

THE OFFICE OF THE LEE COUNTY
HEARING EXAMINER

IN RE: VINTAGE COMMERCE CENTER CPD
DCI2018-10022

ORIGINAL

PROCEEDINGS: Public Hearing
BEFORE: AMANDA RIVERA,
Hearing Examiner

DATE: November 22, 2019

TIME: 9:03 a.m. to 3:05 p.m.

LOCATION: Hearing Examiner's
Hearing Room
1500 Monroe Street
Second Floor

REPORTER: Fort Myers, FL 33901
Cherie' R. Nottingham
Florida Professional
Reporter

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1 APPEARANCES:

2 For the Applicant: NEALE MONTGOMERY, ESQUIRE
Pavese Law Firm
3 1833 Hendry Street
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4 (nealemontgomery@paveselaw.com)
5 and
6 WAYNE ARNOLD, Principal Planner
Grady Minor
7 3800 Via Del Rey
Bonita Springs, Florida 34134
8 (warnold@gradymenor.com)
9 Also Present: Brian Intihar, CRM
Tyler King, Dex Bender
10 Mike Maurer, William Raveis
Ted Treesh, TR Transportation
11 Alan Freeman, Property Owner
12

13 For Staff: ALVIN "CHIP" BLOCK,
Principal Planner
14 Dept. of Community Development
15 1500 Monroe Street
Fort Myers, Florida 33901
16 Also Present: Mike Fiigon, Lee County
Port Authority
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1 HEARING EXAMINER RIVERA: Okay. Good
2 morning. My name is Amanda Rivera, I am a
3 hearing examiner for today's hearing. Today is
4 November 22nd, 2019, and this is case
5 DCI2018-10022, a request to amend the Vintage
6 Commerce Center CPD.

7 Because this is a quasi-judicial hearing,
8 all evidence and testimony must be taken under
9 oath. So if you intend to speak today, if you
10 could please raise your right hand.

11 (Right hands raised en masse.)

12 HEARING EXAMINER RIVERA: Do you swear or
13 affirm the testimony you will provide is the
14 complete truth?

15 (Participants respond affirmatively en
16 masse.)

17 HEARING EXAMINER RIVERA: Thank you.

18 It appears we do have some members of the
19 public here today. I think the instructions
20 have already been given on the forms to fill
21 out, if I'm not mistaken.

22 But the general procedure of how we'll
23 proceed today: First we'll hear from the
24 applicant and any witnesses that they would
25 like to call. Then we will hear from county

1 staff as to their recommendation in the case.

2 After that we will open public comment for any
3 members of the public who wish to speak. There
4 is only one opportunity to speak at the podium,
5 so I would encourage you to take notes as we go
6 through things this morning to make the most of
7 your time.

8 If you have questions during public
9 comment, please state those on the record; we
10 will make note of them. And then applicant and
11 the staff will have an opportunity to address
12 those after public comment is closed.

13 With that, we will go ahead and get
14 started with the applicant, please.

15 MS. MONTGOMERY: You have the 48-hour
16 letter. And just by way of a prelude, we
17 objected or have concerns with condition 3.E.
18 I don't know if the staff has provided it to
19 you yet, but they will provide, I believe, an
20 amended condition 3.E.

21 The applicants still continue to disagree
22 and have legal and transportation concerns with
23 that condition, so I just wanted to make that
24 clear.

25 HEARING EXAMINER RIVERA: And I do have

1 two 48-hour letters, I believe. So the first
2 that was received on Monday, if I'm not
3 mistaken, or Wednesday, I apologize, that one
4 will be labeled as Applicant's Exhibit A, and
5 then the one that was received yesterday as
6 Applicant's Exhibit B, just for your records.

7 MS. MONTGOMERY: Yeah. And just so you
8 know, the genesis of that was the staff and
9 applicant had a meeting. We discussed some
10 things, particularly as relates to the
11 deviation, and the revisions to the deviations
12 were as a result of the conversation with the
13 staff.

14 And I think Chip can confirm that that's
15 the case.

16 HEARING EXAMINER RIVERA: Thank you.

17 MS. MONTGOMERY: So with that, we would
18 call Wayne Arnold. Wayne has testified here
19 before, he's been accepted in many forums as an
20 expert in zoning and planning. And we ask that
21 he be so accepted here today.

22 HEARING EXAMINER RIVERA: Yes, thank you.

23 MR. BLOCK: If I may, before the
24 applicants get started, Madam Hearing Examiner,
25 the applicant alluded to a revised condition

1 that staff had prepared for 3.E. I did not
2 know if you wanted to have that now so that you
3 would have it from the county staff so that you
4 could have it. So as -- if the applicant
5 starts addressing that, you would have the
6 language of the condition in front of you.

7 HEARING EXAMINER RIVERA: Yes, that would
8 be helpful.

9 MR. BLOCK: Okay. And I'll make sure the
10 applicant gets a copy of this same memorandum.

11 MS. MONTGOMERY: Yeah. And we will be
12 discussing this, so -- and before we have
13 Mr. Arnold go, I think we're going to have
14 Mr. Intihar go, just so you can be familiar
15 with the applicant.

16 HEARING EXAMINER RIVERA: Okay.

17 MR. INTIHAR: Good morning, Ms. Rivera,
18 thank you for your time today.

19 HEARING EXAMINER RIVERA: Morning.

20 MR. INTIHAR: My name is Brian Intihar,
21 I'm a principal with CRM Companies, Inc. and
22 the related project ownership entity CLE, FLRE
23 Investment One.

24 Just by way of quick background: CRM
25 Companies is a company that was started in

1 1975. We're a full service real --
2 professional real estate firm. We provide
3 consulting, appraisal, brokerage, construction,
4 property management, architectural services, as
5 well as we have a portfolio of direct
6 investments.

7 CRM has offices in both Cleveland, Ohio
8 and Bonita Springs, Florida. And principals --
9 the main principal of CRM is Stephen Calabrese.
10 He's been active as both a resident and an
11 investor in Southwest Florida since 1986.

12 I've actually been a resident in Estero
13 since 2003.

14 One of our other principals that's here,
15 Greg Calabrese, is a graduate of FGCU and is a
16 resident of Estero.

17 And one of our associates is Mike Maurer,
18 who's basically spent his entire life here.

19 We have direct invest- -- or have had
20 direct investments in excess of 10 states, and
21 we basically performed consulting or other
22 services in almost all 50 over the time of the
23 firm.

24 We've obviously given our time here in
25 Southwest Florida. We've been able to witness

1 the maturation of the Lee County market over
2 the last 30 years. And in regard to the
3 subject property that we're talking about
4 today, we've also been able to see the Alico
5 corridor go from a primarily heavy industrial
6 corridor to really a transportation,
7 education and corporate hub for Lee County.

8 As such, and as part of our involvement in
9 the subject parcel, we're excited to play an
10 active role in that. We basically believe that
11 we can be a good neighbor to all this new
12 activity, given this site's particular
13 location, by providing some transitional uses
14 to the corporate stuff that is going in a
15 little bit to the north of us, as well as the
16 university. And we believe we can do that as
17 part of our rezoning through incorporating a
18 residential component that would provide much
19 needed housing for young professionals that
20 would be working with the corporations, as well
21 as we understand there to be a relatively large
22 need for housing for professionals and
23 educators at the university.

24 In addition to that, we believe that we
25 can service the transportation nature of the

1 area with the airport and the interchange at
2 I-75 through out-parcel development, and then
3 through also blending the two together, kind of
4 in the middle area of the site with convenient,
5 local commercial related type services.

6 Based upon our initial plans and working
7 through this process, we've had good activity.
8 We've been very pleased with regard to
9 residential developers as it pertains to an
10 apartment component.

11 We do actually have a portion of the
12 project under contract. It is in due diligence
13 for among other things obviously the zoning
14 hearing. That, as well as some other criteria
15 that they would need to get through.

16 But most importantly, and I think as it
17 pertains to the conversation that you're going
18 to hear today, is we see that as a win/win for
19 the reasons I already described, as well as
20 basically what that -- development of that type
21 of a product on the site would reduce traffic
22 impacts, you know, to the overall site and
23 interchange even from what was potentially
24 previously approved.

25 So with that, I guess I'll turn it over to

1 Neale either for additional questions or --

2 MS. MONTGOMERY: Mr. Intihar, do you have
3 the staff revised condition 3.E in front of
4 you?

5 MR. INTIHAR: I do.

6 MS. MONTGOMERY: Let me read the first
7 line. It says: The applicant, on behalf of
8 the property owner or any successor or assign,
9 acknowledges that the proposed plan development
10 may generate the need for certain site-related
11 improvements, including at the intersection of
12 Alico Road and Three Oaks Parkway.

13 Have -- you're the applicant's
14 representative, correct?

15 MR. INTIHAR: Correct.

16 MS. MONTGOMERY: Does the applicant agree
17 that improvements to Alico and Three Oaks are
18 site-related improvements?

19 MR. INTIHAR: We do not.

20 MS. MONTGOMERY: And then it says: The
21 ultimate improvements will be based on the
22 requirements of Chapter 10 of the Lee County
23 Land Development Code and the project's
24 subsequent site-related traffic impact.

25 Then it goes further: The applicant on

1 behalf of the property owner, or any successor
2 or assign, also agrees to include a disclosure
3 statement on any resulting plats and also in
4 all documents for condominium, property owners
5 and homeowners associations, advising that all
6 owners within the development will equitably
7 share the cost of these improvements caused by
8 the effect of cumulatively approved site
9 project development at the time the
10 improvements are permitted and determined by
11 the county to be necessary.

12 Does the applicant agree as stated in
13 here?

14 MR. INTIHAR: Uh, yeah.

15 MS. MONTGOMERY: And let me ask you a
16 question: You were familiar with the original
17 condition 3.E, correct?

18 MR. INTIHAR: I was.

19 MS. MONTGOMERY: Did that condition cause
20 you concerns?

21 MR. INTIHAR: It did.

22 MS. MONTGOMERY: Did you take the
23 opportunity to have the engineer look at the
24 cost of 3.E, the original one?

25 MR. INTIHAR: We did.

1 MS. MONTGOMERY: And what was the
2 approximate cost of that improvement?

3 MR. INTIHAR: The original cost of
4 condition 3.E was well in excess of a million
5 dollars.

6 MS. MONTGOMERY: And as the condition
7 amended, do you have any idea at this juncture
8 how much this will cost?

9 MR. INTIHAR: We do not. This
10 actually removes --

11 MS. MONTGOMERY: And if you have to
12 restrict the property with an unknown cost at
13 some unknown time in the future, will that
14 impact the marketability and your ability to
15 develop the property?

16 MR. INTIHAR: Both from a seller's
17 perspective or a purchaser's perspective, any
18 condition like this will take -- basically a
19 deed restriction of a blank check would render
20 the project very unmarketable.

21 MS. MONTGOMERY: Okay, thank you. I have
22 no further questions.

23 HEARING EXAMINER RIVERA: Okay. Thank
24 you.

25 MS. MONTGOMERY: And with that, we'll call

1 Wayne Arnold.

2 MR. ARNOLD: Good morning. For the
3 record, I'm Wayne Arnold. I'm a certified
4 planner with Grady Minor Engineering.

5 You've meet Neale, and Mr. Intihar also
6 representing us. With us today, Frank Feeney
7 from our office who's a professional engineer,
8 and is here to discuss some of the revised
9 conditions, if necessary.

10 Ted Treesh and Uri McCau (phonetic) are
11 here from TR Transportation, and Tyler King,
12 our environmental consultant, is here. There's
13 really I don't think any environmental issues
14 in dispute, but in case there are questions,
15 we're prepared to answer those.

16 So I'm going to go through a brief
17 presentation on the overall plan and where
18 we're going, and then I'm going to step aside
19 and let the other consulting team members
20 speak. And then I thought I would wrap up sort
21 of going over the 48-hour letter, and just
22 discussing and trying to summarize and make
23 sure we're all on the same page with our issues
24 and concerns and those issues that have been
25 resolved.

1 Okay, I don't know what happened to my --
2 panic mode, Chip, what do I do?

3 MR. BLOCK: Well, you didn't have panic,
4 so let's see what we've got.

5 MS. MONTGOMERY: We are going to panic if
6 we lose the PowerPoint.

7 MR. BLOCK: Well, you haven't lost it,
8 it's just not coming up now like it was before.
9 So let's do this: We'll close that down, get
10 rid of that; that might be the problem. Bring
11 it back up.

12 Okay, I'll need your jump drive again. It
13 doesn't seem to want to come up with it. So
14 I'll put it in.

15 Do you have copies of the PowerPoint?

16 MR. ARNOLD: I do. I have hard copies if
17 for some reason there's a technological issue.
18 I apologize for this.

19 HEARING EXAMINER RIVERA: Did you want to
20 issue a -- I'm sorry, submit a copy of the hard
21 copy for evidence? We can go ahead and accept
22 that.

23 MR. ARNOLD: I'll go ahead and pass that
24 out. This is a full-size copy.

25 And Chip, I'm going to give you one that's

1 got some reductions. It's just a few pages of
2 paper.

3 HEARING EXAMINER RIVERA: This will be
4 applicant's Exhibit 1.

5 MR. BLOCK: Try it again now.

6 There you go.

7 MR. ARNOLD: Okay. So on the screen is an
8 aerial location map. We're obviously located
9 at the northwest corner of Alico Road and I-75.
10 We're immediately adjacent to the exit ramp;
11 that's Alico Road southbound.

12 And you can see that we have some
13 development primarily to the south and east of
14 I-75. There's very little development that's
15 occurred immediately to our west.

16 But highlighting there, obviously the
17 airport's one of our most immediate neighbors
18 and one of the reasons that we think that the
19 mix of uses that we're proposing makes sense.

20 A little closer image, you can see that a
21 portion of the site has been cleared. And
22 we've submitted an environmental assessment; I
23 think there's no dispute, staff understands and
24 we're required to provide open space as part of
25 our project.

1 So the existing land use category is
2 industrial commercial interchange. We are in
3 for a companion Lee Plan amendment. It changes
4 both the allocation table and the future land
5 use map to provide this as a general
6 interchange.

7 And the primary difference between the
8 general interchange and industrial commercial
9 is that we qualify then for multi-family
10 residential and it establishes a minimum of
11 eight unit per acre density, a maximum of 14
12 standard, but then we also qualify for bonus
13 units which we are proposing as part of this
14 application that would allow us to get to the
15 308 units that are part of this proposal.

16 I should say the LPA and the county
17 commission both suggested the transmittal to
18 the state. We received one comment from FDOT
19 related to the proposed access that we had on
20 Alico Road and we've since indicated the
21 removal of that access point.

22 This was the existing master plan in place
23 today. It supports the commercial plan
24 development. And we obviously are proposing to
25 modify that. The modification that was

1 analyzed by staff initially as part of your
2 staff report is this one.

3 The changes that we've proposed have been
4 the removal of the access point on -- doesn't
5 show very well, but on Alico Road. We've also
6 dimensioned that -- the water management area
7 to show reduced setbacks for water body
8 setback.

9 But the plan overall shows access points
10 on Three Oaks Parkway. And then we have a
11 series of out-parcels. And we've committed
12 that the only residential parcel could be the
13 parcel labeled C/R, parcel A on that master
14 plan. And we did that after much discussion
15 with staff. That isolates it from any external
16 industrial type traffic or uses, and it allows
17 us to present one common development tract for
18 the residential use.

