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 19th 2018, commencing
at 9:00 a.m.

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(The hearing resumed at 9:30 a.m., January 19, 2018.)

THE HEARING EXAMINER: Okay. We will get back on the record. Day two, January 19.

Chip, are you ready?

MR. BLOCK: Yes, ma'am.

THE HEARING EXAMINER: Laura Belflower for the record. This is the continued hearing for DCI 2016-00024, and where we left off yesterday was that we were going to allow people that had filled out a form yesterday but had to leave before they were able to speak giving them the opportunity to speak.

Do we have any neighbors? Yep, one. Did you fill out the form yesterday?

MR. BARRY: Yes, ma'am.

THE HEARING EXAMINER: Okay. Do you want to come on up?

MR. BARRY: Don't everybody stand at once.

MR. BLOCK: I would say the most important one has shown today, but I know Steve.

MS. MONTGOMERY: Are you under oath still, sir?

MR. BARRY: Yes, ma'am, if you want me to be.

THE HEARING EXAMINER: What's your name, sir?

MR. BARRY: My name is Steve Barry.

THE HEARING EXAMINER: Okay. Thank you.

MR. BARRY: And I'm sure some of this I'm going to ask here was gone over yesterday, but I apologize. I did have to go to work. On this, couple things I have on this 330 proposed units. How many are going to be single units? How many are going to be duplexes? How many fourplexes or whatever plex after that?

THE HEARING EXAMINER: Okay. We will get them to address that.

MR. BARRY: I would like that addressed. Are these going to be -- is this for sale only or are these rental units? That's another question I have.

THE HEARING EXAMINER: The County cannot control whether units are rented or sold.

MR. BARRY: Okay.

THE HEARING EXAMINER: It is a different form of ownership, but that doesn't go to the County's regulation of them.

MR. BARRY: Okay.

THE HEARING EXAMINER: We can let them elaborate on that if they would like.

MR. BARRY: Another question I have is the pricing on these units compared to the median price in Lee County, how do they compare?

THE HEARING EXAMINER: Okay.

MR. BARRY: That's another question that I have. Then getting into traffic a little bit, and I don't know how many, I don't know how many cars there are in an average household, but I would figure at least two, and if there's kids involved I'm sure there's more than that. But how many, how many, how many road trips are going to be headed out to Slater Road every day on this with these -- with all this, with this traffic? And I believe as far as traffic goes, and I'm sure everybody told you about traffic yesterday, because if you go -- I go to work every day and everybody goes to work, they run into this traffic. And as far as your reports go or your studies, the traffic is heavier than your studies probably show because there's -- in the morning when I leave at 6:30 sometimes that traffic is backed up to the fire station to get onto, to get onto Bayshore Road. So in one of your studies what you do, I would suggest you sit in the parking lot down there at CVS and just watch traffic in the morning and you would see what it's like. That being said, if the traffic gets heavy enough can Slater Road be widened? Going down Slater Road what I see on either side, I see drainage ditches on one side and you got a small area and then you got sidewalks on the other side. I

don't know that it can be widened. Opening up Del Prado Extension sure didn't help things. Seems like as time goes by and more people find out about it it's more of a shortcut. And there's all kinds of traffic on Slater Road now anywhere from tour buses to big tractor-trailers. Everything goes on there. That's a big concern.

MS. MONTGOMERY: What are they giving tours of?

MR. BERRY: I have no idea. I see so and so tour bus. I don't know. I don't stop them and ask. All I know is it's not much fun out there.

I know on Willis Road, I believe it was a few years ago that the fire station closed down. That was their main fire station, I believe, in North Fort Myers. It was closed down for, more than likely, budget constraints, and doing so, that put a lot more stress on that small fire station that's on Slater Road. And I see those trucks going out in all different directions, you know, all the time, and I'm just wondering what the chief feels about that, what he thinks about the -- this new development going in, how that's going to affect it. If it has to be expanded who is going to pay for all this stuff?

That's some of the biggest things I have. And the other thing is, you know, this is, this is

changing the whole culture of the living out there. I don't know if culture is the right word or not, but the whole area, the atmosphere, whatever you want to say. People have lived out there -- I have been out there most of my life, and I moved out there just because I didn't want to be bumbled up with people all around me. People have a couple acres, they might have five, ten, twenty acres, whatever it is, and they moved out there for a reason because that's just the way -- that's their life. This changes all that. I think development should blend into the surrounding areas. This doesn't. If I can get a vote on it my vote on changing the voting on this would be no. That's all I got.

THE HEARING EXAMINER: Do you have any questions?

MS. MONTGOMERY: Mr. Barry, where do you live? I mean relative to this project.

MR. BARRY: Do you want me to point it out?

MS. MONTGOMERY: Yes, sir, that would be great.

MR. BARRY: Probably -- I can't see very good here. Probably right about here. Is this Bright Road?

THE HEARING EXAMINER: I think it is.

MR. BARRY: I live on Bright Road.

MS. MONTGOMERY: Okay.

MR. BARRY: Pretty close.

THE HEARING EXAMINER: Okay. Do we have anyone else, any other members of the public that were here yesterday?

MR. BARRY: I thought there would be other members of the public.

THE HEARING EXAMINER: Well, a lot of people spoke yesterday. Okay. Then if there is no one further that was on this list.

Thank you, Mr. Barry --

MR. BARRY: Thank you.

THE HEARING EXAMINER: -- for coming back.

Then we will close the public hearing portion. And before we get to the final final and maybe in some of your answers to questions we need to talk about the conditions, but in answering some of the questions and some of your rebuttal are you going to be wanting to address the conditions further?

MS. MONTGOMERY: Well, the ag, I think that what I heard the consensus was yesterday that we're not going to add it as a use, but that we can in a condition acknowledge that there is an existing ag use and ag affidavit.

On 10A and B I heard Beth indicate yesterday

that she's okay with revised language, so I think that's fine.

On Condition 5, I think that Marcus and I still respectfully disagree. Marcus did concede yesterday it's a general overall issue that they would like to see revised but it's not anything specific to this project. Therefore, my position is still the same that that condition should be stricken and we should follow the Land Development Code and the Administrative Code. There is -- I looked it up last night. If you go to Chapter 10 there is a provision on turn lanes in the Land Development Code as well as the Administrative Code, so we shouldn't be changing the regulations by zoning condition without adequate data and analysis to support it.

The other condition is Condition 4, and I think, if I heard Sam correctly yesterday after we had a lot of robust discussion about it, that we ended up is his concern is that he's afraid that somebody down the road is going to miss the fact that there's a floodway there and that we need to address certain provisions of the Land Development Code. I think he agrees that it's likely that that code is going to change but he wants to put people on notice. And so what I thought the condition we agreed to yesterday

was that there will be a condition that indicates there is a floodway on the property and any encroachment or crossing of the floodway must be done in accordance with all reasonable state, local, federal regulations. So I think that's where we are relative to all of the conditions. So I think we have -- obviously the precise wording, but you probably change it anyway, so I think in general we have reached a consensus on those unless you disagree.

THE HEARING EXAMINER: Well, I think on the ag I did have one question because it appears that one portion of the property, the southeasternmost corner does not have ag exemption on it currently, and there's not a definition of bona fide agriculture, which is the term that is used.

MS. MONTGOMERY: Bona fide agriculture comes from the state statute. There's a definition in the state statute and that's the definition they use to give you the ag exemption.

THE HEARING EXAMINER: That's the 193 and that's one of the provisions. Chapter 14 does talk about bona fide agriculture. It does give a definition. That doesn't apply in this case but it does provide a definition and talks about grounds for 193. Is that

southeastern corner not -- I think it's a separate parcel at this point. Is it because it's too small? Is there a reason why that doesn't have an ag exemption on it?

MS. MONTGOMERY: I'm sure there is a reason. I just don't know what that reason is.

THE HEARING EXAMINER: Okay. So I don't know whether that's going to come into play because your affidavit includes that parcel in there. If it doesn't have an ag exemption -- normally with an ag exemption I think it's found to automatically be bona fide agriculture. That was my only question relative to that condition.

MS. MONTGOMERY: Mr. Inge is going to talk about that along with other issues.

THE HEARING EXAMINER: I think all these conditions when you answer the questions, especially the flooding and the turn lanes and the roadway and et cetera, when we go through all the questions that the neighbors asked and all those issues that come up, I agree with your assessment of where we stood at the end of yesterday with those conditions, and so I think that's what we will go with going forward unless we find some additional information that it may make it necessary to tweak those a little bit.

Okay. All right. Then --

MS. MONTGOMERY: You had a list of questions, so I think that's where we and the staff are. It's my understanding and, I'm hoping it's true, that Chip agreed that he was going to answer some of them, the school zone and some of the stuff about the fire/EMS and some of those things. Is that true, Chip, or is that just wishful thinking on my part?

MR. BLOCK: No. Actually I did promise you all yesterday I would address it.

MS. MONTGOMERY: I want to make sure you're still on that promise.

MR. BLOCK: I'm still on that same promise. I do have some responses. I don't know if it's satisfactory, but I've got some responses to some of those things.

MS. MONTGOMERY: All right. That being the case we'll go ahead and start and the first person I'm going to call is Ron Inge.

MR. INGE: Good afternoon. Ron Inge, and I have been sworn.

MS. MONTGOMERY: The first question I'm going to ask Mr. Inge is in regard to blasting. You had a question about blasting, is blasting permitted, somebody raised a concern about cap rock. Mr. Inge,

can you respond to that issue about whether there will be blasting for the lakes here?

MR. INGE: Yes, ma'am, if I may tender to the Hearing Examiner a copy of our original application that was filed in section -- or Part 10, Section H has the box marked that no blasting will be used in the excavation of the lakes or other site elements of the project, so I'll tender this to the Hearing Examiner.

THE HEARING EXAMINER: Okay. All right. It's my understanding that the County can't regulate blasting anyway.

MS. MONTGOMERY: The County can't regulate mining blasting. The County does regulate, I want to say Chapter 3 but I'm not sure about that. When you have, like, lakes and utilities and that kind of blasting, they did an ordinance several, maybe ten years ago now, so you have to go out and do preblast surveys. There's an extensive process you have to go through if you're going to do that.

THE HEARING EXAMINER: Okay. So the County's regulations have a process that if they did without a condition, even without a condition, if they did come in and say they wanted to now do blasting they would have to go through a process and meet the criteria to

be able to do blasting.

MR. BLOCK: Development blasting is regulated by Chapter 3 of the Land Development Code, and as you will see when you have the opportunity to look at that it also says that construction materials, mining operations, the blasting associated to those, those are the ones that are -- that development blasting for that use is exempt from County regulations and the State regulates that. The County regulates development blasting through Chapter 3. They would have to come in and apply for the appropriate permits. We ask the question as part of the application process to be able to explain to the public what the applicant's proposals are. The use is not -- the activity of blasting is not considered a use. Therefore, it would not be listed in the schedule of uses.

THE HEARING EXAMINER: But making the commitment on the application that they don't intend to blast, it doesn't prohibit them from blasting if they go through the process, the County's process and get the permits. Is that correct?

MR. BLOCK: I would have to say that's correct, yes, ma'am. I would be -- I'm sure that there's at least other projects out there that have gone through

planned development that have done some form of development blasting. It's just that this applicant, which actually consists of the five property owners, have indicated they do not intend to do any blasting.

THE HEARING EXAMINER: Okay.

MS. MONTGOMERY: If you look at Chapter 3 it's an extensive process and you wouldn't do that for a minuscule amount of blasting.

THE HEARING EXAMINER: Okay. I know we have gotten away from addressing blasting in the staff reports and --

MR. BLOCK: I would say, Madam Hearing Examiner, from the standpoint that if blasting is an extremely important element of any case when it's related to development blasting since it's an activity and not a use, I would say that there is reasonable considerations that can be made to say blasting is not permitted as part of the development if it's necessary to be addressed as a condition.

THE HEARING EXAMINER: Yeah. Okay. I don't know that it is controlling. Okay. We have the answer that the applicant has committed not to do that, but it is not being proposed as a condition or a specific restriction on them and they can change their mind if they meet the County's requirements.

Okay. And the staff -- is the staff suggesting there should be a condition on no blasting or --

MR. BLOCK: The development blasting regulations that have been set up by Lee County have taken into consideration the impacts on surrounding land uses. The only place that it's prohibited in Lee County would be off of Winkler Road south -- yeah, it's Winkler Road, Winkler Road south of Summerlin there is a prohibition for blasting in that particular area of Lee County, even for development blasting, but they have not done that elsewhere in Lee County. So I would say that the regulations address the impacts and the protection for the adjacent property owners. I do not see a need to put a condition on it for this project.

THE HEARING EXAMINER: Okay. Thank you.

MS. MONTGOMERY: And I know that several people yesterday indicated there's a lot of cap rock. Mr. Inge has a long history in mining, so I believe he can attest to the fact that there's cap rock in many locations throughout the county. Is that correct?

MR. INGE: That is correct. There's a variety of means to get through that. The most efficient and least costly is blasting, but that sometimes causes

concerns from the public standpoint. Other methods are saw cutting it, which is very, very expensive. That can be done and then you pull it out with a backhoe, or you can bang it out with a hammer, if you will, where you either have a hydraulic hammer on a backhoe and it pecks it out, chisels it out, or you can even go to the extent of dropping a very heavy ball on it, and that's what has happened at certain locations and that's the worst one because those vibrations go on for weeks on end and drive everyone nuts. So there's a variety of ways to go about it. All of it can be done and have been done here in Lee County.

THE HEARING EXAMINER: I would suspect if somebody started doing that the neighbors would all get together and say please blast.

MS. MONTGOMERY: Well, that is true, and I just kind of wanted you to know there are alternatives, that blasting is not necessarily the worst thing.

MR. INGE: From personal experience, my office is right next to the sheriff's office on Six Mile Parkway, and the Springs residential apartment complex next to us, between us and Home Depot, the lakes were excavated using the dropping of the ball. That went on for three or four weeks in a row. I

lost fillings over it, facetiously, of course. But I was praying that someone would allow them to blast.

