11-4, turn lane policy, and

Florida Department of Transportation Design Standard Index 301, turn lanes. Design speed is applied to deceleration length design and both documents will be not less than 5 miles per hour greater than the higher of the legal speed limit, and if available the 85th percentile speed is determined by a Lee County approved traffic engineering study. Did you get all that? It's a mouthful.

So I would like to just take a few minutes to talk about that condition, that proposed condition. First of all, when it comes to turn lanes there are two main purposes of dedicated turn lanes. One of those purposes is safety. The turn lane can provide refuge for turning vehicles outside of the high speed environment of the through lane or through traffic, and the addition of turn lanes really can lead to a reduction in rear-end collisions and sideswipe crashes. In addition to safety, turn lanes promote capacity and mobility, can improve capacity and mobility since turning traffic reduces the capacity of those through lanes. Turn lanes allow through traffic to continue on the roadway with limited delay or congestion from those turning vehicles that are decelerating off the main through lane.

The Florida Department of Transportation's or

FDOT's Manual of Minimum Standards for Design, Construction and Maintenance for Streets and Highways, otherwise known as the Florida Green Book, provides, and I quote, "The uniform minimum standards and criteria for the design of all public streets, roads and highways used by the public for vehicular and pedestrian traffic as directed by Florida statute." This document was last updated in 2016.

Lee County's Administrative Code, AC11-4, turn lane policy addresses when turn lanes are required to mitigate traffic impacts for developments in unincorporated Lee County. That document was last updated in 1998. And while generally the administrative code is more conservative than the state standard, the Florida Green Book, in at least one case that I'll cite the Green Book is actually more conservative than our administrative code. As an example, the minimum required deceleration lengths for a 35-mile-an-hour design speed, and we'll talk about design speed in just a moment, but the required lengths based on the Administrative Code is 140 feet. The Florida Green Book, by referencing the FDOT Plans Preparation Manual is 145 feet. So there's a little difference in those two, those two lengths. In cases where the Green Book is more conservative than County

policy the Green Book standard should govern.

So we talked about -- or I mentioned design speed, and that's a good question as to what that is and is it the same as speed limit. Well, it's interesting if you look at our Administrative Code AC11-4, it appears to view both design speed and speed limit in the same light. It's vague in this regard. And so this appears to conflict with the accepted definition and understanding of the term design speed as referenced in state- and nationally-accepted standards. For instance, the Florida Green Book in Chapter 3 says this, and I quote, it says: "Design speed is a selected speed used to determine the various geometric design features of the street or highway. Selection of an appropriate design speed must consider the anticipated operating speed." And notice it says must consider the anticipated operating speed. "Topography existing in future adjacent land use and functional classification. The selected design speed should be consistent," notice "should be consistent with the speeds that drivers are likely to expect on a given street or highway facility. Design speed shall not be less than the expected posted or legal speed limit."

So, again, that's the Florida Green Book's definition and comments regarding design speed.

The American Association of State Highway and Transportation Officials, AASHTO, also has a Green Book which is a nationally accepted policy reference for roadway design standards. And in FDOT Speed Zoning for Highways, Roads and Streets in Florida manual --

MS. MONTGOMERY: I will interpose an objection at this time. I appreciate everything Mr. Evans has said thus far, and thus far none of it applies to the unique conditions of this property. I don't disagree with the general reasons for turn lanes. I don't disagree with what the administrative code says, and I don't disagree that perhaps the code needs to be changed. What I do disagree with is that we're going to use individual zoning cases to do things that ought to be done through the public hearing process so it can be properly vetted.

THE HEARING EXAMINER: Well, I appreciate that, that you're wanting him to cut to the chase, but I'm going to allow him to make his full presentation and his testimony. If he doesn't pull it together to a point that you think he needs to address, then you can ask him a question.

MS. MONTGOMERY: I will note if you look at the Land Development Code it has to be tied to the specifics of the project, not a general discourse on Green Book and AASHTO.

THE HEARING EXAMINER: That's fine. But as far as an objection I'm going to allow him to continue forward with his presentation and you can ask questions as appropriate.

MR. EVANS: Thank you. So the FDOT Manual, Speed Zoning for Highways, Roads and Streets in Florida refers to AASHTO'S definition of design speed and almost verbatim repeats that, and then it makes the comment that this is the maximum speed prudent drivers should -- would choose when ambient conditions are very good and traffic volumes are light.

So in looking at these state standards or state references as well as the, the nationally accepted roadway design policy reference, the AASHTO Green Book, we notice that design speed must consider the anticipated operating speed, should be consistent with the speeds that drivers are likely to expect on a given street or highway facility, as well as the FDOT manual indicates that this is the maximum speed prudent drivers should choose when ambient conditions

are very good and traffic volumes are light.

So we have discussed in those definitions or noted in those definitions there's the term "operating speed". And what is the operating speed or how could we define that? Well, this could be open for some interpretation, but according to the report Speed, Understanding Design Operating in Posted Speed published by the Texas Transportation Institute, it says, and I quote, "In current practice the term 'operating speed' refers to the speed at which drivers are observed operating their vehicles. The 85th percentile of a sample of observed speed is the most frequently used descriptive statistic for the operating speed associated with a particular location or geometric feature." So, again, the 85th percentile of a sample of observed speed is the most frequently used descriptive statistic or number for the operating speed associated with a particular location or geometric feature. So, for example, if 85 percent of vehicles as determined by a traffic study travel at 35 miles or less on a given section of road over a given section of time, the 85th percentile speed of traffic is 35 miles an hour in that particular case. And of note, this speed could be lower than, it could be the same as or it could be

higher than the posted or expected speed limit. The operating speed of vehicles in this example could be considered 35 miles an hour.

THE HEARING EXAMINER: Please no comments from the audience. He's explaining what the -- the source he's looking at.

MR. EVANS: And that's an example not specifically applied to this location. It's just a general example.

MS. MONTGOMERY: That's my point, which is why I objected.

MR. EVANS: So based upon my general observations of roadways in Lee County vehicle operating speeds along many roadways appear to be greater than the speed limit. If the operating speed of a great number of vehicles along a given roadway is greater than the speed limit, turn lane deceleration length should reasonably accommodate these vehicles. Using current FDOT standards a five-mile-an-hour difference in design speed can result in a need of over 50 feet of additional acceleration length at speeds of 45 miles per hour or greater. So, in other words, at higher speeds it requires more distance to slow or to stop.

The condition as proposed in this zoning

condition is related to the safety of the traveling public, drivers using both through and turn lanes. It's also as indicated earlier related to mobility and roadway capacity. Now, Slater Road is currently an arterial roadway. It connects Del Prado Boulevard Extension and Bayshore Road. So basically we have a roadway that goes well into Cape Coral and then connects to North Fort Myers and then goes again down to Bayshore Road through this connection of Slater Road, and as this area further develops additional traffic will likely use this roadway link. Roadway mobility and capacity will likely become even more important in the future.

So my opinion these factors must be considered in determining the design for this and other projects as well in Lee County. I respect Mr. Treesh's and the applicant's position and how Mr. Treesh's Development Order turn lane length recommendations reflect the design speed of that five-mile-an hour or greater than the legal speed limit.

So at this time that concludes my testimony, and if you have any questions of me regarding the memo or my testimony I will be glad to answer those at this time.

THE HEARING EXAMINER: Do you have a question?

MS. MONTGOMERY: No.

THE HEARING EXAMINER: Okay.

MS. MONTGOMERY: I didn't hear anything about our project, so, no, I don't have any questions.

THE HEARING EXAMINER: Okay. The questions that I wrote down, first of all, the turn lane you're talking about are on Slater Road, correct?

MR. EVANS: Slater Road, yes.

THE HEARING EXAMINER: There's not the connection to Williams Road.

MR. EVANS: It's my understanding, as I recall, that the traffic volumes are going to be likely lighter, and this is an estimate, estimated to be lighter on Williams Road, but that Williams Road does not go through, whereas Slater Road does.

THE HEARING EXAMINER: Okay. Have you -- is this something new that is being applied to a lot of projects or is there something different about this project?

MR. EVANS: This is something that I have noted in reviewing Development Order traffic studies that is a concern regarding -- especially when you have arterial roadways with higher speeds that it's very difficult working with the current administrative code that is vague regarding design speed and posted

speed. And while some designers or recommenders, you might say, from a traffic standpoint such as Mr. Treesh would do a design that's five miles an hour above the posted speed limit, other designers may not. And it's difficult for us to make the case based on our Administrative Code that they need to up that design speed because of the prevailing speeds or the anticipated speeds of the traffic using that facility.

THE HEARING EXAMINER: Is there somewhere in the LDC -- you talked about the Green Book, FDOT Green Book, and then there's a national one. Is there somewhere in the LDC at the Development Order stage or any other point that it says that that should be used?

MR. EVANS: Yes.

THE HEARING EXAMINER: Okay.

MR. EVANS: It's in Chapter 10.

THE HEARING EXAMINER: So Chapter 10 says that you use that as a source to clarify the County's regulations or --

MR. EVANS: I would have to look back at the exact wording of that. There is a section in Chapter 10 that describes and incorporates the FDOT standards into the --

MS. MONTGOMERY: For the record, I agree with Mr. Evans. That's part of why I object to this condition. The County Chapter 10 incorporates the Green Book and the ASSHTO standards.

THE HEARING EXAMINER: So if the provisions you were talking about are in the Green Book and the county's regulations say that the Green Book has to be used, is this an extrapolation of combining the Green Book and the county's regulations together that you don't think would be the conclusion that would necessarily be reached at the Development Order stage?

MR. EVANS: The way that the Green Book states it, and it applies it very broadly, it indicates that the design speed shall not be less than the posted speed and it's silent beyond that. And so it could be understood that an individual engineer would exercise engineering judgment and apply that toward the design speed in their recommendations in the plan that they draw up that would reflect the design speed that they feel would be suitable in this particular case.

THE HEARING EXAMINER: Okay. So what this condition does that you don't currently have with the Green Book and the Administrative Code the way it is

written is it specifies the 85 percentile? Because it says not less than 5 miles per hour, which the testimony is that's the standard that is used, testified 5 miles an hour or greater, and then the condition says if available the 85 percentile. Are you --

MR. EVANS: Yeah, if I might. The five miles an hour is not a standard. That is using the discretion of a designer or a recommender. That would be discretionary that they recommend five miles an hour over the speed limit. My point is that observing the speeds on many different roadways it appears that there are a great number of vehicles traveling over the posted speed limit. Therefore, the turn lane should be designed at a speed higher than the actual speed limit on roads, again in general.

THE HEARING EXAMINER: Okay. I think Mr. Lee indicated perhaps his frustration that he is limited by the regulations and those are the regulations that have to be used, and I'm hearing that the Green Book is brought in and the administrative code and whatever the County's specific land development regulations say relative to turn lanes, but your concern is that it gives too much discretion when you combine those together that it may or may not result

in the way you have worded this condition. Is that accurate?

MR. EVANS: True. The administrative code tends to view the design speed and posted speed the same, and to do that I'm concerned.

THE HEARING EXAMINER: Okay, okay.

MR. EVANS: Especially when you get into higher, higher volume as well as higher speed roadways.

THE HEARING EXAMINER: I can anticipate the rebuttal that is going to be made on this and I share the concern --

MR. EVANS: Sure. I understand.

THE HEARING EXAMINER: -- when the County is asking for something that is not specific to this project. I haven't heard that there's anything unique except that Slater Road is an arterial and most residential projects don't come out onto arterial roads in this type of situation. So I need something to justify imposing this condition that is something more than a failing in the County's current regulations that makes it specifically necessary in this case. Is there something more?

MR. EVANS: My comments are related more general.

THE HEARING EXAMINER: Okay, okay.

MR. EVANS: That's what Miss Montgomery had some concerns about. I understand.

THE HEARING EXAMINER: All right. Thank you.

MR. EVANS: Thank you.

THE HEARING EXAMINER: That completes staff witnesses?

MS. WORKMAN: Yes.

MR. BLOCK: Yes, ma'am.

THE HEARING EXAMINER: Then we will go to members of the public. If we have people who feel that they absolutely must be heard before we break for lunch, then I will try to accommodate that. Is there anyone who wishes to be heard? I see two.

MR. WILLARD: Jack Willard.

THE HEARING EXAMINER: Two people. I know there's preferences and then there are absolutely you will not be able to come back after lunch. How many people absolutely will not be able to come back after lunch? One, two, three, four, five, six, seven, eight, nine. Probably not going to happen, but we will try to accommodate that the best you can. You can fight among the nine of you as to who is the most urgent. And the first person that I saw, sir, are one that needed to speak? Okay. Back here. That's fine.

MS. MONTGOMERY: You let her beat you guys.

THE HEARING EXAMINER: She's quick.

MS. SMITH: And short. I'm Jennifer Smith. I live on Slater Road. And what did you say we had to say?

THE HEARING EXAMINER: You were sworn in.

MS. SMITH: I was sworn under oath. I am no professional by any means. I am just a citizen on this road that -- I have only lived there for six years and I have already seen many deaths. Children have been killed, run over on their bikes. Other accidents that end at Mellow and crash into the fence at the end of Mellow. When you're trying to turn on Mellow to make a left to go north on Slater you have to sit there and sit there because they've got the right-of-way and the turners have the right-of-way. You can't even go, and this is just going to create more and more traffic and more headaches and more time. And you just can't get out of there as it is now as a country road, let alone making it a residential neighborhood like that.

Just some quick statements. I mean, how many tortoises are on this property?

MS. MONTGOMERY: I'm sorry. The Hearing Examiner usually doesn't speak. We write down

questions. You're not allowed to ask us questions.

THE HEARING EXAMINER: Right. No. Please, please. We cannot have that. We cannot have the back and forth or we will never get through this hearing. We're trying to accommodate nine people before we go to lunch. We will note down your questions. If your point is that there are not very many out there in your opinion and you want -- the point you want to make from that, but we cannot go back and forth and giving an answer to every single question.

MS. SMITH: When will we get the answers? Maybe in the email?

THE HEARING EXAMINER: No, no, in the rebuttal. The staff or the applicant, whoever the questions are directed to, we will write down your questions and they will answer them and I will note them and try to make sure that every question is answered.

MS. SMITH: Okay. But if I have to leave before lunch I won't hear the answer. So how will I get my answer?

MS. MONTGOMERY: Read the transcript.

THE HEARING EXAMINER: The tape or the transcript is available. You can ask one of your neighbors to let you know the answer to the question.

MS. SMITH: So that's my question. How do I get these transcripts?

THE HEARING EXAMINER: If the hearing is actually transcribed, which it probably is going to be, it becomes public record. It will be available to the Hearing Examiner's office about two weeks after the hearing is completed, and that's the information that I'm reviewing as well. So you can have a copy of it at that point. The tape, the recording will be on the Internet tomorrow.

MS. SMITH: Okay, okay. You talked about things that are surrounding the area that will support this neighborhood such as schools. The schools, aside from Bayshore Elementary that you noted, aren't even in the zone for Slater Road. So how are those accommodating those neighborhoods? So the schools are already full and in high demand to even get into, and now you're going to build a community that is -- that you're saying these schools will accommodate. They're not in the zone even. So they're going to be going to Lehigh or Alva or Riverdale. That's the zone for these schools, not North Fort Myers High, not North Fort Myers Academy. So those are pointless to even mention.

You talk about how -- employment. I don't see

any signs in all the places I go to around the area that say jobs wanted or jobs available. So how are you saying that this is going to help that?

City water and sewer. I moved out of Cape Coral to the country to get away from all this. I don't want it brought closer and closer to me, and the more -- let's say you rezone this. Next thing you know people aren't going to want to be around this, and then the next neighborhood is going to be rezoned and then the next neighborhood. We're not going to have farms and country life. It's going to be gone and you're the start of this, along with the community that's on Pritchett Road. Now we've got to deal with all the people coming off Pritchett and now this community. Slater Road cannot handle this.

Flooding. You can give me every study you want but you cannot tell me that elevating the land is not going to create flooding for lower level lands around it. It's impossible. My house was built in 1959. I have a neighbor who built way up high because they had to because it's code. I understand that. But his land is here, my land is here. Where is the water going? To the two neighbors, my neighbor behind me, him. It's just, it's impossible that your land is not going to cause more flooding. You can

tell me you're going to reroute it all you want, but it's already not being rerouted properly and this is only going to cause more. And if you want to pay my homeowner's insurance and my flood insurance and my premiums -- and I can barely even get homeowner's insurance right now. I went through company after company to be able to provide me homeowner's insurance. I finally found one, and now I make a claim because of the hurricane and I probably won't have this one after I'm done. So who is going to provide me coverage and protection? Not your neighborhood. And I understand it's going to be esthetically beautiful. They all are, but it doesn't help me, nor does it help anybody in this room. We are going to be flooded even worse. You can give me all the facts you want, but it's already horrible. You live in a house underwater. You live with a child who has had four bone marrow transplants, has an immune deficiency and have your house molded. How many people in this room have had their house underwater or can't get to their house because their driveway is underwater? It's ridiculous. And I understand progress has to be progress, but this is not the place to do it. There are so many other places available. Do not come ruin our country.

Thank you.

MS. MONTGOMERY: Jennifer, can I ask you a question? Where do you live relative to this site? Where are you? Can you tell us on the aerial?

MS. SMITH: I'm south -- I'm sorry. I'm north of Mellow Drive on the left-hand side, on the west side.

MS. MONTGOMERY: A couple miles up the road.

MS. SMITH: Yeah. You might be pushing everything -- I've got to move the screen up. I'm back here. So everything that you were doing may be pushing this way, but you're stopping everything from this way coming this way. Everything flows this way and you're blocking it. Not only that, but every piece of cement you put down, every cement slab for the home is less land, less ground to absorb the water. You cannot tell me you are not causing us issues. You can't. And I thank you for your time.

THE HEARING EXAMINER: Okay. Go ahead.

MR. WILLARD: Jack Willard. I have been sworn in. I agree with everything that this lady just said. Just want to magnify the fact that that area that's in question is the narrowest part of Daugherty's Creek. I live just north and just south of this lady that you're talking about. My backyard

is on Daugherty's Creek. I'm on five acres. You've got a 50-foot or 25-foot buffer for the water to go through that area. So let's say it's 200 feet. My property is 1,400-foot deep, 300 feet wide, and I was eight inches underwater for a week just north of there. Whatever the current standards are for water drainage in that area is obsolete and it's not accurate. My 12 acres just north of me, my next-door neighbor had to move all of their animals for over a week. They were 12 to 14 inches underwater into their garage, into their house, into their stable for over a week. All of my neighbors are flooded. Now, I have been out there seven years. It's flooded four to five times in seven years and getting worse every year. They've got to clean that canal out. They've got to make it drain better. And I totally agree. I have been a contractor for 45 years. A half a mile buffer in that neighborhood at the depth of the water that flows through there will not carry the amount of flow coming down out of Port Charlotte, Punta Gorda. That's all the watershed that's coming down to us.