19 The other significant note on that is for
20 parcel C, which could be commercial uses, but
21 also the site where a hotel or motel could be
22 located, and that's the one most adjacent to
23 the I-75 exit ramp.

24 So this is the revised exhibit that you
25 received last evening. We apologize for that

1 late notice, but there was a meeting held with
2 staff to talk about initiation of a development
3 order for the project. And it was decided that
4 we would revise one of the deviation requests,
5 deviation number three. And we also modified
6 the master plan to indicate a dimensional
7 setback for the water management area that's
8 shown on sort of the northeast corner of the
9 site.

10 And I have hard copies of that, if you
11 need me to insert one of those into the record
12 as well. I don't know if the email was
13 sufficient, but if not, I have copies of that
14 that I can certainly provide to you.

15 HEARING EXAMINER RIVERA: I have it. But
16 if you'd like to submit another one, I'd be
17 happy to accept it as well, whatever you
18 prefer.

19 So deviation three was removed in the
20 entirety from the schedule?

21 MR. ARNOLD: Uh-huh. We're withdrawing.

22 HEARING EXAMINER RIVERA: And that would
23 be Applicant's Exhibit 2.

24 MR. ARNOLD: So as part of the amendment,
25 the most significant change obviously was the

1 addition of multi-family dwelling units to the
2 master plan. We also have modified the
3 original schedule of uses, because we've
4 increased the overall amount of square footage,
5 but with that we also have the condition that
6 staff has recommended where we would reduce the
7 amount of nonresidential use by 200 square feet
8 per residential unit constructed within the
9 project.

10 Because we had sort of struggled with this
11 back and forth, because if we do the
12 residential option, it obviously displaces
13 almost 14 acres of land that we could use for
14 the nonresidential uses, so there's going to be
15 a necessary reduction. And we came up with the
16 200 square feet number based on Mr. Treesh's
17 analysis. I think that's -- it's a generous
18 number. I think it was really less than 200,
19 but we rounded up, just because we think that
20 that's something that's easier to track and to
21 deal with, with the staff.

22 We've also added some other uses like mini
23 warehouse and public warehouse to allow for
24 indoor self-storage, as we commonly call it.
25 And a few other things.

1 But I think in my opinion, and I think
2 staff would agree, that the uses that we have
3 proposed are certainly conducive to be
4 compatible with the residential development and
5 can be internally buffered from those. And
6 also very complimentary too. Because we think
7 that obviously with the out-parcel uses, we're
8 probably going to end up with a series of
9 restaurants and other uses that will provide
10 ease of access for the residents.

11 We are located in proximity to the
12 airport, obviously. You have representatives
13 from the port authority here who are going to
14 speak. But this represents the noise zone map
15 exhibits. We voluntarily agreed to provide
16 notice to the residents.

17 This shows the master plan in relation to
18 that, and you can see that parcel A, which was
19 the residential parcel, is not within either
20 one of the direct noise contours.

21 This shows a series of all the parks and
22 bus stops, EMS, fire stations, et cetera.
23 We're clearly in the urban area, we're serviced
24 by urban services. And you have several
25 policies in your plan that talk about having

1 multi-family and higher intensity residential
2 and commercial uses in proximity to those
3 services, and that was an exhibit demonstrating
4 that we do.

5 We think this -- and as Mr. Intihar
6 indicated, the regional growth in this area is
7 really driving not only the commercial
8 development, but also the need for residential.
9 And in the area of RSW, I think we've all
10 witnessed it, but I think until Neale attended
11 a presentation, we had no idea that the
12 employment was 4,000 on the campus of the
13 airport, which is a huge number of people who
14 are there full-time that could utilize housing.

15 We also know that we've had NeoGenomics,
16 Ulta Resources and others, Skyplex, that are
17 located in the immediate area. Those are large
18 employers, and they're going to also need
19 additional housing that's in not only close
20 proximity to them but transportation routes
21 north and south because of I-75. Florida Gulf
22 Coast University, 15,000 students, it's
23 continuing to grow; it's a couple miles away.
24 We think this provides a necessary place for
25 people to have short-term rentals, whether

1 you're faculty or staff or students, obviously.

2 This sort of shows what's going on
3 immediately around us. The economic and
4 corporate growth, as Mr. Intihar indicated,
5 you're not getting the smokestack industrial
6 and heavy industrial users, you're getting
7 things that are more corporate office driven.
8 And certainly anything that's internal. Our
9 nearest neighbor, for instance, is a surgical
10 center to the north at the moment, and so we
11 have uses that clearly are not heavy
12 industrial, but would not be incompatible with
13 the residential that we're proposing.

14 So we obviously evaluated the Lee Plan,
15 and that's in conjunction with the comp. plan
16 amendment that we're proposing. And so
17 analyzed that for general interchange, which is
18 Policy 1.3.2 of your Lee Plan. It talks about
19 the density and intensity and the other uses.
20 So the mix of uses that we've proposed are
21 certainly consistent with the Lee Plan policy
22 that allows various uses for your interchange
23 area.

24 Policy 2.1.1 talks about residential,
25 commercial, industrial and public development

1 occurring in the designated future urban areas.
2 We obviously are a future urban area, serviced
3 by water, sewer, roads, et cetera, so we
4 obviously are consistent with that policy.

5 The different highway interchange areas
6 and what they're proposing to do, we're
7 consistent with those criteria obviously by
8 inclusion in either the general interchange or
9 the industrial interchange. And of course the
10 map series is being modified to show this as
11 general interchange, and we certainly hope that
12 the county commission will continue to support
13 the project and approve that.

14 Policy 5.1.3 directs high-density
15 residential development to locations that are
16 near employment, shopping centers and schools,
17 et cetera, so obviously here we're close to
18 employment centers that I've already mentioned,
19 but we have the regional mall, Gulf Coast Town
20 Center, that's catty-corner to the southeast,
21 and that's a huge employer for our area and
22 continuing to be as we get other development in
23 and around this project.

24 So Policy 5.1.4 prohibits residential
25 development and industrial development areas

1 and the airport noise Zone B, and we're not
2 located in airport noise B, so therefore we're
3 consistent with that policy. And 5.1.5, Policy
4 5.1.5., talks about providing buffers and
5 future residential areas from encroachment of
6 destructive uses. And that's why in
7 discussions with staff we isolated the
8 residential component to only tract A, which is
9 more toward the middle of the site, and
10 isolated from any industrial traffic that might
11 be using Allico Road and/or Three Oaks Parkway.

12 And Policy 5.1.6. says we're going to
13 maintain development regulations that require
14 high density, multi-family, cluster
15 development, mixed use developments, have open
16 space buffering the landscaping. And obviously
17 we have shown open space on our master plan.

18 With using the greater Pine Island
19 transfer development units that we propose to
20 use, there can be some open space reductions,
21 but those are covered I think administratively
22 just through the code provision to allow the
23 transfer of units.

24 And then we have Policy 95.1.3, which are
25 L.O.S. standards. And we've prepared a level

1 of service analysis, and you may hear some of
2 that discussion related to transportation, but
3 I'll leave that to the transportation experts
4 to discuss in greater detail. But otherwise,
5 we, we have no level of service issues.

6 One of the things I wanted to touch on
7 with regard to the project was just going
8 through our density calculations. Initially
9 when we submitted this, we were asking for
10 significantly more dwelling units. And in
11 discussing it with staff, they were concerned
12 about future industrial growth to our west. So
13 therefore we decided on limiting the
14 residential to only tract A, which is about 14
15 acres. And at the 14-unit maximum under the
16 new general interchange, that equated to the
17 196 units.

18 And then we've, on the application, have
19 indicated our desire to use transferable
20 dwelling unit bonus unit provisions of your
21 chapter 2 under the Land Development Code, and
22 in doing so, we would qualify for the maximum
23 22 units per acre for residential, which would
24 be the 308 units that we've requested. And we
25 think that that's -- that 308 unit number, I've

1 worked on I don't know how many apartment
2 complexes in the last few years, but it seems
3 like the sweet spot for almost every
4 multi-family developer is somewhere between 250
5 and 300 plus or minus units. So we think the
6 number that we've requested is not only
7 consistent with your Lee Plan policy, but a
8 number that's doable and achievable for folks
9 that Brian's firm has been talking to. I just
10 wanted to make sure we talked about that. And
11 our intent would be to use the greater Pine
12 Island TDUs and that provision under your
13 chapter 2 of the Land Development Code.

14 So obviously chapter 34-411 has general
15 standards for planned developments. And I'm
16 not going to go through every one of these
17 criteria. Staff has analyzed those. We have
18 as well. Your number one standard is being in
19 compliance with the Lee Plan, obviously. We
20 also have access to open space and
21 infrastructure. We've asked for what we think
22 is a compatible project. We have a master plan
23 that's functional and is respectful for
24 adjacent land uses.

25 The density, as I said, is consistent not

1 only with the Lee Plan, but we think it's the
2 number that makes sense for the project and
3 others who would be interested in developing
4 residential at this location.

5 So also in chapter 34, chapter -- section
6 34-145 talks about zoning and the
7 recommendations under the Hearing Examiner.
8 And obviously again we have to demonstrate
9 compliance with the Lee Plan, urban services,
10 et cetera. Again, I'm not going to go through
11 all those criteria, it's well discussed in our
12 presentation materials that are in your backup
13 as well as staff's report and analysis.

14 So there were a couple of recommended
15 conditions that we disagreed with. And you're
16 going to hear Mr. Treesh talk a little bit more
17 about the transportation condition 3.E that
18 Neale discussed at the commencement of the
19 meeting.

20 We also have condition 3.A that I just
21 want to highlight. We're going to come back
22 and talk about that as part of the 48-hour
23 letter.

24 This one deals with your Land Development
25 Code provision that says that for CPDs, they're

1 allowed to have residential, as long as there's
2 a minimum of 50,000 square feet of commercial.

3 Staff used a term that is inconsistent
4 with what the code says. They use the term
5 concurrently. And the LDC uses the phrase in
6 conjunction with. And we're going to talk a
7 little bit more about that under the 48-hour
8 letter synopsis.

9 This was the original staff condition 3.E
10 that was modified by the handout from staff,
11 based on the meeting we held with them, I think
12 it was Wednesday of this week. And we'll be
13 talking more about that in some detail.

14 We have Tyler King here from Dex Bender to
15 talk about environmental. There's not a whole
16 lot to talk to, but Neale, if you want Tyler to
17 come up and say a few words?

18 MS. MONTGOMERY: I do. But before he
19 does, I have a couple questions.

20 MR. ARNOLD: Okay, sure.

21 MS. MONTGOMERY: Just you mentioned the
22 original map concept plan. How many square
23 feet is the project for the property approved
24 for right now?

25 MR. ARNOLD: It's approved for 300,000

1 square feet of commercial uses.

2 MS. MONTGOMERY: And is there a condition
3 in the original approval requiring improvement
4 to the -- to arterials of Three Oaks and Alico?

5 MR. ARNOLD: Not that I'm aware of.

6 MS. MONTGOMERY: Where are the access
7 points to the project?

8 MR. ARNOLD: If we go back to the master
9 plan.

10 Let's just use this one. That's the
11 original master plan, obviously. And it showed
12 one access point on Three Oaks, no access to
13 Alico. Our revised master plan shows access in
14 two locations on Three Oaks, and we're removing
15 the proposed access on Alico Road.

16 MS. MONTGOMERY: So you don't have some
17 abilities to directly access from --
18 immediately from the project Three Oaks and
19 Alico?

20 MR. ARNOLD: That's correct, we don't.

21 And I didn't mention it, but while I'm
22 there, I just point out that there was an
23 interconnection previously approved, and
24 there's a condition that allows that to be
25 relocated with the mutual agreement by the

1 surrounding property owner and this property
2 owner. And we have had discussions with that
3 property owner.

4 MS. MONTGOMERY: To the best of your
5 knowledge, they have agreed to work on a
6 relocation?

7 MR. ARNOLD: That's my understanding, that
8 they have agreed.

9 MS. MONTGOMERY: I'm going to hand you an
10 excerpt from the Lee Plan. It's from the
11 glossary. When it comes to site related, that
12 term is defined in a number of different
13 locations. There's a definition in chapter 10.

14 To the best of your knowledge, does that
15 apply at the time of development order?

16 MR. ARNOLD: It's my understanding that it
17 would, yes.

18 MS. MONTGOMERY: There's a definition in
19 chapter 2 in the context of road impact fees.
20 To the best of your knowledge, does that
21 apply -- that definition apply if you're
22 seeking to determine whether or not you're
23 entitled to road impact fee credits for certain
24 improvements?

25 MR. ARNOLD: I'm not certain on that

1 specific policy, but I believe so.

2 MS. MONTGOMERY: The definition in the Lee
3 Plan, would that be the one under consideration
4 here?

5 MR. ARNOLD: Yes, I think it would be. At
6 the zoning stage I think we would be dealing
7 with the Lee Plan definition for that.

8 MS. MONTGOMERY: So when you look at that
9 definition, and I'll read it, it says: Capital
10 improvements and right-of-way dedications for
11 direct access to improvement to the
12 development.

13 And then it says: (As read) Direct access
14 to improvements include but are not limited to
15 the following: Site driveways and roads,
16 median cuts related to those site driveways and
17 roads, traffic control measures for those
18 driveways and roads, and road or intersection
19 improvements, so that the primary purpose at
20 the time of construction is to provide access
21 to the site.

22 In your expert opinion as a planner, where
23 would the site-related improvements be required
24 when you look at this master concept plan?

25 MR. ARNOLD: I think based on that

1 definition, I would say only at the direct
2 access points to Three Oaks Parkway in our
3 internal drives.

4 MS. MONTGOMERY: In your expert opinion as
5 a planner, would site-related include
6 improvements to the two arterials of Three Oaks
7 and Alico?

8 MR. ARNOLD: No. In my opinion, it
9 wouldn't.

10 MS. MONTGOMERY: You've had a slide on
11 95.1.3., I believe it's slide 21. Can I ask
12 you to go back to that one.

13 That policy differentiates between level
14 of service standards that are regulatory and
15 level of service standards that are
16 non-regulatory. And the non-regulatory levels
17 service standards are only used for -- well,
18 let me ask you: The way I read it, it suggests
19 that the non-regulatory only apply in a
20 planning standpoint, but not for the
21 requirement of capital improvement. But in
22 your expert opinion as a planner, what's the
23 impact of non-regulatory standards on a
24 development permit?

25 MR. ARNOLD: I don't think they're

1 necessarily a requirement for the review of
2 those if they're non-regulatory.

3 MS. MONTGOMERY: So when it says
4 compliance with non-regulatory level of service
5 standards will not be a requirement for
6 continued development permitting but will be
7 used for facility planning purposes, does that
8 apply to the applicant or does that apply to
9 the county?

10 MR. ARNOLD: Well, in my reading, I would
11 say that's the county's responsibility because
12 of the facility planning reference.

13 MS. MONTGOMERY: And if roads level of
14 service is a non-regulatory level of service
15 standard, then in your expert opinion can the
16 county require additional improvements based on
17 a non-regulatory standard?