THE HEARING EXAMINER: Okay.

MS. MONTGOMERY: Some of the residents asked the question and you asked us to respond to it as to why these landowners, this applicant didn't purchase the property up on Mellow that has started construction but not completed, and Mr. Inge is going to respond to that.

MR. INGE: That particular piece of property that several folks mentioned has been owned by Lennar, formerly U.S. Home. You might know it by that name. They have plans to finish that off and are in the process, as we understand it, of trying to reactivate that project, so it's not for sale.

MS. MONTGOMERY: So the answer is it's not for sale.

MR. INGE: It's not for sale.

MS. MONTGOMERY: There was a question about multiple property owners. Are there multiple property owners and why?

MR. INGE: Yes, there is. Typically -- not typically, but happens on occasions different groups of investors buy parcels that are near each other and sometimes you will assemble those to put together a

larger parcel to go through the process. It's not unusual to do so. In this case you have different parties to keep their accounting and their investments separate have bought different parcels at different times. There was an effort made to coordinate all that for purposes of this application, and they'll be joined at the hip, if you will, going forward now because it will all be under this one zoning approval.

THE HEARING EXAMINER: So all those property owners are the ones listed as the applicant.

MR. INGE: Yes, ma'am.

THE HEARING EXAMINER: Each of the names is the different parcel owners.

MR. INGE: Yes, ma'am.

THE HEARING EXAMINER: Okay. Thank you.

MS. MONTGOMERY: There's a question that came up today about the ag exemption. Why isn't there an ag exemption in the southeast corner?

MR. INGE: That previously had a small residence on it which is no longer there. There is ag activity ongoing and an application will be filed this year to obtain ag exemption on that particular piece in the corner right here.

THE HEARING EXAMINER: What's the County's

position if this zoning goes through and is approved in the spring sometime and the ag exemption has not been granted on the parcel but it's used for grazing, do you know --

MS. MONTGOMERY: There's an easy answer on that. You have to file before the 1st of March. I'm going to predict there's no way we get to the Board of County Commissioners before the 1st of March. That means the ag exemption is going to be in place before the zoning is in place, which means it's an existing agricultural use, would be my position.

How about you, Mr. Inge, what's your position?

THE HEARING EXAMINER: It has to be filed by the 1st of March and then they award it immediately or not, or is there --

MS. MONTGOMERY: That I can't speak to how Ken does that. You may know.

MR. INGE: He takes time to have someone go review the property. They do a site visit, go through the various items of paperwork to see if there's any questions and the granting or denial of that happens fairly quickly. If you submit early you might have that before March 1st.

THE HEARING EXAMINER: I'll leave it to staff to ponder and whether they see any issue with it.

Because even the definition in 14 doesn't say that you must have an ag exemption to be considered bona fide agriculture. It says something to the degree of must qualify under 193. So if it is, if it is property that qualifies under 193, and that sounds like that's what the information is, at this point you don't have the application ready to file for the ag exemption on that parcel yet.

MR. INGE: Not yet.

THE HEARING EXAMINER: So that application indicates, it lays out the things, the factors that they look at for making it bona fide.

MR. INGE: Yes. In fact, based on this discussion I suspect we'll accelerate getting that filed.

THE HEARING EXAMINER: I suspect you will.

MR. BLOCK: If I may, Madam Hearing Examiner, since we're on that subject maybe just finish the subject off from the County's perspective. The agricultural use affidavit that was submitted is a sworn document and it does indicate that upon being duly sworn and deposed and state as follows, and they go through a complete set of statements. Individual property owners indicate that they're the property owners involved and that they know the agricultural

uses exist on the property. And the attached drawing to this, I think it's a five-page document, maybe longer than that, the last page indicates the subject property and the outline of it saying that it's both hay production and cattle. Staff has no reason to, you know, say that they are inaccurate. Our site visits out there have indicated the same thing, that they're either a combination, it's a combination of either hay production and/or cattle grazing. So we have no reason to say that this affidavit is wrong, and so I think we can rely upon this affidavit for the purposes of any condition that states if you -- that current existing agricultural use is as found as the attachments of the, of the exhibit.

THE HEARING EXAMINER: Okay, okay. That makes sense. And it's all fenced as one area.

MR. INGE: There's some cross-fencing to allow the rancher to move cattle from one place to another, but it's fenced, yes.

THE HEARING EXAMINER: Okay. That parcel is not fenced off separate from the others.

MR. INGE: No.

THE HEARING EXAMINER: Thank you.

MS. MONTGOMERY: Yesterday several residents raised concerns that this development would have a

negative impact on their property values.

Mr. Inge, you deal with developments and various components of that all the time. Do you have an opinion as to whether or not this development will negatively impact the property values surrounding this area? And since a lot of people are a half mile or more away do you think it will have an impact on their property values?

MR. INGE: Obviously I'm not a real estate appraiser and I'm not holding myself out as one, but having acquired a number of parcels of property over the years, participated in the entitlement process for those, the ultimate sale and in some cases development of those parcels, what I have noticed is when you establish a project in an area that is developing or has the potential for developing it tends to drive up the values of adjacent properties over time because you bring in a project that in this case would bring in central sewer and water to an area that doesn't have it, although we'll talk about where we're going to get that later on in some other discussions.

You bring in deed restrictions that control the development management and appearance of the property. You do proper landscaping. You improve

the look for that particular piece over what it is now, and it tends to cause the values nearby to increase. At least I've had experience in trying to buy adjacent properties adjacent to ones we already permitted and zoned to try to expand and that value is always much higher than what it was before we started. So it has a tendency to increase those values, which, from a property owner's perspective is really, really nice. That's oftentimes an investment and one of your major investments. However, to counter the concern of the rising property values and the worries about taxation we do have the Save Our Homes amendment, tends to limit the tax implications, the real estate tax implications that go along with those increased values to something a little bit more reasonable. So the folks that spoke, concerns about their real estate taxes going up, just by general improvement in the economy that will happen, but this, I believe, will help cause those values to increase; however, that increase, the values, assessed values will, but the taxable value won't go up as much because of Save Our Homes.

MS. MONTGOMERY: Mr. Inge, you indicated that you have worked and acquired property or been an investor and have put together, I believe, pro formas

regarding the development of various parcels of properties through the years. Is that correct?

MR. INGE: Not only residential properties, but industrial parks, certainly quarries. I've had several years of experience with those as well.

MS. MONTGOMERY: And there's been several residents that have asked about pricing. Now, I know you don't know what the ultimate pricing is, but you have done enough pro formas that considering the base in the land, I believe you have knowledge about what it costs to extend and provide utilities, to provide the drainage and the roadways and the various components of that development, is this property going to be priced in a way that's going to be deleterious to the neighborhood?

MR. INGE: No. Because by the time you consider the land cost, the cost to extend the utilities and the development of the land, the impact fees necessary to obtain permits to build, the construction costs of the residential units, which right now because of Hurricane Irma, but even in normal regular times are somewhere around 100 to $125 a square foot, so for a normal 2,500-square-foot house that's $312,000 just in construction cost to the house alone. Then you have to add the

development cost of all the land on top of that. So I do not believe that this will be detrimental to the area. I think that you will find there will be some nice home values there.

MS. MONTGOMERY: Okay. That's all the questions that I have for Mr. Inge from your list.

THE HEARING EXAMINER: Okay. All right. And if we come across a question and I don't know who is the right person, he might be the person.

MS. MONTGOMERY: We'll bring him back up here.

THE HEARING EXAMINER: We'll bring him back.

MS. MONTGOMERY: Mr. Stejskal is here and he came back even though he didn't want to, and he would dearly love to leave. I don't believe there is any more environmental questions but I made him come back just to make sure before I let -- we let him go.

THE HEARING EXAMINER: Okay.

MS. MONTGOMERY: Did you have anything else?

THE HEARING EXAMINER: I don't think we heard anything this morning, and I think he answered the environmental ones that I had in terms of -- yeah, the points that were raised. I don't know if staff had anything additional to the environmental side. Beth is not here, so --

MS. MONTGOMERY: Hey, Beth, if you're here and

you want him to say something tackle him on the way out.

MR. BLOCK: My understanding we did not have anything additional. I know Beth was going to monitor this when she got out of a meeting this morning, but to my knowledge before coming into the meeting we had no further environmental issues to raise. All the questions appeared to have been answered.

MR. STEJSKAL: I spoke with her yesterday and we were all on the same page before I left.

THE HEARING EXAMINER: Okay.

MS. MONTGOMERY: Okay. Thank you, sir.

THE HEARING EXAMINER: Just one clarification since you made him come here, to get the clarification.

MS. MONTGOMERY: I'm going to pay for this later, you know.

THE HEARING EXAMINER: I understand, and so I want to make you pay.

MS. MONTGOMERY: Okay. All right.

THE HEARING EXAMINER: The proposal to increase the gopher tortoise area, you indicated that the areas that are outside of where you're proposing for the gopher tortoise preserve are the cleared areas.

MR. STEJSKAL: Yes, ma'am. It's all -- I believe most, if not all of that area is not indigenous. We preserved all the indigenous areas on site as far as I can recall, site planning goes.

THE HEARING EXAMINER: So gopher tortoise habitat areas cannot be cleared. They don't thrive well in --

MR. STEJSKAL: They can, I mean, they can be in pasture areas. I mean, I do them all over the place from everywhere in southwest Florida. I mean, we have them in open fields in Cape Coral, but their more suitable habitat is the pine, oak areas or pine flatwoods or something like that. You don't typically -- I mean, you do see them because there's limited habitat in different areas, but their main habitat is in a vegetated area, provides canopy coverage.

THE HEARING EXAMINER: So the survey that was done, I don't remember, I looked at it but I don't remember it, but the survey that was done, the ones that are on the site right now are predominantly in the preserve area or --

MR. STEJSKAL: Yes, ma'am. I believe, I don't know numbers per se, but I would say at least two-thirds of the gopher tortoise that are on site

are located within the preserve.

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

MR. STEJSKAL: Yes, ma'am.

MS. MONTGOMERY: Thank you.

We're going to call Mr. Treesh, recall Mr. Treesh.

MR. TREESH: Good morning. Ted Treesh, TR Transportation, and I was sworn and still under oath.

MS. MONTGOMERY: Mr. Treesh, obviously you heard yesterday that there are a lot of concerns about traffic and that whatever you did in your analysis wasn't right. One of their concerns or questions that somebody raised was do you take into account home occupations when you do your TIS.

MR. TREESH: Not specifically, but the information we use to develop trip generation is included in the Institute of Transportation Engineers Trip Generation Report, and it's based on surveys of similar type uses all over the country. So even though not specifically identified, I would assume some of that's included in the surveys but I can't specifically say if it is or not, but I would say that if there is home occupation, common sense would say it would lower the trips because that person is

not going off site to a job and influencing the normal commute peak hour but is instead working at home in their PJs

MS. MONTGOMERY: And most of the people who testified raised concerns about when they're off to work, so that seems consistent with your analysis.

MR. TREESH: Correct.

MS. MONTGOMERY: One of the questions that the Hearing Examiner had yesterday is when did Del Prado connect to Mellow.

MR. TREESH: Based on my research looking at the historical areas from Google Earth, Mellow was constructed between U.S. 41 -- well, actually it existed a little east of 41 before, but it was extended out to Slater Road sometime between 1999 and 2004. In the '99 aerials it's not there and in the 2004 aerial, which is the next available. I didn't look on the Lee County GIS website. They may have something in between. So it's been there at least since 2004, so almost, almost 14 years.

THE HEARING EXAMINER: So that connection all the way from Slater Road over to Del Prado --

MR. TREESH: Yes.

THE HEARING EXAMINER: -- Mellow Road is the connection.

MR. TREESH: Yes.

MS. MONTGOMERY: One of the questions that came up yesterday is some folks thought Slater should be widened, some folks didn't, but the Hearing Examiner wants to know whether or not there's any programmed improvements in the CIP for Slater.

MR. TREESH: There's nothing in the CIP, which is the five-year plan for the County, and then I also looked at the Metropolitan Planning Organization's 2040 plan, which is the long-range transportation plan for the County, and there's nothing on the Financially Feasible Plan or the Needs Plan for Slater Road. The only thing in the area that's shown is on the Needs Plan they show Bayshore Road needing to be six lanes out to the interstate, and then they show a future interchange to I-75 further north off this aerial photograph that's on the screen with a connection of Del Prado up to that interchange that, again, is off the, off the map. And they have done alignment studies and so forth for that, but that's, again, on the 2040 Needs Plan. The Needs Plan is basically based on the traffic that's anticipated by 2040, but there hasn't been a financial analysis to show that there's funding available for that. Once the funding is identified, then they put that plan or

improvement on the Financially Feasible Plan, but right now it's on the Needs Plan. Those are the only two long-range improvements that are shown on the plan in this area.

MS. MONTGOMERY: We had a surprisingly large number of people yesterday testify about high rates of speeds and accidents on Slater Road. So one of the questions that came up is using the County traffic methodology. Does that take into account traffic accidents in any way?

MR. TREESH: The levels of service, no. Accidents aren't computed as part of the level of service, but obviously DOT monitors their roadways on a daily, weekly, yearly basis looking at accidents and accident patterns and if something develops DOT remedies the situation that occurred.

MS. MONTGOMERY: There was a lot of discussion about turn lanes yesterday, and one of the questions that came up is can a turn lane be accommodated in the existing right-of-way. Have you had a chance to look at that?

MR. TREESH: I have, but I'll defer to the engineers because it's really an engineering issue in terms of the cross-section of how you make the drainage work. You can always pipe drainage that may

be an open swale at this point. So there's different options, but that's really -- it comes at a design standpoint with the engineers at that time the site plans and engineering plans are being developed.

MS. MONTGOMERY: Several people made mention that this is on a curve and that the access is not appropriately located. Have you had a chance -- I don't know if that's a you question or an engineering question, but I assume you had a chance to visit the site --

MR. TREESH: Yes.