So I don't want to take a lot of time. There's a lot of people here, but that is an accurate statement. I have to take my golf cart to go get my mail because it's too deep to walk in. There's bugs

in it. There's snakes in it. And it lasted for well over a week this last time. Typically it lasts three to four days, and that's four to five times in seven years.

MS. MONTGOMERY: You have to show us where you are, where you're having these issues.

MR. WILLARD: Daugherty's Creek is on my property right there.

MS. MONTGOMERY: Okay.

THE HEARING EXAMINER: Do you have questions of him?

MS. MONTGOMERY: No. I just wanted to know where he is because I don't know what kind of conditions, you know --

MR. WILLARD: Everything west of Slater Road is underwater. My house is 17-foot elevation and my backyard has at least, I would say 12 to 14 inches of water. The front yard, my house is 400 feet back off the road. My entire driveway to Slater Road was eight inches under water for over a week. By the time it leveled all of the horse droppings and everything else was clear across my yard. It stunk horribly for another month after that. It needs to be drained and that community isn't going to allow enough drainage.

THE HEARING EXAMINER: Let me just -- you heard testimony from the County that the standards are being looked at and that may be changing, that you all with this information that you have in specifics, that if you have not already contacted the County to be a part of that study or to provide information for that study or to be able to look at the results of it, et cetera, if you think that the standards are inaccurate, then that's the method to get them to be fixed --

MR. WILLARD: The only standards that I have been told is living in that area, where if it's our property it's our problem. They have got a creek, they've got a drainage. It's our problem because it's residential property.

THE HEARING EXAMINER: In terms of the storm standards that new development has to meet there was testimony that those are being relooked at right now. So if you all want to provide input rather than project by project and trying to stop projects, and I'm not discounting your testimony at all, I'm just suggesting that in addition to your testifying in this hearing you may want to contact the County and see what sort of changes could be made to address the situation at least along Daugherty Creek.

MR. WILLARD: We have already contacted -- the County says they're overwhelmed. Our drainage ditch in the front of my house hasn't been cleaned out but once in seven years. They're overwhelmed. They can't get to it. And I'm not -- I'm a contractor. I look forward to projects like you. I make thousands, hundreds of thousands of dollars. I'm not against the project. I'm against the project that's using old standards saying that they're meeting the guidelines of today's drainage, and I'm telling you for the past seven years it's not meeting the guidelines. The guidelines are not accurate.

THE HEARING EXAMINER: Well, that's what I'm saying. Your input would be appreciated, I'm sure, by the people that are doing the studies to try to update --

MR. WILLARD: Who do I get that input to?

THE HEARING EXAMINER: I think Mr. Lee can get you in touch with whoever you need to talk to.

MR. WILLARD: Do you have a card I can take? Because I've got a 1 o'clock appointment. Can I take a card with me? And thank you very much.

MR. WALKER: My name is Allen Walker and I have been sworn.

THE HEARING EXAMINER: Okay.

MR. WALKER: I am Bee Charmer Lane. Bee Charmer Lane is my driveway. I have been there for almost for 50 years. I have seen changes that most of you have not seen. That doesn't mean that I know more about it than you do. I have seen a lot of water, and I'll be brief about the water.

Is there a pointer? Thank you.

Right there is my sister's home. Eight inches of water inside. The reason, there's not enough drainage to drain all this thousands of acres of runoff and to keep water coming through and it builds up and goes east to Slater Road and all this here was underwater. That gentleman that just spoke was underwater because of that.

Enough about water. It's already been approached and it will be approached again many times. About all the fluff about the churches and the schools and the jobs, that's fluff. These people are out in the country. They go to wherever they have to work. There are no jobs out there. It's agricultural. I'm a beekeeper. I lived there for 47 years. It's my farm. It's my life. I own seven-and-a-half acres and I have seen the water come and go as much as anybody here, and there has to be something done about it. Enough about the water.

Traffic. There have been more people killed on that road in the last couple years than has been the previous 30 because of one thing. Mellow Lane was opened and the traffic has increased a thousand percent. I used to see three or four cars a day. Now I see three or four a minute. It's terrible.

And Plan C about -- what's Plan C? How many people is that? These people, there's going to be 700 units there, there's going to be two cars to the unit. You going to have between five to seven hundred more cars coming out on that corner right there that you can't see around. There's already a cross road right there where a man just died two years ago because you couldn't see around the corner. Anyway, long story short, the traffic is going to be worse than ever. This is going to make it worse than that.

About the jobs. I already said something to you about the jobs. Let me see. Turning lane. That's been addressed. Don't need to go over the turning lane. That was another one of my things.

There's going to be a thousand to 3,500 more cars four times a day people coming in and out of the house. So you got all those cars going four times a day. That's just an average. And the traffic, red

light, turning lanes. And by the way, my driveway is not just a dirt road. Thank you.

MR. PHILLIPS: My name is Richard Phillips. I have been sworn in. I am pastor of Open Bible Community Church. Well, wherever it is.

THE HEARING EXAMINER: I think it's the other way. Turn it. Yeah, be careful with the -- don't get us in the eyes there.

MR. PHILLIPS: Right here. My property is right there. I live one lot off the property. And it says it's 66 acres. This is a ten-acre plot. There's another 45-acre plot and another five-acre and another five-acre and a half acre that are all under different names according to the County records. They have pending contracts on those properties in order to make this happen? Because they're not all under the same person's name.

The 333 residents you were showing that on the side of Slater Road is R-2, and it says it could be as high as 35-foot high. Are we planning apartment buildings there for low income housing? That's another question. And we're talking about the amount of vehicles. The average home has maybe two cars. If you've got kids you got more than that. So we're talking about anywhere from 600 to a thousand extra

vehicles twice a day. And the bottleneck right at the end of Slater Road where it curves it's a single lane. That's a dirt road on the side and you have one lane and you only have about, oh, maybe 50, 75 feet, maybe a hundred feet before the traffic light, and you can't even get two lanes to have a turn lane, so everybody is backed up. Right now we're backed up past, past the fire station every morning having to sit there and wait through maybe four or five traffic lights just to get out on Bayshore.

Now, if they propose this they're going to have to bring water in. They're going to have to bring sewer in, and that's going to mean construction all up and down Slater Road, and it's a small, narrow two-lane road. If they want to do this I would suggest that they make Slater Road four-lane because of Mellow Lane. There's so much traffic on there that it's not going to be able to handle it. It's going to back up all the way to my property on the other side of this. And I've had quite a few of the folks in the church that we're pastor of and they're all complaining about that, said, man, you got to do something about this. Because I have a lot of people that are in the trailer parks there and they have a

lot of trouble getting out in the mornings and trying to -- the traffic backs up when people want to turn to get off the road and it's, it's a bottleneck and they need to have some kind of off ramp access there. And looks like it could possibly decrease all of our property values. Crime increase for having that many more in our rural residential area. We bought property because we wanted to be country folks. This is going to bring us right into the city, and I'm opposed to that because I like the rural setting. So I think that if they want to do this it needed to be about four lanes. Their urban sprawl is sprawling out so big that where we don't have any country anymore. I'm -- I believe that, you know, if they want to make it I don't want apartment buildings that are three levels high, and they haven't said anything other than maybe duplex, and I just wanted to know what the plans are for that, how dense this is going to be. And another question, they're going to build ponds. Is there going to be culverts attaching those ponds to go into the drainage of the creek? At the back of my property is Gully Creek, and I've got four 36-inch culverts, and this last -- well, a couple of times it's come all the way over the culverts into where the property is impassable to get past it, and

we do have a very bad drainage problem there. They would have to put in, if they're going to put a roadway across there, it's going to have to be at least six to eight 36-inch culverts to be able to handle the waterway coming through there because it's very high and very dense.

I would suggest them looking at the possibility of four-laning Slater Road if they want these kind of things going on, but we don't want four lanes. We want to keep it rural and residential, so that's --

THE HEARING EXAMINER: Thank you.

MR. PHILLIPS: Thank you very much.

THE HEARING EXAMINER: Any questions?

Hopefully we're seeing the people that raised their hands because we're going to --

MS. PHILLIPS: My name is Carol Phillips and I have been duly sworn as everybody else has, and I live in the same place as he just showed you.

And the traffic there, I sit out every morning and watch it from our land, I go out in the morning, and it's terrible. There's more than four to five cars per minute. There's more. There's accidents. There's police pulling people over all the time because of the traffic. The flooding is terrible, like they said, and the schools, that lady said.

She's so correct, because my grandson tried to get in. They were booked. So the schools are not adequate for that area for that many people. So I agree with what these people are saying for the most part except I just disagree with my husband on four-laning. No, no, no. Thank you.

THE HEARING EXAMINER: Thank you.

MR. CHODAKOWSKY: My name is Mike Chodakowsky, and I have been sworn in.

MS. MONTGOMERY: I'm sorry. I didn't catch the name. Could you say it again?

MR. CHODAKOWSKY: Mike Chodakowsky.

MS. MONTGOMERY: Thank you, Mike.

MR. CHODAKOWSKY: Do you want me to spell that? Mike will do.

I agree with most of everything that's been said, but earlier comparisons that were made with other subdivisions were all made on Bayshore Road, which to me has very little bit to do with what we're talking about on Slater Road. You couldn't give a comparison on Slater, but you gave all sorts of comparisons on Bayshore Commons and so forth, on State Road 78 itself. Then when you referenced fire departments you referenced the one on Garden Street. Did you do any research to figure out what's the

limits or the borders of any of these departments? One accident, a three-year-old child died in my arms on Slater Road. Excuse me. Another one right at River -- River Trails mobile home park, four young girls were hit, and I was like the second one there. And the fire department that showed up was the fire department on North Airport on North 41 by the air park, not even the one on Slater Road. So there's dividing lines for these departments, so you can't just throw out there willy-nilly that, yeah, there's a fire department on Garden Street in Suncoast Estates. So what. That has absolutely nothing to do with what's going on here.

Williams Road, yeah, there's a school there. There's issues right now with parents waiting to pick up their children at the school. If somebody wants to go ahead of them into a parking lot they're giving a ticket for going around them just a few miles an hour. Yeah, they're somewhat a little bit over the centerline, but they have no oncoming traffic at that point, but they're actually getting tickets written over that. And now we're going to have an ingress/egress of Williams Road. And what about the possibility of a traffic signal at Williams and State Road 78? You've got Daugherty's Creek subdivision

right across the street. There's a lot more to be -- and everybody -- this will happen and everybody will run away and none of this is going to take place. People were saying earlier that they're queuing up on Slater at Bayshore. Absolutely. They're backing up all peak hours, morning and afternoons. You're going to have that there because it's insufficient, and this is just, again, going to make it worse.

Flooding, you say that this won't have anything to do with that. Like people said earlier, you have, you have impervious -- or pervious areas that are going to absorb water. Well, you start putting in streets, buildings, communities, houses, that's no longer a pervious area, it's an impervious area. That water has got to go someplace. And I'm real curious about future plans for additional units in that area with the other acreage that would be available, say, for that.

I think I've got one more. Oh, sewer. Say they're going to be required to have sewer. Does that just fall out of the sky into that subdivision or did that start at Bayshore Road and everybody on both sides to the subdivision will be required to have sewer? I've got that question because I'm 250 feet off the road. This isn't going to be a Cape

Coral situation where you're going to pay three grand just to have it run, you know, 20 feet to your house. I'm 250 feet. That gentleman before was 400-plus feet. Who the heck -- where are we going to get that money from?

So I appreciate you giving me an opportunity to speak.

MS. MONTGOMERY: Mike, can you show me where you are?

MR. CHODAKOWSKY: Yeah. I'm six-tenths of a mile from Bayshore Road. So I'm right across the street from River Trails. I have been there for 38 years. My wife's family has been there for 46 years. So we have seen things happen, things change and seen a lot of people die on that road and be severely injured because of the traffic situation. You can't have a narrow two-lane, two-way. I worked for the traffic department for 31 years in Lee County and I was very much involved in a lot of that and --

THE HEARING EXAMINER: Can you come back to the mike?

MR. CHODAKOWSKY: Oh, yeah. Sorry. Yeah, I was very much involved in traffic things for 31 years. I have been retired for ten years. But Slater Road was one road that we never talked about a whole lot, or

they didn't because I did all the talking about it. So nothing has changed. Thank you.

MR. BRAKE: My name is Terrill Brake and I am under oath. I have been sworn in. The one thing I wanted to talk about on the traffic was the amount of residents currently on Slater Road taken into consideration. If you're upping it by 330 residents that's got to be at least 50 percent increase. Can our roads handle an extra 50 percent increase? And you have heard us all complain, which is true, that about the light changes. It's easily setting three or four light changes in the mornings trying to get through the intersections, and then where Mellow comes into Slater Road it's dangerous.

Also the other concern I had, I want to make this brief, is the zoning issues. You're making all these changes with zonings and you're putting a residential place right beside a commercial place. Do we not think that's going to get changed later on, that they're going to want to push that commercial business that's sitting on Slater Road right beside them and the ag. It's going to change everything in the future. So just take that into consideration.

THE HEARING EXAMINER: Hang on. Let me ask you a clarification. Are you concerned that rezoning

this to residential may be the first step and then they would rezone it to commercial? Is that what you're asking?

MR. BRAKE: No. They're changing it to residential, but there's a commercial property right beside the entrance, their proposed entrance onto Slater Road, about them pushing that commercial zoned property out.

MS. MONTGOMERY: Terrill, can you show us where you live or where you work?

MR. BRAKE: I live right here.

MS. MONTGOMERY: Okay. Thank you.

MS. THOMAS: Hi. My name is Gloria Thomas and I live on the northwest corner of Mellow and Slater. I know that it's very difficult to separate fact from opinion sometimes. However, the traffic generated coming from north 41 to Mellow and to Slater is horrendous, and now it's coming Bayshore to Mellow to get -- to bypass Bayshore and Pine Island Road because that traffic is so congested. I have usually two times a year, sometimes more, crashes into my property fenceline because that angle of trying to turn onto Mellow is disastrous. It's the worst design ever. You can see it right there. And in the afternoon, in the mornings you're going to get five

to ten back-up trying to get out to come to Slater to get down to Bayshore because they have already tried to bypass it. Putting that much more traffic is not going to help that situation. Bayshore Road, Mellow Drive, Del Prado Extension are narrow country roads. They cannot take that traffic. The amount of trucks, although it says no through trucks, has never been monitored, so you have dump trucks, tractor-trailer trucks. 5 o'clock this morning I got woke up with the brakes. That happens every day because there's no monitoring of it now. They cannot take that construction on those roads.

My house was flooded. I had to leave my home because I had eight inches of water in my home. Now, a lot of that was due to the rain before the storm and then the hurricane come, and my home was literally flooded, eight inches in water, so I had to leave. I'm just now getting back into it. So I am concerned with the drainage. It's always been bad. So putting this much more is not going to help us. I think that there's issues that need to be resolved before you start putting in 600 units into a rural area.

THE HEARING EXAMINER: Three hundred.

MS. THOMAS: Three hundred units, 600 people,

1,200 cars, whatever. It just can't handle it. We're a rural community and I think we want to stay that way, and I think that this much traffic and this many people will just add more to the problems that we have.

THE HEARING EXAMINER: Okay. Thank you.

MR. JONES: My name is Butch Jones. I have been sworn in. I live about a half mile north on Daugherty Creek of the project. Everything everybody has pretty much said what I came up here to say. I wanted to be on record so I could repeat it if necessary. Basically long story short, boils down to Slater Road is one of the oldest neighborhoods in Lee County. There's -- I personally know of maybe seven generations that lived in the Slater Road neighborhood. We don't need a damn to block the water. We don't need more traffic on the road. Everybody that lives on Slater Road enjoys Slater Road. We're still kind of mad about Mellow, but we really don't need to make it worse. Thank you.

THE HEARING EXAMINER: Thank you.

MS. MITCHELL: My name is Jennifer Mitchell and I have been sworn in. I live a half mile north of Bayshore on Slater Road. I'm right across from River Estates. We have been there 18 years. And, yes,

we've had flooding, but we have had the opportunity to have a pond in our front yard that does help the neighbors and us in the flooding process. It is a very small, narrow road. I have been hit several times going in my driveway. There is a turn lane into River Estates, but the people seem to think that I'm turning into there rather than my drive. One of the accidents that I had a friend with me in my truck and I just happened to see a dump truck come flying up on me and I floored it, but as it skidded 120 feet beside my truck before it came to a stop. Another time -- and we always have our turn signal on prior. Another time we were turning into our drive and a van hit us and threw us into the drive totaling our car. Thank God we had no accident.

One of the questions I have is this is under -- this is undeveloped property. Why was it not checked on Del Prado Extension for the property that's never been finished that somebody had started to develop and already has the utilities in that property between Suncoast and Sable Springs that is on the Del Prado Extension?

Once they put Del Prado Extension in we have an awful time getting out of our drive, and we are on the one going south. Again I reiterate that the

people that are going to work in the morning, because I no longer have to do that, but I did have to go to the doctor and it was backed up clear past Julia Park almost, which is just south of us. It's another 55-and-over community. We have 55-and-over there, 55-and-over at River Estates. Then we have River Trails that we have had so many times that the police have been there that you can't count that. You just can't count that. But it's the narrowest road. We can't get out. What's going to happen when we have more of these things come in? Thank you.

THE HEARING EXAMINER: Let me ask you a question. Your point about the other project that wasn't finished, was it --

MS. MITCHELL: Yes, ma'am.

THE HEARING EXAMINER: -- why don't they go in and finish that one instead of opening a new area?

MS. MITCHELL: Yeah. Why don't -- have they looked into that that possibly they could take that property and finish it rather than starting a brand-new one in our rural area?

THE HEARING EXAMINER: Okay. Thank you.

MS. MITCHELL: Thank you.

MR. CATON: Greetings. My name is Doug Caton. I'm here representing myself and some of the members

of the Slater Pines Road Association. Where is your pointer?

I live right in this area here. There's 33 properties in here, 26 residents. It's called Slater Pines Road Association. The property you were just talking about here that's undeveloped is right here. You can see roads in here. There's also another little piece right here, I don't know how many units are in there, that's been developed. It's been gated for ten years.