18 MR. ARNOLD: No, I don't think they can.

19 MS. MONTGOMERY: Thank you. I don't have
20 any other questions.

21 HEARING EXAMINER RIVERA: Do you have any
22 questions, Chip?

23 MR. BLOCK: Yes, ma'am, I do.

24 Couple of -- I believe I only have a
25 couple of questions, Mr. Arnold.

1 During your presentation in and around
2 PowerPoint slide number 9, and I'll let you get
3 to it before I ask the question so that you can
4 concentrate on getting to 9 and then going from
5 there.

6 9 is a schedule of uses, or should be the
7 schedule of uses, based upon by memory.

8 MR. ARNOLD: You're correct.

9 MR. BLOCK: And I listened to your
10 presentation and I looked at the proposed
11 schedule of uses, and I see, after hearing what
12 you have said and seeing here in the very first
13 line, a schedule of uses, and then stricken is
14 the wording for tracts A and B.

15 So is it the applicant's intent and
16 presentation today that there would be only one
17 resulting set of conditions, not optional
18 conditions for option A or option B?

19 MR. ARNOLD: That's correct. And I think
20 that was one of the comments we want to address
21 as part of the 48-hour letter.

22 MR. BLOCK: Thank you.

23 And then second of all, during questions
24 that were raised by Ms. Montgomery, do you have
25 knowledge of when the original zoning was

1 granted?

2 MR. ARNOLD: I read the original zoning
3 resolution. I was not a party to the original
4 zoning case.

5 MR. BLOCK: Do you happen to know maybe
6 even the year that it was approved?

7 MR. ARNOLD: I can tell you that in just a
8 moment. I think the original was approved in
9 2005.

10 MR. BLOCK: Thank you very much.

11 HEARING EXAMINER RIVERA: On this slide,
12 since we're here, one of the questions I have
13 was the application originally -- it appeared
14 to be requesting ALF units as well. Was that
15 subsequently amended? Because I didn't see it
16 on the schedule.

17 MR. ARNOLD: We did. We've withdrawn that
18 request.

19 HEARING EXAMINER RIVERA: Okay. And can
20 you elaborate, I'm not sure if you're the
21 correct person to speak about public
22 facilities, but you mentioned that it has
23 adequate sewer/water service, but I know there
24 was some discussion in the staff report and in
25 the supplemental materials that there may be

1 stub-outs but not connections. Can you speak
2 to that?

3 MR. ARNOLD: I -- if I can defer to Neale
4 to answer that, or Frank Feeney from our
5 office, who's been dealing with utility
6 providers.

7 HEARING EXAMINER RIVERA: Okay. Just some
8 clarification at some point today would be
9 helpful to me on that point. Thank you.

10 MR. ARNOLD: Would you like that -- would
11 you want to deal with that now or --

12 MS. MONTGOMERY: Where is Frank? Oh,
13 there he is. I'm looking here, and he's there.

14 MR. ARNOLD: Would you like Frank to
15 address that now?

16 MS. MONTGOMERY: Yes.

17 MR. ARNOLD: Come on up, Frank.

18 So I don't think Frank has testified here
19 before, so I have a copy of his resume --

20 HEARING EXAMINER RIVERA: Okay.

21 MR. ARNOLD: -- for you.

22 MS. MONTGOMERY: Mr. Feeney, were you
23 sworn?

24 MR. FEENEY: Yes.

25 MS. MONTGOMERY: Yes. Just wanted to make

1 that clear for the record.

2 MR. FEENEY: For the record, my name is
3 Frank Feeney, I'm a professional engineer
4 working for Grady Minor. I've got over 19
5 years of experience working in the area. And
6 I've worked pretty much from Sarasota all the
7 way down to Key West doing multiple different
8 types of jobs working for residential as well
9 as commercial developments, as well as
10 large-scale utility municipal jobs.

11 HEARING EXAMINER RIVERA: So you do have
12 experience working in Lee County, just not
13 testifying previously in this --

14 MR. FEENEY: Yes, ma'am.

15 HEARING EXAMINER RIVERA: -- jurisdiction.
16 Okay.

17 Did staff have any question? I'm sorry,
18 do you have any questions of --

19 MR. BLOCK: No, ma'am.

20 HEARING EXAMINER RIVERA: Thank you. Yes,
21 I'll accept you as an expert, thank you.

22 MR. FEENEY: Thank you.

23 Your question is concerning whether or not
24 there's water and sewer availability, as well
25 as what kind of stub-outs are available.

1 On both of the north and the south
2 entrances off of Three Oaks there are water
3 mains as well as sewer mains that are stubbed
4 out. They will be tied into. So ultimately
5 when the development is completed and done,
6 we'll be tying directly into their pressure
7 pipes.

8 HEARING EXAMINER RIVERA: Okay. So they
9 will be developer funded connections at that --

10 MR. FEENEY: We will be doing our own --
11 yes, we'll be basically having to go through
12 the development order process in Lee County and
13 getting approvals for Lee County to actually
14 show the sewer and water connections.

15 HEARING EXAMINER RIVERA: Okay. And your
16 testimony was that they are currently located
17 at the north and south -- essentially the only
18 two access points for the property.

19 MR. FEENEY: That's correct.

20 HEARING EXAMINER RIVERA: Okay. Thank
21 you, that answered my questions.

22 MS. MONTGOMERY: I don't know, Mr. Feeney,
23 if you can confirm this, but Mr. Freeman
24 certainly can, because he worked with the
25 property owners to extend Three Oaks Parkway,

1 and included the utility lines. And so it's my
2 understanding that the question at the time was
3 Mr. Freeman hadn't yet dedicated those to the
4 county. But it's my understanding they have
5 subsequently been dedicated and are now
6 available and that addresses the issue; is that
7 correct?

8 MR. FEENEY: That is my understanding as
9 well, based upon my conversations with Lee
10 County Utilities yesterday.

11 HEARING EXAMINER RIVERA: Okay, thank you.

12 That was my only question, thank you.

13 MR. ARNOLD: Any other questions of me?

14 HEARING EXAMINER RIVERA: No, not at this
15 time, no.

16 MR. ARNOLD: So I think I'll go back and
17 have Tyler come up to discuss the environmental
18 assessment and --

19 MR. KING: Good morning. For the record,
20 my name is Tyler King, I'm the president and
21 principal biologist at Dex Bender and the
22 environmental consultant for the applicant.
23 I've testified numerous times in this forum and
24 my resume is on file.

25 The 33.95-acre parcel is comprised mostly

1 of pine flatwoods, invaded by exotics. The
2 western eight acres of the site is fallow
3 pasture, and there are small areas of spoil and
4 ditches and some disturbed areas, very small
5 there.

6 There are no wetlands on the site. A
7 protected species survey was conducted on the
8 site in September of 2018. No listed species
9 were observed.

10 Another protected species survey will be
11 performed during the developmental order and
12 South Florida permit application.

13 And that's pretty much it. Not a very
14 exciting site so -- any questions?

15 HEARING EXAMINER RIVERA: None from me,
16 thank you.

17 Did staff have any?

18 MR. BLOCK: I don't have specifically any,
19 but the applicant -- or the representative did
20 not mention anything about whether or not they
21 have any objections to the recommended
22 conditions. And since we do not have our
23 environmentalist here today, I'd like to kind
24 of get that on the record if they have any
25 objections to it.

1 MR. KING: Any objections to which part?

2 I'm sorry.

3 MR. BLOCK: To the environmental
4 conditions that are contained within the staff
5 report.

6 MR. KING: No, we do not.

7 MR. BLOCK: I just wanted to make sure it
8 was on the record.

9 MR. KING: Sure.

10 HEARING EXAMINER RIVERA: Thank you.

11 MS. MONTGOMERY: Our next witness is Ted
12 Treesh. Ted has testified here many times
13 before. He's been accepted as an expert in
14 transportation planning, and he's still
15 accepted here today.

16 HEARING EXAMINER RIVERA: Yes, thank you.

17 MR. TREESH: Good morning, Ted Treesh, TR
18 Transportation Consultants.

19 Let me just briefly go through the -- just
20 a background of the analysis that we conducted
21 as part of this application.

22 As Wayne indicated, this site is currently
23 zoned for 300,000 square feet of commercial
24 uses. As Chip indicated, that zoning was
25 approved in 2005.

1 This request slightly increases those
2 intensities, as well as asked for some
3 multi-family. As part of the comp. plan
4 amendment, that allows the multi-family to be
5 requested. But as you're aware, during our
6 zoning process we have to look at the worst
7 case in terms of what this project will
8 generate in terms of vehicle trips. And in
9 this case the worst case is assuming that the
10 entire site is developed with commercial retail
11 and the hotel use.

12 If the multi-family component is
13 constructed, as Wayne indicated, there'll be a
14 reduction in the commercial square footage
15 subsequent so that the trip generation isn't
16 exceeded to what we've analyzed during this
17 process.

18 So in our analysis, the worst case in
19 terms of this current request is looking at
20 350,000 square feet of commercial plus the 300
21 hotel units.

22 And at the bottom of the slide, just
23 generally shows the comparison of the trip
24 generation during the -- the PM peak is the
25 highest, the trip generation periods, for this

1 project. And we're about 300 trips higher on
2 the second option, which is the 350,000 plus
3 the hotel.

4 So it's not a tremendous increase in trip
5 generation, you know, considering the amount of
6 development that we're looking at and the
7 amount of development that's approved in the
8 area. And I'll discuss that briefly in a
9 moment.

10 So as we move forward in the analysis,
11 looking at this option B was the worst case in
12 terms of our overall analysis that was
13 conducted.

14 So then what we did was looked at the
15 intersections as well as the arterial level of
16 service analysis pursuant to the TIS
17 guidelines. The link level of service analysis
18 indicated in the TIS there were several issues
19 all along. One issue along Alico between I-75
20 and Three Oaks Parkway, that short segment
21 there, is projected to operate at a level of
22 service F in 20-- we looked at 2024 as the
23 build-out of this project. So that was our
24 analysis year during the -- during our traffic
25 reviews.

1 That section of Alico is shown to fail in
2 2024 without the project traffic. So it's a
3 background level of service deficiency.

4 And I believe Lee Road, which is to our
5 west, that extends south of Alico Road, was
6 shown to operate at a level of service F in
7 2024 without the project.

8 So those two link levels of service
9 analyses were shown to operate below the
10 recommended standards. And again,
11 transportation concurrency is now
12 non-regulatory, so the Lee Plan references that
13 the level of service is more of an
14 informational review, so traffic -- the county
15 can track issues as they begin to surface on
16 developing their capital improvement program.

17 When we add the trips from our project,
18 obviously those links that are already at F are
19 still in F, and we do not degrade the other
20 roadway links that are in the area. Those
21 operate at a level of service D, as in dog,
22 better, or better than 2024 with the project.
23 So this rezoning does not degrade the level of
24 service of any of the roadway links beyond what
25 they're operating at, or projected to operate

1 at in 2024.

2 And then we looked at the intersections.
3 We looked in our analysis at the two site
4 access drives along Three Oaks Parkway that
5 Wayne indicated earlier, as well as the
6 signalized intersection of Alico and Three Oaks
7 Parkway. And that's where basically the
8 condition and the discussion started with
9 staff.

10 And again, this is the old condition 3.E
11 that's in the staff report right now, it's not
12 the revised language that was handed out this
13 morning. But it's basically that our points
14 are still the same in terms of the discussion,
15 and are these improvements at Three Oaks and
16 Alico site-related, and our conclusion is that
17 they aren't. And I want to just explain how we
18 arrived that that conclusion.

19 And a lot of this information is also
20 contained in Marcus Evans' memo which is
21 attachment J of the staff report. He
22 references several of the LDC and the Lee Plan
23 sections, and I'll reference those as well.

24 The first one I have here is LDC Section
25 2-270(a), which talks about how impact fees are

1 used. Obviously this project will pay road
2 impact fees when they apply for the building
3 permits. That's the time that impact fees are
4 collected in Lee County is at the building
5 permit stage. And those impact fees are to be
6 used for the funding of the capital improvement
7 plan. So then we define in the LDC 2-264 what
8 capital improvements are.

9 And you can see through the definition
10 that -- in just reading towards the bottom line
11 there, that are any non site-related road
12 construction projects.

13 So again, as we've indicated, there are --
14 there will be site-related improvements for
15 this project. But those -- it's our contention
16 that those are related to the improvements that
17 are required to provide access to the site.

18 And as Wayne indicated on our master
19 concept plan -- actually, that aerial right
20 there shows it very well. You can see on Three
21 Oaks Parkway the driveways to this project are
22 already constructed. On the south end this
23 right here is a driveway apron that was
24 constructed. It's a right-in/right-out access
25 to Three Oaks Parkway. And then at the north

1 end is a full median opening with a driveway
2 apron construct. So those will service the two
3 intersections that serve this property. And
4 then we'll -- again, as previously indicated,
5 we'll provide a cross-access to the property to
6 the north at some point to be located in
7 collocation with our neighbors to the north.

8 Again, Three Oaks Parkway, as previously
9 indicated, was built by Mr. Freeman for impact
10 fee credits. It was constructed a number of
11 years ago. If you've been in the area for a
12 number of years, that road was barricaded for a
13 number of years because it currently ends up at
14 the Fiddlesticks Canal. It doesn't traverse
15 any further.

16 But recently that road was turned over and
17 accepted by Lee County. It's now open to
18 traffic. There's a surgery center that exists
19 a little further to our north that is now open,
20 so that roadway is opened to traffic.

21 I would also mention in our analysis that
22 we looked at, in the build-out year of 2024 we
23 assumed, after consultation with Lee County,
24 the completion of the extension of Three Oaks
25 Parkway to the north to connect at Daniels

1 Parkway. That project has been in the works
2 for a number of years. It is now funded, fully
3 funded within the CIP in the first three years.
4 I believe it's three separate projects. DOT is
5 here and they can speak further to this. But
6 the funding of the project is within the first
7 three years of the CIP for right-of-way and
8 construction of that extension to the north.

9 So we worked with Lee County DOT and they
10 provided us some traffic projections based on
11 the travel model that we assumed in our
12 analysis for Three Oaks Parkway. That would
13 include that connection further to the north to
14 Daniels Parkway.

15 I apologize, I'm just getting over a cold.
16 Getting dry mouth very quickly.

17 So again, going back to our intersection
18 analysis at Three Oaks and Alico Road. As I
19 previously indicated, we were discussing
20 site-related improvements. And again, as
21 previously referenced, Neale brought this up in
22 the Lee Plan, this is the definition of
23 site-related improvements.

24 Numbers 1 through 4 really don't apply to
25 us. Those are -- in terms of Alico and Three

1 Oaks, those are describing the driveways and
2 connections and turn lanes that are required at
3 those driveways and connections, or traffic
4 control measures required at those driveways as
5 a result of the project at the driveway
6 connections to our project.

7 Number five, where it says roads or
8 intersection improvements whose primary purpose
9 at the time of construction is to provide
10 access to the development. And this is I think
11 what the county is saying, that this -- the
12 intersection of Three Oaks and Alico, the
13 primary purpose is to provide access to this
14 development.