MS. MONTGOMERY: -- and determine whether or not that roadway would accommodate an access point where it's located on the map.

MR. TREESH: We looked at it as well as the engineering firm that will do the ultimate Development Order will look at it, and it's part of the Administrative Code that you have to meet certain sight distance requirements. So if that requires some clearing of the vegetation along our side of the property within our property boundaries, then we'll have to do that in order to maintain proper site lines.

MS. MONTGOMERY: I know you told us yesterday what the level of service is, but the folks keep

insisting that there's something that you missed when you did the traffic analysis. When you do your traffic analysis I thought I heard you say yesterday you either do the analysis in peak season or you use adjustment factors so that it is a peak, peak season, peak hour analysis.

MR. TREESH: That's correct.

MS. MONTGOMERY: And so did your TIS then take into account the existing traffic as well as some projection of future growth to build out the project?

MR. TREESH: Yes, it did.

MS. MONTGOMERY: And with that, what is the level of service on the road?

MR. TREESH: It would be a Level of Service C in our analysis year of 2022, and Marcus's memo from staff also concurred with that conclusion.

MS. MONTGOMERY: And Level of Service C, and I got in trouble with my folks with these, but when we're talking about roads there's extra capacity on that road, isn't there, at a Level of Service C?

MR. TREESH: That's correct.

MS. MONTGOMERY: So a Level of Service C road can accommodate additional trips.

MR. TREESH: That's correct.

MS. MONTGOMERY: Okay. I have no additional

questions.

THE HEARING EXAMINER: Okay. Staff have any that they wanted to, well, to ask of Ted?

MR. BLOCK: No, ma'am.

THE HEARING EXAMINER: Just to follow up on that point that you were just discussing about the level of service. Is there a difference in a Level of Service C for an arterial and a Level of Service C for a collector or a local road? Obviously it's a proportion of the available capacity, but if you have a two-lane road with a set right-of-way width that is classified as a collector versus being the same width road being classified as an arterial, is there an expectation that because it connects through it has more capacity or is there actually less capacity expectation if it's a restricted width road?

MR. TREESH: I'll give you a five-minute synopsis of levels of service. It is irrespective of right-of-way width. That's not a computation. There's many computations that go into -- there's many factors that go into the computations of determination of capacity. Lane widths is one of them, so we look at the lane widths that are available. The number of access connections per mile, the number of conflict points that occur on

that segment of roadway, the speed limit that is on that on that roadway. All these factors go into a computation for the levels of service, and there's several more than I know I'm leaving out but those are the major ones. So an arterial does have a higher capacity than a collector because typically it has longer segments, and, again, that's another item that goes into how long is the roadway. It typically has a higher speed limit than a collector roadway.

So every document that I have seen from FDOT's computations to Lee County's computations, arterials do by default have a higher capacity than a collector. Is it possible to have a collector with a higher capacity than an arterial? Yes. If you've got a collector that has no access on it, is a mile long and has no connections and it's a straight road may have a higher capacity than an arterial that has ten signals on it in the same distance. So it's possible, but generally arterial has a higher capacity, theoretical capacity than a collector or a local road.

THE HEARING EXAMINER: So if this road was classified as a collector road, same lane width, same driveways, all those factors that you were talking about, if it was classified as a collector would it

still be Level of Service C or would -- because the capacity is less, expectation is less?

MR. TREESH: Well, that's hard to say because there would have to be new calculations, and there's no -- the County utilizes software that's produced by the Florida Department of Transportation to produce those levels of service thresholds that are published every three years for the roadways in the county, and there's no box to check if it's an arterial or a collector. The boxes are more related to the operational characteristics of the road than the physical characteristics of the road.

THE HEARING EXAMINER: So that was my question. Its classification is not relevant and to the levels of service.

MR. TREESH: That's correct.

THE HEARING EXAMINER: So a Level of Service C, however it's classified, for this particular road is a Level of Service C.

MR. TREESH: That's correct.

THE HEARING EXAMINER: That was my question, whether the classification -- all right. So the discussions about whether there is sufficient right-of-way for widening or for turn lanes or what improvements are going to be necessary for a project

this size, that's going to come from the engineer?

MR. TREESH: Yes.

THE HEARING EXAMINER: I think that's all the questions I had here.

MR. TREESH: The only other comment I would offer, there was a lot of comments made about the signal down at Bayshore and the queues that extend on that road. There's been a lot of changes to that intersection in the last five to six years with the development of the Publix shopping center. We were involved with that as well as Carl Barraco's and making substantial improvements to that intersection, but mainly on the south leg, and when they did those improvements we put in dual lefts on the south leg. The south leg is called Coon Road. And those dual lefts necessitated changes in the signal timings and the way the signal operates at that intersection. So now the left turns onto Bayshore from both Slater and Coon can only turn on the arrow. It's called a protected left-turn movement. So there's no turn movements on the green ball because you've got dual lefts coming off of the south side. So that's caused some additional delays on that north side, but, again, the signals are maintained by FDOT and the County, and obviously the major road at that location

is Bayshore Road, so their concern is moving the majority of traffic along Bayshore, so the side streets are going to encounter some delay as they -- during those peak time periods when the traffic on Bayshore is the heaviest. But the County and the State evaluate signal timings on a regular basis and they evaluate it based on complaints they receive from the residents and the public. And there's, you know, possible improvements that could be done down in the future at that intersection by the county or the state, but, again, that's quite a distance from our site, and those improvements are always evaluated on a yearly basis by the county and the state as they develop their capital improvement program if things need to be done to accommodate some changes that occurred down there with the development of all the retail and commercial uses at that corner. So there's things that can be done, not specifically related to this project, but, you know, I would encourage those residents to contact the Lee County DOT or FDOT. You know, they're not watching every intersection every day, obviously, but the more complaints and comments they hear from the public, you know, the more attention that these operations will get. And it may just simply be an adjustment of

the signal timings. But, again, DOTs are worried about the main line traffic, which is Bayshore Road, which carries a substantial amount of traffic more than Slater or Coon, so that is always the desire as signal timings go to move the most amount of traffic during those peak hours. So I just wanted to offer that comment as well.

THE HEARING EXAMINER: Thank you.

MS. MONTGOMERY: Thank you.

MR. TREESH: Thank you. Do you need me anymore? Do I get to leave, too?

MS. MONTGOMERY: Yes, you get to leave, too.

Okay, Jennifer.

THE HEARING EXAMINER: We're going to call you when you get about down to the parking lot.

MR. TREESH: Yeah, I know.

MS. MONTGOMERY: The problem is if he gets down to the parking lot he may or may not come back.

THE HEARING EXAMINER: Suddenly his cell phone is off.

MS. SAPEN: For the record, Jennifer Sapen, and I am sworn in.

MS. MONTGOMERY: Okay. The Hearing Examiner had several questions yesterday that I believe fall within your purview. One of the questions was when

was the application filed that changed a portion of this site to Suburban. I believe Raeann Wessel is the one that raised the question of concern.

MS SAPEN: The western portion of the site along Slater Road is a singular parcel, was owned by one entity. In 2007 a small-scale comp plan amendment was approved April 24th for 5.43 acres. The entire property was 16 acres. So the landowner there had two different future land use categories under his single ownership. The small-scale comp plan amendment changed the northern portion of that, the 5.43, from Rural to Suburban.

THE HEARING EXAMINER: So it was split north and south.

MS SAPEN: Correct. I have a copy of a map from the LPA of that item. It may help you.

THE HEARING EXAMINER: If I didn't say it earlier, the original application that was provided is Applicant's Exhibit 5, and then this will be Applicant's Exhibit 6. It's a copy of the small-scale amendment documents.

Okay. And so the rest of the property was already Suburban?

MS. SAPEN: That's correct.

THE HEARING EXAMINER: So only that northern

half of that western lot was --

MS. SAPEN: That's correct.

MS. MONTGOMERY: There was questions, again. Rae Ann Wessel brought it up, about dark skies, and we touched on the fact that the County does look at lighting. Have you had a chance to look into that issue further?

MS. SAPEN: I have. Lee County Land Development Code Section 34-625 dictates lighting standards in Lee County. There is a requirement that the lights be fully shielded with full cut-off luminaries and recessed bulbs, which means the light is faced downward, and there's a requirement that the foot candles may not exceed .5 foot candles on vacant land, and when it's abutting residential property it can't exceed .2 foot candle measured 10 feet from the property line.

MS. MONTGOMERY: One of the questions that the hearing examiner had --

THE HEARING EXAMINER: Hang on.

MS. MONTGOMERY: I'm sorry.

THE HEARING EXAMINER: Does agriculture with a house on it constitute residential in terms of those standards, do you know?

MS. SAPEN: It says it's into a residentially

zoned property.

THE HEARING EXAMINER: So it does say zoned. And do you know whether there are any standards -- there was a suggestion that there not be light spillage into the preserve areas as well as off site.

MS. SAPEN: I heard that. I looked through the Land Development Code section and I couldn't find anything in that. There is -- there's further criteria in the Florida statutes and the County Administrative Code, which I haven't had a chance to look through those, but there wouldn't be light in the trees and there wouldn't be light within the preserve.

THE HEARING EXAMINER: So the light spillage requirement would apply on each person's individual property? Each house has to meet those requirements as well or is it just around the development as a whole?

MS. SAPEN: My engineers are nodding that yes.

MS. MONTGOMERY: How about we let them answer that question?

THE HEARING EXAMINER: Okay. Because that may answer the preserve issue. If the individual lot owners can't have it and the subdivision -- well, except for streetlights, may be an issue with

streetlights. Okay. We'll explore that with the engineers then. We'll put that on their list.

MS. MONTGOMERY: I'm a little uncomfortable with Jennifer saying yes because someone told her to say yes.

THE HEARING EXAMINER: That's hearsay, I think.

MS. MONTGOMERY: One of the questions that the Hearing Examiner had yesterday was the extent of project frontage on Slater. Did you have a chance to do those calculations or look that up?

MS. SAPEN: The Slater frontage has 2,763 linear feet. Wait. That doesn't look right.

THE HEARING EXAMINER: No. I think it's about 500 feet. I measured it this morning, although Lee Spins was not working very well.

MS. MONTGOMERY: I have a question. Do you have a copy of the survey? Do you need a copy of the survey?

THE HEARING EXAMINER: I don't know. Is that in the staff report? There's a legal description and there's a sketch that says it's not a survey.

MS. SAPEN: Your estimate was correct. There is roughly 450 and another length of roughly 50 feet. So the frontage along there is just a little over 500 linear feet.

THE HEARING EXAMINER: Yes, this is the survey. I have it, not that I could read it at this scale, but that answered the question.

MS. MONTGOMERY: If you need a copy that you can read is that something that would be helpful to you?

THE HEARING EXAMINER: My question on that width really goes to the transportation and your engineer's design and et cetera. You had raised that you wanted to have the lake on the north side to provide a buffer and to move the driveway around, but then we got talking about, well, one neighbor to the south of the driveway area was concerned about the noise from the road, and then there was a discussion about how could you put turn lanes in when you don't own the frontage where the turn lane is going to go, whether additional right-of-way would have to be given. So that was -- if you only have 500 feet and the turn lane has to be 500 feet long, unless you put the road all the way at the northern end, but that sort of engineering, what sort of improvements are required, what are the lengths of them, et cetera, et cetera. So I don't know that I'm going to need the survey unless in our discussions with the engineers it becomes relevant. So we'll go with the one I can't read.

MS. MONTGOMERY: We won't give you more paper just for the sake of giving you more paper.

THE HEARING EXAMINER: I appreciate that.

MS. MONTGOMERY: Jennifer, I know you have a graphic. I don't know if you want to discuss it or have the engineer. There was a question about how wide is the creek and how wide is the preserve area.

Now, let me ask you a question before you go. How are we going to get these graphics if they're not already with the Hearing Examiner to the Hearing Examiner?

MS. SAPEN: I can email them to you. I can have -- we can actually call someone at our office and have them delivered before we leave here today.

THE HEARING EXAMINER: That's fine, or any time today. We will view them electronically and receive them electronically. It won't be a written submission. If you want to give me a paper copy of it, which would probably be preferred, we'll just accept that, like we're going to get the zoning map, the revised zoning map, without having to do a written submission.

MS. MONTGOMERY: I just want to make sure you get the information so you have it.

Can you walk us through this graphic?

MS SAPEN: I'll let the engineer explain the implications of these widths, but just to explain from a site plan standpoint and this graphic, the dimensions on the right side of the slide are dimensions of the creek. Dimensions on the left side are dimensions of the preserve. I chose a different location shown here. I started at the centerline of the road-crossing, and the creek at that point is 50 feet wide. That's at the centerline of the road. Then we look at the creek width at the top of the slide, which is actually the width of both creeks, which is 263 feet, and south of the road-crossing the creek is 20 feet wide. So you can see that the creek itself gets smaller as it passes through our project and is the smallest past our crossing.

On the left side you see the preserve width, and this just demonstrates that in addition to the creek there is anywhere between 500 and 130 feet additional preserve beyond the creek itself.

THE HEARING EXAMINER: Okay. I do need to identify this as an exhibit, though. So the dimensions will be Exhibit 7.

MS. MONTGOMERY: Yeah. And there's other graphics as well. I mean one of the graphics just -- you can see it off to the left there. I would click

on it but I'll probably make everything disappear.

THE HEARING EXAMINER: The FEMA flood map?

MS. MONTGOMERY: The actual picture of the creek. I thought that would be helpful for you to see, and the reason I thought it would be helpful because if you have ever driven up 17 and you see Prairie Creek it has no banks and essentially in the summer it's just, you know, it's just free-flowing, and this creek has actual banks and can be readily determined, which isn't always the case, so we thought it would be helpful for you to see a picture of what the creek actually looks like.

THE HEARING EXAMINER: We will just call this composite exhibit of the creek pictures and graphics and that will be Number 7.

MS. SAPEN: And this photo was taken just a couple of days ago.

THE HEARING EXAMINER: And do you know approximately what point you were that picture was taken from, where on the property?