I would like to speak to a couple issues if I may. I was the former Assistant Directer of the St. John's River Water Management District, so I can speak with a little authority on water. We just had a recent issue with Irma out here at the airport, and I'm sure the County is probably aware of it. When they raised the property of the airport two feet above Gateway and then when Irma came in guess where all that water went? Into Gateway. There's millions of dollars of suits going on. One of my customers and good friend is involved with that suit. That's what happens when you put impervious ground higher than the surrounding area, and that's what you're talking about here. We've had at least two 100-year storms out there. Is that about right, residents?

In '95 and Irma was another one, 100-year storms. I could fish in my yard. I could canoe all the way from my house all the way up to Slater Road, and I have done that. And that's what we're facing out there. Like has been said, we get the surface water, the drainage all the way from Charlotte County. It comes under the interstate. You can't see the culvert on that map, but it's right in that area. And there's other passageways, and that water just comes and sometimes it will rain and two days later it peaks. Why? Because that surface water is finally getting to us, and that's just going to be exacerbated by putting a further block in that narrow passageway where Daughtery Creek goes in there.

Did any of you all come out there? Did any of the staff come out there during the hurricane?

THE HEARING EXAMINER: Just direct the questions to me and --

MR. CATON: Okay. Did any of the staff come out there and look at the water situation by air?

THE HEARING EXAMINER: Well, let's, let's answer it later. So the question is did staff come out after the hurricane and look at it from the air.

MR. CATON: Yeah.

THE HEARING EXAMINER: Okay. We'll get --

MR. CATON: It's the reality we have to live with, and we have storms like that frequently during the summer. When you build those water retention areas they will be full by June. And then we get big thunder boomers like we get, it goes right on top of it, just goes right over it and into the creek. Is that right? That's probably what's going to happen. That's what we experience and surface water management with the Water Management District.

Another point I would like to make, and I thank Gloria Thomas for bringing this out, she and I went down to Andy Coy's office after Mellow/Del Prado was put in. We were watching dirt trucks come down from the mining area up in Charlotte County. They bypass all this area with the traffic lights down on 41. They come in here and they were using this as a bypass, truck bypass, and they still do that today. I have caught two Publix trucks going from the Publix down here at Bayshore and Slater using this as a bypass, and I stopped them and I reported them. I said, "You people, can't you read the signs? At all three intersections it says no through truck traffic."

Well, Gloria and I were the only ones that were able to go down there. Lee County DOT was there, the

sheriff's office was there, and they had those signs up in two days after we made our presentation, no through trucks. And to enforce it, for a while they were putting a deputy right here in this field area and when the truck made a left turn or came off the other direction made a right turn they just follow him. It's a hundred dollar ticket plus they check your truck and find anything else wrong with it. Like Gloria said, it has not stopped that. It reduced it but we still have people ignore it. They can't read the signs. And they do motor brakes. They wake everybody up. They come ripping down there with their motor brakes on, wake everybody up in the neighborhood. Now what are we going to have? More traffic making everything backed up. And that is a dangerous intersection right there. I have almost been hit a couple times myself there. And now these people are going to go -- if they're going to go west or north they're going to go out that way. If they're going north they're going to go out that way because that's the closest way to the interstate up at Tucker's Grade. They're probably not going to go down Williams and out that way because you can see it goes way out past that area.

Let me see if there's anything else. Like I

say, I have only lived there 34 years, and people have already testified they have lived out there three and four and five generations. It's a rural area. My wife and I moved down here from Tampa in an urban area. We didn't like it anymore. We moved to a rural area. We want to keep it that way, and I think most people in here do want to keep it that way. And to have further urbanization, that's called urban sprawl. Did I do that? That's called urban sprawl, any other definition. And if any of you staff lived out there you'd know what we were talking about. You don't live out there. You probably live in a gated community.

THE HEARING EXAMINER: Please stay, please stay --

MR. CATON: We live in the woods. We live in farmland. We like it and that's the way we want to keep it. Thank you very much.

THE HEARING EXAMINER: Okay. Hang on. Can I ask your name again? I didn't get it.

MR. CATON: Doug Caton, C-A-T-O-N. I live on Caton Lane just off of Slater Pine.

THE HEARING EXAMINER: Thank you.

MS. NESBETT: I'm Linda Nesbett and I have been sworn in.

THE HEARING EXAMINER: You've got to pull the mike down there.

MS. NESBETT: I have lived on Slater Road for 25 years, Lee County resident for 43. We moved to North Fort Myers from San Carlos way south of town when it got developed and we wanted out of there. We spent 25 years creating a botanical garden and native paradise there. We actually hand-cut our driveway in so we wouldn't disturb the environment. Because I'm at the very end of Slater Road where it meets Nalle Grade, but I have five acres, so I'm on both sides of Daughtrey's Creek. So, you know, and we get flooding. We get a lot of flooding. Like I said, we hand dug our whole driveway out. We also had to get the Brazilian peppers out because they grow along creeks there, and we didn't want any heavy equipment in, so we did all that ourselves, hand-cut it, chipped it ourselves. Like I said, it's a natural environment. We wanted to fit into nature. We never paved our driveway to keep it like nature. We built a one-room house with floor length windows all the way around so we could see our nature from every side of the house, you know. It's like a miniature Edison home, I guess you could call it. We didn't want to put pavement down for the thing, so we built like an

old Florida Cracker house that has a wrap-around porch so you can -- you know, one-room house, floor length windows and then a wrap-around porch. So we watch nature all day long every day day and night. We did that all because we love getting our hands dirty and our feet dirty, like stepping in dirt. We like to watch the wildlife. We like to see the dark sky so we can see the stars at night. I wonder about the light pollution that this would cause. All I hear is paving, more traffic and light pollution when I hear a development like this going in. I don't, I don't think of one of my wildlife creatures on my property wanting to walk into that development. They would walk away from it probably to myself, my house, my property.

In terms of the -- I'm used to a sheet flow. We have known about sheet flown ever since we have lived there. Sheet flow is natural. Even after the rains come, which we get heavy rains now, my whole property is flooded, by the way. We have fish in our yard, and we've gotten used to it. We build our tropical plants up so that doesn't get affected. Everything for nature. But sheet flow is one thing, because we can get rain five days later into Charlotte County and we will get that water flowing down on our creek,

too. The creek always overflows in summer. It's just part of living there. But development is a whole other thing. You're talking about paving. You're talking about building up. You're building fake ponds. By using the term rock pit, you know, you're digging out the earth is what you're doing. You're destroying the property, letting it fill with water, disturbing the natural environment there and calling it a pond or a lake to attract a certain type of person. It's not the type of people that live in North Fort Myers. Putting that many people, more people out there is just going to destroy our paradise of all the people that love and have lived out there for a long time.

And the transportation, like I say, I don't know -- I haven't really heard anybody say, when you come out of that development you've got to turn left to get on Bayshore. Nobody is going to be going right. Nobody lives in North Fort Myers and wants to go to Cape Coral, at least we usually don't. Our paradise is there. Why would we ever want to go to Cape Coral? They may have to go there to work because they're not going to find work in North Fort Myers. So that's what we're getting. We're getting people just wanting to go -- through traffic

basically. Nobody that lives there goes on Mellow because we go out to Bayshore to go to Publix or whatever, go to downtown. All the traffic is going that way. So if you get out of that development, turn left, how are you going to do that with traffic the way it is already? There's no way you can make that turn. The traffic, I can't even imagine.

I guess the only other thing I want to say is that, you know, none of us that lives here wants this, you know. It would be different if it maybe was like a retirement community moving in maybe with less cars, that type of concept, but what we're talking about here is just not that. What it really sounds like to me is a bunch of money changers moving and changing paradise.

THE HEARING EXAMINER: Thank you.

MR. NESBETT: My name is Dave Nesbett. I have been under oath. And when we moved to Lee County 43 years ago there was 200 people that lived in San Carlos Park. There was no interstate. There were no bridges over the river except a draw bridge. And my secretary, the first thing she told me, when they built that new Edison Bridge they couldn't figure how they could get that into the town because there's no way of coming across the river, and she said the

Edison Mall was way out of town. When you think back like that you think of Lee County as a totally different kind of thing. Naples was a small fishing village. You could actually go to Fort Myers Beach. My family was out on Sanibel for the last 75 years and they're all gone because what they see is not what they really like. And my wife and I never see anybody we ever met before even though we know a lot of people. We think they've all left and they've gone, like, to the North Carolina mountains because they don't like a lot of changes they see. So I think philosophically everybody feels the same thing. We like to live a rural lifestyle. The Koreshans at Estero had a saying that Estero was the center of the universe, and if you drive down to Estero now it looks like the center of the universe. So if everybody wants all those malls and all those eatery places and all those chains, put the developments down in Estero. But like one person said, there was that development that was going to come up on Del Prado Extension that was abandoned and a lot of the utilities were put in. That land has sat there empty for years now. So if a developer wants to go in and do something like that the land has already been raped. So there are opportunities that you can do

things that won't offend the rest of us up on Slater Road. I live at the end of Slater, and when these kids come in at night it's a drag strip. All I hear is -- I can identify every Mustang with a hopped-up engine and whatever. And sometimes I wonder, all the old people that I knew up in that area, where they have gone, because I see even traffic backing up at Nalle Grade and Slater at like 5 and 6 o'clock, and that didn't exist ten years ago.

So I think everybody here feels the same thing. We just kind of had enough and we're just asking for the mercy of people that want to develop things to kind of take it in their heart because that's where we live. We love this place. We will die on that property. We will never go anywhere else because we love North Fort Myers. So, thank you.

THE HEARING EXAMINER: Thank you. All right. We really need to cut it off. This is going to be the last one.

MS. GRANT: I'm Genelle Grant and I have not been sworn in.

(Ms. Grant was placed under oath.)

MS. GRANT: I live on Bright Road, which is about a quarter mile, about halfway between Mellow and this development. I live there. You don't.

It's really awful.

THE HEARING EXAMINER: Ma'am, give me testimony.

MS. GRANT: Someone who don't live there can come in and say it will make no difference to us.

THE HEARING EXAMINER: Okay. I appreciate there are very strong emotions in this and I understand this is your home and it's important to you. You need to give evidence that this does not meet the County's Comprehensive Plan, does not meet the County's regulation. That's the only way that I can take your concerns into consideration. I understand the emotions. I can't translate that into a recommendation to the Board. So, please, in future comments, people that are going to be making comments after lunch, it's very helpful if you can give me specific responses. Several of you have already done that. If you can give me specific responses that's what we need to hear.

Okay. We are going to take a break for lunch at this point. We, I think, can anticipate this is going to go on for another day. I have available dates that I can give for everyone to -- for the applicant and the staff to look at. And, Chip, if you can share those with members of the public that have a specific issue. Unfortunately we cannot

coordinate with everybody. We try to accommodate people's schedules where we can. It's going to be what the applicant and the staff availability is going to be. If you think that you are not going to be able to come back I'm going to put this list out here and I ask you to put your -- first put yours on top or put it in a separate stack of people that absolutely are asking to be heard this afternoon. I know it's everybody's preference to not come back another day and sit here for this process, but I ask you to respect your fellow citizens and to provide that information. So I'm going to put this back out here. You can put in a list if you want to change the date. We are going to come back, we need to be back here by 2 o'clock. We're going to lunch right now, and the hearing will have to end at 4:30.

(The hearing was in recess at 12:47 p.m., January 18, 2018.)

(The hearing resumed at 2:00 p.m., January 18, 2018.)

THE HEARING EXAMINER: We are back on the record and we are still in the public participation portion, and I have a bunch of names. They seem to be pretty much in the same order except there's one on top. Is this the order?

MR. BLOCK: The one on top was placed there by myself as a new person that filed. Their first name is Mary. So she was the -- she gave it to me during the break.

THE HEARING EXAMINER: Okay. All right. Then we will go in the order that we have here and if we get through with everybody before 4:30, great. If not, then whoever is left -- maybe we ought to talk about the day.

MS. MONTGOMERY: I think we're hoping to get done today, but if not we're hoping first thing tomorrow morning we can come back and get it done quickly.

MR. BLOCK: That's good with staff. Friday is perfectly fine for us to come back.

THE HEARING EXAMINER: Then if we don't get done today by 4:30, then we will be back here at 9 o'clock

tomorrow.

MS. MONTGOMERY: Yeah.

THE HEARING EXAMINER: Richard Shine. I'm not sure that's an M or an H.

UNIDENTIFIED SPEAKER: Shine. He's coming.

MR. SHINE: Good afternoon, Hearing Examiner. I was not present this morning when you may have conducted a group swearing.

THE HEARING EXAMINER: Anybody else that wasn't here if you would please raise your right hand everyone. You too, sir. Mr. Shine.

MR. SHINE: Oh, yes. Thank you.

(Those members of the public wishing to speak were placed under oath.)

MR. SHINE: Thank you. Good afternoon. My name is Richard Shine, 27-year property owner and full-time resident in the vicinity of this project. The facts that I'm stating here today are both my own and are consistent with the understanding and perspectives of our neighbors also in the vicinity of this proposed housing project. Our Greater Slater Area Community watch group started approximately 20 years ago. We have for a very long time worked in partnership with many pertinent to the safety and security of our area, which also includes the

Bayshore Elementary School, a community institution.

What I haven't heard discussed here today is any information about the hundreds of children and parents and adults who use the soccer fields on the eastern side of this proposed development. Williams Road connects to State Road 78 and Bayshore and then leads to I-75.

The area in which we live is a low density rural and agricultural area as depicted on the Future Land Use Map right out here in the hall. The proposed project will substantially change the nature of our area from its low density rural and agricultural nature to a much higher and inappropriate level of population density and intensity with traffic and public safety impacts far beyond what the infrastructure can sustain and what public safety considerations should tolerate.

This proposed development, if approved, would change, against the will of the people in our community, Lee County's promise to the people that they could find the rural, agricultural, low density lifestyle in our area and that such areas have a right based on their long-term history to exist in the mix of land use type designations and uses. It will substantially change our community character.

In my opinion no developer has a right to do that. I believe that Lee County must uphold its promises and not allow that.

Everything about the proposed development defies every Lee County Smart Growth plan, policy or objective I can think of based on my familiarity with Smart Growth on a professional career basis.

The project puts the community in peril when the County scaled back development impact fees such that the County really doesn't have the money to make the necessary safety improvements on Slater Road or over by the Bayshore elementary school. And the County doesn't seem to make developers step up and pay for anything but the bare minimum.

I learned yesterday that there does not seem to have occurred appropriate coordination with the school district regarding the Bayshore elementary school. The entrance and exit for this development will, or at least one of them will apparently be located on the Slater Road curve. The short sight distances and the high speed of traffic there will likely result in more crashes. There are many school buses operating and stopping along Slater Road every day. In one past year we counted approximately 80.

Apparently no turn lanes are planned at this

time. The Lee County road impact fee update of January of 2015 contains information to estimate residential traffic, and on the basis of that what we know about this development could generate approximately 31 or 3150 trips, new trips each day. Add to that all of the service industry vehicles, the deliveries and all kinds of other trips. Picture anywhere from 1,600 to 3,200 vehicle trips going in and out of there every day on a curve.

We have heard discussion and input and testimony by traffic professionals today about the 85 percentile, 85th percentile. While having spent 41 uninterrupted years in transportation I have always referred to that as mob action in traffic, and that should certainly not be applied to Slater Road.

Regarding business impacts, usually development entrances and exits are supposed to be certain distances from existing roads and/or business driveways, and it's our understanding that the developer wants a variance to significantly reduce the difference -- the distance between the development entrance and exit in relationship to Bee Charmer Lane, the Walker family's honey and farm business, which is a long-term community institution. This will result in traffic peril for Walker Farm's

customers and will negatively impact their business. Development is supposed to be business friendly and supportive, not potentially harmful to people or businesses.

With all due respect to the North Fort Myers Planning Board, I attended that meeting, and on the basis of what I saw there that evening I respectfully offer that perhaps the Planning Board should never really have acted to advance this particular proposal to this level. At that time when I read the material there were so many items in the plan that were still rated as insufficient. When I looked at it yesterday on the Community Development work site I found that there are still a total of 80 -- excuse me, I found that there are still a total of eight areas identified as insufficient in such categories as sufficiency review, environmental, the application, the legal description and added information. So there appear to be some areas that are -- for which there is still insufficient information.

Ours is a government of, by and for the people, not for imprudent proposals that put the public in peril. Respectfully, should you be inclined to approve this proposal, will that decision you make tell the many long-term people in the community for

generations and who have legal standing in this matter and who are here today stating relevant facts that they are wrong, they should not prevail? We have heard somebody this morning talk about urban services, that urban services are in place. This is not an urban area.

Also I'm very, very concerned about the -- what I believe to be an inadequate notice to the public with regard to when they could speak. The entire morning was really taken up by the presentations we heard, the parties that are involved as agents in this matter or county staff, and without prior notice to the public I offer to you, Madam Hearing Examiner, that that foreclosed the public for participation, particularly those people who had to leave because they had to go to work. I, we oppose this project and we are here to help you today and help our government to do the right thing, to make the right decision, and we implore you to do that. Thank you so much for giving me the opportunity to make these remarks.

MS. MONTGOMERY: I have a few questions, if I might.

Mr. Shine, I believe you live on Bright Lane; is that correct?

MR. SHINE: Bright Road.

MS. MONTGOMERY: Bright Road.

MR. SHINE: May I please ask the Hearing Examiner a question before I proceed with answering any further questions?

MS. MONTGOMERY: You have to ask the Hearing Examiner.

MR. SHINE: May I ask you a question? Is this proceeding regarded as judicial, legislative or administrative?

THE HEARING EXAMINER: It's quasi-judicial.

MR. SHINE: Quasi-judicial. Thank you.

THE HEARING EXAMINER: It's more court-like than making new laws by the Board of County Commissioners.

MR. SHINE: Thank you.

MS. MONTGOMERY: And, Mr. Shine, your property is located, I believe, in the Rural land use category, isn't it?

MR. SHINE: Yes. We're rural and agricultural. Thank you.

MS. MONTGOMERY: Okay. The County does have a clear administrative code on how the hearing examiner process works. I take it you didn't avail yourself of a review of that code.

MR. SHINE: If I may, Hearing Examiner, I'm here

as a citizen providing input and I'm beginning to detect that cross-examination of me as a member of the public providing input is bordering on the inappropriate.