15 And we contend that that's not the primary
16 purpose of Alico and Three Oaks. Obviously
17 most of our traffic traveling through that
18 intersection to get to our site has to travel
19 through that intersection. With the connection
20 of Three Oaks to Alico, our project traffic
21 will now have the option of coming to and from
22 the north, from the Daniels Parkway corridor --

23 MS. MONTGOMERY: I hate to interrupt. You
24 just said the connection to Alico. I think --

25 MR. TREESH: I meant Three Oaks, I'm

1 sorry.

2 MS. MONTGOMERY: Up to Daniels.

3 MR. TREESH: Yes. With the connection to
4 Three Oaks up to Daniels, our project trips
5 will be able to provide access to Daniels to
6 the north and Alico Road to the south.

7 Alico Road and Three Oaks today, based on
8 our intersection counts, carries almost 4,500
9 cars through it in one hour during the p.m.
10 peak hour. That's without our project.

11 At the build-out year of 2024, I believe
12 the projections -- because again, when we do
13 our projections into the future for our
14 analysis, we grow the background traffic at a
15 historical -- based on a historical rate. And
16 based on the 2024 conditions, there will be
17 approximately over 6,000 cars through that
18 intersection during the p.m. peak hour. That's
19 in a 60-minute window.

20 With our project, again, assuming the
21 connection up to Daniels Parkway, we're only
22 anticipating to add about 12 to 13 percent on
23 top of that 6,000 cars an hour.

24 So my contention is that the intersection
25 of Three Oaks and Alico, the primary purpose is

1 not to provide access to this development.

2 This aerial photo shows the primary access
3 to the development. In our opinion it's where
4 the blue dots are, the intersections on Three
5 Oaks Parkway.

6 The golden dots are, in our opinion,
7 off-site intersections that are not the primary
8 purpose to provide access to this development.

9 And again, going back to the definition of
10 road impact fees and why a development pays for
11 road impact fees is to exactly pay for
12 improvements like the county is suggesting to
13 Alico and Three Oaks. Those are what road
14 impact fees are paid for.

15 This project, as Wayne indicated, there's
16 a lot of other vacant property you can see on
17 Three Oaks to our north and to our west. A lot
18 of that property has already been through the
19 zoning process here in Lee County. There's --
20 I just went through and found six different
21 rezonings on large parcels north of Alico Road
22 up to the Fiddlesticks Canal that all have
23 frontage on Three Oaks Parkway. And those
24 projects in total, the zonings total over 3.3
25 million square feet of various industrial,

1 commercial and retail uses. So it's quite a
2 number of approved uses that are approved in
3 those zoning resolutions. And in none of those
4 zoning resolutions are there any conditions
5 similar to what Lee County is proposing in
6 condition 3.E on this project.

7 One of the things we do reference when
8 it's time to look at site-specific improvements
9 is the Lee County Administrative Code 11-4.
10 And you've heard me refer to that in this forum
11 before. That's commonly referred to as the Lee
12 County Turn Lane Policy. And again, that is
13 done at the time of development order. We
14 testified in this hearing many times and I've
15 done it many times, that site-specific
16 improvements will be determined at the time of
17 development order stage.

18 Well, in that Turn Lane Policy there's
19 this language that talks about the analysis
20 when turn lanes need to be installed,
21 specifically at an intersection. And I've
22 underlined here where it says: If and when a
23 traffic analysis shows that the level of
24 service is being degraded by the proposed
25 project traffic.

1 So that's if an intersection is shown to
2 go from a level of service D to a level of
3 service E because of the project trips.

4 And again, the movements at Three Oaks and
5 Alico Road, there are movements that are
6 failing in the background without this project.
7 As I indicated in my previous testimony, the
8 segment from Three Oaks to I-75 is already at
9 level of service F without our project. The
10 reason it's at level of service F is because of
11 the high volume of traffic. When you have that
12 high volume on a link level of service, logic
13 says the intersections at either end of that
14 link are most likely going to have some issues.
15 And that's what we have in this instance is we
16 have movements that are at level of service --
17 a poor level of service at the signalized
18 intersection of Alico and Three Oaks.

19 But the movements that we're impacting --
20 and it's fairly easy to understand because of
21 where we're located -- to get to this site, if
22 you're coming from the south, east or west on
23 Alico, on Alico you would turn left if you're
24 heading eastbound. If you're heading westbound
25 you would turn right. And if you're heading

1 north, you would go straight through.

2 And again, this intersection was
3 constructed by Mr. Freeman, you know, under Lee
4 County DOT's review, to accommodate the large
5 majority of this development when it's built.
6 Because if you've been out there and you saw
7 those barricades that were up, there was a very
8 wide road right at the intersection. There's
9 dual left turn lanes, there's through lanes,
10 there's right turn lanes on Alico -- I mean on
11 Three Oaks Parkway. So a lot of improvements
12 were done in advance to accommodate this future
13 development.

14 But what's happened since then is traffic
15 on Alico has continued to grow. Gulf Coast
16 Town Center has been developed very
17 successfully. Now you've got Miromar Lakes,
18 you've got other residential projects coming in
19 to our east that's been increasing the traffic
20 along Alico Road over the years, and so that's
21 causing this intersection to have some
22 operational issues in the future, based on our
23 analysis.

24 But again, our contention is that just as
25 the impact fees were developed, growth pays for

1 growth, the impact fees, in our opinion, are
2 what's to be used for these off-site
3 improvements, specifically at Alico and Three
4 Oaks, if the county determines.

5 But going back to this statement, the
6 movement that our analysis showed, we did not
7 degrade any level of service movement. There
8 were movements that were already at level of
9 service F that we were adding some traffic to.
10 But again, it was at level of service F in the
11 background. And if it's at level of service F
12 in the background, it's called a preexisting
13 deficiency. And that's -- you know, that can't
14 be held -- the project cannot be held
15 responsible for fixing preexisting
16 deficiencies.

17 As you noted in the previous language of
18 condition 3.E, there were specific terms that
19 were identified. And in the modified
20 condition, it's a more general statement.
21 Which, as Neale indicated before, is basically
22 a blank check, because we don't -- you know,
23 it's not clear what improvements that are going
24 to be needed in the future. You know, there
25 could be a number of things that could happen

1 in this area prior to this project seeking a
2 development order improvement.

3 NeoGenomics is coming in further to the
4 north; that project has applied for development
5 order. They will have 4, 500 employees on that
6 property at the time of their build-out. So
7 there's a lot of different projects that could
8 happen. Again, all have impacts at this
9 intersection of Three Oaks and Alico Road, and
10 all those projects are paying impact fees.

11 These are just the zoning ordinances that
12 I was referencing earlier that are approved and
13 exist to the north on Three Oaks Parkway on
14 either side of Alico Road up to the
15 Fiddlesticks Canal. And it's almost 3.4
16 million square feet and almost 600 hotel rooms.

17 So in summary, our conclusion is that the
18 impact fees are to be used for the improvements
19 in satisfying condition 3.E.

20 This project will be responsible for
21 site-related improvements, and we will have to
22 evaluate the turn lanes. Again, as I said,
23 Three Oaks Parkway was built with turn lanes
24 into all those driveways, but at the time of
25 development order we'll have to commit and

1 evaluate them to determine if they were long
2 enough.

3 We don't believe condition 3.E is
4 consistent with the Land Development Code and
5 the Lee County Comprehensive Plan.

6 The other thing we looked at, and I just
7 wanted to reference, was another Lee County
8 Administrative Code 13-17, which is the traffic
9 study guidelines for rezoning applications.

10 And again, it says in that document that the
11 applicant should be aware that the zoning TIS
12 is utilized for general impact analysis for the
13 proposed project and not as a basis for a
14 traffic mitigation plan. And what condition
15 3.E is basically saying is that we must pay for
16 a traffic mitigation plan. We don't know what
17 that mitigation plan is.

18 The other thing I just wanted to point out
19 that we've all seen is that most projects don't
20 develop anywhere near the level of intensities
21 that are approved at zoning. As I said, 3.4
22 million square feet is approved to the north.
23 The likelihood of that ever occurring, based on
24 what's happened in the past in other zonings
25 around Lee County, is highly unlikely.

1 And again, the impacts for this specific
2 project are evaluated at the time of the local
3 development order.

4 That's really all the comments I had at
5 this point, and I'd be more than happy to
6 answer any questions.

7 MS. MONTGOMERY: I have a few.

8 Mr. Treesh, do you have Mr. Evans' staff
9 analysis in front of you?

10 MR. TREESH: Attachment J?

11 MS. MONTGOMERY: Yes.

12 MR. TREESH: Yes.

13 MS. MONTGOMERY: As you pointed out on
14 Page 1 of Mr. Evans' memo, he does quote that
15 same section from AC-13-17 where it says that
16 the zoned TIS is not applicable for determining
17 traffic-related impacts for development orders.

18 I believe earlier you testified that when
19 you do a zoning TIS, it's the maximum potential
20 impact, correct?

21 MR. TREESH: That's correct.

22 MS. MONTGOMERY: And how many projects,
23 just generally, do you think you've worked on
24 where you've looked at the zoning TIS and the
25 development order TIS?

1 MR. TREESH: Over a thou- -- couple
2 thousand.

3 MS. MONTGOMERY: Is it unusual in your
4 experience for the development order TIS to
5 have less or significantly less impacts than
6 the zoning TIS?

7 MR. TREESH: Yes.

8 MS. MONTGOMERY: And so the D.O. TIS is
9 used to identify the traffic mitigation plan,
10 because that's when you know what the actual
11 impacts are; is that your understanding?

12 MR. TREESH: That's correct.

13 MS. MONTGOMERY: And so there actually is
14 a section in chapter 10, I believe, that says
15 here's how you do the TIS, and then I think the
16 next section says -- is the section on the
17 traffic mitigation plan.

18 MR. TREESH: That's correct.

19 MS. MONTGOMERY: Mr. Evans' memo makes a
20 point of saying: The applicant did not meet
21 with the staff to discuss the traffic study
22 methodology prior to submitting the initial
23 traffic study.

24 I presume, but I'll ask you: Have you had
25 considerable experience with the zoning TIS

1 requirements?

2 MR. TREESH: Yes.

3 MS. MONTGOMERY: So do you need to meet

4 with the staff in every case in order to

5 perform a zoning TIS?

6 MR. TREESH: No.

7 MS. MONTGOMERY: And if the staff has

8 questions, do you generally get transportation

9 questions through sufficiency?

10 MR. TREESH: Yes.

11 MS. MONTGOMERY: Did we get those here?

12 MR. TREESH: Yes.

13 MS. MONTGOMERY: Did we respond to them?

14 MR. TREESH: Yes.

15 MS. MONTGOMERY: And the top of -- I'm not

16 sure what page, it says: Elements associated

17 with proposed project accesses, including but

18 not limited to possible access movement, will

19 be further considered at the time of local

20 development order, and references the code

21 sections.

22 When you look at that, in your mind is

23 that applying to the site's access points and

24 not Alico and Three Oaks?

25 MR. TREESH: That's correct, yes.

1 MS. MONTGOMERY: When I look at -- I'd ask
2 you to turn to page 4, table 5. And the table
3 looks at significant impacts expected. There's
4 three links identified on Alico. Does
5 Mr. Evans' report indicate that there is
6 significant impact expected on any of those
7 links from this project?

8 MR. TREESH: It indicates that the project
9 will not have a significant impact on these
10 links.

11 MS. MONTGOMERY: And then if I flip to the
12 next page for the continuation of that table,
13 it indicates that there are two roads where
14 there's a significant impact, and that's Lee
15 Road and Oriole; is that correct?

16 MR. TREESH: That's correct.

17 MS. MONTGOMERY: But there's not an
18 adverse impact?

19 MR. TREESH: That's correct.

20 MS. MONTGOMERY: And then when I looked at
21 the table at Three Oaks Parkway, does it
22 indicate that there's a significant impact?

23 MR. TREESH: Which table again?

24 MS. MONTGOMERY: It's the same table. It
25 continues --

1 MR. TREESH: Back on the previous page?

2 MS. MONTGOMERY: Yeah, it just continues
3 over. So Three Oaks is at the top of the next
4 page.

5 MR. TREESH: What was your question? Does
6 it indicate --

7 MS. MONTGOMERY: Does this project,
8 according to the memo, have a significant
9 impact on Three Oaks?

10 MR. TREESH: It does not.

11 MS. MONTGOMERY: And I know this isn't a
12 DRI, but generally when we think about
13 requiring mitigation for major county
14 facilities, you have to be both significant and
15 adverse.

16 MR. TREESH: That's correct.

17 MS. MONTGOMERY: And so this project is
18 not significant and adverse on any link.

19 MR. TREESH: That is correct.

20 MS. MONTGOMERY: And I think that's
21 important, because if you look down toward the
22 bottom of this page, it says that there may be
23 a transportation proportionate share, but
24 there's no condition in the staff report to
25 that effect.

1 In your opinion, would that be because the
2 project is not significant and adverse on any
3 link?

4 MR. TREESH: That's correct.

5 MS. MONTGOMERY: If you look at the next
6 page, page 6, there's a paragraph that starts
7 off table 6, and it says: Table 6 describes
8 subject site accesses and nearby roadway
9 intersections that are expected to be most
10 impacted by the proposed zoning, along with
11 their corresponding pre and post-project
12 build-out levels of service.

13 As a general rule, when you analyze level
14 of service, you don't look a couple years down
15 the road past build-out, do you?

16 MR. TREESH: No, we just look at the
17 build-out projected year.

18 MS. MONTGOMERY: So why is there a
19 reference to post build-out here? Is that
20 normal?

21 MR. TREESH: I'm not sure the nomenclature
22 he's identifying there. You'll have to confirm
23 that with Mr. Evans.

24 MS. MONTGOMERY: Okay.

25 MR. TREESH: But the way the table's set

1 up, I believe that's at the build-out year.

2 But I can't confirm that.

3 MS. MONTGOMERY: Okay. And then if you
4 look at the top of page 7, there's a paragraph
5 that says: Transportation Chief Traffic
6 Engineer Steve Jansen has expressed concerns
7 with respect to intersection operations under
8 future conditions, and has indicated that the
9 additional traffic volume from the subject
10 site, assuming full project build-out, will
11 warrant intersectional turn lane improvements,
12 including increasing the number of turn lanes
13 and/or extending existing ones.

14 Let me ask you a couple of questions about
15 that. One: Is it valid to assume that the
16 project will build out to the maximum
17 potential?

18 MR. TREESH: Is it what again?

19 MS. MONTGOMERY: He's assuming these are
20 needed because it builds out to the worst case
21 scenario you analyzed. Is that a valid
22 assumption, based on your experience?

23 MR. TREESH: That it will build out to the
24 maximum? No. In my opinion, based on past
25 experience of other projects, no.

1 MS. MONTGOMERY: The thousands of
2 projects --

3 MR. TREESH: Right.

4 MS. MONTGOMERY: -- that you've worked on?

5 And in your expert opinion, I think I
6 heard you say the improvements that they
7 identified in the original condition 3.E are
8 needed with or without this project.

9 MR. TREESH: One of the specific
10 improvements was, yes. The others they
11 identified in our opinion weren't needed.

12 MS. MONTGOMERY: The memo defines -- takes
13 the definition of capital improvements from the
14 impact fees section of the Land Development
15 Code, and it talks about capital improvements
16 are all the necessary features running non
17 site-related road construction projects.