MS. SAPEN: Our engineer, Wes Kayne, took the photo. I'll let him tell describe it.

MS. MONTGOMERY: And the Hearing Examiner had a a question yesterday about whether or not we were able to locate any photographs of the subject site in

the days following Irma.

MS. SAPEN: We didn't take photos ourselves. However, Google Earth allows you to change the date up at the top on the application, and coincidently there were photos taken just a couple days after Hurricane Irma. They're a little bit darker because of the cloud cover, but these do show some of the flooding in the area, which our engineer can explain a little bit further, but that's the source of these aerials.

MS. MONTGOMERY: But the lower right-hand corner is a picture of the site on the 14th of September?

MS SAPEN: Correct. Those are the treatment ponds just south of the project and that's the mobile home park and there's the creek crossing.

THE HEARING EXAMINER: The County also took aerials, did they not? I thought I had seen some post-Irma. I had forgotten about that.

MR. LEE: After Irma everybody who was able to access Google they took a picture, I think it's September 12th aerial photo. I think that's the one I know. I seen that one. I have a copy here of the similar picture on that one on the condition on September 12th, which is two days after Irma.

THE HEARING EXAMINER: Okay. Because I thought

when you looked at Lee Spins there was -- like what happened after Charlie, there were pictures taken before Charlie, beginning of the year, and then after Charlie. I thought there was a September picture on Lee Spins, but we'll check on that.

MR. LEE: We do have the information on the web, County web page, that Irma, Hurricane Irma and pictures. And we hired contractors at selected creeks to have them walk over and survey it, took pictures on it. All their information -- in fact, I have some more, several of the pictures, snapshots, to show extent of County did it. Also including on-ground picture while driving on Mellow Drive and also flights, two flights, the picture I have here, but none on the Slater Road. Mellow Drive is more extensive flooding than Slater Road. If you want I can show it to you.

THE HEARING EXAMINER: Okay. Yes, I would appreciate that information as well when we get to staff. Okay.

MS. SAPEN: I do have a response. Mr. Barry this morning asked how many single-family, what type of units would go in there. The request is for a total residential density not to exceed 330 units. However, if the property is developed as all single

family there's a maximum cap of 210 single-family units.

THE HEARING EXAMINER: Okay. And is that the number that was used in the traffic analysis as the worst case?

MS. SAPEN: That's correct.

THE HEARING EXAMINER: Okay. So what limits that? Is there something in the application or in the Master Concept Plan or --

MS. SAPEN: Our request statement included that.

THE HEARING EXAMINER: Would you object to a condition stating that?

MS. SAPEN: No, a condition of that would be great.

THE HEARING EXAMINER: Okay. And that's because the single-family generates more traffic than the others? Is that the relevance of that?

MS. SAPEN: Right.

THE HEARING EXAMINER: Okay. So there could be 120 multifamily. Now, does that number include single-family and two-family attached or just single-family detached.

MS. SAPEN: Just single-family detached.

THE HEARING EXAMINER: The traffic calculations I believe I had heard were the same, and now we have

let Ted go and Marcus, but I think that the traffic calculations are the same for two-family attached. Is that not correct? Marcus, come back.

MS. SAPEN: I'm not a traffic expert. However, I do know what these products look like with a single family -- or the two-family attached products. Typically those are smaller square footage than single-family detached. A lot of times the two-family attached are single story. Where you're more likely to have a two-story unit, meaning larger families, are more likely more drivers in a single-family detached than a two-family attached.

THE HEARING EXAMINER: He's back. Thank you.

MS SAPEN: And Marcus can give a better opinion on that.

THE HEARING EXAMINER: I don't know if you heard the question as to whether two-family detached is calculated the same rate as single family -- or two-family attached is calculated at the same rate as detached.

MR. EVANS: Yes, it is, yes, it is, from an ITE standpoint that's how we would review it, yeah.

THE HEARING EXAMINER: And town houses are calculated the same rate as multifamily; is that correct?

MR. EVANS: ITE has kind of changed some with their latest edition that just came out very recently, within the last two or three months. I would have to look at that to see because the multifamily has changed. I think, as I recall, there's a low-rise, a mid-rise and a high-rise multifamily. So I believe a townhome would be considered multifamily low-rise.

THE HEARING EXAMINER: Okay.

MR. EVANS: I would have to look at that.

THE HEARING EXAMINER: It's at a lower rate than single family is.

MR. EVANS: It would be, yes.

THE HEARING EXAMINER: So if the commitment that was done in the traffic analysis was that there would be 210, if that was the numbers -- I didn't remember the exact number. I remembered that there was a worst case scenario that Ted introduced. If it was so many of single-family and so many of multifamily, that single-family number for the traffic analysis included the two-family attached, correct?

MR. EVANS: Yes, yes, it would.

THE HEARING EXAMINER: So in that condition that you agreed to a minute ago would you agree to having that limit be the maximum number of single-family

detached and two-family attached since that's the way the traffic is calculated?

MS. SAPEN: I believe we would agree with that if that's consistent -- because it is consistent with the traffic analysis with this application.

THE HEARING EXAMINER: Okay.

MR. EVANS: Certainly give more flexibility to how it's developed.

THE HEARING EXAMINER: Well, if the maximum is 210 and that includes most of the product that you're going to have that forces the 120 multifamily units to be able to get all 330. And I don't know whether the numbers work that way, but if the numbers don't work that way, if you're not willing to make the commitment then -- I'm concerned about having the traffic analysis run on a worst case scenario and then there not being conditions holding the project to that worst case scenario, because if the product mix ended up being 210 detached and 120 single-family attached, then you've got a much worse traffic.

MS. MONTGOMERY: And I think we're okay with this but let me just have --

THE HEARING EXAMINER: We will put that aside and let's think about that one.

MS. MONTGOMERY: Especially since Ted is not

here. We may have to --

THE HEARING EXAMINER: I knew we shouldn't have let him go.

MS. MONTGOMERY: I know. That's always how that works.

THE HEARING EXAMINER: Well, I think it was one of your graphics in the -- one of his graphics in the PowerPoint presentation where he listed the numbers, and as I recall --

MS. SAPEN: Yeah, one hundred -- it's slide 51, and 120 multifamily and 210 single-family.

THE HEARING EXAMINER: Right. So in that he was assuming, it appears, that the two-family attached were considered single-family.

MS. MONTGOMERY: Whatever ITE says it is is what I'm sure he did.

THE HEARING EXAMINER: Well, look at that, but given, given the number of concerns about traffic --

MS. MONTGOMERY: I hear you. I just want to make sure.

THE HEARING EXAMINER: Okay. So we'll come back to that.

MS. MONTGOMERY: Okay. And thank you, Marcus. You thought that was a simple question.

MS. MONTGOMERY: All right. Our next witness

would be Wes Kayne.

THE HEARING EXAMINER: And, no, you can't leave, Jennifer.

MS. SAPEN: I won't leave.

THE HEARING EXAMINER: I'm not letting anybody else leave.

MR. KAYNE: Jennifer is my ride home.

MS. MONTGOMERY: She's here for the duration.

And everybody remembers that we're still under oath, correct? I just want to make sure.

MR. KAYNE: For the record, Wes Kayne, still under oath.

MS. MONTGOMERY: All right. One of the questions that has come up a lot is, and in varying interpretations, but the concern expressed by a vast majority of people that live a half mile or mile to the north is you're going to put a road across this creek and you're going to force that water north and we're going to have more water. How do you respond to that concern?

MR. KAYNE: My response is that through the design and development process we're going to be held to certain regulations based on county, state and federal regulations because there's a FEMA floodway. So we are not going to impact this floodway with

crossing it. When we cross it we will have to study what the discharge rate is as modeled by FEMA and we will have to allow that same rate through there without increasing the stage upstream.

So upstream of this site at Bright Road there's actually -- I couldn't tell if it was an actual bridge or if it's just a very large steel culvert crossing. Then downstream at Bayshore Road is several large box culverts. So the final design will be somewhere in between there depending on the analysis.

MS. MONTGOMERY: When you say between there, you are saying it's either going to be some type of bridge structure or it would be a box culverts.

MR. KAYNE: Yes. And that would be depending on the analysis and obviously the cost effectiveness for the developer.

MS. MONTGOMERY: We heard one gentleman yesterday say on his property he has four 36-inch culverts. The number and size of those culverts, is that something you would have to determine when you go through your analysis?

MR. KAYNE: Yes, we would have to determine that.

MS. MONTGOMERY: And will the agencies allow you

to, what the residents say, dam the creek and cause it to back up?

MR. KAYNE: No.

MS. MONTGOMERY: And let me ask you a practical question given the location of the roadway crossing. If you were to dam the creek and cause it to back up, who is the first property that would be impacted negatively by that?

MR. KAYNE: Well, the southernmost portion of our development, so it would impact us first. Well, the development first.

MS. MONTGOMERY: Is that something you are inclined to do with your license?

MR. KAYNE: No, I'm not.

MS. MONTGOMERY: One of the questions is, raised by Rae Ann Wessel is that the Caloosahatchee --

THE HEARING EXAMINER: Neale, Neale, let me ask you to not identify who raised the questions necessarily unless there was a specific opinion that was expressed that you would like to have countered because -- the neighbors raised the question, so --

MS. MONTGOMERY: Okay. A neighbor well, she's not really a neighbor. She lives three-quarters of a mile away. A question was raised about water quality and would we be having a deleterious impact on an

impaired water body. Have you had a chance to look at that issue?

MR. KAYNE: Yes. Generally speaking, I have taken a look at it since yesterday and this, this property is located within the Daugherty Creek watershed, which is an impaired waterbody based on FDEP's determination and it's impaired for total nitrogen and fecal coliform. We would essentially be going from ag use to residential. And actually when you look at the runoff concentrations for those two uses, agriculture, pasture is actually higher than single-family. Further, just pure kind of common sense looking at it, you're going from ag land -- fecal coliform is from animal and human excrement. So you're removing the ag use and then you're going to a central sewer system. So any human waste that's developed on the site would be taken to the wastewater treatment plant. So that's -- and also because we are in an impaired waterbody we would have to provide a nutrient loading analysis as part of our permitting process, which would, which would show that we are at or below the current nutrient loading.

MS. MONTGOMERY: We wouldn't be able to get our water quality certification without doing that, correct?

MR. KAYNE: That's correct.

MS. MONTGOMERY: And you need to get your water quality certification in order to get your ERP.

MR. KAYNE: That's correct.

MS. MONTGOMERY: I know from sitting on WRAC that there's a lot of concern in Martin County, the St. Lucy River, with water quality and there has been extensive studies done about septic tanks and the negative impacts on fecal coliform levels. So in this instance going from single-family on septic to a project with central sewer, doesn't that help the fecal coliform?

MR. KAYNE: That would provide a benefit to the basin.

MS. MONTGOMERY: And, if you know, the residential development will have to comply with the County's fertilizer regulation, won't it?

MR. KAYNE: That's correct.

MS. MONTGOMERY: So that helps with phosphorous and nitrogen.

MR. KAYNE: That's correct.

MS. MONTGOMERY: The Hearing Examiner -- obviously we have heard a lot of stories about people under eight inches or more of water, particularly north of Mellow Road. So have you had a chance to

look at the FIRM map to ascertain what's going on relative to the floodplain and this property and properties to the north?

MR. KAYNE: Yes. And we did bring copies of the FIRM panel for this site. Now, it does kind of cut off the Mellow Road area, but we do have this --

THE HEARING EXAMINER: You obviously didn't get that today because that's the map that wouldn't load this morning, so lucky you got it yesterday.

MR. KAYNE: Well, maybe I was tying it up. So, yeah, this was a screen shot from Lee Spins and it essentially shows the FEMA flood delineations throughout this area. And I like this a little bit better than the FIRM panel because it's nice and colorful and gives you a little more idea of where you're actually at in the world versus this black and gray white paper.

So we are essentially, the development is essentially located right here as outlined, and all of the yellow area is considered Zone X, which Zone X reads that it is areas of point two percent -- areas -- got to make sure exactly what I'm reading here. Other areas, Zone X. Areas determined to be outside of the .2 percent annual chance floodplain. So a majority of this site is actually outside the

floodplain, and the reason for that is the Daugherty's Creek that runs through here as seen in the photo that I took, it's a very well-defined and channelized floodway. So as you go further north you can see it starts spreading out because those areas become less defined channels and lower areas. So our site essentially doesn't have any development that's occurring in the flood -- in a flood zone. It's Zone X.

THE HEARING EXAMINER: The .2 percent that you were talking about, that's the 500, what's commonly called the 500-year floodplain?

MR. KAYNE: That's correct.

THE HEARING EXAMINER: And the rest of the area, the blue is the hundred year floodplain?

MR. KAYNE: That's correct. And then the hatched is the actual floodway through there. So we're at a narrow point, but that's because it's deep channelized flow through the site. If you look at the aerials from the post-Irma, what I saw they were 9-14, so approximately three days after, you basically saw this same situation occurring, what you would expect, that there's a lot of flooding north of Mellow and west of Slater and in areas that were on the east side, I believe they call it Slater Pines,

and that's actually an adjacent basin. That's East Daugherty Creek watershed and that line runs kind of through here.

So basically what I'm saying is the storm events that occurred over the summer that are hundred-year-plus storm events, we saw kind of what was expected based on the FEMA flood studies out there, and we wouldn't be doing anything to exacerbate that issue.

MS. MONTGOMERY: So, Wes, let me ask it a different way. It appears based on what people identified where they live that the vast majority of people who experienced flooding lived in what we're looking at as a blue area.

MR. KAYNE: That's correct. They were primarily in the blue area, and I heard several say that their homes were fairly old, and this study is the most recent one, 2008.

MS. MONTGOMERY: I know one of the people testified that her home was built in 1959. So for those people whose homes are in the floodplain and were built not to FEMA elevations would you expect that they would experience flooding in a hundred year storm event?

MR. KAYNE: Yes, I would.

MS. MONTGOMERY: So it's unfortunate that they experienced flooding, but that's a direct result of being too low in a floodplain, isn't it?