THE HEARING EXAMINER: If the question is did he look at the Administrative Code provisions or was he aware of the Administrative Code provisions --

MS. MONTGOMERY: Yes. And the reason I inquired, Madam Hearing Examiner, is because Mr. Shine asserted that the process was inappropriate.

THE HEARING EXAMINER: And I think we can allow him to have the opinion on that, and if you want to respond to it later, I don't know that that's necessary.

MR. SHINE: Would you like me to clarify what I just said?

MS. MONTGOMERY: No. I think the record speaks for itself.

MR. SHINE: Yes, it does. I would simply repeat the same thing I just said.

MS. MONTGOMERY: I won't make you do that.

MR. SHINE: Okay. Thank you.

MS. MONTGOMERY: Mr. Shine, you have offered several comments on traffic and you indicated that

you worked in the traffic field in the past. Did you perform any technical analysis in this instance?

MR. SHINE: No, I did not perform any technical analysis, but I did rely upon published Lee County traffic estimating documents available to the public on the website with regard to, you know, estimates for residential units, multifamily units and a mix thereof, and so I don't believe there's a basis to challenge my remarks about traffic, potential traffic impact or the remarks of anyone else who may have spoken before me with regard to our understanding of potential traffic impacts.

MS. MONTGOMERY: Can you share with us what documents you relied on to offer your opinion?

MR. SHINE: I stated that, did I not?

MS. MONTGOMERY: I might have missed it.

MR. SHINE: Okay. Thank you. It was the Lee County Road Impact Fee Update of January of 2015.

MS. MONTGOMERY: Okay. That's what you're relying on for your testimony?

MR. SHINE: I am not pinning my entire testimony, facts or opinions on that document alone. It's a reference to which I made in my remarks.

MS. MONTGOMERY: Would that be the only transportation document you're relying on?

MR. SHINE: That's the only one that I referenced in my remarks.

MS. MONTGOMERY: Okay.

THE HEARING EXAMINER: I did want to follow up. You indicated that you had experience with Smart Growth principles and experience in transportation. Are you -- do you work in that field or have you in the past?

MR. SHINE: Oh, I have. Yes, I have.

THE HEARING EXAMINER: Can you tell me your experience? Because, I mean, you can be qualified as an expert witness and --

MR. SHINE: I have been qualified in other settings as an expert witness in transportation in the past. I didn't request to do that here. Are you asking for my -- a few remarks about --

THE HEARING EXAMINER: Well, when you said in your opinion it doesn't follow Smart Growth, if you have a background in that, if you have an education and experience, then that gives more weight to your comments.

MR. SHINE: Well, thank you, yes. I worked for a high-profile state transportation agency here in southwest Florida for 25 years, six as a transportation consultant before that in the United

States and in the Caribbean, and as well seven years with the New Hampshire DOT a long time ago, and that's why I still have this accent.

THE HEARING EXAMINER: Okay. So you do have experience and expertise in transportation.

MR. SHINE: Absolutely.

THE HEARING EXAMINER: Transportation planning or --

MR. SHINE: Absolutely. Yes. Thank you.

THE HEARING EXAMINER: And your background in Smart Growth?

MR. SHINE: It's related to transportation.

THE HEARING EXAMINER: From a transportation perspective.

MR. SHINE: Oh, absolutely. Smart Growth, yes. Thank you. Transit-oriented development design, all of the -- very long list of those kinds of things.

THE HEARING EXAMINER: Okay. And you made a comment at the beginning about concerns about impacts on the soccer field. I didn't understand what your concern was.

MR. SHINE: Well, my concern is that while I have been here today I haven't heard a single solitary individual even refer to the soccer fields that are immediately to the north of the Bayshore

elementary school on Williams Road, and because over the years they are in such high demand and are used to a really great extent, they're immediately across the street from the Bayshore Elementary School as well as like a Lee County community park. I have been there for 27 years. Our kids played on those fields. Hundreds and hundreds of people all week long play there.

THE HEARING EXAMINER: So your concern is that the fields are used a lot so there's traffic on the road.

MR. SHINE: Oh, yes.

THE HEARING EXAMINER: Not that the project itself will impact what is happening on the fields but --

MR. SHINE: I believe it will, I believe it will, as well as impacting the traffic that we have heard from others here today pertinent to the Bayshore elementary school.

THE HEARING EXAMINER: How will the development itself, not the traffic from it, but how will the development itself affect the fields or the use of fields?

MR. SHINE: Traffic.

THE HEARING EXAMINER: Just the traffic.

MR. SHINE: Traffic. Thank you.

THE HEARING EXAMINER: I was trying to understand.

MR. SHINE: I'm not suggesting anybody who might move in might also play soccer there. I'm suggesting it's going to be, you know, an additional level, layer of traffic impact that nobody has talked about here today.

THE HEARING EXAMINER: Okay. Thank you.

MR. SHINE: Thank you so much.

THE HEARING EXAMINER: All right. Gary Monette.

MR. MONETTE: Monette.

THE HEARING EXAMINER: Monette. Okay.

Just so that you all know, the forms, if you ever happen to see your form again, the little "Y" at the end doesn't mean that you are for or against it. It means you spoke or you didn't speak. So I have marked yours that you spoke. You had crossed through the "Y". Just in case anybody ever sees that.

MR. MONETTE: Good afternoon. My name is Gary Monette. I live on Slater Pines Drive, which is about three-quarters of a mile north of where the project wants to be placed. Nobody mentioned speed limit. Everybody went around the speed limits, speed limit, speed limit. The speed limit on Slater, on

Slater Road is 45 miles an hour posted. Remember I said posted. It doesn't work. They're talking about not having any access off-ramps to turn into this project. It's also mentioned that --

THE HEARING EXAMINER: Let me clarify something. A couple people have said that. They're not indicating, there has not been any indication there will not be turn lanes. The question is how long the turn lanes will be. So I think the condition and the discussion about the 85 percent and, et cetera, that was a question of how long the turn lanes, the exact configuration of the turn lanes, but I don't think anybody is arguing there does not need to be a turn lane into the project.

MR. MONETTE: Okay. Because according to the -- pertaining to a turn lane or the length of the turn lane, if we're 45 miles an hour speed limit, you can go five miles, I guess, one way or the other. If there's -- well, the reason I brought that up was if there's not a turn lane involved in the project -- which normally all new subdivisions have turn lanes in and out. On most new subdivisions you have a turn lane which pertain to -- this one here on Slater, if you're coming north you would have a median turn lane and the lanes would blow out around the turn lane so

the traffic can stop, make a left-hand turn and go in the project. If you don't have one of those, you get day dreamers and there's like -- everybody has mentioned there's been numerous accidents, numerous deaths on Slater.

Something else nobody mentioned on Slater. You don't have any shoulder on the road there. We have a drainage ditch. You have about a two-and-a-half-foot strip and then it goes right down to a drainage ditch on both sides, and the drainage ditch can vary from two feet to four-and-a-half feet. And if you have to make an emergency stop, depending on either way you're going, north or south on Slater, you don't have any room to stop. You can't go into the opposite lane because you're going to hit somebody. If you try to get off the road you're going to roll over.

There's a mention in the project of having four lakes. When you dig a lake the water comes from someplace to fill that lake up. If you've got four of them -- and all the water drains north to south. I have a well. You're going to eat up a lot of groundwater, surface, underground, and this year, being as dry as it was, we had a lot of people lose wells because of no water. If you're going to take

all of this water, and I'm assuming that they're digging the lakes for fill for the property, what's going to happen to our water table? Big concern to everybody, not only me, everybody that lives in that whole area there that has wells. We don't have a watermain. The watermain stops -- the watermain goes up the east side of Slater and it stops before it gets to, to --

UNIDENTIFIED SPEAKER: River Trails.

UNIDENTIFIED SPEAKER: River Trails, isn't it?

MR. MONETTE -- before it gets to Mellow. It crosses the street there at mellow. So, you know, we're, we're -- I don't want to have to dig a well. I already got a price for digging a well. It's like eight grand.

THE HEARING EXAMINER: We'll have somebody address that. Generally speaking the lakes just fill up from the water level. You take the dirt out and the water will seek the level. They're not, I don't believe, proposing to fill the lakes with groundwater.

MR. MONETTE: No. I know you don't fill the lakes. I know where the water comes from. It comes from, when you're digging it it comes from -- from where they stop digging it it will fill the lake up,

but that water has to come from someplace. If you got four of them in there --

THE HEARING EXAMINER: So the concern is how will that surface water input in the lake affect wells in the surrounding area.

MR. MONETTE: That's correct. I have another concern. Do -- when you have public meetings like this is everybody in the general area supposed to get a notice of this meeting?

THE HEARING EXAMINER: It's 500 feet around the property gets -- any property owned within 500 feet, and I believe if there is not a minimum number of people that are within that distance, then they go out an additional distance around for that.

MR. BLOCK: That's right.

THE HEARING EXAMINER: The notice to the larger area is by the sign that is posted. The only legal notice that is required is a little notice in the newspaper that nobody ever sees, but that's all that has to be provided. Everything else is a courtesy notice, the signs and then the letters that go out.

MR. MONETTE: Well, the only -- we got this. This is a notice that was sent to somebody on Gillman. I guess everybody on Gillman got a notice because they live within, I'm assuming, the required

500 feet.

THE HEARING EXAMINER: Okay.

MR. MONETTE: But this was sent to me on a text in my phone, in my e-mail. So I wouldn't even be here today if I didn't know about this. And for a project that wants to be this big my concern is everybody that lives within not only 500 feet, all the way up to Nalle Grade Road should have been notified because this impacts everybody. Everybody north it impacts.

Another concern I have is with that many units, 330 units, be it multifamily or single family or up to 35 feet buildings, do our -- does the sewer departments and the water departments -- is the facilities adequate to add on this many more people for both, for both sewer and water? I don't know if -- I did a little survey on water. One person per day uses 80 to a hundred gallons of water, and that figure was estimated on December 2nd, 2016. So if you take, if you take that per day, you multiply that times all the people that are going to be moving in here, that's a lot of water. Your sewer is 70 percent of that for waste. If you have sprinklers, a sprinkler can use 1,020 gallons of water per hour. Most yards are zoned for three times

a week, and you all can do the multiplication on that. So that's a lot of water to use and take -- the facilities have to be updated, that Lee County pays for the update of the facilities. Do we pay for it as a facility already being there and is adequate for what is being discharged and used today? Down the road if it has to be updated who gets that -- who foots that bill? Do they foot the bill or do we, the public, have to foot the bill for the extra cost? And we shouldn't have to do that.

I want to talk about Daughtrey's Creek. The lady that lives on the corner of Mellow and Slater had to move out of her house because she had eight inches of water in it, and again we have the sheet flow that comes north. When we get a lot of rain and a lot of water during the rainy season, not so much now in the wintertime, but in the rainy season from April through November when Daughtrey's Creek will start building, building up, and I don't know the last time that creek has been cleared, but there's so much overgrowth in it, you got trees growing in it, brush growing in it that displaces the water from running which backs the water up. I've had water back up and come down Slater Pines Drive on my street during the rainy season because Daughtrey Creek won't

hold any more water and it runs down my road. I had six inches of water down my street just from Daughtrey's Creek not being able to hold the water. Now, according to their plan the water flow on that whole project runs to Daughtrey's Creek, if I looked at the plan right when they were showing it. Also Daughtrey's Creek is a 25-foot buffer on each side of the creek. My concern is is the buffer natural. Daughtrey's Creek and that 25 feet on either side of that creek, is that going to be natural ground or is the 25 feet going to be elevated to match the existing grounds in the development?

THE HEARING EXAMINER: We'll get that answered.

MR. MONETTE: Because if everything runs to Daughtrey's Creek and we get a year in rain like we had last year, the backflow of the water going north from Daughtrey's Creek is going to be even worse than it was this past year unless the creek is cleared out, because that creek can't take any more water.

Everybody has, everybody has talked about elevation, property elevation. Give you a little example of property elevation. If you have a little tiny creek and you have two - I can't think of the name of the critter - two beavers dam that creek up where does the water go? Don't go that way anymore,

it goes this way. If you take a mass that wide and you fill it, I don't know what their final footage elevation is going to be through that whole project, but that's a block. That's like a big dam there. That little Daughtrey's Creek, if you get a lot of rain, is not going to hold all the water that's going to flow into there rather than sink into the ground and move like it normally moves. It has to find other ways to distribute the amount of water that's there.

If -- nobody has mentioned -- I forgot what the buffer is, 25 feet or 30 feet from Slater to where the lake, the first lake is.

THE HEARING EXAMINER: I think it's 50.

MR. MONETTE: Fifty?

THE HEARING EXAMINER: I believe that's what they said.

MR. MONETTE: Would that take in if there's turning lanes put in there or will that have to be moved back another 12 feet to accommodate for a turning lane?

THE HEARING EXAMINER: We'll get that addressed. I think turning lanes have to be in the right-of-way, so the buffer would be in addition to the right-of-way. So we'll get that addressed.

MR. MONETTE: Everybody has mentioned traffic on Slater. If you don't live or work there or use Slater Road you have no idea what you're looking at for traffic. None. I followed a school bus -- and I mentioned earlier that the speed limit there is 45. The speed limit is 45. Followed a school bus a couple weeks ago that was driving 55 miles an hour. Suppose that guy has got to stop that bus, turn in that project. They ain't going to make it. There's no shoulder. Now you got a rolled-over bus, a busload of kids. That is not a road to play with. The road Service C that's extended to 2022, that's way behind schedule, way behind. They need to get on that motorcycle and get out there and survey that a whole lot better because you can't use statistics from 2015 and '16 to present. It's grown, it's grown a lot out in that way, but it's not going to be near what we're going to have when that project -- if that project gets put in.

I asked a question. In the beginning of Jennifer's presentation she showed this section as being colored in and she showed Oaks Creek and Chapel, I think it's Chapel Creek, as being adjoined to this project.

THE HEARING EXAMINER: To the east, yeah. Can

we pull --

MS. MONTGOMERY: Let's wait until we get a question.

MR. MONETTE: Well, are the other two, Oak Creek and Chapel Creek, are they approved for development?

THE HEARING EXAMINER: Yes.

MR. MONETTE: They are?

THE HEARING EXAMINER: Yes.

MR. MONETTE: Because Oak Creek backs into Cedar Pines Drive. And I hate, I hate talking rumors, but the rumor is at the end of Slater Pine, you go down, I don't know, a thousand feet and then you make a sharp right-hand turn and it ends down around the corner. It's a mile long. Slater Road -- or Slater Pines is about a mile long. So where it makes the turn Oak Creek butts right up to that turn of our street, and the hearsay is when they, when they are starting to develop they want to take Slater Pines Drive and use that for an access to get into the back of that subdivision that's going to be a subdivision. And that's a private road. The County doesn't own it. We maintain it. We paid to have it blacktopped. We take care of our own ditches. We put our own culvert pipes in to make water flow, and I'm not giving that road up. This is down the road. This

isn't now, but this is down the road. And I just want it brought up that -- see, because I heard they weren't ready to be developed or it wasn't zoned to be developed yet.

THE HEARING EXAMINER: Let me, let me suggest on that one because that goes beyond this project --

MR. MONETTE: Right.

THE HEARING EXAMINER: -- let me suggest that you get with Chip and look at -- or if you have looked online at the plans. The staff report has a copy of all those different developments and it has a site plan and it would show whether or not there's a connection to that road. After this is over if you want to get with Chip and if you can look at the site plans that control that that may tell you a little bit more about where that connection and whether they have an access approved or connections. Probably not, but it may answer your question.

MR. MONETTE: Okay. I've got so much wrote down on here, but everybody that was in front of me had went through a lot of this, and I know you don't want to go over the same, the same scenarios.

This is a -- is this definitely going to be a low income project?

THE HEARING EXAMINER: There is no indication of

that one way or the other.

MR. MONETTE: Not one way or the other.

THE HEARING EXAMINER: No. They have not asked for bonus density. This is not a situation where they need to say at zoning whether it's low income or not. It allows single-family, two-family attached, town houses and multifamily, and whoever lives in those, however the developer chooses to develop it.

MS. MONTGOMERY: And, in fact, under 760.28, civil rights portion of the statute relative to zoning, it would be unjust to ask those questions.

THE HEARING EXAMINER: It's not something that can be considered at a zoning standpoint because in this case they have not asked for anything extra to be able to provide affordable housing.

MR. MONETTE: Well, to be honest with you, I hope you don't approve the project. That's all I can say. Thank you.

THE HEARING EXAMINER: Okay. Any questions?

MS. MONTGOMERY: No, no.

THE HEARING EXAMINER: Okay. Julie Monette, Julie. Wish to speak?

MS. MONETTE: I really don't have anything to say that wasn't already said. The reason that my husband said about low income housing is because

that's what we got on this thing, low income housing to be going in. That's why he said that, not that we can or cannot ask.

THE HEARING EXAMINER: So the notice you received from a friend, somebody had written that in there.

MS. MONETTE: Yes. If I hadn't gotten text, about 90 percent of these people would not be here because we were not informed of anything. We were not within the 500 feet. Also, the only thing I want to add to this that my husband did not add and nobody else did is this River Trails community, mobile home park, they've had a 10 o'clock curfew there for the past almost three years because of crime and drugs, and this is a mobile home community. We all are single homes. We're not housing developments or whatever. This is why we would like to keep it single homes and not developments because of the crime and the drug problem that River Trails already has. So if you're an adult and you own your own mobile home and you're renting property you have to have everyone in your family home and in the house by 10 o'clock because of drugs and crime being so bad. That's only one case scenario there and that's the only mobile home park that's there. So you figure it

out. Where does the trouble come from? It's not coming from the individual homes. Thank you.

THE HEARING EXAMINER: Daniel Mendez.

UNIDENTIFIED SPEAKER: No, he's not here.

UNIDENTIFIED SPEAKER: He couldn't be here all day.

THE HEARING EXAMINER: Okay. All right. We will hold on to that one and if we don't finish the public portion, since we're coming -- we may be coming back tomorrow, we'll hold that one as a possibility and let him speak tomorrow if he can be here if we have not finished the public portion.

Dan Jerz, J-E-R-Z. Also not here. Okay. We'll hold that one as well.

James Whitehead.

UNIDENTIFIED SPEAKER: He left.

UNIDENTIFIED SPEAKER: People have to work.

THE HEARING EXAMINER: Gregory Sauer, S-A-U-E-R.

UNIDENTIFIED SPEAKER: He had to go to work.

THE HEARING EXAMINER: David Foster.