18 MR. TREESH: Correct.

19 MS. MONTGOMERY: So based on that, in your
20 expert opinion, are road impact fees supposed
21 to pay for this non site-related capital
22 improvement?

23 MR. TREESH: Yes.

24 MS. MONTGOMERY: Do you have a copy of the
25 proposed revised condition, per chance?

1 MR. TREESH: Yes.

2 MS. MONTGOMERY: I believe you were in
3 attendance at a meeting that the applicant had
4 with, among others, the DOT staff?

5 MR. TREESH: Yes. On Wednesday of this
6 week?

7 MS. MONTGOMERY: Yes.

8 And so in attendance from a transportation
9 standpoint were Mr. Evans, Mr. Jansen, Mr.
10 Murphy, Mr. Cerchie?

11 MR. TREESH: Correct.

12 MS. MONTGOMERY: At any time had the
13 applicant indicated that they agreed that they
14 or their successors would be responsible for
15 improvements at Three Oaks and Alico?

16 MR. TREESH: Did they agree?

17 MS. MONTGOMERY: Yes.

18 MR. TREESH: No.

19 MS. MONTGOMERY: And did you or others
20 make it clear that you did not agree that those
21 improvements were site related?

22 MR. TREESH: Yes, we made it clear they
23 were.

24 MS. MONTGOMERY: So the first sentence of
25 that condition, is that correct or incorrect?

1 MR. TREESH: I believe it's incorrect.

2 MS. MONTGOMERY: And as that condition is
3 written, do you have any idea, from a timing
4 standpoint, when the improvements would be
5 required?

6 MR. TREESH: No.

7 MS. MONTGOMERY: It could be five years
8 after build-out, 10 years after build-out, any
9 time in the future?

10 MR. TREESH: It doesn't specify.

11 MS. MONTGOMERY: Could the county ask for
12 funding if nothing was developed under this
13 condition?

14 MR. TREESH: Ask that again?

15 MS. MONTGOMERY: As this condition is
16 written, it creates an obligation to pay for
17 those future improvements. Let's say we have
18 another catastrophic downturn and nothing
19 develops on this site. Under this condition,
20 can the county still ask the property owner for
21 a share of the -- to pay for whatever
22 improvements they identify?

23 MR. TREESH: I believe they could, yes.

24 MS. MONTGOMERY: You mentioned the
25 site-related improvement definition from the

1 Lee Plan, and you pointed out that you believe
2 the staff was relying on number 5. That's the
3 one that says: Road or intersection
4 improvements whose primary purpose at the time
5 of construction is to provide access to
6 development.

7 MR. TREESH: Correct.

8 MS. MONTGOMERY: So as we just discussed,
9 the county could ask this property owner to pay
10 for improvements at that intersection, even if
11 they hadn't built anything. Is that consistent
12 or inconsistent with number 5?

13 MR. TREESH: I believe that's inconsistent
14 with number 5.

15 MS. MONTGOMERY: And you also indicated
16 that with or without this project those
17 improvements may be necessary. If they are,
18 then how does that -- those improvements in any
19 manner provide primary access to the
20 development?

21 MR. TREESH: I don't believe it is the
22 primary access to the development.

23 MS. MONTGOMERY: Let me -- well, let's
24 talk about that for a minute.

25 Can you go back to the aerial and tell

1 me -- there. When I look at Marcus's memo, he
2 talks about Lee Road. And where's Lee Road?

3 MR. TREESH: Lee Road is just to the west.
4 It's the next signal to the west where there's
5 a RaceTrac at the corner. It's approximately
6 maybe less than half a mile to our --

7 MS. MONTGOMERY: Okay. And where is
8 Oriole?

9 MR. TREESH: Oriole is this roadway right
10 here. This is the Oriole Road extension.
11 Again, it was built by Mr. Freeman. It comes
12 up and then curves to the east and connects to
13 Three Oaks, again, just south of the
14 Fiddlesticks Canal.

15 MS. MONTGOMERY: So if someone was seeking
16 to get access to this site, do they have to go
17 through the Three Oaks and Alico intersection
18 to get there?

19 MR. TREESH: No. As I indicated, Three
20 Oaks will be extended to Daniels; still will be
21 able to use that arterial roadway to connect to
22 the north.

23 This project to our west is in for
24 development order. It includes a roadway
25 connection between Oriole and Three Oaks. So

1 if someone did come across Alico and Oriole and
2 then traverse this site through the --
3 basically what I call a reverse perim- -- it
4 looks very similar to this on this property, to
5 be able to get to our project.

6 MS. MONTGOMERY: Okay.

7 MR. TREESH: And again, once all this
8 property up here is developed, they'll be able
9 to access our site directly without having to
10 travel through the Alico Road intersection.

11 MS. MONTGOMERY: Let me ask you a
12 question. Mr. Intihar had indicated that the
13 residential portion is under contract. If the
14 property develops with commercial and
15 residential, do you have any knowledge of
16 whether that would be an increase in trips or
17 decrease in trips, based on the -- would it be
18 the worst case scenario or would it be less?

19 MR. TREESH: No, it would be much less.
20 Residential development in this case would be
21 multi-family product; would be significantly
22 less than a retail or commercial development in
23 terms of trip generation.

24 MS. MONTGOMERY: Would it be even less
25 than what's already presently approved on the

1 project, the 300,000 square feet?

2 MR. TREESH: Yes.

3 MS. MONTGOMERY: So this project could
4 potentially reduce impacts over what's approved
5 but still have to pay for county major
6 intersection improvements, the way that
7 condition's written?

8 MR. TREESH: Based on condition 3.E,
9 correct.

10 MS. MONTGOMERY: But if the current
11 300,000 square feet were developed, they
12 wouldn't have to pay anything.

13 MR. TREESH: It's my understanding that
14 condition three did not apply to the existing
15 zoning of the 300,000.

16 MS. MONTGOMERY: I just handed you the
17 definition of site related from the Land
18 Development Code chapter 10, which is the one
19 that applies at the time of D.O. That is
20 worded differently than -- is more expansive
21 than the Lee Plan definition.

22 I'd ask to you look at that definition and
23 tell me, based on chapter 10, do you think --
24 or do you have an expert opinion as to whether
25 or not the improvement at Alico and Three Oaks

1 are site-related improvements?

2 MR. TREESH: No, they've not site-related.
3 The expansive language is about pedestrian
4 bicycle facilities and transit facilities and
5 frontage roads. The other points are exactly
6 the same as included in the Lee Plan.

7 MS. MONTGOMERY: Can you tell me whether
8 or not in your expert opinion the improvements
9 that the county is asking for at Alico and
10 Three Oaks are roughly proportionate to the
11 impacts of the public's use?

12 MR. TREESH: Ask me that -- say that
13 again?

14 MS. MONTGOMERY: Yes. I'm referring to a
15 section of 70.45, governmental exactions. And
16 for the benefit of the Hearing Examiner,
17 there's a definition of prohibitive exactions.
18 And if improvement lacks an essential nexus for
19 legitimate public purpose and is not roughly
20 proportionate to the impact of the development,
21 that is a prohibitive action.

22 So my question is: Your expert opinion as
23 a transportation consultant, are those
24 improvements roughly proportionate?

25 MR. TREESH: No, they're not

1 proportionate. The language of the condition
2 doesn't say the developer is responsible for
3 proportionate share.

4 Obviously as I indicated in my previous
5 testimony, any improvements made at Alico and
6 Three Oaks, there's other traffic using those
7 movements, not just this project. So they're
8 asking to pay -- this project is -- they're
9 asking this project to pay 100 percent and not
10 a proportional share.

11 MS. MONTGOMERY: So in your opinion it
12 would be a prohibitive exaction.

13 MR. TREESH: Correct.

14 MS. MONTGOMERY: Mr. Treesh, did you have
15 occasion to hear Mr. Arnold's testimony
16 regarding Policy 95.1.3?

17 MR. TREESH: Yes.

18 MS. MONTGOMERY: Do you agree or do you
19 concur that the level of service under that
20 policy for roads is non-regulatory?

21 MR. TREESH: Yes, I do.

22 MS. MONTGOMERY: And since it's
23 non-regulatory, under that policy the county
24 can only use it for planning purposes; is that
25 your understanding?

1 MR. TREESH: That is my understanding,
2 yes.

3 MS. MONTGOMERY: So the county would not
4 be able to use it to require capital
5 improvements.

6 MR. TREESH: That's my understanding, yes.

7 MS. MONTGOMERY: Okay. I don't have any
8 other questions at this time.

9 HEARING EXAMINER RIVERA: Thank you.

10 Does staff have questions?

11 MR. BLOCK: Yes, ma'am, I have a few
12 questions, if I may.

13 MR. BLOCK: Now Mr. Treesh, the -- your
14 analysis as directed by your client, what was
15 the project build-out date again?

16 MR. TREESH: 2024, I believe.

17 MR. BLOCK: Okay. To your knowledge, do
18 you know when the extension of -- I believe
19 you've testified to it but I want to get it
20 back on the record. Do you know when the
21 extension of Three Oaks Parkway to Daniels
22 Parkway is going to be completed by?

23 MR. TREESH: I do not. I know when it's
24 funded.

25 MR. BLOCK: Okay. Under the funding, when

1 is it expected to occur?

2 MR. TREESH: The funding is approved in
3 the capital improvement plan within the first
4 three years of the adopted capital improvement
5 plan.

6 MR. BLOCK: Which --

7 MR. TREESH: So therefore that's why we
8 took the improvement into account.

9 MR. BLOCK: Which is expected to be under
10 the capital improvement plan. To what extent?
11 How far out does that go?

12 MR. TREESH: CIP is a five-year plan.

13 MR. BLOCK: Starting when and -- I'm
14 trying to get --

15 MR. TREESH: So we're at 2019, so I
16 believe it would be to 2023, the current plan.

17 MR. BLOCK: 2019 --

18 MR. TREESH: 2023, 2024 is the --

19 MR. BLOCK: Okay. The project that has
20 been requested, and it is a complete -- from
21 what I've understood from Mr. Arnold's
22 testimony, it's a complete replacement of the
23 existing zoning. Is that a correct statement?

24 MS. MONTGOMERY: I'll object. He's not
25 the correct person to ask that. That would be

1 a quest- -- planning question for Mr. Arnold.

2 MR. BLOCK: Okay.

3 Therefore, based on Mr. Arnold's
4 presentation and answer to my question, it was
5 a complete replacement. Therefore --

6 MS. MONTGOMERY: Same objection. You're
7 just asking the same question in a different
8 way. The correct person to ask that is
9 Mr. Arnold.

10 MR. BLOCK: Do you know what my question
11 was going to be, Counselor.

12 HEARING EXAMINER RIVERA: It's okay, you
13 can continue, Chip.

14 MR. BLOCK: Thank you.

15 This project is proposing what intensity
16 for a complete approval?

17 MR. TREESH: This request that's before us
18 today?

19 MR. BLOCK: This application. I'm
20 specifically asking a very simple question:
21 What has the applicant requested as being the
22 proposed intensity of this project?

23 MR. TREESH: 350,000 square feet with a
24 hotel and multi-family.

25 MR. BLOCK: Okay. And the hotel is how

1 many units?

2 MR. TREESH: 300 rooms.

3 MR. BLOCK: And how many residential
4 units?

5 MR. TREESH: I don't know if there was a
6 number of units. Is there a number of units?
7 I'm not familiar with that. That would be a
8 request for Mr. Arnold.

9 Again, the traffic analysis looked at the
10 worst case, which did not include the
11 multi-family. So the number of units -- in
12 terms of the traffic analysis, it is
13 irrelevant.

14 MR. BLOCK: So who on your team proposed
15 the -- to your knowledge, do you know who on
16 your team proposed the comparative amount of
17 commercial to a residential unit as contained
18 in the condition recommended in 3.A?

19 MR. TREESH: Can I see 3.A?

20 MS. MONTGOMERY: Can I ask the petitioner
21 to read 3.A into the record so we all know what
22 we're talking about so the record's clear?

23 MR. BLOCK: Perfectly fine with me.

24 MR. TREESH: Is there a specific portion
25 of 3.A you want me to read or that you're

1 asking about?

2 MR. BLOCK: Well, my specific question
3 related to 3.A in the second full paragraph.

4 MR. TREESH: That paragraph states: If a
5 residential development is approved as part of
6 the local development order, the maximum
7 nonresidential floor area of 350,000 square
8 feet will be reduced by 200 square feet for
9 each dwelling unit approved by local
10 development order.

11 So you're asking -- yes, we were consulted
12 and provided a conversion ratio of units to
13 square footage of commercial.

14 MR. BLOCK: And was -- do you concur with
15 that number? Was that the number that was
16 presented?

17 MR. TREESH: Yes. As previously
18 testified, our number that we provided was a
19 little less, but to be conservative we rounded
20 that to 200 square feet.

21 MR. BLOCK: Thank you.

22 Your slides 40 and 41 summarized your
23 presentation today, if I have read the two
24 slides correctly and together.

25 MR. TREESH: Yes.

1 MR. BLOCK: Okay. The discussion in 40, I
2 believe, has -- if you can back up to 40,
3 please -- talks about projects responsible,
4 second bullet point, providing site-related
5 improvements.

6 Who would be responsible for paying for
7 the site-related improvements?

8 MR. TREESH: Any developer or applicant at
9 the time submitting for the development order.

10 MR. BLOCK: Would that development order,
11 in an element of just infrastructure and
12 platting, could that be required to have
13 site-related improvements, in your experience?

14 MR. TREESH: I've done it a number of
15 different ways, sir. I've done it several
16 different ways where the applicant for that
17 development order for infrastructure and
18 utilities would like to do off-site
19 improvements, and they make that part of the
20 development order. And then I've also had
21 development orders where they just simply want
22 to put in the utilities and on-site features
23 and defer off-site improvements to the point
24 that any future development order that actually
25 generates traffic would be responsible for

1 those. So I've done it both ways in Lee
2 County.

3 MR. BLOCK: And would your answer also not
4 only be for off-site, as you have just
5 responded, but also be related to just the
6 definition of site-related improvements?

7 MR. TREESH: Ask that question again? I
8 didn't quite understand.

9 MR. BLOCK: I understood your response, as
10 you were explaining and were providing your
11 answer, that you were talking about off-site
12 related improvements.

13 MR. TREESH: And when I say off-site, I
14 mean the turn lanes that are not on the
15 property that are at the site access
16 connections serving that project.

17 MR. BLOCK: Understood. I'm just -- I'm
18 not using the term off-site. The summary says
19 site-related improvement.

20 MR. TREESH: Right.

21 MR. BLOCK: And my question went to
22 specifically who pays for site-related
23 improvements.

24 MR. TREESH: The applicant.

25 MR. BLOCK: Okay. Could there be an

1 instance following the scenario I just
2 provided, which is just infrastructure
3 improvements and platting, as an individual
4 site comes in, in your experience, would
5 site-related improvements also be looked at at
6 that time? For the vertical development
7 proposal I'm talking --

8 MR. TREESH: Yes.

9 MR. BLOCK: -- about.

10 MR. TREESH: Yes.

11 MR. BLOCK: Who pays road impact fees?

12 MR. TREESH: The applicant.

13 MR. BLOCK: The applicant --

14 MR. TREESH: Well, the applicant applying
15 for the building permit applies for road impact
16 fees.

17 MR. BLOCK: Thank you. So impact fees,
18 are they paid at the time that a project is
19 approved under a development order scenario
20 consisting of only infrastructure improvements
21 and platting?