MR. KAYNE: Yes, that's correct.

MS. MONTGOMERY: Is there anything this project is going to do that's going to exacerbate their current problems?

MR. KAYNE: No.

MS. MONTGOMERY: One of the questions that the Hearing Examiner raised is, and I think maybe the residents, if you know, how deep will the lakes be?

MR. KAYNE: Twelve-foot typical and 20-foot max, and that's based on Lee County Land Development Code. That really depends on the quality of the materials that are being excavated.

THE HEARING EXAMINER: Before we leave the floodway and the FEMA map, were you able to superimpose that over your project? I guess my question is, is the -- is there any portion of the AE zone, I guess it's called, the blue area, that is outside of the preserve area?

MR. KAYNE: If you look in this area right here it just barely clips the back end of these lots, but it would be outside of the building pattern.

THE HEARING EXAMINER: It is an area that may be

filled, but just that very small area it would be filled. And there's no prohibition of being filled in the AE zone if you're outside of the floodway; is that correct?

MR. KAYNE: That's correct.

THE HEARING EXAMINER: There's no requirement that you -- the carrying capacity for the area that you filled has to be provided somewhere else or --

MS. MONTGOMERY: Are you asking would we have to provide compensating storage?

THE HEARING EXAMINER: Yes, for the fill in the AE zone.

MR. KAYNE: To my knowledge, you know, if we were to impact this floodway --

THE HEARING EXAMINER: Floodway I know you would have to compensate for it, but the floodplain -- several people talked about this would stop the ability for the -- for it to come out of the bank and have an area to flood, and the flood maps are showing that a hundred-year flood event and they don't anticipate that there being a different line for a 500-year flood event apparently, if all of that hundred-year flood event is within your preserve and you were not allowed to fill your preserve, then you're not reducing the carrying capacity, but if

there are areas that go into that hundred-year floodplain area, then the requirement is only to protect capacity within the floodway, not within the hundred-year flood; is that correct?

MR. KAYNE: To the best of my knowledge.

MR. LEE: Can I --

THE HEARING EXAMINER: Yes.

MR. LEE: My understanding would be yes, so far you repeated it right. Within floodway is a FEMA regulation issue, that FEMA granted the local community to preserve that one, and that's why my initial staff report recommendation two option. One is have the map revised or through local community government allocates, the County submit that -- provide, submit analysis to show your proposed encroachment causing zero rise of water level on your site and upstream and downstream. Zero means 0.1 foot rise. That's within floodway encroachment. Outside floodway, which is called floodplain, that's the Water Management District has provision of that. Okay. You want to fill this building pad, whatever amount, you have to make it cancel that amount of fill by providing more storage. So that's called import and export of the material within your site. That's what the Water Management District purview for

them to require design property outside of floodway but still in floodplain.

THE HEARING EXAMINER: Okay. So if there is any portion of the buildable area that encroaches into the floodplain and they fill that, those lot pads, then they're going to have to have a comparable amount of increased stormwater storage or flood water storage to accommodate that.

MR. LEE: That's what regulation, but that's what I'm saying, that no regulation is perfect, and although many people say too much regulation, but hydrologically if you -- they propose a perimeter berm surrounding the property separated by a creek, one is the east and one is the west, but that is totally enclose the berm. Normally six inches to 12 I think is elevating it. So every time I see that one they meet the district requirement because, oh, I'm filling 100 square feet of cubic yard of material, but to cancel that one I'm going to excavate providing more storage. So until the filling material volume plus or minus equal zero, fine, but I see straight line of a foot or higher berm and when it water flowing without project trickle down from sheet flow collecting to the creek and then running through, in general this one is

going this direction this way and then running down through. It's blocking -- regulationwise okay. We don't have any regulation to provide for me, so the larger development we ask them to have a break if that is beyond that thousand feet, and we sit down with engineer, look, you are going to destroy pretty much all the sheet flow pattern, have it piling up. So that until -- before it overflow your farm, you farm is higher, so that it's overpassing, bypassing it to your project site causing pile-up. That's what's going into the comment that you will be the one first impacted by it if you design elevating it. Well, but unfortunately that's not exactly true because your berm as shown here runs off here, so water level higher will not coming into until it's higher than your berm. So your project, people living inside your project will not notice it. I'm saying hydraulic-wise.

THE HEARING EXAMINER: So if the sheet flow is coming from the north, going south southwest toward the creek and it gets to the northern end of this project if it's approved and built, and there's a berm, do they not have to have their ditch, for lack of a better word, be lower than that adjacent property so it will still receive the flow from the

neighboring property and then channel it to the creek or to their ponds?

MR. LEE: Typically they, after and before the berm they have a ditch so that in this case water collected it. Just like the one west of that one straight black line and then horizontal, that other property owner talked yesterday, somehow water collected, either it has to dump into the Slater Road, the ditch, east side of the ditch, or have to go up, and they're -- not all the way to black line. There was a proposed development at the lake, that he pointing out that screen over there, have to go up and then going into the creek. So some way, again, I don't have any code to regulating of have them change it. It's typical development designing in throughout this area. So that's what I'm saying. You cannot avoid this general impact some degree.

THE HEARING EXAMINER: Okay. So when the requirement says that you have to accept water that is currently flowing on the property and you can't dump off your property water that is not already being discharged off of your property, if the flow is from the north to the south do they not have to design the system under the county's regulations or the state or federal, do they not have to design it

so that the sheet flow coming in is accepted into their ditches and into their stormwater system?

MS. MONTGOMERY: Whoa, whoa, whoa. You have to deal with off-site flows, but typically you don't want to mingle off-site water with your water because then you become responsible for somebody else's water quality issues. So you typically pass it through some way or you pass it around but you don't mingle the water. I'm not an engineer, but let me ask Wes that question.

My understanding of the district criteria you do have to handle offsite flows, but am I correct you typically don't mingle your water with the offsite flow water?

MR. KAYNE: I mean, there's a couple approaches to that. I have seen it done where, yes, you would help get it to the existing waterbody it flows to or you can accept it and pass it right through without any -- without having to store that water quality.

THE HEARING EXAMINER: You still have to accept it. There has to be a ditch --

MS. MONTGOMERY: Yes.

THE HEARING EXAMINER: -- something along the northern property and it may ditch and go straight over to the creek. You don't have to protect the

quality of it. It's the same water that's already flowing there, so you just accept it into the ditch and it flows into the creek, but you have to accept it, correct?

MS. MONTGOMERY: Yes.

MR. KAYNE: Yes.

THE HEARING EXAMINER: And is that not what you were saying, that they didn't have to --

MR. LEE: Yeah.

THE HEARING EXAMINER: Okay. You're saying the regulations address that but it may not guarantee that there's not going to be a change.

MR. LEE: Again, I basically agree with their design, but I'm saying hearing the citizens, I'm not saying citizens have always right or they don't have -- most of them don't have engineering license, but some way as a citizen myself and staff there may be some degree of impact, but regulation state and countywide that was practice we have been through here as a normal practice.

THE HEARING EXAMINER: Okay, okay. Well, that kind of goes to the question, you have shown us the maps of the FIRM, but is there anything from the County's perspective different about this drainage basin, this geology, anything else that says that

there is a necessity for this project or any other project in this basin to be treated differently or more restrictively than the regulations that apply across the county?

MR. LEE: By and large it's typical in terms of area-wide hydrology, hydrologywise, typical site except one minor thing. I would, by the time development was coming in, would discuss with engineer, consider about northwest, northwest side of property owner, make sure they are developing, able to dump the water outside of the ditch, collect the water and either send to creek or make sure that all right to go through east side of Slater roadside ditch. That's what detail things I'm going to check whoever at the time, whenever they submit it, so that's when I start checking. Otherwise, this is a typical development case.

THE HEARING EXAMINER: So there's nothing extraordinary about this basin or anything. There are just details that have to be looked at as there are details in any project with engineering on it.

MR. LEE: Yes.

THE HEARING EXAMINER: Okay. So you talked about the depth of the lakes. And that's controlled by regulations, right?

MR. KAYNE: That's correct.

MS. MONTGOMERY: And under the county regulations, if you go to 20 feet you have to do a deep lake management plan; is that correct?

MR. KAYNE: That's correct.

MS. MONTGOMERY: And that helps ensure water quality.

MR. KAYNE: That's correct.

MS. MONTGOMERY: Speaking of the lake, several residents raised the concern that digging these lakes will have an adverse impact on their shallow wells and they won't be able to get water. Do you have an opinion as to whether or not the digging of these lakes will adversely impact any wells?

MR. KAYNE: The water that essentially fills these lakes as was referred to yesterday by the residents is the same water that's there without the excavation. So that's surface water that's underground that once you dig out the lakes it's exposed and so it would not have a detrimental impact to wells.

MS. MONTGOMERY: In other words, it doesn't change anything relative to their wells.

MR. KAYNE: No. Because part of our surface water management system also is to have control

structures that keep those lakes at an appropriate level during the wet season.

MS. MONTGOMERY: It's sort of ironic at the same time they all talked about flooding they also talked about it's too dry right now. When it's dry groundwater levels drop everywhere in the county. Is that correct?

MR. KAYNE: Absolutely.

MS. MONTGOMERY: So impact to their wells is more a result of the amount of rainfall in the county and where they are in the dry season versus the wet season.

MR. KAYNE: That's correct.

MS. MONTGOMERY: And we see that when we look at a water management lake because the lake levels vary from wet season to dry season.

MR. KAYNE: Yeah. They can fluctuate two to four feet depending on areas and environmental conditions, weather conditions.

MS. MONTGOMERY: But at the end of the day nothing this project is going to do is going to impact how effective their wells are in the dry season one way or the other.

MR. KAYNE: Will not have an adverse impact.

THE HEARING EXAMINER: Can I ask a question?

Can there be a potable well, drinking water well 20 feet or less deep?

MR. KAYNE: I can't speak for older wells, but I know newer wells are drilled into the aquifer much deeper than that.

THE HEARING EXAMINER: You don't know whether there's a Health Department restriction on whether a well, especially with all the septic tanks that are out there, you don't know whether there's a Health Department restriction on how deep your well has to be if it's used for drinking water?

MR. KAYNE: I don't generally design wells.

THE HEARING EXAMINER: Do you know one way or the other, Mr. Lee?

MR. LEE: I do know the number, but I'm not into saying the well depth. We have other staff members in that area. If you want I can call him down here.

THE HEARING EXAMINER: My only thought was the concern that it would affect the well. In most cases a well that is a drinking water well is going to be from a lower aquifer than the surface water.

MS. MONTGOMERY: Some of the older ones out there I suspect are in the surficial.

THE HEARING EXAMINER: Then they better hope

that the septic tank upstream from them is not getting used very much. Okay. All right.

MR. KAYNE: Or the treatment ponds.

MS. MONTGOMERY: One of the questions that came up yesterday was, and I think we can talk about it from this graphic, is will we be placing any fill in the preserve area. Are we going to raise the height of the preserve area?

MR. KAYNE: No, we wouldn't be doing any impacts within the conservation easement.

THE HEARING EXAMINER: And that we have, we have two graphics that we can't quite overlay, but pretty much from what you showed the preserve area corresponds -- or the floodplain is entirely within the preserve area. There won't be any fill except that small area that you talked about. So any commitment to not raise the ground in the preserve area also won't raise the ground in the floodplain area.

MS. MONTGOMERY: One of the questions that came up yesterday was, if you know, whether or not reuse is available to this property.

MR. KAYNE: To the best of my knowledge it is not available at this property, because we did request utility record drawings from LCU and there

was no indication of reuse mains nearby.

MS. MONTGOMERY: Switching to the other side of the property, you heard Mr. Treesh punt to you the question of whether or not the 50-foot -- or the right-of-way --

MR. KAYNE: Fifty-five-foot right-of-way.

MS. MONTGOMERY: -- accommodates the turn lane. Can accommodate the turn lane.

MR. KAYNE: In my experience we have been able to design turn lanes to fit within a 55-foot right-of-way.

MS. MONTGOMERY: And then the follow-up question to that is will the turn lanes be in the 50-foot setback to the lake? In other words, the 50-foot setback from the right-of-way, will the turn lane be in that 50-foot area or outside of that 50-foot area? I'm assuming based on what you just said it's outside.

MR. KAYNE: Well, my understanding of the turn lane it would be northbound right, so it would be south of the lake.

THE HEARING EXAMINER: Well, will there be a southbound right, a southbound left turn lane, south to east turn lane?

MR. KAYNE: I didn't review that. I mean if

there is, then, I mean, we would fit that turn lane within the right-of-way.

THE HEARING EXAMINER: Normally with a project this size does the County's regulations require just a right-turn lane in?

MR. KAYNE: It depends on approaching trips or approaching vehicles versus how many trips are going each direction. I didn't review that. I wasn't responsible for the TIS, but if there is a southbound left into the site the same thing with the right-in from the south, it would be within the 55-foot right-of-way that's existing.

THE HEARING EXAMINER: And if there's not enough right-of-way to do that would this project be required to dedicate right-of-way necessary to put the turn lane in if the turn lane is required?

MS. MONTGOMERY: It's my understanding from Mr. Treesh, who now I regret letting him leave, is that if the turn lane is required it would be a right-in, you're correct, and that after talking with Wes that it can be accommodated within the right-of-way.

THE HEARING EXAMINER: Okay. So the turn lane that we have been talking about -- sorry that Marcus had to leave, too. The turn lane that we have been

talking about is not a southbound to eastbound turn lane.

MS. MONTGOMERY: Right. It's a northbound --

THE HEARING EXAMINER: To eastbound turn lane.

MS. MONTGOMERY: Eastbound.

THE HEARING EXAMINER: Okay. Because I think, I was thinking that the turn lane we were talking about is the southbound as well as the northbound, that there would be two.

MS. MONTGOMERY: Mr. Inge was in the meeting what Ted said about it and it was his communication. My memory could be faulty, so --

MR. INGE: Ron Inge. Ted did say it's his opinion at this point just a right-in turn lane would be constructed, wouldn't be enough traffic coming from the north.