MR. FOSTER: I'm here.

THE HEARING EXAMINER: Okay. Good.

MR. FOSTER: My name is David Foster and I have been sworn in, and I live at 17340 Slater Road. And if you look at their little map there on the

northwest corner of that property above the "S", I am in that curve. We have -- it's actually my brother's property but I live there. We have three-eights of a mile of fence line that is affected by their project.

THE HEARING EXAMINER: Okay. Are you on the east side of Slater Road? Okay. So you're the property in that notch.

MR. FOSTER: Right there.

THE HEARING EXAMINER: The front of it that's zoned C-1. Okay. Thank you.

MR. FOSTER: Okay. If you put turn lanes in there you might relieve part of the problem, but the main problem is is because of the way that curve is there's no visibility there. Obviously putting a bunch of people in there is going to change the traffic. It's already dangerous, very dangerous. Most people don't turn into that driveway. I can tell you that it's a -- you got a good chance of getting rear-ended there any time you turn in. So they make a comment that this had relative lack of conflict. That's not exactly true. You don't have a lot of information yet because you haven't dotted all your i's and crossed all your t's yet because you're trying to get this approved, but I can tell you that any time anybody puts a project in and it's in

between two roads you're going to block the sheet flow of the water through there. You can talk to South Florida Water Management. SFWMD has got engineers. NASA has got engineers. They've lost two space shuttles. Without a doubt you start building houses there you're going to put a plug in between Slater Road and Williams Road. All that water flows from the north down to the south. That's just the way it works. Daugherty Creek couldn't hold it all anyhow. It's impossible for it to move that much water. There are a lot of problems in that area, the least being some project that blocks it off.

The fellow that was talking about the tennis courts over at the school, the parking lots over there for the tennis courts are very small. I have a nephew that goes to school over there. Sometimes I go pick him up. The parking lots are so small that the cars park on the street. Now you're proposing that for another -- an additional access into that property. So somewhere along the line you're going to have to do something with Slater Road, going to have to do something with Williams Road. You're going to have to do something with water and sewer. And these aren't -- that ain't their problem. That comes into the, that comes into the County, which

adds to the tax problem.

THE HEARING EXAMINER: Well, I would clarify that some of those are the developer's problems. They do have to pay for some improvement.

MR. FOSTER: I don't think in that curve that you have enough actual right-of-way because I have looked at the, I have looked at the plat and looked at the survey and I don't think there's enough room, I don't think there's enough physical room to put a slow-down or a turn lane in there. The two churches across the street, they're right up against, they're right up against it. So I guess what we need to look at is whether or not there's enough easement in there, because if you just put a turn-off off of Slater Road with no way to escape you might as well just put a cemetery over there where them water ponds are.

They made a comment about that piece of property and they said it was vacant. It's not vacant. We use it. We use it for all kinds of things. All right. The stripe down the middle is a concrete pad that we have truck-pulls on. Yeah, we pull permits, we have people show up. And to put a project in like this next to a bunch of ag land turns into a whole bunch of phone calls if you're out doing what you

have done with your property all along. Think about that, think about that.

The sheriff's office has been watching this highway, or this street. It's not a highway, it's a street. Should be a drag strip. And last Sunday, a week ago Sunday morning they were out parked in our parking lot handing out tickets. The lowest one I saw was 65 miles an hour on a Sunday morning. So if you don't have enough room to widen that road and you put a straight turn-off in, then, like I say, might as well put a firehouse right there and maybe build a hospital.

As far as using the property, if we have a truck-pull we're usually done by 11 o'clock. Like I said, we pull a permit from the County, so it's not an illegal operation. But we also have trucks that we lease land to to park their trucks because they can't park them in Cape Coral.

So the one thing out of everything you have said, relative lack of conflict, that's just not true. I can't speak for the people that live anywhere else, but, like I say, I live there. I come in all times of the day and night and I know what Slater Road is. Most people live on past and they don't really actually turn off of Slater Road so they

don't know. They're just aggravated because the traffic is either going too fast or too slow. But add another, be conservative, add 600 people, 600 cars going to work at 8 o'clock in the morning. You don't have the infrastructure. Then when you flood everybody else out where are you guys? Cashing your checks? Because this is all about money, lady. It's all about money. And chances are that project will go in because it always seems to. But you ought to have a little respect for the people that are around you because that's why they live there. There's land around them. We shoot skeet back there. We got a gun range, pull trucks. The guys that rent spaces to park their trucks, they leave at 6, 5, 3 o'clock in the morning. All we're going to do is end up getting a bunch of aggravated calls. We're allowed to do that, but just like an airport, when they build a housing addition next to it what's the first thing they want to do? They want to complain about the noise. So, yeah, go ahead, build it. I happen to know it's for sale. Then you don't have to worry about us arguing.

THE HEARING EXAMINER: Hang on, hang on.

Do you have any questions of him?

MS. MONTGOMERY: No.

THE HEARING EXAMINER: The only question I have is were you there on the property during or immediately after Irma?

MR. FOSTER: Yes, ma'am.

THE HEARING EXAMINER: Do you know what the flood situation was through -- on your property and also on this property?

MR. FOSTER: Funny you would ask. The sidewalk that runs right down alongside Slater Road, right down through there, that sidewalk is about that far below street grade. You ought to look to see how much money Lee County spent on that sidewalk. The property -- they drew all kinds of little lines, the drainage went this way and that way and it all went to the creek. That's a snot-nosed engineering kid that hasn't been out there.

MS. MONTGOMERY: I object at this point.

THE HEARING EXAMINER: I'm going to agree. You need to treat people fairly and --

MR. FOSTER: Okay. All right.

MS. MONTGOMERY: I'm going to ask that be stricken.

MR. FOSTER: You can take it out.

MS. MONTGOMERY: He's a Certified Engineer in the State of Florida.

MR. FOSTER: I can appreciate that, Certified Engineer. Like I said, South Florida Water Management, NASA, everybody makes mistakes, but every single time - I have lived in Florida my whole life - every single time when you build a project like this it disrupts the water flow.

THE HEARING EXAMINER: Well, if you would answer the question. You were telling me that the sidewalks were down below. So was it flooded there along Slater Road?

MR. FOSTER: Yes, yes.

THE HEARING EXAMINER: The area along Daugherty Creek.

MR. FOSTER: I don't know. We don't go back there. It's not our property.

THE HEARING EXAMINER: No. I mean on your property. Was the back of your property --

MR. FOSTER: My brother has filled that in. It's fairly high but it does get wet.

THE HEARING EXAMINER: Okay. But during Irma you don't know what it was like around the Daugherty Creek.

MR. FOSTER: Not, yeah, not back there.

THE HEARING EXAMINER: Okay. That was my question.

MR. FOSTER: But, like I say, it's -- and everybody to the north, all you got to do is drive down Slater Road, everybody down through there has water problems, and that water hung on all summer, and then add a hurricane to it.

THE HEARING EXAMINER: Can I get you back on the mike.

MR. FOSTER: We had a lot of water. There's no doubt. And maybe that was the 25-year storm. Maybe it was a hundred year storm. Maybe it will never happen again, but I bet it does.

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

MR. FOSTER: It seems to be more than normal than the average. So, but, yeah, I have to say I'm opposed to it.

THE HEARING EXAMINER: All right. Thank you. Terry Forden.

MR. FORDEN: He said everything I need to say.

THE HEARING EXAMINER: Okay. Guy Mitchell.

MR. MITCHELL: Been covered.

THE HEARING EXAMINER: Now, you realize you will not be able to speak before the Board.

MR. MITCHELL: Yes, ma'am.

THE HEARING EXAMINER: Judy Fordyce.

MR. FORDYCE: I'm the other one on there.

THE HEARING EXAMINER: Oh, C.J. Okay.

MR. FORDYCE: C.J. Fordyce, and, yes, I have been sworn in. And a major concern that everybody has got is going to be the water and the traffic, and it's going to be a big issue. I have seen three people get killed on that road. It's going to make it worse. I know everybody north of that project is going to get flooded. When you take -- let this project go through and they get to connect to the other projects, now how many people are really going to be out there? That's going to be a big question. And you get all them people out there and say if a hurricane or something does come about you got to evacuate everybody or get first responders in and out with all them people, there ain't no room. And there's only so many dirt roads and paths you can cut through to get in around there. So hope you all take a really good look at it. I just want to let you know I'm opposed to it. Thank you.

THE HEARING EXAMINER: Thank you.

Ed Zentez, Z-E-N-T-E-Z. Nope.

Bart Mornston. Okay.

Harold McFarland.

MR. McFARLAND: Good afternoon. Harold

McFarland. I have been sworn in. First some background on us. My husband and I moved, bought a property on the west side of Slater Road in 1991. We shopped around Nalle Grade and Slater because we wanted to be in the country, and we finally picked our property because of the mature oak trees and the woods around it, and we eliminated as much grass as possible, planted it up in trees.

The one young lady testified this development would be esthetically pleasing. Well, for us it's more like esthetically sterile. We want the country, if people have a yard and put horses in it. Well, one place used to have alpacas. We have the wild and the wildlife. That's what we enjoy. That's what we moved there for. But now to address the problems with the development that I see. First in traffic. We live right across from the entrance to River Trails, and we have learned that any place you have a lot of people have to come on and off Slater Road there are accidents. We have lost several mailboxes. We lost a power pole in front of our house. Just a couple years ago we had a truck come rolling roof over bottom across our driveway just because of the traffic in and out of there. They have testified about the problems with Mellow and the traffic there.

I think they -- I have seen many accidents where they have the road coming from the CVS and McDonald's, which is all new. A lot of heavy traffic.

They mentioned the study of the traffic. One thing I want to note, the gentleman said before they do this they'll do another study, and if they do it in July and August they'll extrapolate to what it would be in season. Well, I would like to submit that you not only need to do a study by a time frame, but also by hour because traffic is always hazardous at any time, but in the mornings and the evenings when you're going to work or coming home from work it is compounded many times over, if you look at those times of day to see what the traffic flows would be.

THE HEARING EXAMINER: And I will note they do have to do that. It's called peak hour traffic.

MR. McFARLAND: Oh, good.

THE HEARING EXAMINER: They do have to look at that.

MR. McFARLAND: Because that's very important. As I say, when you are trying to get off Slater onto Bayshore in the morning they're backed up forever.

Now to the flooding. Everybody has testified about the flooding to the north, so I don't need to go on that. I am to the south and to the west. My

property is bisected by a wet season stream. And when they say that a development never causes flooding around it, when you raise anything up you do, and I'm worried, a little concerned for myself that it would cause more water to flow across Slater. My stream drains Shelby Lane to the back of Slater; that if there's more water added, then I could end up getting flooded, which I luckily have not yet.

But I don't know if anybody from River Trails has come in to testify, but I would like to say a word for them. The one part where it jogs down, they're going to put a pond in there and it butts up right to River Trails. That was there when we moved in in '91. So back then, I don't know when it was put in, they did not have to do a lot of things you do now. It's not elevated. The drainage isn't great. We would walk over there because it was safer than Slater and the road would be full of water in the wet season after a rain. And in the wet season your water areas, they fill up. And I'm a nerd for checking statistics and numbers, so I have rain gauges -- one rain gauge, and in a summer afternoon it's not an often occurrence but it's not unusual to get a thunderstorm that would drop three to five inches in an afternoon and that would fill everything

up, and it has to flow somewhere. And River Trails is already low, and you have a pond -- they have a pond right next to it, and if it overflows it's going to start flooding River Trails. I would just like to make that in their defense.

And as to a comment later -- earlier, this has nothing to do with this development, but I live across from River Trails. I have walked there. I have talked to some of the management. They have become good neighbors. The kids are nice. I like -- I'm happy to have them say they're my neighbors. They're good people. I don't want to -- when you say it's full of crime and whatever, it used to be, but right now I don't think it is.

Thank you. Any questions?

THE HEARING EXAMINER: Thank you.

Harry Griffith.

MR. McFARLAND: He's not here. He went home.

THE HEARING EXAMINER: Denny Mitchell.

UNIDENTIFIED SPEAKER: He's not here.

THE HEARING EXAMINER: Okay. Hubert Crane. Joyce Walker.

MS. MONTGOMERY: I think she went earlier, or her husband went.

THE HEARING EXAMINER: Well, I have a separate

one. And any of these names I'm calling, if you know these people, if you will let them know if we go on until tomorrow that they -- if the public portion is open we can -- they can speak then.

Steve Gysin. Keisha Gysin. Stephen Barry.

MR. BLOCK: Not here.

THE HEARING EXAMINER: Robert -- I can't read this. R O V I T A -- stop right there. I think its R-O-B-I-T-A-I-L-L-E.

MR. ROBITAILLE: Yeah. It's Robitaille. My name is Robert Robitaille. I have been sworn in. A couple of -- can you go back to the other one? Not this one. Yeah, that one there. I live almost -- I live right here. That's me. I've lived there since 2000. Now, I have seen many, many accidents right here. A lot of them took down my fence, my mailbox, took a pole down right here. I don't know how many times this has happened. It's happened during the day. It's happened during the night. For some reason it doesn't seem to stop. And my daughter was hit by a dump truck on this road on her car with my nephew -- my grandson in it. Now, they lived, but the dump truck flipped over and laid out a whole thing of asphalt. Now, the thing is, the truck wasn't supposed to be going that way at all because

it's a no-through sign. There's nothing I can do about that. That's up to the people who are supposed to take care of that.

Another concern that I'm worrying about is these lakes that they're digging. Now, nobody said how deep they're digging them. We know how big they are but we don't know how deep they are. That also comes into the play of the water table and everybody's surrounding area, are their wells going to run dry? Because from what I see there them lakes look pretty deep. Not only that, they had a lake on this side here where it says it's supposed to flow up, go to the next one and then go into Daughtrey's Creek. Well, everything flows this way, so how is it going to do that?

THE HEARING EXAMINER: It's a matter of where you put the piping, how they put it in.

MR. ROBITAILLE: Well, you're going to build it up higher than this lake? They got the arrow showing it's going north, not south. So I don't know how that works. Just something, you know.

THE HEARING EXAMINER: We'll have them address that.

MR. ROBITAILLE: Another thing that I'm worried about is that I noticed that these people have not

mentioned is the values of all our houses. When you change it from agriculture to residential is that going to bring our values down on our land? And our taxes, are they going to go up because of it or what? I don't mind them going down, but they never seem to go down.

MS. MONTGOMERY: I wouldn't count on that.

MR. ROBITAILLE: So what's that outcome going to be? And also on the turning lane heading south, obviously they got to put in a turn-in lane to turn left. Whose land are they going to take? Are they going to take my land or are they going to take the land that they want to develop and make this happen? Or are they going to take the bee land, Mr. Walker's land? That's something -- somebody is going to have to give something up here.

So, you know, cars go through there like it's a highway, and just because they put in that little thing there it's not going to stop them. It's not going to slow them down. I know it. I have seen accidents many times. I hear it from my house, and my house sits off 300 feet back and I hear the accidents. Electric pole, fence. I went to work one day my fence was fine. My wife called me said, "Did you see the fence?" I said, "No. What's wrong with

it?" "The whole fence is gone." That's how quick it can happen. There's been a lot, a lot of people died on that. There was a woman that got killed walking with a baby. Both of them died.

I had some other things to say but I can't quite remember them. But when you build something up, the water has got to go somewhere. It's not all going to go to Daughtrey's Creek and come down. It's going to go elsewhere. It's not going to allow it to go past that. You got a mound, the water is down here. Got to go somewhere else. I don't know where it's going to go, but I hope it don't flood, because you got to remember one thing. When we got all this rain last June it wasn't because of the hurricane. That was part of it. The other half was all them rain showers that came day after day for three or four days straight. Then the hurricane came and made it a little worse, but it was already worse already. Just like Island Park down in south Fort Myers. Look what happened to them people with the development building around them. They got water up to here. So we all have concerns. I do not approve of this project.

THE HEARING EXAMINER: Okay. Gary Adams.

MR. ADAMS: How are you doing this afternoon? My name is Gary Adams and I have been sworn in. I

live -- right here is my house. I've got an acre of property right here on this corner. This project is going in here. Probably one of my biggest concerns is, it's like everybody here has been talking about, they have covered everything but the traffic, the traffic on that road. Shelby, there's a -- that's a bus stop right across the street on that dirt road. When you put all these multifamily homes in here are the buses going to be going inside that multifamily development to pick up those kids or are they going to be standing out there on Slater Road to catch that bus? Because I will sit out there in the morning sometimes and see cars as a school bus is stopped picking up kids just go right around them. They ignore the stop signs and everything on the buses. And in that corner it's just really, it's just a really scary road. So I just hope you guys take in consideration the traffic because it's horrendous out there. I oppose this project.

THE HEARING EXAMINER: Okay. Robin McBreairty.

UNIDENTIFIED SPEAKER: She's gone.

THE HEARING EXAMINER: Okay. Randy Hoffman.

UNIDENTIFIED SPEAKER: He's gone.

THE HEARING EXAMINER: Patricia Mason.

MS. MASON: My name is Patricia Mason and I have

been sworn. I live on Bright Road, which is a little bit north just south of Mellow. It's right between the project and Mellow Drive there.

THE HEARING EXAMINER: Okay.

MS. MASON: Everybody says traffic, and that's true. It's terrible. And one thing is when they opened up that Del Prado Extension, on the other side of 41 there are housing developments just boom, boom, boom, they're going in, and hundreds, and they're coming this way. So we get all that. We get all the traffic from up around Nalle Grade and north of them has to come down Slater Road or Nalle Road. We just get traffic from everywhere, and this is a little -- it's a little two-lane road. It's not built for that kind of traffic.

Another thing is the flooding. We all flood. Well, we didn't flood during the hurricane. A lot of our neighbors did, and south of there we heard everybody, you know, lots of flooding. And I can't understand how they can think that they're not going to impact that when they're raising the property. Because look at -- was it Babcock? They built up, everything around Babcock floods. Down in Bonita they built up, everything floods around it. So I think it's really not a good idea to develop too much

and build up the land like that because the area just can't take it. And, you know, we have lived there since 2000, and we bought mainly because it's in that area. There's one- to five-acre homes and agriculture, and this is what we were looking for to retire, which we are now, and we can't move. So whatever is in there we're stuck with, and we sure don't want a lot of development. I'm afraid this is just going to lead to more. This one goes in and then we got the other property around there that's ripe for development, and I just hope we don't get this in our area. Thank you.

THE HEARING EXAMINER: Thank you.

Gilbert Mason.