22 MR. TREESH: No. Road impact fees?

23 MR. BLOCK: I specifically asked about
24 road impact fees.

25 MR. TREESH: All right, I didn't hear

1 that.

2 MR. BLOCK: Okay, you're the expert on
3 transportation and road-related issues.

4 So it is your finding, after hearing your
5 responses to answers to the -- your counsel,
6 and as part of your presentation, that the
7 project is consistent with the Lee County
8 Comprehensive Plan and Land Development Code
9 related to in your case transportation-related
10 improvements and infrastructure?

11 MR. TREESH: Correct.

12 MR. BLOCK: Is that with or without the
13 conditions and the recommended zoning action?

14 MS. MONTGOMERY: You can ask him to
15 restate the question if you're not clear.

16 MR. TREESH: With or without --

17 MR. BLOCK: Does your finding that there
18 is adequate infrastructure, adequate urban
19 infrastructure in this case related to
20 transportation and related items, is your
21 finding consistent with the Lee County
22 Comprehensive Plan and Lee County Land
23 Development Code; is it predicated on that it's
24 just consistent or is it consistent because of
25 the conditions of the zoning approval?

1 MR. TREESH: My opinion, it's consistent
2 as we submitted it. The conditions were added
3 by staff.

4 MR. BLOCK: Thank you.

5 I believe that answers all my questions.
6 Thank you, Madam Hearing Examiner.

7 HEARING EXAMINER RIVERA: Thank you.

8 MS. MONTGOMERY: I just have a follow-up
9 question.

10 Mr. Treesh, Mr. Block used off-site and
11 site-related sort of interchangeably, and I
12 want to make sure the record's clear.

13 The site-related improvements I think that
14 you identified, such as turn lanes, are
15 off-site because they're in the right-of-way,
16 but the only off-site improvements that you
17 think are site-related are at the project
18 access points?

19 MR. TREESH: That's correct.

20 MS. MONTGOMERY: Okay.

21 HEARING EXAMINER RIVERA: Thank you. I
22 don't have any questions at this time.

23 Does the applicant have additional
24 testimony?

25 MS. MONTGOMERY: Yes, I believe

1 Mr. Arnold's going to follow up.

2 MR. ARNOLD: Thank you. Again, Wayne
3 Arnold.

4 And I thought it might be appropriate to
5 go back through the 48-hour letter. I have
6 other copies, if you don't have one with you.

7 HEARING EXAMINER RIVERA: I have one,
8 thank you.

9 Does staff have --

10 MR. BLOCK: Yes, ma'am.

11 HEARING EXAMINER RIVERA: -- theirs as
12 well? Thank you.

13 MR. ARNOLD: We made obviously comments in
14 order to be consistent with the time frame for
15 providing the 48-hour notice to you and staff,
16 and subsequent to that we were able to schedule
17 some time with staff, but only after we were
18 required to give you the 48-hour letter.

19 So we have made some subsequent changes,
20 and I apologize for the confusion, especially
21 on the late submittal yesterday afternoon,
22 there was a deviation, justification and a
23 master plan revision to reflect that additional
24 change.

25 But if it would be appropriate, I'm just

1 going to go through the various points we've
2 raised in the letter and try to explain why or
3 answer questions if you have any regarding
4 that.

5 And the first point we raised is something
6 that Mr. Block asked on his cross of me which
7 was we had said there's really no need for
8 options A and B with regard to the conditions.
9 Option B reflects the proposed development
10 scenario that the developer wishes to achieve
11 with the schedule of uses in the master plan,
12 which contemplates primarily the residential
13 option and obviously other revisions that we've
14 proposed. We don't think there's a need to
15 retain the prior language in the conditions
16 that refer to the master plan that this would
17 replace.

18 HEARING EXAMINER RIVERA: I did have a
19 question on that. Because there were the
20 changes in the uses that you already went
21 through --

22 MR. ARNOLD: Right.

23 HEARING EXAMINER RIVERA: -- of the
24 scheduled uses.

25 But then there were also some property

1 development regulation changes, such as minimum
2 lot area. Under the proposal that you've
3 submitted it's only 10,000 square feet, but the
4 existing was 20,000 square feet. The minimum
5 width and depth didn't change, but that was a
6 change, as well as height. You're asking for
7 85 feet --

8 MR. ARNOLD: That's correct.

9 HEARING EXAMINER RIVERA: Before it was
10 only 45. So holistically you would be asking
11 that essentially everything in 3 would be
12 replacing what previously applied to the
13 existing master plan --

14 MR. ARNOLD: That is correct.

15 HEARING EXAMINER RIVERA: -- scenario.
16 Okay.

17 MR. ARNOLD: And we think that was the
18 analysis that staff performed as well as our
19 traffic consultant and our analysis. So we
20 think it only makes sense. And it's -- I'm
21 just afraid it's going to be confusing because
22 we really believe the option B master plan that
23 highlights the residential component is the
24 preferred option for the applicant.

25 MS. MONTGOMERY: And there was no master

1 concept plan. The revised plan has more
2 detail. So we do think that when you come in
3 to submit, it would be confusing for the
4 development order reviewers to know which one
5 you're under.

6 MR. ARNOLD: The next point that I raised
7 was regarding the modification to the master
8 plan to remove the Alico access. In the master
9 plan you received yesterday, it not only shows
10 the removal of the access point but provides a
11 dimension on the master concept plan for the
12 reduced setback for the detention area. And
13 that is something that we provided a new
14 deviation justification for that deviation
15 number 3. And -- excuse me, number 1, I
16 apologize, deviation number 1 regarding the
17 water retention setback.

18 So we've provided that notation on the
19 plan. And forgive me, I know, Mr. Block, you
20 had asked me a question prior to the hearing
21 regarding notation on the master plan, and
22 forgive me, I forgot, but I was going to try to
23 address that in my presentation.

24 MR. BLOCK: Certainly. If I can direct
25 you to the applicant's overnight matter. I

1 believe that's what you're talking about,
2 Mr. Arnold?

3 MR. ARNOLD: Yes, sir.

4 MR. BLOCK: Okay. If I can direct the
5 Hearing Examiner to the first page of the
6 deviations and justifications. There's
7 confusion contained on this page in that
8 deviation 1 has been altered, and that's fine,
9 staff will be addressing that deviation. But
10 at the bottom of deviation 1 it says withdrawn.
11 Just before number 2. Therefore, deviation 1
12 we don't even need to discuss based upon this
13 deviation language. They're saying it's been
14 withdrawn now. I don't think that was their
15 intent.

16 Deviation 2 is unchanged and deviation 3
17 is unchanged. But I believe that was the
18 applicant's intent was to remove deviation 3.
19 Because when you refer to the master concept
20 plan that was also provided, the sheet itself
21 under the list of deviations in the table for
22 it did not include a deviation number 3. So I
23 was asking Mr. Arnold to please help clarify,
24 is it the master concept plan deviations, is it
25 the deviation and justification, which is

1 correct, which needs to be corrected. So that
2 it was clear on the record today.

3 MR. ARNOLD: Thank you, Mr. Block.

4 And he is correct, I'm going to -- I'll
5 get to that momentarily. But to finish out
6 page 1, we had Mr. Treesh's testimony with
7 regard to our condition 3.E, so I'll leave
8 that; I'm sure there will be further discussion
9 on that item.

10 We mentioned on the top of page 2
11 condition 3.B. I think this was really just we
12 want to make sure it's acknowledged that we can
13 invoke the potential open space reductions that
14 go along with the chapter 2 discussions for use
15 of bonus density. And the condition as written
16 doesn't really indicate such.

17 But I want to make sure that that's
18 something that can be taken care of
19 administratively and doesn't require some sort
20 of amendment to come back through the public
21 hearing process. So an acknowledgement on the
22 record that that's an administrative process
23 would be great, or if the Hearing Examiner so
24 chooses to clarify that, that would be
25 appreciated.

1 The next, condition 3.A that was mentioned
2 refers to the language I mentioned previously
3 which is in reference to CPDs requiring at
4 least 50,000 square feet of commercial use in
5 order to have a multi-family component.

6 And staff's condition references the word
7 that it must be developed concurrently with or
8 prior to the residential use.

9 And that is inconsistent with note 10 on
10 your table 34-934, the use regulations for
11 planned developments. Note 10, as I've noted
12 in the letter, says that the use is permitted
13 only in conjunction with at least 50,000 square
14 feet or more commercial or industrial use. It
15 doesn't specify that it has to be concurrently
16 with or prior to. And we would appreciate the
17 Hearing Examiner's recommendation to make that
18 consistent with your code requirement.

19 Continuing on, in the middle of the page,
20 condition 3.C. This related to the airport
21 requirements, in chapter LDC 34-1104(b).

22 And this language that staff has offered
23 in this condition isn't exactly consistent with
24 that provision of the Land Development Code,
25 and we would only ask that it references that

1 portion of the code which provides notice, but
2 it's written a little differently than is
3 required by the current Land Development Code.

4 HEARING EXAMINER RIVERA: I had a question
5 on that. Because I went through and at least
6 by my tracking it was verbatim what was in the
7 code. So I was curious as to what the change
8 was.

9 MS. MONTGOMERY: Well, and I think in the
10 past the Hearing Examiner's Office has not
11 included conditions when it's in the Land
12 Development Code, so I think the correctness
13 would be to simply rely on the Land Development
14 Code. Because to the extent that it changes
15 over time, we don't want to create an
16 inconsistency.

17 MR. ARNOLD: Yeah, because it did track --
18 I'm sorry, the language didn't -- and I think
19 it's been the preference that if it's a simple
20 Land Development Code reference that we don't
21 need to have it as a condition.

22 HEARING EXAMINER RIVERA: That's typically
23 true, but that actually is a requirement. It
24 says that for the approval of an amendment to a
25 plan development the following must be included

1 as a condition of approval. So it is
2 redundant, I agree with you. Typically our
3 office's position has been that we wouldn't do
4 that, but because it's conditioned -- or it's
5 required in the code that it be conditioned as
6 such, I wanted to check on the language because
7 I was going through to see what the difference
8 was. So that one I think we can address, if
9 you want to continue to the next one.

10 MR. ARNOLD: All right. Condition 3.G was
11 mentioned. And that is something that both
12 Mr. Treesh and Ms. Montgomery have spoken to
13 you about the regulatory concurrency
14 provisions. I'll defer further conversation on
15 that.

16 Condition 3.D relates to our cross-access
17 easement. And this is something I'm just
18 making sure with staff that this is something
19 we can accomplish if we reach mutual agreement
20 with our neighbor to relocate it without having
21 to go through an MCP amendment process, if
22 that's something that can be taken care of
23 administratively with our development order
24 review.

25 And then continuing on, deviation number

1, we discussed that revision, the proposed justification change. And I apologize, what we did in the submittal to you late yesterday was simply to change the deviation justification page that was in our packet. Probably should have prepared it as a standalone deviation request and justification so it's not confusing. But our intent would be to seek the deviation to reduce the 50-foot setback for water retention, propose the justification that's shown in bold on that page, and then you can disregard anything that follows the bold language with regard to that deviation.

HEARING EXAMINER RIVERA: The applicant would still agree with the same essentially condition that followed that deviation from the original approval?

MR. ARNOLD: Yes, that's correct, we do.

And then staff had recommended denial of deviation number 3. And this is something that grew out of the meeting we had with them. And I think they convinced us that it's easier to withdraw that, and once we have a development order and can show how we can deal with circulating vehicles on-site, then we'll deal

1 with that at the time of development order. So
2 we officially withdraw deviation number 3
3 dealing with cul-de-sac.

4 And I think that included -- concludes our
5 discussion on the 48-hour notice. And if it
6 would be easier to deal with Mr. Block's
7 discussion, we can provide to the Hearing
8 Examiner revised deviation justification for
9 all three of those deviations, if necessary, or
10 the proposed change to deviation number one,
11 and the change to the deviation numbering on
12 the master plan, because it will change with
13 the removal of deviation number 3.

14 HEARING EXAMINER RIVERA: Okay. We can
15 table that, because I have some questions on
16 the master concept plan. Well, we can discuss
17 it now, I guess. It was really more directed
18 at staff.

19 But under the revised master concept plan,
20 property development regulation table, on the
21 issue of the open space I agree that it makes
22 sense to address that that can be handled
23 administratively, if you're going to be
24 utilizing the greater TDUs. But the way that
25 it's written on the master concept plan itself,

1 it takes -- it presumes that you're going to
2 have the benefit of the full 35 percent
3 reduction. So I don't know that that note
4 needs to necessarily be on the master concept
5 plan if we're going to be addressing it in a
6 separate condition. Because the way the code's
7 written, it could be up to 35 percent, but I
8 don't want to have something that appears --

9 MS. MONTGOMERY: Requires 35 percent.

10 HEARING EXAMINER RIVERA: Exactly.

11 MS. MONTGOMERY: I think that's fine. I
12 think our major concern was just to make sure
13 that we were intending to use Pine Island TDUs
14 and not have to come back to you to do that.

15 HEARING EXAMINER RIVERA: Okay. So in
16 that case, I would probably like to leave the
17 record open to at least revise that portion.
18 And if there's additional deviations, I'm okay
19 with what was submitted, but if the applicant
20 wants to make it cleaner and fix the items that
21 Chip noted, then that's fine with me as well,
22 and we'll leave the record open. I can include
23 that.

24 MR. ARNOLD: Okay. Thank you.

25 HEARING EXAMINER RIVERA: Thank you.

1 Does staff have any questions?

2 MR. BLOCK: No, ma'am.

3 MS. MONTGOMERY: We don't have any further
4 direct testimony at this time. We reserve the
5 right to rebuttal testimony.

6 HEARING EXAMINER RIVERA: Certainly.

7 Okay, why don't we go ahead and take a
8 break before we start with staff. I actually
9 need a slightly longer break at this time, so
10 let's do 20 minutes and then come back at 10
11 after, please.

12 MS. MONTGOMERY: Okay, thank you.

13 (Recess.)

14 HEARING EXAMINER RIVERA: Okay, we are
15 back on the record and starting with staff's
16 presentation.

17 MR. BLOCK: Good morning, Madam Hearing
18 Examiner. My name is Chip Block, I'm Principal
19 Planner with the Department of Community
20 Development.

21 Before we get started, I'd like to be
22 accepted as an expert witness of the Lee County
23 Land Development Code and Lee County
24 Comprehensive Plan. And I have been previously
25 accepted in those fields in --

1 HEARING EXAMINER RIVERA: Yes.

2 MR. BLOCK: -- the Hearing Examiner
3 process before.

4 HEARING EXAMINER RIVERA: Thank you.

5 MR. BLOCK: And as I get started, I will
6 be saying that with me today and speaking today
7 will be Mike Fiigon, that's F-I-I-G-O-N, from
8 Lee County Port Authority. And also I'll be
9 having Marcus Evans providing a presentation.

10 Also available would be, if you had a
11 question from Lee County DOT that maybe they
12 could answer, they're here but not expected to
13 go to presentation.

14 The second cleanup element of this is you
15 do have and do see on the board a PowerPoint
16 presentation, much less than what the applicant
17 provided.