THE HEARING EXAMINER: So the traffic analysis shows p.m. peak -- or a.m. peak motion coming down is only six cars and p.m. peak is 16 of that turn movement, south to east turn movement, and northbound it's 93 in the p.m. and 26 in the a.m. So that's probably where it came from. There's only supposed to be six trip turns.

So the northbound turn lane, the northbound to east turn lane you're saying would be within the

right-of-way by culverting --

MR. KAYNE: Yeah. There's already some existing drainage out there, so it would be configured to make sure that drainage is still there.

THE HEARING EXAMINER: Are the ditches on both sides of the road currently?

MR. KAYNE: I believe there's a swale on each side of the road, but I believe during the sidewalk construction project that they also placed some drainage inlets and piping.

MS. MONTGOMERY: One of the questions that the Hearing Examiner had yesterday is, and I think based on concerns raised by the public, several people looked at your drainage graphic and said how are you going to make that water flow north?

THE HEARING EXAMINER: Before we leave it, since Marcus has come back in graciously for us, the question was whether or not there was likely to be required or anticipated there would be a southbound to eastbound turn lane or just a northbound to eastbound turn lane.

MR. EVANS: That's extremely difficult to answer in that we don't have a Development Order that actually shows what they're going be building.

MS. MONTGOMERY: Right. And I agree with

Marcus. I don't want to get into this because we don't have the DO level analysis and we don't know what the final number of units --

THE HEARING EXAMINER: Let me ask --

MR. EVANS: I would be cautious to say yes in that it's all going to depend on what the intensity is, what they actually build. They're asking for this much. They may be building significantly less. We don't know.

THE HEARING EXAMINER: Let me ask it this way. If there was a warrant or a justification for a southbound to eastbound turn lane and there is not enough right-of-way or the configuration of the curve of the road or whatever is not adequate, is the County able to require that the developer provide the right-of-way off of their property to put that turn lane in? Is that part of the improvements that are required if it warrants a turn lane?

MR. EVANS: It's my understanding that could be required because they have control of that right-of-way. If they don't have control of that right-of-way certainly we would be hard-pressed to have the applicant try to negotiate a right-of-way purchase with a neighboring parcel. If they control the right-of-way we have some ability to work with

the developer to -- for that right-of-way to be either dedicated or an easement or some type of a legal means to be able to widen that roadway. But, again, I would agree with Neale in that it's something we should have on the radar, but at the same time we're very -- based on Mr. Treesh's analysis he's showing 16 southbound left turns into the site, and, as I recall, the warrant for a left turn is ten, so they're six above that. And so if indeed the intensity of the actual development when they come in for the Development Order is less than what we looked at in the zoning or the composition of multifamily to single family is somewhat different, those six trips could disappear potentially in the sense that it doesn't trip a warrant. I think this might be -- well, I think this is premature. We don't have a site plan to work from.

THE HEARING EXAMINER: My only concern is given all the discussion that there was about this being a curve and being narrow with ditches on both sides, et cetera, et cetera, I was wanting to make sure that within the County's regulations there is a way of ensuring that if turn lanes are warranted, whatever improvements are warranted by this project that there is physically enough room to do it without the County

having to come in and condemn somebody else's land, et cetera, and it sounds like that there is. There's a 55-foot-wide right-of-way with ditches existing, but do you agree that if there's not enough right-of-way there is the capability of providing it for the southbound one? There's not for the northbound one but --

MR. EVANS: Without more information I'm cautious to make a guess at that. The other thing is drainage is one thing, utilities are another thing. We don't know -- I don't know what utilities are out there, if there's some major fiber-optic lines or other issues, utility issues, and that, again, is something we look at during the Development Order phase of this whole project. There are a number of elements that need to be considered.

THE HEARING EXAMINER: What happens if there isn't enough right-of-way and it's not practical or possible to put in the improvements that are warranted? Does the County say you have to reduce your project?

MR. EVANS: The County has some ability to restrict the access. Maybe it's right-in/right-out, which would certainly be very, very difficult from a development standpoint, but the County does have some

ability to restrict the movements at that access.

THE HEARING EXAMINER: Okay. So if it can't be done, physically can't be done, then the County does have the power to say you have crossed the line and you've got to reduce things down or change things until it meets the County's requirements.

MR. EVANS: The County does have that ability, again, reasonably working with the applicant and trying to weigh all the factors, yes.

THE HEARING EXAMINER: I mean, you know, it's great to say yes, we're going to meet the requirements, but if the reality is that the requirements can't physically be done, then the question is then what, and it sounds like the answer is that the County can make sure that the County's regulations are met and the requirements have to be met.

MR. EVANS: For that matter the County could say no access. Again, we want to be cautious about stating this is going to be how it is. We don't have all the information.

THE HEARING EXAMINER: My finding that I have to make is the roadways are adequate or can be made adequate to accommodate the project and that's what I'm trying to understand. Thank you. And we'll try

not to bring you back down again. Thank you.

MR. EVANS: Should I leave?

THE HEARING EXAMINER: It's up to you. You might want to wait. You might want to wait until the engineer is through anyway.

MR. EVANS: I am more than happy to stay.

MS. MONTGOMERY: Before we took that segue into turn lanes and access you were going to address the question of are you making that water flow north and how are you going to do that, and coupled with that is the Hearing Examiner's question of do these lakes interconnect before they discharge into the creek and how exactly. We need more information on how your system works.

MR. KAYNE: Sure. So just basics of stormwater management system in southwest Florida essentially. So in our -- in the project what will happen, like Sam was discussing earlier, there would be a perimeter berm around the site, the developable site, and that would be based on a 25-year storm event elevation based on current requirements. The roadways will be set a little bit lower. There's usually five- to ten-year, five is the minimum, sometimes a little higher than that, but five-year minimum road elevation and most likely would be

closed drainage with inlets and storm drain pipe. And I did put arrows on this to show the interconnectivity of the lakes, but realistically that water, I mean, if there's more rainfall in this area, you know, if they're interconnected they will flow in any direction because it's going to be one basin. So all those lakes will rise the same and fall the same. So it's not necessarily that the water is flowing north, it's just that as it's rising and falling it's interconnected between these three lakes. And the outfall structure makes more sense to to have it at the lake-to-creek interface.

THE HEARING EXAMINER: You're saying it's rising and falling because there's a pipe that is at a set level that runs from one lake to the other.

MR. KAYNE: Yes, because all the pipes that interconnect these lakes will be below control elevation, so the lakes will always equalize with each other.

MS. MONTGOMERY: Okay. So those who are going to read the record who are concerned about this but don't know what that means, can you explain what is control elevation and how does that get set?

MR. KAYNE: So the control elevation is usually set by the review of the wet season water table and

also any wetland areas that are nearby, and what we do is set the control to be at or near that elevation because, for one, we don't want to dry out, you know, adjacent wetlands. We want to keep them wet and we don't want to drop the water table or flood anybody. So we look at that wet season water table and wetland indicators essentially to set that control elevation for the basin that it's in. And then that control structure that's the main outfall will be set at that -- you might have an orifice or a weir at that elevation that will allow the water in these lakes that are interconnected to bleed down to the control elevation in between storm events.

THE HEARING EXAMINER: Okay. So it's a limited flow out so that --

MR. KAYNE: Limited flow up to the 25-year storm event.

THE HEARING EXAMINER: If it's raining a lot then the lakes will continue to fill up to the 25-year flood event. That pipe is still there but it's only letting it out at a slow amount.

MR. KAYNE: At a controlled rate.

THE HEARING EXAMINER: And so as the storm event passes then the lakes will gradually go down at that controlled rate.

MR. KAYNE: That's correct.

MS. MONTGOMERY: One of the questions that I think Mr. Lee has already answered is are there any unique rules or regulations relative to this basin as opposed to other basins in the county.

MR. KAYNE: Not that I have seen, and since hearing that yesterday I did look around and I couldn't find anything that was specific to this area or to this watershed.

MS. MONTGOMERY: I don't think I have any other questions. I think we answered all of your questions.

MR. KAYNE: Do you want to talk about lighting?

MS. MONTGOMERY: Oh, that's right. I forgot. I had Jennifer for lights and forgot you volunteered for that. The lighting. Are we going to have lighting in the preserve areas and have lighting ruining these people's ability to see the stars?

MR. KAYNE: I hope not, but the answer is Lee County Land Development Code requires that any -- well, for one, streetlighting is not a requirement. However, if you do want streetlighting then you have to provide the photometric analysis and that would show if there's any spill off site or into a preserve, and you are not allowed to spill into

preserves. You are not allowed to spill off of the overall site, not necessarily between single-family homes that are within that development.

THE HEARING EXAMINER: Okay. So the restriction -- the individual lots aren't controlled by the regulations, but the overall project cannot spill into --

MR. KAYNE: To off-site properties.

THE HEARING EXAMINER: So if somebody had a light on the back of their house that shown into the preserve, that's not regulated by the County because it's individual house lights or is that?

MR. KAYNE: Not from a Development Order perspective. That might be something --

THE HEARING EXAMINER: It could be a deed -- it could be a zoning, code violation. Okay.

MS. MONTGOMERY: Yes, the County has filed code violations for lighting.

THE HEARING EXAMINER: For individuals onto adjacent property but --

MS. MONTGOMERY: I've had that experience where neighbors complain that there's light spillage, and if, indeed, there is, the County has filed a code violation and you guys get to hear it.

THE HEARING EXAMINER: Okay.

MS. MONTGOMERY: Unless they're smart enough to fix it first, but if not, you get to hear it.

THE HEARING EXAMINER: Okay. Just checking to see. Oh, you were going to provide an explanation, Jennifer introduced the widths on the creek, but you were going to give us more information about what those mean. Did we get that?

MR. KAYNE: I think we covered a little bit when we were talking about the floodway and all that and it's all contained within the preserve boundaries and conservation boundaries unless there's any further clarification.

THE HEARING EXAMINER: No, if that's all you had to say about it that's fine.

Are you going to talk about the sewer and water?

MS. MONTGOMERY: Yeah. That was -- you had a question or some of the residents had a question about when we go to provide central water and sewer to this property was that going to force them to have to connect to water and sewer, and in the information provided yesterday the water mains and the force mains are proximate to the site. Can you address that, Wes?

MR. KAYNE: So along Myakka Drive there's a 12-inch water main right here at the project

boundary. There's also a 16-inch water main along Williams. It's kind of, I guess, unfinished roadway here. So it would make the most sense to the developer to not run extension mains all over the area and just to tie in at both of these locations, and based on County requirements there would most likely be a looped system. So it would actually provide some degree of level of service upgrade for people that are on that potable water system. But it would make the most sense to connect right adjacent to the site and not have to run water mains all over.

Force main, there's a four-inch force main that serves the school property and that would probably make the most sense for the development to go ahead and tie into that, which wouldn't really affect any abutting properties. And at the time of development we would have to make sure that there's enough capacity in that main and if it needs to be up-sized maybe downstream to accommodate this development. But from my experience I haven't seen where the County has made single-family owners tie into a force main that's adjacent to their home. We're not running gravity sewer past their home. I think that's kind of the delineation between, you know, a Cape Coral UEP and a developer running a pressure

main off site.

MS. MONTGOMERY: Just for the record, Ordinance 17-3, not the Land Development Code, but regular local ordinances, does allow the County to require mandatory connections in some instances, but because there's no -- there's not a different area that's going to be opened up by connecting to the water, sewer any mandatory requirements aren't going to be triggered by what this development is doing.

MR. KAYNE: And I think there was some questions about kind of the cost impact and who pays for that. The developer is going to pay through whatever funding mechanism they choose to develop the utilities on-site and they're going to almost always develop them to the Lee County utility standards, so they then become turned over to Lee County Utilities. During that process they have to pay connection fees. I think it's half up front and half at time of turnover. So the developer is going to be paying connection fees for each unit that's in here, which are essentially impact fees.

THE HEARING EXAMINER: To pay for any improvements to the system if necessary.

MR. KAYNE: Yeah. And that's actually mentioned in the letter of availability. It says Lee County

Utilities will commit to serve only upon receipt of all appropriate connection fees, signed request for service and upon approval of all state and local and regulatory agencies.

THE HEARING EXAMINER: I'm just checking to see what we have left on the questions.

Okay. I had some questions of staff, and I know --

MS. MONTGOMERY: I think we have answered all the questions that were our questions.

THE HEARING EXAMINER: I think so, yeah.

MS. MONTGOMERY: The other questions are fire and EMS and I believe Chip graciously agreed to answer.

MR. BLOCK: Madam Hearing Examiner, maybe to assist with the other staff being able to get some work done, do you have any transportation-related questions that maybe Marcus could help with?

THE HEARING EXAMINER: I don't think so. I appreciate you coming down and sticking with us. I think we're pretty close to getting done, but I think everybody needs a very short break and then that will allow us to go on into lunch and not have to break for lunch. Why don't we take about a ten-minute break right now and come back to staff and then,

Marcus, you don't need to --

MR. BLOCK: Would it be necessary for Sam to stay? Do you have anything for natural resources, stormwater management issues? If so, then Sam can stay after the break.

THE HEARING EXAMINER: I think the only thing was about the flood zone on the Master Concept Plan, and I don't know that we had a full agreement on that issue. We can talk about it when we first come back, we can do that and that way he can leave. So we'll take a break until 20 minutes till 12.

(The proceedings were in recess at 11:30 a.m. and resumed at 11:42 a.m.)

THE HEARING EXAMINER: Okay. We will get back on the record. And there was something, Jennifer, that I had meant to follow up from -- Mr. Barry raised about character, changes in character, and it raised a point about transition on the property. So we're going to let Mr. Lee go first and explain his point, but you can be thinking about -- you touched on it some, but I want, if you could, to discuss the interface between the Suburban and the Rural and how the project design -- what steps you have taken to address that.