MR. MASON: Yeah, I been swore in also. I live on Bright Road. That was my wife that just spoke. And I agree with everything. A lot of people that's talked about the flow and I agree with that. That is unreal flow that we get in there. We had neighbors that was underwater. And the traffic on Slater is terrible. You get out of there of a morning, we used to pull out of a morning and maybe wait on one or two cars. There's probably 15 or 20 now you got to wait. So I'm definitely not for this project going in. Thank you.

THE HEARING EXAMINER: Thank you.

Robert Haffa.

MR. HAFFA: Hello. I'm Robert Haffa. I have been sworn in earlier. Could I get you to pull up the aerial of the parcel, please?

Just prior to Hurricane Irma come in we had a lot of rain, and between that rain and the hurricane, I was back in here behind this one piece of property on that south side at a garage sale at one of them trailer parks, where that house is most of that field as far as I could see was flooded. And my question again, and somebody has already talked about it, when you take the buffer of 25 feet past the creek line --

THE HEARING EXAMINER: I need to clarify. It's 50 feet.

MR. HAFFA: Oh, 50 feet. Okay, 50 feet. It's not enough. I live on Bright Road. I live on Daughtrey's Creek. The property line on Daughtrey's Creek is my dividing line between my house and my son's house. He has 150-foot frontage, completely underwater. The creek rose, flooded his whole front yard. I had at least 200 feet across my house. So that's how much the water rose. It took four days before I had a driveway to drive in. And I can see that this property back here had to have a lot of

flooding just based on what it is. So when you have overflow off the creek it's got to go somewhere. We turn around and take this property, elevate the property for houses, narrow Daughtrey's Creek, you're going to back up all that property from my house even farther north because you can't take a one-ounce funnel, pour one ounce of water in it, it's going to run right through it, but put two one-ounce bottles up there and that funnel is going overflow, and that's what's going to happen. They're going to build this in there, raise the property, shrink down the waterways. Not only that, but we need that property for runoff. It's got to have somewhere to go with all this sheet flow that's coming down. We got to move it. We can't just back it up. And, again, like somebody said, what are we going to do, have another Island Park because they want to build a development, back up the property and flood all the people who live back here? That's absolutely not right and I'm opposed to this. Thank you.

THE HEARING EXAMINER: Thank you.

Valerie Chodakowsky.

Okay. Rae Ann Wessel.

MS. WESSEL: Good afternoon, Madam Hearing Examiner. For the record, Rae Ann Wessel, and I have

been sworn in. I am a 40-year resident of Florida, 28 years in North Fort Myers. I live on eight acres of property north of this property bordering Bright Road and Sawmill Lane. I actually live on the old campground for the Dowling-Slater sawmill. So there are a lot of interesting things that show up when you dig in the dirt.

I worked as an environmental consultant and field biologist for almost three decades. I am a limnologist, so by training I study the fresh waters as well as marine waters. Not here seeking to be deemed an expert, but I have been deemed an expert on these issues before as I represented both developers and public interest.

THE HEARING EXAMINER: Let me clarify, because if, again, if you offer an opinion if you have the expertise and you are recognized as an expert it can carry more weight, but, I mean, can be based on your opinion of facts.

MS. MONTGOMERY: She's not an expert in drainage. I agree that Rae Ann deals with water but not in this aspect of it.

THE HEARING EXAMINER: Okay. Well, I don't know what her testimony is going to be on. If she wants to testify from an environmental standpoint, if you

are offering opinions on that.

MS. WESSEL: I will offer opinion on gopher tortoise relocation which I did for 20 years. I will offer some observations about water condition, which I continue to work in in the policy realm. As I said, it matters not to me. I'm going to share some information, ask some questions, would be glad to, but I understand the applicant may not wish to --

THE HEARING EXAMINER: Well, do you object to her being considered an expert in the gopher tortoises or in water?

MS. MONTGOMERY: Raeanne does have experience in gopher tortoises. I won't deny that. And she does have experience in water policy. She does deal with that on a regular basis. When you get into water management and civil engineering she's not qualified in that realm.

THE HEARING EXAMINER: Then we will stop it at that.

MS. WESSEL: I would just for the record say I did permitting for water management purposes for 20 years. So, again, I'm here to offer some observations and some technical information as a resident, as somebody who has lived through this both from personal experience, but also in terms of the

larger landscape of policy and Land Development Codes.

I am here to add my voice to that of my neighbors in opposition to this project as it is designed. Due to its density, intensity, flooding, traffic, wildlife impacts, noise and light pollution, all of which are inconsistent and incompatible with the rural lifestyle that this area really has been noted as until more recent changes to land use and the Future Land Use plan happened. The infrastructure of Daughtrey's Creek and Slater Road are the life blood of this neighborhood and of this rural character. You can't separate them. They are the arteries that create this neighborhood and the quality of life. While this is a zoning hearing and we're looking at zoning issues, it does pave the way for different uses that will change the character and diminish the quality of life that residents and taxpayers who have been here for generations and helped create the conditions that we have today have built.

The staff report states that the project is not anticipated to be destructive to the character and integrity of the surrounding land uses, but the applicant has used and referenced projects that were

built long before the comp plan was developed. For example, the mobile home parks along Slater Road, one was built in 1955, the second in 1980, and the commercial property immediately north, northeast of this -- northwest of this property was developed in 1974. The Comp Plan was not created until late 1980. So it's not really a fair metric to use to compare consistency and compatibility. Likewise, a number of the density calculations that were referenced for projects that have been more recently revised are not projects that affect Slater Road. So, again, I feel like it's sort of trying to mix -- I understand about the compatibility to bordering properties, but when we're talking about Daughtrey's Creek and we're talking about Slater Road these properties were not -- are not an appropriate comparison.

As a community, in fact, we argued against the Future Land Use Map changes that have put Suburban in this rural character, and we feel like this domino effect is occurring where it's whittling away, slowly working at the edges and working in to actually eliminate the rural condition that many of us moved there for. These projects are then used as precedent setting for building additional projects. So there's this domino effect where we just are continuing to

lose wild areas and rural character.

This project proposes an average of five units per acre, some of which would be built at six units per acre over the Suburban portion, and 35-foot-high multistory buildings. There are no multistory buildings along this corridor. That is just another inconsistency.

Schedule of uses. There was a reference made to home occupation. We wanted to ask that the calculation for traffic generation would include the kind of traffic that could be generated by home, home businesses.

And because of surface cap rock that is underlaying the Daughtrey's Creek area, that I'll get to in a few minutes, we request -- it was not clear at all if blasting was going to be allowed. That cap rock is very close to the surface and I wasn't, I wasn't clear that there would not be blasting if in the process of developing these lakes or footers for homes that there might be blasting. So we would request that no blasting be allowed as being disruptive and not supportive.

THE HEARING EXAMINER: We can get that addressed, but I believe that that is outside of the County's control. That's a State controlled issue,

the use of blasting.

MS. WESSEL: Blasting is usually listed in the --

THE HEARING EXAMINER: I know, but it's not under the County's control, I don't think, but we'll get that clarified.

MS. WESSEL: Just want, again, because it hasn't been raised yet, I wanted to bring that into the discussion.

THE HEARING EXAMINER: Okay.

MS. WESSEL: We understand that the -- a lot of the decisions for the development will be subject to water management district permitting, but there is a concern that Daughtrey's Creek is the only drainage for this region and any development in the watershed will affect the capacity of this limited drainage. The increase in intensity and impervious cover will exacerbate the flooding. It's physics. Daughtrey's Creek is actually characterized by cap rock, limestone right at the surface that's full of holes. So water not only rises, but can move laterally sort of bubbling up. I have seen this most recently this past rain. So the water doesn't just pile up and spread out, it also can come up from below and increase flooding potential. Because of those holes

there's erosional forces that suck some of the soils down in and into the creek as well. But as a result what happens in wet season, and particularly wet seasons like we've just had, the water levels can pop up very quickly, very fast and they spread across the landscape, and you have heard that from neighbor after neighbor. This past summer water elevations were approximately 11 feet higher than they are today on property just north of this property along the creek, and that lateral flooding extended about a hundred feet towards the homes. Now, this was a heavy rain year, but we have also seen this same kind of flooding that everybody is talking about during 1995, 1992, 1995, 1998, 2005. These were all hundred-year storm event years. They're becoming more frequent, and there is more impervious cover that is having to -- that's taking away available recharge areas, and so it's focusing that single drainage, it's really focusing all that water down through that single drainage point.

The concern here is that the road interior to the development and the constriction that it can cause, we haven't seen designs but we know that it is designed within the floodplain, will back water up to those properties to the north that will then be

compromised by the existence of Slater Road and I-75 and just captured in there. We would ask that the -- there be an actual analysis. You said there were studies being done. I'm not clear what they are exactly, but that Natural Resources would provide some very targeted documentation of the conditions of water during these extreme events that I mentioned and really be able to model and document and demonstrate that flooding would not occur in these extraordinary events.

We also would ask that for the purposes of really evaluating this fairly that on the site plan there were some dotted bold lines that were showing the 50-foot setback, I think it was, from the top of bank.

THE HEARING EXAMINER: The buffer area.

MS. WESSEL: The buffer area. I think it was 50 feet. And we would ask that there be an overlay for the flood zone that would help in really documenting what happens to water, not just with an artificial setback of X number of feet, but what actually happened so we understand the dynamic. This county does not need to be permitting more population in any kind of flood zone, especially as those are becoming more challenging every year.

There were some comments about the stormwater pond. I would also like to see what the depth of those stormwater ponds are since they're being dug, if I understood the write-up, to provide fill for the development. I expect that they would be on the deeper side, in which case they should be -- there should be an analysis that helps assure the public, those of us that are on wells, that our wells will not be impacted by this development, because they can buy fill other places. It's just cheaper to get it on your own property. So in terms of that consistency and policy.

Stormwater pond along the road really provides a concern for me that you're going to have a lot more wildlife potentially impacted as it crosses the road to get to that pond or leave that pond or nest around that pond. So I think that becomes a public safety and health hazard, not just for the wildlife, but obviously for those of us who drive that road.

In terms of water quality, Daughtrey's Creek has been on the evaluation list for impaired waters. We have significant levels of nitrogen and phosphorous, and anything that adds to the discharge of nutrients into that system should be looked at to, to a protective standard to avoid additional impact. The

Caloosahatchee is an impaired waterbody, and so by law that is already supposed to be happening, but there is no cheaper or more cost effective way of treating water than containing it, treating it at its source.

I did not see any reference as to whether reuse water was going to be used for irrigation or was proposed for irrigation. This is an emerging issue for nutrient pollution. We have seen here in Lee County nitrogen levels that can be eight to ten times above natural background, so it becomes a source. Now, with advanced wastewater treatment that concern goes away, but most of the -- I think all of the reuse that is occurring in this area is not tertiary treatment.

There was a question about utilities. I wanted to put on the record as to whether bringing utilities to this property would then obligate other property owners to incorporate, sign up and pay for being hooked up to the system.

Traffic. So can't get away from that. The staff report on page three says the development is found to be supported by existing infrastructure, existing and future infrastructure in the area. I don't think you can make that claim with water or

with traffic. Slater Road, as it has been described, is literally a two-lane road with no shoulders, no, no -- two big ditches on either side and then a bike path on the west side, on the same side -- on the east side on the same side as this development. There is no right-of-way even for utility poles. They are in the swale or in the sides of the swale. So we have a very constrained system. 330 units being proposed on this property will increase traffic by approximately 3,000 cars a day. As you have heard, there's already an enormous problem with traffic and with accidents. Public safety is a main thrust of the Comprehensive Plan and Lee County's obligation. I didn't see any reference to statistics on mortality, on injuries, on accidents, and I don't know that there's an acceptable level of service for mortalities, accidents or injuries. That really needs to be front and center. You have to do more than count cars.

This property is located at a curve and we -- all of us who have lived there have not had pleasant dreams having witnessed the kind of accidents that have been there. And I have to ask why would we even promote or want to put forward a project either as a developer or as a community that's not safe just

because a formula says it will meet the threshold if we know it's not safe. It's our responsibility to do something about that and make sure it's safe.

Lee County has the distinction of being the area in the nation with the highest mortalities of pedestrians and bicyclists, and I'm not at all clear how that's going to be protected with the bike lane on that side of the property with this conversation about turn lane. There needs to be something much more significant done than what is being discussed in this application. Traffic has deteriorated along Slater in large part due to Mellow Drive, Del Prado Extension, and it's become a major thoroughfare for Cape Coral. There was a reference made to the CL Ventures property, which is just that sort of triangular property just west of the Mellow Drive name. That property is 387 acres, I think, and has potential to increase about 11,000 traffic runs a day. So 11,000 traffic trips per day once that's developed. I understand that that is a slightly different issue, and the neighborhood is starting to deal with that, but we can't, we can't not talk about something when we know that traffic is coming onto this little two-lane road.

School buses stop on Slater Road and deliver

children. And I can't tell you how many times I have seen people run around with the blinkers out, run around those buses, hopscotch over people. It is a risky road as it stands today and there are unacceptable traffic issues that will only be exacerbated by this project.

Wildlife. So protection of wildlife and wildlife habitat is part of the code, and there is a significant gopher tortoise population on this property. It is mapped in the area that is where the indigenous preserve is. It looks like based on the numbers you would be looking for about 15 acres to accommodate that on-site. It is entirely possible because of the layout, if that is correct of where the gopher tortoise burrows were mapped, that that preserve could be expanded and it would do two things. It would, it would reduce development north of the constriction and the roadway across Daughtrey's Creek, but it would also allow for water to spread out and eliminate the need to move gopher tortoises. Now, I know it is possible, I have lived through this change in regulation, to move gopher tortoises. I did it for 20 years. I always did it by hand. You don't have to have equipment, people. We'll say they don't want -- that they can't do

something because there will have to be equipment in the preserve. Very, very well-established ways to do it without using equipment and to do it by hand. The fact of the matter is, when you relocate those gopher tortoises they have a very strong homing instinct, and I have seen in 24 hours tortoises that I put in a box, moved to a preserve were back on the property having come across several roads to get there. How they did it I have no clue. I need GPS, but they don't. So we're talking about adding additional wildlife conflicts as we move, we move wildlife away.

So I would recommend that if there is a design standard here you look at reducing the impacts in that area in the north and west of the creek and a little bit south where the gopher tortoises already are. The carrying capacity probably needs about 15 acres and you can accommodate that on-site. That's also open space.

The applicant suggested their design will architecturally integrate the human environment by preserving contiguous indigenous vegetation and open space. I can only on behalf of my neighbors have to explain that it was heartbreaking as we watched years ago every single mature tree, oak tree, pine tree, palmettos being ripped out of the ground for a

rent-a-cow operation. Now, it was entirely possible --

THE HEARING EXAMINER: For a what operation?

MS. WESSEL: Rent-a-cow.

THE HEARING EXAMINER: Oh, rent-a-cow.

MS. WESSEL: Rent-a-cow ag exemption. You get somebody to bring some cows in. There was no reason that those cows couldn't be on that property the way it was, and I could very well envision a community of very nice homes that would enjoy these mature trees. But to put that in the application it's -- I just think it needs to be said. That didn't need to be done. It has sat now for years, and as it happened one of the --

MS. MONTGOMERY: I will object to this line of testimony and the casting aspersions on the rent-a-cow and the current applicant. It's agricultural land with an ag exemption, which is allowed to be cleared.

MS. WESSEL: And they were allowed to do that at the time. Mr. Inge will tell you, we were on LPA together, and I questioned it at that time, and it certainly was within the use on ag, but ultimately the concern comes when an application is going to say that this is integrating the architecture and the

environment and mixing in together when there is nothing left. So I just feel like that has to be put on the record because it was legal. It was done without having to have a gopher tortoise survey or anything else done at that time.

I would like to ask one other thing. The code speaks to dark skies, and somebody else brought that up. Noise and light pollution are increasing everywhere, and the noise pollution from the roadway traffic has increased dramatically, but dark skies is something that the code does speak to. We know that native wildlife as well as human are impacted by light pollution. We ask that there be no light spillage into indigenous preserves or adjacent properties. It affects the natural hunting, feeding, sleep cycles of animals, and, indeed, many plant species. Artificial light robs nocturnal prey species of their time to feed undercover, and we feel like that is a minimum requirement that really needs to be addressed in this rural landscape.

To the public notice and community review I just want to say that the staff report seemed to get cut off. I saw one page. I was not aware of the community meeting that was held by the North Fort Myers Community Panel, and I'm not clear how many

neighbors who could have had valid input and useful input into that process were notified. So I do want to put that on the record. When there is a community notice presented it's got to be more than a notice in the, in the newspaper because as you pointed out nobody reads those notices. But a mailing to adjacent property owners, the 500-foot, something, would have been significantly helpful. And as I understood in talking to people later there really was not a clear understanding of what they were being asked to discuss.

So in closing I just ask that you consider all of these aspects of the project, and while this is just zoning, it is going to pave the way for changes that are going to have a significant impact on our rural community and on our quality of life. Thank you.

THE HEARING EXAMINER: Thank you.

Roy Reeves.

MR. REEVES: My name is -- I have a problem with my voice. My name is Roy Reeves and I have been sworn in. And if I could ask them to bring up the slide with the barrier wall on the south side of the property.

THE HEARING EXAMINER: The buffer?

MR. REEVES: No, the barrier, the property line.

MS. SAPEN: The buffer.

MR. REEVES: The buffer.

THE HEARING EXAMINER: I don't think they were proposing a wall, but, okay. I think you're talking about the buffer drawing.

UNIDENTIFIED SPEAKER: I beg your pardon. May I please offer this gentleman a lozenge?

THE HEARING EXAMINER: Yes.

MR. REEVES: Won't do any good.

UNIDENTIFIED SPEAKER: Okay.

THE HEARING EXAMINER: Thank you anyway.

MR. REEVES: Where that buffer wall is there in the pink my residence is just to the south of it, the two homes right there, my neighbor and I. What my question is is why they're moving that, they're asking for a deviation to bring that thing closer to our property line with the road. We're already going to have enough noise from people coming in and out of there and they're wanting to make a deviation?

THE HEARING EXAMINER: I don't think they requested a deviation in that area. It's either going to be a 30-foot-wide vegetated buffer or it will be a 15-foot-wide wall and trees.

MR. REEVES: Okay. But what I'm getting at is

where the road is, the access road.

THE HEARING EXAMINER: Right.

MR. REEVES: That's right at our property line. We get enough noise from Slater Road as it is. Now we're going to have a community here, people working 24 hours a day in and out all night. That's my concern.