18 MS. MONTGOMERY: Oh, come on now.

19 MR. BLOCK: Oh, yes. I did not do a
20 previous principal planner in the planning
21 division PowerPoint presentation consisting of
22 over 300 pages, I did not do that. On this one
23 I think I've got a total of eight pages, which
24 I do.

25 HEARING EXAMINER RIVERA: Thank you. And

1 that will be staff Exhibit 3.

2 MS. MONTGOMERY: Thank you.

3 MR. BLOCK: Sure.

4 You will find that it is extremely general
5 in nature, providing some photographs,
6 pictures, map depictions that -- when I say
7 photographs, it's like a copy of the aerial
8 photograph for the subject property. It really
9 doesn't go into anything else. But I have that
10 on there as I go through my staff report, the
11 staff report that was prepared by county staff,
12 because I think the layout of the staff report
13 in providing the summary as I go through it
14 will lay out the staff recommendation and our
15 findings.

16 I will also talk about -- following
17 Mr. Evans' presentation, I'll then fall back to
18 the 48-hour and discussion of conditions, if
19 that would please the Hearing Examiner.

20 I do not have a handout for that. I'll
21 just be going through the points that have been
22 raised in the 48-hour letter by the applicant,
23 and try to address all the points either raised
24 there or as we have discussed during the course
25 of the public hearing, such as in Mr. Arnold's

1 testimony about the deviations, justification
2 and master concept plan.

3 First thing I'd like to do is -- I'm not
4 going to go off this cover page -- is to help
5 the Hearing Examiner understand and the record
6 understand that while the applicant today --
7 and this goes to one of my questions that I had
8 asked during the hearing, that this is not --
9 was not anticipated to just be an amendment
10 that adopted a brand new master concept plan.
11 The request language actually provided by the
12 applicant is on the screen now and it's
13 addressed in the staff report, it was to modify
14 the project, modify the master concept plan,
15 add an option to develop residential. We
16 actually had two master concept plans then, we
17 had the 2005 action and we had the proposal for
18 this one. And then development intensity is as
19 you see it.

20 And so that's where the staff, in its
21 review process, came from in our
22 recommendation; came to the point of trying to
23 provide the Hearing Examiner a detailed set of
24 conditions that would help identify down the
25 road administratively, that, as correctly

1 pointed out by the applicant, to try to
2 alleviate some of the confusion they might
3 have. We wanted to make sure down the road
4 administratively there was no confusion. Are
5 you doing this development, option A, which is
6 the 2005 approval, or is it option B, the one
7 that we're considering today and what would be
8 the future zoning action associated to it.

9 So we were attempting, didn't want to have
10 it difficult, and that's why you see only three
11 numbered conditions: Condition 1, choose your
12 plan; condition 2, if you've chosen option A,
13 condition 2, you follow this. If you choose
14 option B, you do condition 3. Very simple.
15 That way everybody, as soon as you know at the
16 development order stage that option A or option
17 B has been chosen, you now go down to condition
18 either 2 or 3 and you go from there.

19 Subject property is currently zoned
20 commercial planned development. And it was
21 approved in 2005. You have that record in the
22 staff report. It was approved for the
23 intensity I think of 300,000 square feet of
24 total floor area. It's in my report. It's
25 also conveyed in the attached resolution.

1 Today the future land use category of the
2 subject property today consists that it is a --
3 the industrial commercial interchange category.
4 It's this category right here. And this is
5 attachment B of the report, these three maps of
6 zoning, future land use and aerial photograph.

7 There is a Comprehensive Plan Amendment
8 that's going through the process. It has been
9 transmitted, as the applicant has pointed out,
10 and will go to the board of county
11 commissioners with this zoning case when it
12 goes before them. That's the plan.

13 The change is to take it to general
14 commercial. I believe it's general
15 commercial -- general interchange, my
16 apologies. To general interchange.

17 The real change associated to that is we
18 get away from industrial, although general
19 interchange could allow some, but more
20 importantly allows for the potential
21 development of residential units where under
22 the previous future land use category, it was
23 not allowed.

24 So staff reviewed the applicant's proposal
25 and we provide the Hearing Examiner with a

1 recommendation of approval with conditions.

2 We made certain findings on page 2 of our
3 staff report that are required under LDC
4 Section 34. I'll just go to the next aerial
5 photo and just stop at the aerial photograph
6 for now. That's consistent with Land
7 Development Code Section 34.145.B.4.A.1.

8 These findings are as addressed in here
9 that we're finding that the uses and intensity
10 as proposed in the current application is
11 consistent with the Lee County Comprehensive
12 Plan.

13 Very importantly, though, at the very
14 beginning where we're finding it consistent, it
15 says it's consistent as conditioned. And
16 that's very important in some of the elements
17 associated to this project.

18 We say it does meet the Lee County Land
19 Development Code, or qualifies for certain
20 deviations. At this time we only have two
21 deviations in this second option, option B.

22 We also say that it's compatible with the
23 surrounding land uses. We also say that we'll
24 provide access sufficient to support the
25 proposed development intensity. And that's

1 where we differ with the applicant. Because
2 the applicant says it's just consistent with
3 the comprehensive plan. Particularly on the
4 specific element that I questioned, and that's
5 urban infrastructure, specifically
6 transportation.

7 Now, later on I'll talk about some of the
8 infrastructure that's still available, and all
9 the divisions of Lee County have said that it's
10 consistent, there's adequate infrastructure, or
11 in staff analysis there's adequate
12 infrastructure because of what staff found in
13 the surrounding area. But it is as conditioned
14 with the recommendations.

15 There's various other findings and
16 conclusions here. (As read): More
17 importantly, the recommen- -- deviations
18 rec- -- in this case it says: Each deviation
19 recommended has been found to enhance the
20 achievement of the planned development and is
21 not expected to impact, in this case it's a
22 positive, preserves and promotes the general
23 intent of the code to protect the public
24 health, safety and welfare.

25 Staff report goes into detail about

1 surrounding uses. I'm not going to go into
2 that. I have no corrections or objections to
3 what the applicant presented as to what the
4 surrounding land uses are.

5 We talk about the master concept plan,
6 that there were two master concept plans
7 proposed. They wanted to use the master
8 concept plan as staff understood the
9 application, at the completion of our staff
10 report, that they wanted to use just either A,
11 master concept plan from 2005, or B, their
12 alternative master concept plan, which we've
13 been discussing.

14 And in the deviations, I will get to those
15 a little bit more specifically, if necessary,
16 in the 48-hour.

17 But staff did not recommend deviation
18 number 1. There were reasons for it. And the
19 applicant has corrected those reasons. So we
20 are now agreeing that deviation 1 can be
21 recommended for approval because it would only
22 be effective -- and I'll skip through the next
23 page, which was the 2005 master concept plan,
24 and go to the concept plan that Lee County
25 staff reviewed in its recommendation.

1 We have a prob- -- a little problem here
2 with this particular location of the deviation.
3 Because when you looked at that, although we
4 recognize it's a conceptual plan, there was no
5 real indication that they needed 25 feet. And
6 in fact that depiction, if you used it as a
7 detail, would actually have been close to 45 to
8 50 feet for the setback. So we didn't even
9 know if the deviation was actually necessary to
10 help them achieve the intent of the planned
11 development, and how that would be protecting
12 the public, health, safety and welfare if it
13 was less than 50 feet. That has since been
14 corrected in the applicant's recent submittal.

15 The next page I've gone to is the master
16 concept plan that came in later on as part of
17 the 48-hour. I do not have the applicant's
18 master concept plan from overnight, but I have
19 this one from the 48-hour. And there are
20 two -- whoops, what did I just do? End of
21 slide show, that's not what I want.

22 Okay, this is the 48-hour master concept
23 plan. I'm backing up one page, 7, to show you
24 that there is a difference now and some
25 discussion here and more importantly --

1 actually not there, it is in the property
2 development regulations. There will be a
3 change on number 8, the number 8 slide and a
4 change at the access point to Alico Road.

5 Switching to the 48-hour master concept
6 plan, you will now see that there's a double
7 asterisk following the property development
8 regulations description of commercial retail,
9 light industrial usage and, you know, it can be
10 comprised of any combination of uses, double
11 asterisk. That double asterisk then goes down
12 and is clarified as being subject to any zoning
13 resolution, where it says subject to zoning
14 resolution. That of course could mean that
15 later on down the road as the board of county
16 commissioners takes final action on it, it may
17 change the intensity of the project. If it
18 does, they've afforded the opportunity for them
19 to make the change, subject to the zoning
20 resolution.

21 Not really a problem with that for county
22 staff, but I wanted to note the two differences
23 between what staff reviewed and what is
24 contained in the 48.

25 And the other one is the access point off

1 of Alico Road at this location has now been
2 removed. That's fine and that's a good thing
3 because FDOT was objecting to it, Lee County
4 DOT was objecting to it, county staff was
5 objecting to it.

6 Now, page 5 of the staff report, we get
7 into great detail to the Lee County
8 Comprehensive Plan. And just like Mr. Arnold,
9 I don't want to read through every single one
10 of these policies. I don't want to have to
11 point out certain things that we have to look
12 at.

13 But importantly, the bottom of page 5, the
14 second to last paragraph, talks about -- begins
15 with the transmitted Comprehensive Plan. It
16 talks about residential densities. The project
17 is entitled, if the Comprehensive Plan is
18 amended, to have a residential density of 14
19 units per acre, standard residential density
20 range. And they have to be met at eight units
21 per acre. They can't be less than eight units
22 per acre.

23 It also says that you can also go up to a
24 maximum density of 22 units if you utilize
25 bonus density. And that process is contained

1 in chapter 2 of the Land Development Code.

2 Next paragraph, it continues on over to
3 the top of page 6. It talks about two object-
4 -- the goal and objective 2.1 and 2.2 of the
5 Comprehensive Plan. We're saying it's
6 consistent with those two points under goal 2,
7 objectives.

8 The objective 2.2 also talks about, and
9 its related policies, the timing of development
10 in directing new growth to portions of the
11 county where adequate urban services exist.

12 The site is accessed directly off of Three
13 Oaks Parkway. And to get to the site today in
14 your -- in the easiest fashion possible, you
15 are going to use the intersection of Alico and
16 Three Oaks, and you're going to come north on
17 Three Oaks Parkway.

18 Now, the applicant has pointed out you can
19 use Oriole to go north, swing back to the east
20 and connect with Three Oaks Parkway. We
21 recognize that; we know that that's there.

22 But the ease of access to this property,
23 that's a little bit easier, unless you're don't
24 wanting to deal -- do not want to deal with the
25 intersection with the timing of the lights.

1 Water and sewer are available, according
2 to utilities. Fire and EMS is in the area.
3 And in fact, backing up on the aerial, I don't
4 have Oriole there. I don't have Oriole there.
5 Darn it. I'll have to use this one and just
6 explain.

7 Oriole Road is right here. There is a
8 parcel right here that has been set aside for
9 fire -- for the fire department. They are
10 planning on building there.

11 So in realty in the future there is an
12 expectation that there will be a fire
13 department station there. And in most
14 instances in San Carlos Park you also have EMS
15 stationed there, that could be a possibility.

16 There is a sheriff's office that serves
17 the area.

18 Transit. Going back to the aerial
19 photograph, transit right now is found along
20 Alico Road, and a part of it, it turns down
21 Three Oaks Parkway. So you do have transit
22 nearby. And improvements will be required as
23 time goes on to provide for a sufficient bus
24 stop in accordance with the Land Development
25 Code during the development order process.

1 We've looked at other policies of the
2 Comprehensive Plan about providing consistency
3 with the plan, protection of nearby property
4 owners, infrastructure improvements.

5 In summary, Lee County staff has
6 recommended approval of this case, finding it's
7 consistent with the Comprehensive Plan, as
8 conditioned in the recommended zoning actions.

9 I'm not going to touch base anything on
10 transportation, as Marcus will be discussing
11 that. And I will also skip on page 8 Southwest
12 Florida International Airport comments, because
13 Mr. Fiigon is here today from the airport and
14 he can address some points regarding that. But
15 the property is in an airport noise zone, and
16 as you have correctly pointed out, there is a
17 condition that is required by the code to be
18 included in the zoning action.

19 Environment. You didn't hear a lot from
20 Tyler, the applicant's, presentation, because
21 environmentally Lee County staff and the
22 applicant agree with all the environmental
23 aspects associated to the property and
24 conditions associated to it.

25 School district previously has anticipated

1 that it was at 400, which at one time it was
2 400 residential units. We did not ask for a
3 revision of that when the applicant reduced it
4 to 308. It's going to generate less than the
5 46 students that was anticipated at 400. But
6 the school district already said that there
7 were enough seats within the district that
8 would be available to support development of
9 the site for residential purposes. So it's
10 consistent with the Comprehensive Plan for
11 educational purposes.

12 And staff has recommended approval of this
13 request based upon the conditions as outlined
14 in C, the attachment C, which is staff
15 conditions.

16 I'll kind of go over my notes and make
17 sure that I haven't missed anything that I
18 wanted to discuss during this portion of the
19 staff presentation, since I will be getting to
20 specifics.

21 I did emphasize the fact that we did find
22 the project consistent with the Land
23 Development Code and Comprehensive Plan as
24 conditioned in our staff report.

25 I'll mention it now, but get to more

1 specifics later on, staff's analysis of the
2 inclusion of option A, option B in our
3 conditions. While predicated upon the in- --
4 what staff understood was the intent of the
5 applicant when we reviewed this case, is also I
6 think very important to take into consideration
7 for confusion in the future. We are aware that
8 the applicant has proposed in a sitting with
9 Lee County staff that their proposal for the
10 first development order is for the intention of
11 building the infrastructure to support the
12 development and platting the development, doing
13 the plats, the road plats.

14 The positive of that is if you adopt the
15 zoning as proposed, we don't have to worry
16 about the old master concept plan -- I'll bring
17 that back up in 2005, it's this way -- where
18 there weren't any lots. And in fact some of
19 the lots in here, parcels and tracts, are
20 completely different. This is now called --
21 this was previously called tract A, kind of a
22 central portion of the site. Along Three Oaks
23 Parkway was tract B, and at the corner of Three
24 Oaks and Alico Road was also tract B with, I
25 believe -- I don't see a tract C at this

1 moment. So those are the only two tracts that
2 I see.

3 That's different than the current master
4 concept plan which has parcels now instead of
5 tracts. Has out-parcels along the roadways,
6 and numerous ones. That's good, because the
7 applicant needs this in the event that they
8 were going to plat in this fashion. Otherwise,
9 if they apply for a development order for
10 something like this and they show plats for
11 different lots and different parcels, my
12 expectation is that there was going to be an
13 amendment of the plan development that would
14 have to go through the processes. Whether the
15 amendment would be through the public hearing
16 process or whether it could be done
17 administratively, that would be based upon the
18 code and the review by staff.

19 The negative regarding it is that if they
20 use the 2005 approval, they can't get this
21 platted, they can't get a development order for
22 this, because anticipated residential
23 development was not anticipated in the '05
24 action and the lots weren't there. So that was
25 going to be the problem associated to it.