Okay. So the issue, I think the way we left it

with the condition was that you would prefer to see, Mr. Lee, you would prefer that the flood zone -- the floodway be shown on the Master Concept Plan, and there was a discussion saying that the condition would be -- replace Condition 4 as you had proposed it and just say that the project has to -- that any floodway encroachment must meet all applicable regulations.

MR. LEE: Yes.

THE HEARING EXAMINER: Okay. And so you're fine with that, and we don't need to show the floodway or the floodplain on the Master Concept Plan.

MS. MONTGOMERY: And I don't -- one, I think we discussed yesterday that it's not required, and, secondly, I know Sam said they haven't changed the map since what, '08, but I do not want to get into a situation where, you know, the feds are under pressure to do new maps and what we have in the concept plan is wrong. So I just want to rely on whatever regulations are in effect when we go to get a Development Order and ERP.

THE HEARING EXAMINER: So maybe we had addressed that then. Maybe we had gotten everything taken care of on that. And none of the discussions that we've had this morning have changed anything for you on

that position.

MR. LEE: No.

THE HEARING EXAMINER: Okay. I'm sorry. Then I didn't mean to keep you. I apologize.

MR. LEE: No problem.

THE HEARING EXAMINER: Okay. So that addresses that question. Now we'll go to Chip for his other things that were in his ballpark.

MR. BLOCK: First of all I'll apologize for my lateness. I was trying to confirm the zoning map question that we had. And if we can we'll just go ahead and talk about that and then I'll go through the notes.

The zoning map I would love to have re-created for you right now and be able to hand it to you, but the zoning map itself for the MUPD -- or the MPD zoning district to the east, which currently shows as IPD, has not been changed on the zoning maps. Our people that do the zoning maps are aware of it. It just has not yet been created. So I would have to refer back to the fact that we have a zoning resolution in the actions. Even if there's a question later on down the road with somebody looking at properties in Lee County, regardless if it's this property or any other properties, if there's a

question about zoning we always work back through the zoning history to see where or what the zoning is on the property, what Board actions may have taken place, what actions may have been taken. The resolution is the effective action.

THE HEARING EXAMINER: Right. And I don't think there's any question as to what the actual zoning is. My concern is that we include a zoning map with the recommendation and then that's attached to the resolution and we have in the record that the zoning map in the staff report is wrong, but there's no way of translating that in the document, so we will be forwarding an incorrect document. So do you think that it will be possible to have by the time the packet is put together for the Board, and I don't know when I will be writing -- finishing the recommendation on this, but is it more than, is it going to take more than two weeks in all likelihood to get a corrected map?

MR. BLOCK: I will talk with our staff. That was one answer I do not have because I needed to run back in here and help take care of things. We will strive to achieve that going with your recommendation to the Board of County Commissioners. If anything else, maybe from a clarification and correction

standpoint before the Board's final action to be attached to the resolution, we might have some additional time to make a map correction there also.

THE HEARING EXAMINER: Let me ask this. If it cannot be officially corrected, if staff can provide a map with that incorrect thing and just mark through and handwritten in or cut and pasted or something so that there is a corrected zoning map that goes to the Board, even if it's not the official version so that we're not forwarding to the Board incorrect information. I don't think anybody is going to notice. It's not going to make a great big deal, I don't think, but I just, since we know it's incorrect, I want to get it corrected. So if we can do that within two weeks or so, you know, somewhere in that area, just so that we don't forget it and don't lose it. We don't need to do a formal written submission, I don't think. That's just correcting an error in the map.

MR. BLOCK: I have a note to myself to try to get that to you as quickly as I possibly can. I will ask our staff upon completion of the hearing.

THE HEARING EXAMINER: And that also raises the question, the applicant had listed a letter that was going to be Applicant's Exhibit Number 2 that you

listed.

MS. MONTGOMERY: The letter that Mr. Inge sent to Mr. Shine, you should have that. It was with my 48-hour letter.

THE HEARING EXAMINER: Oh, it was attached as part of the 48-hour letter.

MS. MONTGOMERY: Yeah. I'll give you another copy if that got misplaced because I want you to have it.

THE HEARING EXAMINER: Yeah, it's not in my 48-hour letter. All right. Then that's Exhibit 2.

MS. MONTGOMERY: Mr. Inge, I think, just briefly can explain the significance of that letter.

MR. INGE: Ron Inge, and I have been sworn.

When we presented at the North Fort Myers Planning Panel, Mr. Barraco and I presented the project to that panel, Mr. Shine and one or two other folks were there. Mr. Shine spoke and indicated that he represented the Greater Slater group, he gave a formal name yesterday when he spoke, and that he would like for us to meet with them or he would like to get more information about the project and share it with his constituency group. I gave him my card, as I did the other folks that were there and said please call me so we can meet to talk about the

project, I would be happy to do so. Subsequent to that I called Mr. Shine four times. I left three voice mails and talked to a lady who answered the phone who advised that Mr. Shine was out in the carport working on the car, that he would call me back. All four times requesting a meeting with he and the group that he represented to talk about the project. I did not receive any return phone calls, and so out of an abundance of caution I wrote that letter to further indicate to Mr. Shine that we were ready, willing and able to meet with he and any other group of folks to talk about the project. I received no reply to that letter as well. So I made five separate attempts after the presentation to the North Fort Myers Planning Panel to meet with Mr. Shine and his group.

THE HEARING EXAMINER: Okay. Thank you.

MR. BLOCK: All right. With that being taken care of from the Applicant's standpoint, Madam Hearing Examiner, from yesterday's public hearing, if you do not mind, I would like to take a few moments of time here to go through the comments that we have received during the meeting so that I can address points that I think were important to be addressed as part of this record. It may be duplicative to

questions you may have had, so when I hit your questions I will say if I have already addressed it or if we need to do something else to that.

During the course of the hearing there was a question raised, I believe I have answered it but I wanted to go ahead and state it here about existing large lot subdivision regulations in North Fort Myers under Chapter 33. By definition existing large lot, existing large lot subdivision is defined, and the subject property does not have an existing large lot subdivision adjoining the subject development; therefore, would not be subject to the requirements under Chapter 33 of the Land Development Code for North Fort Myers.

There was a lot of discussion about -- some discussions by the residents about the school district, and having worked with the school district in the past in different zoning cases and having also all zoning cases, planned development zoning cases are shared with the long-range planning planner for the school district, Dawn Huff, and in this instance Dawn Huff did respond, and I looked back through the staff report and I did not see what I normally include in the staff report, the response from Dawn Huff about the school districts and what is

available, what's not available and what are their calculations. So with that being said, I want to make sure that we have it on the record, and I'll supply to Miss Montgomery and her team copies of the same information. It will be a letter from the school district, two-page letter from the school district, that being the letter itself and a table that follows it under concurrency analysis, which is dated April 28, 2017. I've added to it a print of the school district map of the various school zones in this area so that I can further explain some points regarding it.

THE HEARING EXAMINER: Okay. I'll take those as two different exhibits. We'll take the letter as Staff Exhibit 2 and then the zone and graphic we'll take as Staff Exhibit 3.

MR. BLOCK: The school district in their response and analysis has come back to say that they have reviewed it for 330 multiple family dwelling units, or at least that was the original request, but then it was revised to remain at 330 units, but 210 single-family and 120 multiple family.

The third paragraph talks about the generation rates for the various school grade levels, and finally under the concurrency analysis the capacities

for the elementary school would not be an issue for the school district at this time. They have identified that there's no issue related to it. But when you have a middle or high school generation at this time there is a deficit in the subject area. They call it CSA, which is Concurrency Service Area. So I'll use CSA. They have identified there's a deficiency in the CSA for middle school and high schools. Now, the school district itself, the map I will now refer to, this district is in the CSA district of East Choice Zone E-1. When you look at the map that I provided you will see areas highlighted or -- yeah, highlighted in yellow, a red and a blue. The blue is the East Zone. The East Zone is made up of East Zone 1, 2 or 3, and it goes left to right. So the property is in the East Zone Choice C-1 on the left of the blue, the most western portion. If there is a deficit when school choice is reviewed and students are assigned to schools under school choice they will attempt to put them in the zone that they are in to the school that they're in. If there is no school in that zone or there's a deficit in the seats, the next move is to go to the next adjacent zones, whether it be to the west, to the south or to the east, and they will then assign

the seat to the student to the zone in one of those directions. And that's what they have always done under their CSA concurrency review. So the adjoining districts, according to the letter, do have sufficient seats at this time under middle and high school to be able to supply and have the student go to a school as close to their residence as possible, and that is how school choice works.

THE HEARING EXAMINER: Okay. So the middle and high school are actually already over capacity at this point?

MR. BLOCK: They're already at a deficit in the CSA, in the school choice East Choice Zone E1, is what it is, but there are seats available in the adjoining zones.

THE HEARING EXAMINER: Okay. So there is a deficit now with or without this project.

MR. BLOCK: That is correct, yes, ma'am.

THE HEARING EXAMINER: And it's kind of hard to tell, but it looks like perhaps Slater Road is the dividing line between the yellow and the blue.

MS. MONTGOMERY: It's just to the west of Slater where the line looks like it is.

MR. BLOCK: Yes, ma'am. I would say it's just to the west of the line of Slater. They're probably

anticipating where residents may be able to access Slater Road and going east and making that boundary at that particular point.

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

MR. BLOCK: Another question came up when we were talking --

THE HEARING EXAMINER: Do you have any questions?

MS. MONTGOMERY: No.

MR. BLOCK: Another thing we talked about, that was talked about by the residents, and we'll stick with schools for this moment, is some residents raised a concern about school bus stops on Slater Road. Well, school bus stops are established every year by the transportation department most of the time for that school choice zone for the buses as they go along when they know where their students are located at. When this development occurs, yes, there could be a possibility that the entrance to this, this project off of Slater, could itself become a school bus stop. But, again, that's going to be determined by the transportation department of the school district on a yearly basis. And during the school year, particularly the beginning of the school

year, the school district evaluates where those bus stops are, where the students are located at and may adjust at times where the school bus stop may be located at to accommodate maybe special conditions or circumstances that need to be addressed. So that is also evaluated during the beginning of the school year. I'm sure all year.

Slater Road is a road, two-lane road as the residents have pointed out, where there are school buses traveling on it on a daily basis. My expectation is for any of the school districts or the schools, so it would be elementary, middle or high school, and they are picking up students along Slater Road today. Whether it's going to be at this location or as, I think it was Mr. Shine was mentioning about one closer, a little bit further to the north, and it wasn't at Mellow Drive. There was another road before we got to it. Whether it's going to be at a particular intersection location that's going to be the school district to make the call.

THE HEARING EXAMINER: And changes.

MR. BLOCK: Right. Most of the time probably -- there was a comment the school bus should go into the development. The school district tries to avoid going into private developments to pick up students

when they can stay on a public road system and reduce their amount of travel and travel time for the buses so they can be the most efficient, most efficient as they possibly can be.

And, of course, during one of the discussions by the residents they said, well, there appears to be a failure, as I marked down here, appears to be a failure to coordinate with the school district. And I would just assure the residents, those that may read the record of this, that we do constantly coordinate with the school district through their long-range planning, long-range planner that's at the school district through sharing with them every single planned development application, industrial, commercial or residential, so that they know what is coming down the road in the future that may have an impact on them as they go through the processes.

There was a consideration, and the applicant has already addressed this of, that the case was not sufficient, and you even alluded to if you look at it from a E-connect standpoint you might see insufficiencies. I would concur that the applicant has clearly handed you a letter that says the case is sufficient, but most of these sufficiencies came in October as I read through the record of individual

staff members telling me that it was complete or sufficient for hearings. And all of them, Development Services found it sufficient in May of 2017, but the remaining ones found it sufficient in October of 2017, with the letter being sent out on November 21, 2017, finding the case sufficient for hearings and scheduling it for the hearing date that we had yesterday.

The applicant has addressed this during their presentation, but there was a discussion about utilities and are they going to be required to connect if utilities are extended. I talked with Lee County Utilities staff this morning, Terry, Terry -- I want to say her last name is Kennedy. I apologize if it's the wrong name, but Terry with the Lee County utility staff, and she confirms to me that Lee County Utilities from a water standpoint would not automatically require any single homeowner who might be along the main if it's extended to serve them, would not be required to interconnect with that. Miss Montgomery had talked about a particular ordinance, and, of course, that ordinance prevails, but from a general standpoint, from sanitary sewer, and Miss Montgomery also pointed out under certain circumstances you are going to be required to

connect, I have heard their engineer speak that, well, we're going to extend a force main. Well, that was the break point according to Terry. She told me -- it's actually Terry Kelly. Terry Kelly is the last name. Terry advised me that if it's an extension of a force main, adjoining property owners where that force main is along the roadway system or easement, they will not be required to connect into a force main. If it was gravity sewer, in general it's a 90-day time period to when that main opens up for usage if it's gravity. Residents or owners on either side of it will be advised that they have roughly a 90-day period in which to make a connection into that utility under a gravity sewer situation. This is an FGUA, Florida Governmental Utilities Agency area, so they would be the ones responsible for informing those adjacent property owners about this.

I believe the applicant has already addressed lake depth. I don't think I need to go any further on the lake depth. And I believe that we previously discussed today before we got off the subject about blasting. I think we understand that there is development blasting allowable in Lee County, and we can go from there if necessary.

Those are my comments about discussions or items

that were discussed during yesterday's public hearing and before getting to your list of questions that you have given to staff and the applicant to respond to. Areas that I had marked down to take a look at first is who is the applicant on the case. The applicant has explained that to you and provided you a copy of the current application, so we know who the current property owners are.

There was a question about EMS service, and I'm going to kind of extend that a little bit into fire service also. EMS has, and as does fire district, has specific locations where their units are stationed throughout all of Lee County, and talking with North Fort Myers in the past and also with EMS and reconfirming it with Ben Abes this morning for Emergency Medical Services, if there is a call made and a unit has had to go out to provide service to someone they would reach out to the next available unit and ask that unit to then come in if there's another call in the same area when the first unit is still answering the call and taking care of whatever needs to be taken care of. So there's a working relationship. We are not in an area -- in this case being Lee County, we are in an area where Lee County EMS takes care of Lee County as a whole. You don't

have individual emergency medical services associated to it. And we are in the North Fort Myers community, in the North Fort Myers Fire District, so they would reach out. And I also understand that most, if not all of the fire districts have an agreement that if there's a need to pull in somebody else from another fire district, one of the adjoining fire districts, they have a reciprocal agreement where they work with each other whenever they can do that, whenever their facilities are also available or their equipment is available.