Now, the other one is is how far is this property going to be built up, because we flood there now. I mean, am I going to be responsible for the water runoff of them?

THE HEARING EXAMINER: And we're going to have them address that, but just real briefly for everybody's standpoint, every project has to, when they build up for the homesites, there has to be a swale that comes on the property and a berm that goes around the outside of the property. You may argue that it's not enough, that it won't hold enough water, but in the design requirements that water has got to come off the homesites into basically a ditch that runs along the property and then goes to their lake.

MR. REEVES: Goes to their lake and then overflows and then comes back on.

THE HEARING EXAMINER: No. To the design

standard, if it's a 25-year storm it would have to go in and ultimately into the creek.

MR. REEVES: The other thing is they have talked about the turn lane. There is no right-of-way there. When Lee County put the sidewalk in in front of my home their sidewalk is two foot on my property. My pins are in the middle of the sidewalk. Where is the turn lane going to go is my other question.

THE HEARING EXAMINER: Okay.

MR. REEVES: The other thing is, like Rae Ann, she mentioned the wildlife. I have lived there for 42 years now, and before that was clear-cut we used to have all kinds of neat wildlife coming in and out of there, you know. It was, it was a pleasure to sit in your backyard and watch the wildlife cross the fields. We don't have that anymore. So I'm against the project.

THE HEARING EXAMINER: Okay. Thank you.

Gary Erickson.

MR. ERICKSON: My name is Gary Erickson. I live right on the purple border on the south. My concern was the elevation of the property they're going to build, which Roy brought up, is the runoff. Noise, traffic, everybody brought up traffic, and the water. The water flows -- you can go to the back of my house

to the field, before they even built this, and water is all back in there. It's all wet. It's probably dried up now or close to it, but it's all the way out behind our home. So, anyway, I'm against this, and thank you.

THE HEARING EXAMINER: Okay. Thank you.

Mary Zettel.

MS. ZETTEL: I am Mary Zettel. I have been sworn, Madam Hearing Examiner. I live pretty far north of this project right where Slater Road crosses I-75, and I'm on a road off of there. Heck, we used to have horses on the road. We don't anymore since they built Prichett Parkway. That was another development that went in up there. But my concerns are two. We have a creek behind our property. It's our real property line. And with the rain and with the hurricane I wore boots for two weeks to get to my car. We had a foot-and-a-half of water on our property because our creek drains into Daughtrey's Creek. Daughtrey's Creek was backed up. Our creek was backed up. We were wet. It affects not just the people close to it, but the people to the north because there are very limited waterways in there to carry the water, and when the downstream one clogs the one upstream clogs and it just messes up the

whole water system in that whole Slater Road area. And my second one, of course, is the traffic. When I have to go to work in the morning, and I work for the County, as you might know, and I know Chip and Dan, and I know most of the people here, and I have worked a lot with all this stuff, and when I go to work in the morning and I want to go down Slater Road I'll sit through three or four traffic lights because the people making a left-hand turn to go to I-75, which includes people from Cape Coral coming across the Del Prado Extension down Slater Road to make a left-hand turn onto Bayshore, are backed up. I have been backed up to the fire department trying to get out of Slater Road at 7 o'clock in the morning. It can take me two or three traffic light changes sometimes to be able to get out of their now with the traffic that's already there. And that's just my personal experience.

And so I wanted to talk about drainage. I wanted to talk about traffic. Those are my two primary concerns. The wildlife, I don't know what is down there. I know what's on my property. I know we have a fox family that lives out there. I know there is gopher tortoises out where we live, and I love to see them and I hate to see them disappear from

anywhere in our rural area. Thank you, ma'am.

THE HEARING EXAMINER: Thank you. Okay. That is all the names I have of people that are here. We have a bunch of people who were here earlier that did not speak. I have like five pages worth of notes.

MS. MONTGOMERY: And before you get to those, and I know we have to do rebuttal and I want to take a break before I do that, Mr. Stejskal has to leave, so I want to recall him for the limited discussion of --

THE HEARING EXAMINER: I was not planning to try to finish up today. I don't think we're going --

MS. MONTGOMERY: I don't know if I can get him back. We have to get started with rebuttal. You said we had until 4:30 and I was counting on that.

THE HEARING EXAMINER: 4:30.

MS. MONTGOMERY: Yeah, 4:30.

THE HEARING EXAMINER: Okay. All right. We can do that, but what I do want to say is -- go ahead and come on up. We will -- I want to leave the public portion open for tomorrow.

MS. MONTGOMERY: I don't want to do that.

THE HEARING EXAMINER: Did you say you don't agree to doing that?

MS. MONTGOMERY: Well, I mean, the public have a

right to be here.

THE HEARING EXAMINER: We have about 20 names of people that could not sit here all day, and I understand that, and we're this close to, to completing things. I'm sure people could have talked longer to stretch it out. I don't know whether anybody is going to be able to come back tomorrow or not. I would like to leave the public portion open to allow these people to come back if they wish to speak, people that have not spoken. I understand you can start your rebuttal and I'm fine with that. We can go through the questions and things so you will have a heads-up of things to talk about. I think that that is the fair and full thing to do. People did not understand necessarily that they were going to have to sit here all day.

MS. MONTGOMERY: With all due respect, I mean, most people call Chip or they look at the County website and know what the rules and regulations are. The applicant spent a lot of time waiting to get to a hearing, and invariably what happens is when you do that is, you know, it proliferates and it's not just limited to the people who came today.

THE HEARING EXAMINER: Well, I'm going to limit it to the people whose names I have here. These are

the only ones I will call. I won't take any additional names from anybody. So it is people that signed up today to participate in the process and for whatever reason could not stay here. And, like I said, I don't know that any of them will know that they can come back, but I think that that's only fair to do that.

MS. MONTGOMERY: Okay. We recall Barrett Stejskal. You're still under oath. The very first witness, Jennifer, had a question about the number of tortoises. I know that both you and Beth did an analysis of the number of occupied and unoccupied burrows. Can you tell me how that information can help guide you as to how many tortoises there are?

MR. STEJSKAL: Yes, ma'am. There was approximately 24 active burrows and 12 inactive burrows, giving us a total of 36 burrows on site. According to the FWC guidelines a ratio of .5 is done on all burrows to determine how many actual gopher tortoises reside on-site. So that .5 of that 36 would give us about approximately 18 gopher tortoises may reside on-site.

MS. MONTGOMERY: Okay. And the gopher tortoises that are presently located within the preserve and conservation areas and open space are going to remain

there; is that correct?

MR. STEJSKAL: Yes, ma'am, correct. Underneath everything we have discussed thus far and anything located within the preserve area, whether it's indigenous or nonindigenous, will be preserved and not impacted.

MS. MONTGOMERY: And the other tortoises, to the extent there are any, will be relocated in accordance with the FWC procedures?

MR. STEJSKAL: Yes, ma'am, correct. According to the FWC permit they will be relocated off site to an approved recipient site.

MS. MONTGOMERY: And did you hear Miss Wessel's testimony where she submitted we should just expand the open space preserve area?

MR. STEJSKAL: The open space preserve area does not include, the extra areas that she possibly may have been referring to, does not include any indigenous area, just open pastureland.

MS. MONTGOMERY: There's a concern about overgrowth in the creek area. Will the exotics within that open space have to be removed?

MR. STEJSKAL: Yes, all exotics within the entire indigenous and nonindigenous open space areas will be removed.

MS. MONTGOMERY: Okay.

MR. STEJSKAL: This will all be incorporated under the management plan.

MS. MONTGOMERY: I don't have any other questions for Barrett.

THE HEARING EXAMINER: Okay. Beth, did you have anything?

MS. WORKMAN: Yeah. Beth Workman for the record. What is required to be submitted with the zoning case for the protected species?

MR. STEJSKAL: I am not a hundred percent sure. I think just species survey.

MS. WORKMAN: What did you submit?

MR. STEJSKAL: I believe it was the species survey.

MS. WORKMAN: Okay. Thank you.

MS. MONTGOMERY: I do want to -- that reminds me of something. Mr. Shine submitted that the application is still insufficient in, I believe, eight areas, and I'm going to submit for the record a November 21st, 2017 letter from the staff to Jennifer Sapen indicating this project has been found sufficient.

THE HEARING EXAMINER: I'll accept that as Applicant Exhibit 4. I figured that was looking

at --

MS. MONTGOMERY: I just want to have it on the record. I'm glad you brought it up.

THE HEARING EXAMINER: Just to clarify further for the record that when a letter goes out saying it's insufficient, that's still listed even if the sufficiency is -- insufficiency is cured. So that may have been what they were looking at.

MS. MONTGOMERY: Yeah. I just didn't want you to have any doubts about that.

THE HEARING EXAMINER: I didn't think it would be in front of me if it was actually insufficient.

MS. MONTGOMERY: I know, but I want to make sure you know for sure.

THE HEARING EXAMINER: Okay. So that is Applicant's Exhibit 4. Did you have anything further?

MS. WORKMAN: Can you explain what is in the species survey so the folks understand? Because we're just throwing around species survey.

MR. STEJSKAL: During a species survey we go out and assess the entire site, walk the entire area, and we will go and flag any burrows that we have located that we identify on site that may be active, inactive or abandoned and include them in the report, submit

the report to the County, which then will be, as the process moves forward, that same report will be submitted to FWC to obtain the relocation permit.

MS. MONTGOMERY: Well, you don't just randomly walk around the site, you do transects.

MR. STEJSKAL: No, ma'am. We walk transects north, south, east and west throughout the area, and in order to do this you have to be an authorized gopher tortoise agent, which I hold that qualification as well.

MS. WORKMAN: I have no further questions.

THE HEARING EXAMINER: There was also a suggestion that having the lake near the road was going to create problems of wildlife being attracted to that lake, the one just immediately east of Slater Road. Is that something that you look at or Fish and Wildlife has guidelines for?

MR. STEJSKAL: I honestly do not know. I don't deal with any of the Lee County designs or structures or placements of those.

THE HEARING EXAMINER: No, I mean from a wildlife standpoint is it -- do you look at whether the lakes are attractives, attractors for wildlife?

MR. STEJSKAL: I do not personally with what I do, no, ma'am.

THE HEARING EXAMINER: You do not. You just deal with gophers.

MR. STEJSKAL: Well, no, I deal with all wildlife. If I were to do a survey, I mean, you can find wading birds and alligators and whatnot in lakes and such, yes, ma'am.

THE HEARING EXAMINER: Okay. So do you have an opinion as to whether or not you believe that having the lake next to the road would create any greater situation than any other?

MR. STEJSKAL: I do not feel, no, ma'am, not -- I mean, it's not like we're doing -- it's next to an airport and you have an airport coming in over a lake. Then that would be a different story. But a residential development, I personally do not believe a lake would affect anything.

THE HEARING EXAMINER: That was all the environmental questions that you didn't ask that I think would go to him. Okay. Thank you.

MS. MONTGOMERY: I know we won't finish, but I would like to recall Jennifer and start with Jennifer. We're going to make the engineer sweat until tomorrow, I think.

THE HEARING EXAMINER: Okay. With the understanding that Jennifer may come back for some of

the questions.

MS. MONTGOMERY: Yeah. We expect to start.

MS. SAPEN: Hi. Again for the record Jennifer Sapen.

MS. MONTGOMERY: We have heard a lot of discussion about rural character, and so one thing that we have asked Jennifer to do is to walk you through the Future Land Use Map. You heard Miss Wessel complain that she didn't like when parts of the land use map had changed to Suburban, but when you start looking at where the rural areas are, where the conservation areas are, where the DR/GR is, it matters, I think, in how far away some of these people spoke and are as to where they are located and where this property is located, so I'm going to ask Jennifer to walk you through the Future Land Use Map in this area.

MS. SAPEN: I think the Future Land Use Map also speaks to some explanation on the rural character, and exactly where that rural character is is appropriate in this map. The subject property we talked about is in both the Suburban and the Rural Future Land Use category. Most of the 11 acres is within Rural. Everything south of the project and all along most of Bayshore is in the Suburban Future

Land Use category. When you look at the Suburban land use category it is described in Policy 1.1.5 as a category providing housing near the more urban areas, but does not provide the full mix of land uses typical to more urban areas. So it's a transitional zone between Urban and Rural.

The Rural Land Use category, which is - a lot of the residences spoke today - north of the site and along Slater Road. The Rural Future Land Use category, according to Policy 1.4.4, is described as areas which are to remain predominantly rural, that is low density residential, agricultural uses and minimal nonresidential agricultural uses that are needed to serve the rural community. So this land use category does protect the rural character as described in the Future Land Use Policy 1.4.1, and it sounds like it's a lot of what the residents had concerns with of the rural character. There is no proposal with this project to change that future land use. There's no proposal to change the character around their homes.

Further north going across I-75, I believe there was a couple of speakers who, I believe one woman was at the corner where Slater Road goes into Nalle Grade. That portion of the land use map, that's in

the Open Land Future Land Use category, which according to Policy 1.4.4 is described as areas that are extremely remote from public services and characterized by agricultural and low density residential uses. Again, this project does not affect that. Traffic does not go that direction. There's no proposed change to that character.

This darker area on the north side of Mellow Drive, that is conservation lands, upland. It's conservation area. And if you transition a little bit further to I-75 it goes the opposite direction where it gets more intense. We have Industrial Development Future Land Use and at the interstate at the interchange it's appropriately Future Land Use category of General Interchange. The point of this being, there's a transition heading north from more intense to more rural in future land use and in character of the neighborhood. Therefore, our development south of that won't impact the rural character.

Also Lee Plan Policy 2.1 states that the development should be contiguous and compact growth pattern. When we looked at some earlier graphics showing the residential and especially the Residential Planned Development which have been

approved but not yet constructed in compliance with Policy 2.1 which states to prevent development patterns where large tracts of land are bypassed in favor of development more distant from services in existing communities, I would submit that this project is not more distant and it is an infill. It doesn't bypass other tracts of land, and as described and shown in the letters of availability there's utilities, there's school, there are services, there are jobs. The infrastructure both in urban services and urban infrastructure is available to the site.

MS. MONTGOMERY: Miss Sapen, that ties into, we heard Miss Wessel and several others use the term urban sprawl. Are you familiar with that terminology?

MS. SAPEN: Yeah. The Lee Plan defines urban sprawl, page XII slash 13, as the uncontrolled premature or untimely expansion and spreading out of urban levels of density or intensity into outlying nonurban areas. It's classified as Suburban, the transition between urban areas and rural area. In this case it is not premature or untimely or uncontrolled. Therefore, it doesn't meet the definition of urban sprawl. We would also submit that the project is on an arterial roadway, defined

in Lee County as an arterial roadway, also qualifying it as an appropriate location for density.

MS. MONTGOMERY: Mr. Shine and I believe a couple other people raised concern about compatibility of this residential development with the school, suggesting that it's inappropriate to have children live near a school. Do you have an expert opinion from a planning standpoint about the appropriateness or inappropriateness of a residential community next to a school?

MS. SAPEN: The school located right next to the property and the access there will allow the residents on the site, the children living there can walk directly to the school. And there's policy in Goal 66, the education goal, it's, it's garnered -- it's written to describe how schools should be developed and where they shouldn't, but I think it applies to this residential development. Policy 66.3.6 encourages the location of neighborhood elementary schools within walking distance of residential areas they serve. So inversely it encourages residential to be constructed near schools where it's in walking distance.

THE HEARING EXAMINER: Let me ask --

MS. MONTGOMERY: I believe it was Mr. Foster who

said --

THE HEARING EXAMINER: Neale, hang on.

MS. MONTGOMERY: I'm sorry.

THE HEARING EXAMINER: Let me ask on that question, because I'm not sure I heard that. I may be thinking of a different speaker, but I heard that there was statements made about the impact was going to be of trips going past the school that already is having people parking on the road, parents, to pick up the children.

MS. MONTGOMERY: There were a couple of comments, different comments. That one -- I mean, there was a question or comment about whether it was appropriate to put the residential next to the school. You're correct, Mr. Foster made two assertions. One, he indicated he picks up his nephew and that people don't park in the parking lot, they park along the road, so that's going to be a problem. He did make that assertion.

THE HEARING EXAMINER: I didn't remember Mr. Shine's question being that residential near a school is a problem, but okay.

MS. SAPEN: Yeah, there was a question that whether the school had been contacted and whether there was communication and would they be okay having

this residential project right next to it. I would also -- in the staff report there is a letter of availability from the Lee County School Board, so there have been correspondence about this project with the School Board.

THE HEARING EXAMINER: What did they say?

MS. SAPEN: They said there was adequate service to serve this project and the requested density.

MS. MONTGOMERY: So for the several people that said there's not enough school capacity in your opinion, does that letter address that concern?

MS. SAPEN: Yes, the letter addresses the capacity and concurrency.

MS. MONTGOMERY: Several people, particularly this afternoon, raised concern about noise and about lighting. Miss Wessel raised concern about dark sky. If you know, does the Land Development Code at the time of local Development Order require you to do a photometric analysis?

MS. SAPEN: Generally that's an engineering question, but I do know the Land Development Code requires a photometric analysis done and that there be no light spillage off site.

MS. MONTGOMERY: So for the neighbors, for the people driving up and down Slater Road, that issue

will be addressed by the Development Order application?

MS. SAPEN: That's correct. And there's no deviations requested from any of the Land Development Code criteria on lighting. Those would be met.

MS. MONTGOMERY: And if you know in your expert opinion is there any unusual noise generated by single-family residences or other types of residences that would be inconsistent with the residential or the C-1 uses in the area?

MS. SAPEN: The residential uses here will generate the same type of noise as any other residential use near or around and significantly less noise than a truck pull.

MS. MONTGOMERY: I know you're not an expert in traffic but let me ask you, as a general rule is an arterial road a sufficient roadway to accommodate a residential community?

MS. SAPEN: Arterial roadways are where you commonly find main accesses to residential communities. Arterial roadways are where -- and I guess this is more of a traffic engineer or traffic planner question, but arterial roadways are the heart and network of Lee County where you would expect most of your traffic to be generated to. So it would be

very appropriate to put residential access onto the highest level of road available, and in this case it's an arterial road.

MS. MONTGOMERY: I heard Miss Wessel say that apparently we did something untoward in regard to going to the Community Planning Panel. Have you been to the North Fort Myers Community Planning Panel on more than one occasion?