THE HEARING EXAMINER: Do you have any information on response time? Because the requirement is that they have to have urban services, and the rural areas are not supposed to have urban services, and so it's my understanding from other cases that there is a response time level expectation depending on where you are in the county.

MR. BLOCK: Mr. Abes -- and thank you, Jennifer, for putting up your all's PowerPoint picture. The closest Lee County EMS site is stationed just outside the Academy in North Fort Myers in Suncoast, and depending upon the route that they would take to get there Mr. Abes had advised me that EMS would be able to get there in less than the five-minute minimum

that they have.

You have a fire district to the south, plus also conceivably if that fire district station is not available you also have a North Fort Myers Fire District that is located on U.S. 41 north of the Del Prado intersection and they would be able to leave from there and actually use the Del Prado/Mellow Road intersection over to Slater to get there. Now, I did not ask the timeline involved with it, but I believe that they, under an emergency situation, can get there within a reasonable time frame associated to it.

The copy, the question about the copy that you had, kind of -- and the FIRM map has been discussed. I don't think I need to go any further from my standpoint of identifying the FIRM. The applicant has correctly pointed out that the vast majority of the site is within the designated FIRM flood elevation of X. There might be a small area of AE, but that's actually in the preserve area anyhow. And the full copy of the North Fort Myers Planning Community Panel meeting is what I have as attached to the staff report. It's a single page with a follow-up from, I think it was --

MS. MONTGOMERY: Me.

MR. BLOCK: -- Miss Montgomery's office, and that is all that I had. I attempted to find online the minutes from that meeting and they stopped putting on line, that I have been able to find, their minutes back in 2016.

THE HEARING EXAMINER: So it just is coincidental that the discussion of this ended at the bottom of the page and that was it.

MR. BLOCK: That's all that I could find at this particular time.

THE HEARING EXAMINER: Okay. See, you teased us yesterday saying that you had a copy of it.

MR. BLOCK: Well, I honestly thought that I had seen that. I knew there was a second page and I went, oh, when I looked at it I went, oh, that's -- the second page is actually the response that Neale Montgomery had provided attached to it.

THE HEARING EXAMINER: And both of those pages are in the staff report.

MR. BLOCK: Yes, ma'am, they are.

MS. MONTGOMERY: In the back.

MR. BLOCK: I want to say Attachment H. No, K, I believe it is. Yeah, Attachment K to the staff report. Now, as I was going through your questions yesterday and this morning I went to my -- I started

creating a separate response list here and I want to make sure I have given you everything that I had. I talked about schools, Chapter 3 for blasting, Chapter 33 for large lots, EMS, utilities, zoning map response, North Fort Myers minutes. The final thing is home occupation. And I know that we talked about that extensively for traffic, but I think it's generally important to put on the record what happens with a home occupation. It's really not supposed to generate any significant changes in residential. And you have the ability to go back in and look at the Land Development Code, supplemental regulations, which are found in 34-1772. That's 1772. Basically it's supposed to be subordinate and incidental to the residential use. No one other than family, immediate family members are supposed to be working as part of the home occupation, at least coming to the home. There are others that can be outside the home doing other things, going to their vehicles and doing what they need to do. There's no exterior change or indication that a home occupation is being allowed.

THE HEARING EXAMINER: I think it's been sufficiently --

MR. BLOCK: I understand, but I'm wanting to make sure we understand this is not supposed to

generate additional traffic. Even customers aren't supposed to come to the home. So I just want to make sure it's understood so that, or at least stated on the record so that if there's any question when we go into the next public hearing or years down the road it's been stated as to what the home occupation provisions are.

Now, with all that being said, Madam Hearing Examiner, I can also tell you under the 48-hour notice, what Neale has talked about - and I apologize, I'm using the first name Neale but we all work together here - what Neale has talked about in the 48-hour notice as to the agricultural activity. I think first I'm going to go through all four items. The agricultural activity, I agree that it could be handled as simply as referencing the fact that there is existing agricultural activity and that it's regulated by Note 48 of the Planned Development Use Regulations Table, and is also further regulated by the agricultural exhibit that they have supplied to us. I think that can be all that needs to be simply done to the conditions and deviations, some type of notation to that.

As to the comments on environmental and changes on environmental, Beth, as I recalled yesterday,

agreed with the applicant's changes in the language, Beth Workman, and, therefore, I do not have any additional changes to that. I did confirm with Marcus and we confirmed during the course of today's meeting that we are going to respectfully disagree with each other on how that should be handled regarding the turn lane condition, and we'll leave it in your capable hands to come up with what you think is the best way to handle it, and if we need to we'll address it at the Board of County Commissioners.

And then finally the issue related to the condition on floodways. I walked in on some discussions, so I may have missed something.

THE HEARING EXAMINER: I think we've got an agreement on that.

MR. BLOCK: If we have reached an agreement on that, whatever that agreement is, I have no reason to disagree with it.

THE HEARING EXAMINER: Wow, that was a nice blanket statement.

MR. BLOCK: Well, I missed some of it, so I just want to make sure that I covered --

MS. MONTGOMERY: Well, we didn't deviate from where we were the last time.

MR. BLOCK: Yeah, and I understood that.

MR. LEE: Went much easier without you.

MR. BLOCK: Yes.

THE HEARING EXAMINER: I think the explanation that not necessarily under the County's requirement, but under the Water Management District requirement that we're going out not as a floodway, we're going to the floodplain and that's going to have to address extra capacity and et cetera, et cetera. So having a condition that just basically says no floodway encroachment except in conformance with the regulations, that puts everybody on notice there is a floodway, and where there's a floodway there's going to be a floodplain. So I think that's taken care of.

MR. BLOCK: Just a final statement before you look through your questions if you've got any other questions for me, just a final statement. This is not -- a little bit longer public hearing than we have dealt with recently, and we get longer ones occasionally, you get the 20-plus-day public hearing for mining operations, but we don't have that one here, but there has been a lot of discussion and comments that have been placed on the record since the staff made its presentation, and I would like to say at this moment the things that we have heard, with the exceptions that we have agreed upon to make

changes in the conditions, has not changed the overall staff recommendation. We still continue to find it consistent with the Lee County Comprehensive Plan; that there are sufficient findings available under the Lee County Land Development Code for findings of approval of a planned development zoning, rezoning, and nothing that we have heard has changed our minds regarding that and we do still continue to recommend approval of the project with conditions and deviations as clarified during the course of the public hearing.

THE HEARING EXAMINER: Okay. All right. I think you covered everything that I had. The only thing I still had left was about the -- after Hurricane Irma and you indicated that you had some pictures. Let me ask you, are they clear enough to show whether or not this property was flooded after Irma or are they more generic Google Earth kind of level?

MR. LEE: I have three, four pictures we took. The one I prepared would be -- I heard one of the citizens say did the County ever care about or somebody come out. We did the helicopter ride, took pictures on three different dates and on-ground driving right after Irma, driving, and mainly on the

Mellow Drive. And Slater Road nothing notable flooding observed on Slater Road. So just prepared in case you want to see it.

THE HEARING EXAMINER: Okay. So the answer to the question is yes, the County did go out. They both looked at helicopter views and drove the area, and when you drove and the helicopter view of the Slater Road area it was not anything over what you would expect of any area that has just gone through a hurricane.

MR. LEE: Right. Based on that we further contacted or hired a private surveyor to professionally survey what would be highest water mark during the storm event and Daugherty Creek was not selected. Instead on the Mellow Road because there was extensive flooding, we did have a surveyor survey that area but not in the creek, not in the Slater Road. Other areas east of 75 there were multiple creeks and locations we went out to survey. And after that we hired another set of a contract that going, contractor going out each individual house being claimed for the FEMA flood damage and took a picture and extra survey there additional. So County doing a lot of things after each major disaster like Irma. So after the next phase come out

for overall hydrologic and hydrologic analysis countywide the same thing. Storm event comes up, what we can do better to reduce the damage or prevent damage if we can. So these are prepared in case you want to see of steps we have taken care of it

THE HEARING EXAMINER: So, yes, the County does respond and is looking, using Irma as a learning example of what circumstances in that hurricane, but as it affects this specific property you don't have any information that there's anything particularly concerning after Irma on this property that would change --

MR. LEE: Not at this particular location but near --

THE HEARING EXAMINER: Near, to the north, yes.

MR. LEE: Yes.

THE HEARING EXAMINER: Okay. We're left with the question about the 210, whether the single-family detached and attached as to whether you were going to agree with that.

MS. MONTGOMERY: I believe it's 130 multifamily and 210 single-family was the worst case scenario that was analyzed.

THE HEARING EXAMINER: Right. And so are you in agreement to a condition that it be a maximum of 210

single-family detached and single-family attached units, that that be the cap?

MR. INGE: I believe -- Ron Inge. I believe what we were looking for is approved density of 330, of which no more than 210 can be single-family attached and detached

THE HEARING EXAMINER: Correct. Yes. If I said that another way that's what I meant, yes. No, not a maximum of 210 total, but 330 of that a maximum and just as you said. Okay. So you're agreeing to that condition. All right. Then I think that the point that I raised about the transition, I think you talked about it, and I know that there was some discussion about because of the use that is on the property to the north and how that affects the development. But one of the concerns I heard was the the relationship to the rural area, and since you are right at the boundary of the rural area, whether there are provisions of the code, the Lee Plan or the LDC that you would cite as saying there should or does not need to be a transition.

MS. SAPEN: I put the two slides next to each other, the Future Land Use Map and the -- it's called here the Surrounding Density Map. You can see that there is a direct relation where the Rural comes down

along Slater Road. That is the portion of Slater Road you see on both sides where there isn't any type of a higher density residential. Gully Creek, just south of Gully Creek, all right, River Trails and River Estates is a fairly high-density development. This slide with the future -- with the Future Land Use slide shows the transition moving from Bayshore heading north where it is Suburban, more intense, and then it goes to Rural, and further up is the open land. And while on the border between the Rural Future Land Use and Suburban Future Land Use the requested density is allowed and it's slightly less than what would be allowed in the Suburban Future Land Use category.

THE HEARING EXAMINER: But what is the density of the mobile home development to the south? Is that River Trails?

MS. SAPEN: Yes, correct, River Trails and River Estates. River Trails is the one directly abutting us. The density of that is 2.6, but keeping in mind the character. Those lots can be as small as 5,000 square foot, whereas our single-family lots are proposed at 6,500 square foot.

THE HEARING EXAMINER: Okay.

MS. MONTGOMERY: And, Jennifer, I know you said

this yesterday, but go back to the aerial a second. Or go back to the surrounding zoning map. That's probably better. Okay. Other than two people, everybody that testified, their only encounter with this project is going to be driving on Slater Road.

MS. SAPEN: That's correct. They will have roughly 500 linear feet of the project frontage along Slater Road, and that visibility from Slater Road, you won't have any homes for at least, was it -- 400, 500 feet. And then the only area that the traveling public would see would be that. So the impact to the people coming from the north in the Rural Future Land Use, their impact and their view driving down Slater Road won't be affected by the density of this project because of the lake setbacks and buffers.

THE HEARING EXAMINER: Okay. I think we're going to need to get a corrected zoning map.

MR. BLOCK: Correct.

THE HEARING EXAMINER: And we need -- I'm going to call this a supplemental PowerPoint rather than -- because we started off with just talking about the creek, but you had more slides than just the creek in the revised slides, right?

MS. SAPEN: That's correct. There's about five or six slides we added this morning.

MS. MONTGOMERY: We had a FIRM map, picture of the creek, the width of the preserve and the creek.

THE HEARING EXAMINER: Were they all the creek, though? So I'm okay calling that the creek, creek-associated pictures and graphics. Okay. All right. So we need to have those, a printed-out version of that provided.

MS. MONTGOMERY: Do you want printed and e-mail or just printed?

THE HEARING EXAMINER: Printed and e-mail would be fine.

MS. SAPEN: We'll be sending staff an e-mail, so you don't have to scan them all.

MR. BLOCK: That is correct. What we'll do is we'll make sure that -- we'll print a hard copy of what you provide, make sure it's part of the hard copy file and then the electronic version will be available online.

THE HEARING EXAMINER: Okay. So you're just going to send it to staff, staff will print it out and provide it to me.

MS. SAPEN: We can provide hard copies for you.

THE HEARING EXAMINER: Okay. Well, if staff is going to print them out anyway. Are you going to print it out?

MR. BLOCK: The intent was to print it out so that it was part of the official hard copy file, but I can provide you a copy.

THE HEARING EXAMINER: So it's for your file, not for our file you're talking about so that you have it for your hard copy.

MR. BLOCK: That is correct.

THE HEARING EXAMINER: The DCD file. That's fine. Yes, okay. Then if you provide that hard copy, send the email to them and copy us. So we don't need to do a written submission, and you're going to trust me to address those conditions that we talked about changing. So that's fine. I think we --

MS. MONTGOMERY: Yeah. And I guess if Chip and I don't like how you worded it we'll probably --

THE HEARING EXAMINER: Talk to the Board about it.

MS. MONTGOMERY: I don't want to be shocked or offended if we kind of massage the wording but that could happen.

MR. BLOCK: We'll discuss it amongst ourselves and if it needs to be clarified at the Board we may need to do that.

MS. MONTGOMERY: It's always easier to critique

somebody else's writing than it is your own, that's for sure.

THE HEARING EXAMINER: Okay. Then I think we have addressed everything and then this hearing is closed.

(The hearing concluded at 12:27 p.m., January 19, 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 382, is a true. record.

Dated this 15th day of February, 2018.

Janet K. North

Janet K. North

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