MS. SAPEN: Yes, I have. It's usually a small room attended by the panel people who vote on it and then members, and there's maybe three or four residents that show up. Every once in a while there will be a case that generates a lot of public interest and the room is filled; there's 30, 40 people in the room. I will also say that there isn't just a little ad in the newspaper. We post signs on the site, and on this project we posted one on Slater Road right where the driveway cut is and we also posted one on the back on Williams Road, and they're large signs very similar to the Lee County zoning signs.

MS. MONTGOMERY: And is that process, in fact, and those notices required by the North Fort Myers Planning Panel?

MS. SAPEN: Correct. It's required by Chapter

33.

MS. MONTGOMERY: And it's not to cast aspersions on the folks on the Planning Panel, but, in fact, there's people like Charlie Krebs, who is an engineer, and Wayne Daltry who has extensive experience in planning. So the people on the planning panel weren't befuddled by the application, were they?

MS. SAPEN: I wasn't at that planning meeting for this particular project. I would have to let one of the members here, the team members who were there speak to that.

MS. MONTGOMERY: I can answer that question. No, they weren't.

Did you hear anything today that changes your mind, your expert opinion as to whether or not this development is compatible with not people a mile or two miles away, but with the surrounding community?

MS. SAPEN: My opinion remains that it is compatible, especially looking at the similar characteristics. If anything, I found that the C-1 uses next to the property is more intense than what I was able to ascertain from the aerial.

MS. MONTGOMERY: And has anything changed your mind in terms of that there's a mix of uses when you

look at the C-1, the mobile home, the public facilities and other RPDs and MPDs?

MS. SAPEN: This is a transition site between a lot of different constructed projects, and understood that some of the projects were constructed many, many years ago, but that still doesn't mean that there isn't an intense development existing. So this is compatible and a transition between the lower density to higher density, and not only consistent, but nearly exactly equal to Oak Creek, Chapel Creek and Bayshore 57 which have approval.

MS. MONTGOMERY: I heard a lot of people ask who raised concern about the 35-foot height. What is the normal height for a single family, whether it be in an urban, suburban or rural area?

MS. SAPEN: The Land Development Code, the property development regulations for conventional residential zoned districts across the board are 35 feet. Thirty-five feet is a very standard maximum height in a lot of developments. It doesn't necessarily mean three stories. A lot of times in zoning resolutions you will see two-story, slash, 35 feet, but those are older resolutions. Now they just stick to 35 feet.

MS. MONTGOMERY: And so is that height

consistent with what surrounds the subject property?

MS. SAPEN: Yes, it's consistent with what is permitted in nearly all the land around the project.

MS. MONTGOMERY: Okay. I don't have any other questions for Jennifer.

THE HEARING EXAMINER: Okay. And I'm going to have some but I --

MS. MONTGOMERY: Well, I'm going to reserve the right to call her back.

THE HEARING EXAMINER: Yes, I would like for you to do that. What I would like to do at this point is to run through unless -- did staff have any questions of the points that she just made?

MR. BLOCK: No, ma'am.

THE HEARING EXAMINER: Okay. What I would like to do is to run through the questions that either I heard being asked or that were raised in my mind by some of the testimony so that you can be prepared to answer them tomorrow.

MS. MONTGOMERY: And just so you know, I do know that utilities, traffic and drainage obviously will be questions we will get to tomorrow.

THE HEARING EXAMINER: And I'll try not to be repetitive. I tried not to write down all of them, and I would ask staff as much as some of these are

not on your list if you would also note them.

There was a point made about the schools, that the one to the east is not within the same zone as this property so that the children would not go to that school. I need some sort of confirmation on what the zones are.

MS. MONTGOMERY: That's why I had Jennifer introduce or reference to the letter that says there's capacity. Regardless of what zone they're in now there's enough capacity.

THE HEARING EXAMINER: I understand that. I would like to understand whether this development would go to that school as it is currently zoned. I mean, obviously it's vacant property right now, but whether there would need to be a change in the zoning of the school districts.

There was a question I heard about the width of the drainage area across the creek. There was some discussion about that being the narrowest point of Daugherty Creek, to just understand how wide that is, where the creek actually is surveyed, the top of bank, and then also how wide your preserve area is, to understand the width we're talking about within that preserve.

There was a question about who the applicant is

relative to the current property owner, whether there are multiple property owners and was it a contract purchaser or whatever. That may all be revealed in the application and if that's the answer you can point that out.

There was discussion about culverts under the road and between the ponds and then from the ponds out to the creek, how will that flow whether there are culverts. I think under the road the question is is that going to be a bridge, in essence, or is it culverts with a roadway over it. How is that typically designed when you're in a floodway situation, whether it will create a damn or what standard it is designed to and whether the roadway has to be designed to a higher storm event than, perhaps, the retention pond or that sort of information.

There was also reference that the emergency services, the ones that are closest aren't necessarily the ones that serve this area and whether or not, like the schools, whether there are service boundaries. I know there's different fire districts and there are districts and their stations may not be in the middle of their district.

MS. MONTGOMERY: Just so you know, what happens

is, no matter where you live, I do live in south trail, but if there happens to be -- and this probably happens more --

THE HEARING EXAMINER: The first responder --

MS. MONTGOMERY: The responders respond. So you want to know --

THE HEARING EXAMINER: Yeah. Clarify that, clarify that for me. When we say urban services are available, that it's available in a form -- it's not just it's one-and-a-half miles away. If it's one-and-a-half miles away and that's the one that can serve or would serve or all of them would have to serve, if that's what the answer is. There was several questions about where the sewer connection is, what direction it's coming from and will the people along the way be required to connect to the sewer. And I guess my question is is that a County requirement that if a line comes through and --

MS. MONTGOMERY: There is a County ordinance.

THE HEARING EXAMINER: Just address that.

Where the number of people -- well, this is a traffic question about how the numbers were taken into consideration, and that leads to a question that I thought -- I haven't heard anybody explain when the Del Prado connection to Mellow Road took place, how

long ago that took place and how that may have affected the numbers that have been used. If it just happened in 2015, did that affect the 2015 numbers, or if it happened ten years ago, you know. So the timing on that, I think, as to what is taken into consideration. And I want to say to the neighbors these questions are not that -- these are questions I heard. It's not saying that all the other comments you had that I'm ignoring them. I heard these as questions that needed to be answered.

Have you -- the question about the unfinished projects in the area, whether or not those were considered rather than opening up a new area.

MS. MONTGOMERY: I don't have to answer that question, do I?

THE HEARING EXAMINER: It would be nice just to have an answer on the record. They may not like the answer and you may think it's very simple and straightforward as to why they were not looked at or if they were not looked at, but it would be nice to have an answer on the record. They asked the question.

MS. MONTGOMERY: That's not relevant to the zoning whether we could or couldn't try to buy someone else's property and whether it was or wasn't

for sale.

THE HEARING EXAMINER: And that's an answer.

MS. MONTGOMERY: All right.

THE HEARING EXAMINER: There was a question raised, this is for staff, about looking at the area from the air and on the ground after Irma, what sort of look at the situation, the drainage situation in the specific area the staff had. Also if the applicant has any information about what the site looked like immediately after Irma or with the heavy rainstorms that occurred in June on this project, if you have any information about this specific site that would be helpful.

Okay. The improvements to a development such as this coming in to Slater Road, since it is an arterial as has been explained, that there be an explanation of what sort of turn lanes. There was a discussion about the fact that the -- because your driveway is to the south, a north to eastbound turn lane would have to be on someone else's property or additional right-of-way would have to be acquired, and if the County is not doing a project at this point what happens. Does the road -- does the development have to wait until the roadway improvements are available, which leads to the

question of are roadway improvements proposed, are they in the CIP for Slater Road any time in the near future and how does that relate to improvements to serve this development.

Question about the impacts of the lakes, how deep are they and what impacts would they potentially have on surrounding wells. The adequacy of sewer and water. I think you answered that with a letter that you provided in terms of the availability. If there are improvements required in the future for water and sewer facilities, does the applicant pay any portion of -- basically are there impact fees for what --

MS. MONTGOMERY: No. We pay a capital connection. When you pay you pay for that capital, future capital improvement.

THE HEARING EXAMINER: Okay.

MS. MONTGOMERY: And they get it, most of it up front.

THE HEARING EXAMINER: Amplifying on that would be helpful.

MS. MONTGOMERY: But that's an engineer question.

THE HEARING EXAMINER: Will the area -- and I think I know the answer to this but we need to have it in the record. Will the area along the buffer,

along the creek be changed in height? Will there be any build-up in the preservation area or any change to the height of that?

MS. MONTGOMERY: You want to know if Beth is going to let us touch it.

THE HEARING EXAMINER: Yeah, basically.

MS. MONTGOMERY: You do know the answer to that.

THE HEARING EXAMINER: I do know the answer to that but it would be nice to have it on record.

To answer the question about roadway improvements, turn lane, et cetera, are they in addition to the 50-foot setback for the lake. I think the answer is yes, but there's not right-of-way there. So that whole right-of-way turn lane, how that goes into your property, whether you can help straighten out the curve by moving the right-of-way over onto your property, whether that makes any difference with the improvements you have to put in.

MS. MONTGOMERY: I didn't hear anybody say we should redesign the road.

THE HEARING EXAMINER: No, I didn't say that.

MS. MONTGOMERY: Now you're making me nervous.

THE HEARING EXAMINER: If you've got to widen it right in front of your project to make the turn lanes, how that may affect the function of the road

is what I'm asking.

Explain about the flow of lakes going from lake to lake, if it's going --

MS. MONTGOMERY: How does it interconnect and how does it get to the lakes.

THE HEARING EXAMINER: Yes. Especially going against what seems to be the normal sheet flow direction.

Addressing impacts on property values or their -- surrounding people's tax rates or taxes.

MS. MONTGOMERY: We don't have an appraiser with us. Ron deals with development, property valuations to some degree in his area, so we can have him address that.

THE HEARING EXAMINER: Talk about your knowledge to the degree you do know how the School Board handles bus stops and how they typically in a residential development would deal with a bus stop on an arterial road or whether they go into the project.

MS. MONTGOMERY: I have actually tried to get the school to go into projects and they will not go into projects.

THE HEARING EXAMINER: Okay. So if there is a school stop in the area the children would be expected to go to that area.

MS. MONTGOMERY: Typically what they do if it's a community they will stop at the front gate and the parents wait with the kids, but typically gated community, they will not go in no matter how much you beg them.

THE HEARING EXAMINER: Did you give -- go over any date on when the plan amendment happened or is it in the staff report when the plan amendment happened on this property to make the property Suburban? Didn't that happen relatively recently?

MS. SAPEN: I'll look it up.

THE HEARING EXAMINER: Yeah, check on the dates on that.

Whether or not the traffic analysis considered home occupation. Addressing whether or not there will be blasting or whether -- my understanding is the County can't deal with that anymore, but if you can address that. Whether there is a different standard for this particular drainage basin because of the geology or because of the fact that it is an area of -- it's been suggested it's an area of limited outfall, whether this particular drainage basin has a different requirement either from the Water Management District or from the County because it's this particular area as opposed to across the

whole county.

MS. MONTGOMERY: So let me ask you a question, because if you look in the comp plan you will see there is a section where they talk about the management plans for different drainage basins and things like that. So you want to know both what the Water Management District would do as well as whether it's mentioned in the comp plan?

THE HEARING EXAMINER: Well, if it is mentioned in the comp plan to call this area out specifically, yes, and whether to your knowledge the Water Management District treats this basin differently than it would the general standards across the whole county. We have been talking about 25-year, three-day, and is that the norm in this area as well.

There was discussion about having some sort of extraordinary drainage study. I think what I had heard was a suggestion that the County itself may be looking at doing drainage studies as a result, but what your thoughts are on having an extraordinary drainage study.

MS. MONTGOMERY: I don't know if it's extraordinary, but I do know, because I have seen it on the agenda, that Sam and Anura and Roland have been looking at drainage countywide. I believe on

February 2nd there was a meeting with the County, the Village, Bonita, the District, maybe even Big Cypress Basin to talk about overall drainage issues related to the storm event. So Sam probably is going to have to answer those questions.

THE HEARING EXAMINER: Okay. All right.

MR. LEE: Now or tomorrow?

MR. BLOCK: No, tomorrow.

THE HEARING EXAMINER: There was a request that the floodplain, in addition to the floodway being shown on the MCP, that the floodplain be shown. I don't know that it necessarily needs to be shown on the Master Concept Plan, but I would appreciate having the information of just an overlay of the FEMA floodway and the flood -- whatever flood zone it's in.

MS. MONTGOMERY: Okay. All right. Well, remember what I read to you what the definition of a floodway is.

THE HEARING EXAMINER: I understand, but under FEMA floodway is a --

MS. MONTGOMERY: So you want the FIRM map? Is that what you want?

THE HEARING EXAMINER: Yes, basically.

MS. MONTGOMERY: I want to make sure whatever we

bring is what you're looking for.

THE HEARING EXAMINER: FIRM map laid over an aerial. And whether or not the -- there was some discussion about an impaired waterbody standard and whether those apply.

MS. MONTGOMERY: That's a water quality thing.

THE HEARING EXAMINER: Just try to address it even if it doesn't apply, just address it. Whether there will be reuse water in this facility, how that happens, and whether or not accidents are considered in calculating levels of service.

MS. MONTGOMERY: What was that one?

THE HEARING EXAMINER: Accidents, whether traffic accidents are calculated in the capacity or the level of service or traffic numbers.

Okay. You touched briefly on the dark skies. Is the no light spillage -- does the LDC talk about dark skies? I think that was a Smart Growth thing that got taken out.

MS. MONTGOMERY: What we'll do, what Jennifer is going to do is bring that section of the code. It has to do within a certain distance you can have a .05. I mean, it's more technical than that.

THE HEARING EXAMINER: I didn't remember the term dark skies in there. I think that got taken out

at some point as a term.

And question, I guess, of staff, is there a second page to the North Fort Myers minutes or was this the end of the discussion? It doesn't -- looks like it kind of cuts off, but that may have been all there is.

MR. BLOCK: There is a second page and I was going to present that as part of my rebuttal, but if you would like to have a copy of it --

THE HEARING EXAMINER: Well, you can bring it tomorrow. You can bring it tomorrow.

MS. MONTGOMERY: He's got to hang on to it or lose it.

THE HEARING EXAMINER: Yes, so that you can lose it and I won't.

MS. MONTGOMERY: Last time he was trying to give it to you.

THE HEARING EXAMINER: Yeah, I saw that.

And also what the width is of the frontage on Slater Road.

MS. SAPEN: The right-of-way?

THE HEARING EXAMINER: Yeah.

MS. MONTGOMERY: The width of the project.

THE HEARING EXAMINER: The project's frontage, how wide is the project's frontage. Because you were

talking about locating the driveway here and there and whether or not it's possible to meet the separations without a deviation and what effects that would have and your turn lanes and all those things.

Okay. That was the questions I heard. Hopefully there were others that you all caught them and be prepared to address them. I don't know that I'm going to be able to listen to the tape before tomorrow, but if there are questions that are unanswered and I get back making my recommendation we don't want to say gee, I really need an answer on that and have to open the hearing back up again.

MS. MONTGOMERY: One of the questions, but I think you answered it was -- and I don't remember who asked the question about when we look at traffic, do we look at the peak hour, and you explained that we do look at peak hour.

THE HEARING EXAMINER: But a detailed explanation, not long detail, but an explanation of that and how the --

MS. MONTGOMERY: Okay. Ted will be happy to do that if he's listening to me.

THE HEARING EXAMINER: Whether he's listening or not he'll be happy to do that.

Then where we are is we will start back tomorrow

at 9 a.m. And I have these sheets that I called out the names of the people that were not here that had been here but left. So we will start with them, so you can let people know they will be first thing at 9 a.m. They can fight as to who gets to go first.

MS. MONTGOMERY: Can we move it to 9:30 so we can -- because you have asked us --

MR. INGE: There's a lot of things we have to get together that I'm not sure we're going to be able to get it together by 9 a.m. tomorrow, so can we move it a little later?

MS. MONTGOMERY: Some of us have to go get the paper you have asked for.

THE HEARING EXAMINER: Again, I hate to make people wait longer, but, yes, we can start at 9:30.

MS. MONTGOMERY: Okay.

THE HEARING EXAMINER: And we'll start with this list and only this list and then we will go to the staff for any rebuttal or comments or changes based on what you have heard, and the applicant can finish their rebuttal and summation. Okay. With that then this hearing is closed until 9:30 tomorrow morning.

(The hearing was in recess at 4:30 p.m. January 18th, 2018.)

STATE OF FLORIDA

COUNTY OF LEE

I, Janet K. North, RPR, do certify that I was authorized to and did stenographically report the foregoing proceedings and that the typewritten transcript, consisting of pages numbered 1 through 260, is a true. record.

Dated this 15th day of February, 2018.

Janet K. North

Janet K. North

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1,400 [1] 39/1
1,400-foot [1] 121/4
1,600 [1] 158/8
1.1.5 [2] 11/10 235/2
1.4.1 [2] 11/14 235/16
1.4.4 [2] 235/10 236/2
1.7.6 [2] 13/2 13/8
10 [8] 38/21 75/11 110/18 110/19 110/24 111/3 180/13 180/23
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10-254 [1] 25/19
10-285 [1] 29/23
10-296 [1] 26/3
10-329 [1] 28/18
10-415 [2] 23/15 89/2
10-416 [3] 23/20 24/11 90/5
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100-year [3] 61/8 141/24 142/1
106 [1] 28/2
107.8.1 [1] 86/19
10A [4] 24/18 45/3 86/11 86/12
10B [3] 24/18 86/11 86/12
11 [8] 11/5 11/12 13/7 25/10 25/11 73/12 78/1 234/23
11 acres [4] 11/12 25/5 25/10 78/2
11 feet [1] 210/8
11 o'clock [1] 185/14
11,000 [2] 215/18 215/19
11-4 [1] 68/20
115 [1] 2/8
11th [1] 10/18
12 [3] 121/10 122/17 228/16
12 acres [1] 121/8
12 feet [1] 175/20
12-inch [2] 49/20 49/22
12-month [1] 72/25
120 [2] 2/9 65/25
120 feet [1] 139/10
124 [1] 2/9
125 feet [1] 21/22
127 [1] 2/10
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12:47 [1] 153/17
13 [1] 237/17
130 [1] 2/10
131 [1] 2/11
135 [1] 2/11
136 [1] 2/12
138 [2] 2/12 2/13
14 inches [2] 121/10 122/17
14,520 [1] 39/2
14.9 acres [1] 23/9
140 [1] 2/13
140 feet [1] 102/21
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