1 And I think it's important to make that
2 statement now, because if we totally replace
3 this then the past deviations that have been
4 granted, certainly water management would still
5 be in effect because it's here. This deviation
6 down here for the turnabout, as proposed in
7 original deviation three, would no longer be
8 effective if they only use the new plan.
9 Because now in the overnight change they've
10 removed deviation three. So the other items
11 associated to the A approval would no longer be
12 effective, and they can't even use it. Because
13 if this action happens, as proposed by the
14 applicant, to only use B map, the option map
15 with the master concept plan, they can't use
16 any of the elements related to 2005 in the '05.
17 Yet that was their exact statement during
18 yesterday's meeting with county staff, that
19 they were going to be applying for a
20 development order for infrastructure
21 improvements and for platting based upon the
22 2005 approval. This likely will already be
23 replaced.

24 So the applicant should be prepared for
25 that in the event that they apply for a

1 development order; at least be aware of that.

2 I have to state it now. It's not going to be
3 part of my 48-hour discussion later on. And I
4 think it's important for us to point that out
5 now as staff so that the applicant can plan for
6 that in the future.

7 With that being said, Madam Hearing
8 Examiner, I'm able to answer any questions that
9 you might have, and then we can turn it over to
10 the applicant for any questions that the
11 applicant may have. Or vice versa, however you
12 want do it, it's your hearing.

13 HEARING EXAMINER RIVERA: I'm going to let
14 the applicant ask their questions.

15 MS. MONTGOMERY: Yeah, I have a couple
16 questions.

17 Chip, does the staff typically have a
18 standard condition that reads something like
19 approval of this zoning request does not
20 address mitigation of the project's vehicular
21 or pedestrian traffic impacts. Additional
22 conditions, consistent with the Lee Plan and
23 the Lee County LDC may be required to obtain a
24 local development order?

25 MR. BLOCK: That's a standard condition

1 that we would generally include that the
2 Hearing Examiner is now excluding in their
3 recommendation.

4 MS. MONTGOMERY: Okay.

5 MR. BLOCK: That's one of the two. That
6 one and concurrency. And if there's a
7 condition later on in the staff recommendations
8 that says you have to comply with the Land
9 Development Code, normally the very first
10 condition says the same thing and so that gets
11 stricken. So you might have three commonly
12 stricken by the Hearing Examiner's office, and
13 that's one of those.

14 MS. MONTGOMERY: Okay. But can -- do you
15 agree that regardless of whether the verbiage
16 is in the resolution or not, that you have to
17 comply with chapter 10 in order to obtain the
18 development order?

19 MR. BLOCK: No, we say you have to comply
20 with the Land Development Code as a whole, so
21 chapter 10 is inclusive.

22 MS. MONTGOMERY: Which includes a
23 requirement to submit the development order
24 TIS, does it not?

25 MR. BLOCK: Uh-huh.

1 MS. MONTGOMERY: And then the next LDC
2 provision, and I want to say it's like 10-287,
3 but I don't know that I'm right, so --

4 MR. BLOCK: Sure.

5 MS. MONTGOMERY: -- I won't say that, but
6 it requires, depending on how your D.O. TIS
7 turns out, you may have to also do -- identify
8 a traffic mitigation plan?

9 MR. BLOCK: Yeah, you'll have some
10 improvements that might be identified through
11 the traffic analysis, yes.

12 MS. MONTGOMERY: And so that typically
13 happens when you actually know what you're
14 submitting for and you can evaluate what you're
15 actually submitting for.

16 MR. BLOCK: Absolutely right.

17 MS. MONTGOMERY: Okay. You mentioned that
18 the site is accessed today, that you have to go
19 through the Three Oaks and Alico intersection.
20 And I wasn't sure what the relevance of that
21 was, because are you aware of the fact that Lee
22 County asked the transportation consultant to
23 do a transportation analysis based on the
24 extension of Three Oaks and that traffic being
25 in place?

1 MR. BLOCK: I remember what's contained in
2 the traffic analysis. I don't know the basis
3 of why something had to be done. But I know
4 that things were taken into consideration as to
5 the traffic impact statement, as requested by
6 county staff.

7 MS. MONTGOMERY: Well, let me ask you
8 this, as a planner: If I'm going to make an
9 applicant assume all the trips from a
10 connection to Daniels, shouldn't the applicant
11 also be able to assume that they can distribute
12 trips in an alternate direction and gain access
13 from that direction?

14 MR. BLOCK: I would say if the facility is
15 there for that consideration, the answer is
16 yes. However, it's my understanding, and this
17 can be corrected by Lee County DOT because
18 that's where I got my information from, this
19 project is projected to have a build-out for
20 the 350,000 square feet of commercial -- we
21 have to consider the worst case scenario --
22 potential for reduction based upon residential
23 units that might be built upon that commercial,
24 and 300 hotel/motel rooms. And the build-out
25 is 2020- -- if I remember correctly, 2024.

1 My understanding is that facility going
2 north and making connections with Daniels is
3 not going to be available until 2027. So I
4 think we have to look at the impacts of the
5 project on the facility that will be there at
6 the time it builds out, which is the reason for
7 our condition.

8 MS. MONTGOMERY: Well, and I appreciate
9 that comment. What now causes me concern, if
10 the road's not going to be there till 2027,
11 then the impacts won't be there till 2027, so
12 why do we have to analyze that intersection
13 with all those trips?

14 MR. BLOCK: Because it was our opinion --
15 from what I've understood from the staff making
16 the recommendation, it is our opinion that
17 those improvements are necessary with this
18 project, as analyzed within the traffic impact
19 statement.

20 Now, they can correct me if I'm wrong, but
21 that's my understanding of the purpose of the
22 original condition. And the adjusted condition
23 is being done to place owners within this
24 project on notice, because we need to protect
25 the public's interest if this is developed, as

1 in the case of other projects where you do
2 infrastructure and you do platting, future
3 owners may not be aware that they are going to
4 be held responsible for not only the impact
5 fees, they'll probably understand that, but
6 also site-related improvements. That was what
7 I understood in the answer by Mr. Treesh, and
8 what I have understood in the past: As
9 vertical development occurs, site-related
10 improvements could be required and improvements
11 could be required or you -- they would also pay
12 the impact fees. That's for the vertical
13 development.

14 And we just don't want those owners to
15 believe, which has happened quite often in the
16 past, that they've bought a lot and they can go
17 in and develop it and they're not put on
18 notice, gee, I don't want to have to do all
19 these improvements. It could be done
20 incrementally or it could be done as a whole.

21 MS. MONTGOMERY: I think I understand.
22 There is a -- I will say, based on your
23 testimony, it seems that there's a disconnect
24 between what we were prior told and what you're
25 now saying, so I probably should explore that

1 with Lee County DOT, correct?

2 MR. BLOCK: Understood. All I'm saying is
3 that we have a condition that as provided for,
4 both in the Land Development Code and in the
5 Comprehensive Plan, we have a condition that we
6 have -- element that we have to consider
7 protection of the public's interest. Public's
8 interests are not just adjoining property
9 owners, which is a common concern. But we also
10 have to take into consideration the public's
11 interest of the purchasers within the
12 development, and that's why the condition -- my
13 understanding part of the condition why it's in
14 there.

15 MS. MONTGOMERY: But we can agree that
16 developers are told at pre-app and they're told
17 when they look at the regulations that they're
18 going to have to -- both in chapter 2 and
19 chapter 10, they know they're going to have to
20 pay impact fees and they know they're going to
21 have to do site-related improvements, as that
22 is defined in chapter 10 and in the comp. plan.

23 MR. BLOCK: Correct. I'm not disagreeing
24 with you on that. Maybe a disagreement on the
25 interpretation of what site-related

1 improvements are --

2 MS. MONTGOMERY: Well, clearly, yes.

3 MR. BLOCK: -- but that will be done at a
4 later time during this presentation.

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

7 HEARING EXAMINER RIVERA: Chip, the
8 language for 3.E, is that best addressed if I
9 have a question to you or to transportation?

10 MR. BLOCK: I would leave it to Marcus
11 Evans --

12 HEARING EXAMINER RIVERA: Okay.

13 MR. BLOCK: -- to answer that question.

14 The general intent of that condition is
15 back to, as I answered Ms. Montgomery, is in
16 part, if not entirely, but at least in part, we
17 need to protect the public's interest. And we
18 want the interest of the public to understand
19 that when they purchase within this development
20 and they look at trying to develop in the
21 future on their sites, they may be held and are
22 expected to be held to having to pay for
23 site-related improvements and the impact fees.

24 HEARING EXAMINER RIVERA: And going back
25 for a second, the conversation that you were

1 getting into about the replacement of master
2 concept plan option A with B, I'm not clearly
3 following that, if you can walk me through that
4 one more time.

5 MR. BLOCK: Yeah, I'll try to simplify it
6 down. The informal yesterday -- I hate to keep
7 referring back to something that you were not
8 available for, but it is something that
9 happened before today's hearing.

10 I attended that public -- that informal
11 hearing with county staff, because the
12 applicant proposed, in this case a
13 representative of Grady Minor Associates, Mr.
14 Feeney, was there, were proposing to do a
15 development order, and that development order
16 consisted of infrastructure improvements and
17 doing -- let's see, it was infrastructure
18 improvements -- oh, and platting of the
19 subdivision.

20 The previous 2005 -- they were going to
21 rely upon the previous 2005 action. They were
22 going to run into a problem with that. The
23 biggest problem associated to the 2005 action,
24 this master concept plan, is that there are no
25 lots. This lot, parcel, known as tract A on

1 this plan, and these lots along Three Oaks
2 Parkway are not the same as what they are
3 proposing in their informal to do platting.
4 They were going to do 12 lots along the
5 frontage, all culled out parcels. They were
6 going to do, I believe it was three tracts or
7 parcels, A at the top, B in here, and C along
8 I-75. And should they file for that under the
9 2005 action, they wouldn't be able to achieve
10 that without having to amend the plan
11 development.

12 The other problem is, is that if it
13 somehow got approved to then come in for
14 development orders on the ultimate -- and this
15 is the best depiction that we could -- actually
16 this is probably -- this is the best depiction
17 of what conceivably would be platted out
18 without the road.

19 If somebody came in and tried to seek
20 development approval which was inconsistent
21 with the 2005 action but consistent with this
22 zoning, their plat now is a problem -- has a
23 problem. They may have to redo the plat.
24 There's just too many inconsistencies between
25 the two, that if they use one and then try to

1 apply the other under a local development order
2 for vertical development, and that other one is
3 following this type of plan, potentially there
4 is going to be a problem if they've utilized
5 the '05 for the plat and the original
6 development order.

7 HEARING EXAMINER RIVERA: So does that get
8 to the disagreement, though, between basically
9 having three conditions versus just having one
10 standard condition with all the schedule of
11 uses and property development regulations that
12 apply to both? Because staff's still objecting
13 to that is my understanding. You would like to
14 keep it separate, whereas the applicant wants
15 to combine that.

16 MR. BLOCK: Well, there are -- we haven't
17 gone into great detail in the analysis of what
18 they propose in the informal versus what is
19 approved in the '05. Because again, it's an
20 informal. It was trying to provide action.

21 One of our statements during our
22 discussions with them is, you're going to have
23 to comply with the '05. And understand, you've
24 got a development application, in this case
25 rezoning or amendment of zoning, that does not

1 coincide with the 2005 action. It's my
2 understanding development services confirmed
3 this with Jessica Sulzer. She confirmed that
4 they would not issue the development order, if
5 it was based on the '05 action, with this case
6 going through the process right now.

7 HEARING EXAMINER RIVERA: So it's more a
8 concern that staff has of protecting the
9 applicant and not a public interest that --

10 MR. BLOCK: We were trying to look after
11 the applicant on this one. Doesn't sound like
12 it sometimes when I raise questions and
13 concerns, because this can be a rather
14 combative public hearing process. The vast
15 majority of the time I ask questions to raise
16 concerns is I'm doing it for the protection of
17 someone, whether it be the public or the
18 applicant. On this one I'm worried that the
19 applicant and future developers may be placing
20 themselves in a position that without the 2005
21 action being included as part of this, they may
22 very well be placing themselves in a position
23 that they're no longer conforming, and I don't
24 want that to happen.

25 HEARING EXAMINER RIVERA: Okay. Thank you

1 for that clarification.

2 MS. MONTGOMERY: I'm completely perplexed
3 as to -- and I'll tell you why I'm perplexed,
4 and that is because in my experience, and it
5 may just be unique to me, it's not at all
6 unusual to come in and have a pre-app. You can
7 change your mind about your direction or
8 whatever. So, I mean, there was a pre-app
9 discussion but no formal submittal, as I
10 understand.

11 MR. BLOCK: That is correct, yes.

12 MS. MONTGOMERY: And when you do an
13 infrastructure submittal, a lot of times you're
14 just bringing utilities in or you're doing
15 drainage. And in my experience it's not
16 unusual to have a plat that has just large
17 tracks and then you come in and replat when you
18 want to do the individual lots and parcels.
19 And so those decisions generally don't get made
20 with the first plat and the first submittal.
21 So I'm not really sure exactly what problem
22 we're trying to solve, because that's that
23 normal process.

24 MR. BLOCK: Well, I think the problem,
25 Neale, and I apologize for using first name

1 basis, but we've worked together for years.

2 MS. MONTGOMERY: Sure.

3 MR. BLOCK: I just didn't want to end up
4 with Lieutenant Colonel Vindman or whatever his
5 name is, issues that they have had in
6 Washington D.C. in the commonality.

7 Back to your question. We're trying to
8 anticipate, because of your 48 -- because of
9 the 48-hour letter that was provided to us,
10 where you're deleting the '05 entirely; that's
11 the first parts of this. You delete '05
12 entirely, the '05 action entirely, then you get
13 the benefit of this new approval. But if it
14 hasn't been adopted yet and you apply for a
15 development order under the '05 resolution,
16 which was explained during the hearing, this is
17 exactly what we're doing. What your client --
18 your engineering firm said, we are applying
19 for -- we will be applying for a development
20 order under the '05 resolution. Well, if this
21 is replacing it and development services knows
22 this, they're not going to grant that
23 development order for an infrastructure and
24 plat, because the plat will be inconsistent
25 with the master con- --

1 MS. MONTGOMERY: Yeah, and therein lies
2 the problem. That's an assumption I don't
3 think is true. I now understand what your
4 point is. I disagree, but I think we're trying
5 to solve a problem that I don't think is going
6 to exist. But I do appreciate you putting us
7 on notice.

8 MR. BLOCK: It's best that we do. Because
9 if down the road you get a denial and we
10 haven't stated this in open public hearing or
11 tried to help out, then I know what's going to
12 happen, we're going to get another meeting.
13 And that another --

14 MS. MONTGOMERY: Oh, we're going to have
15 meetings anyway.

16 MR. BLOCK: And that other meeting happens
17 because why are we being denied, we're doing
18 it -- we've got zoning approval and we're doing
19 it under the '05 action.

20 MS. MONTGOMERY: I understand your point
21 now.

22 MR. BLOCK: And be --

23 MS. MONTGOMERY: I'm not concerned, but I
24 appreciate your thought.

25 MR. BLOCK: Well, if we don't tell you

1 now --

2 MS. MONTGOMERY: No, I --

3 MR. BLOCK: -- we get into a further
4 discussion in another meeting. And we want to
5 make sure that the applicant files correctly.

6 MS. MONTGOMERY: The applicant's here and
7 the engineer's here, so --

8 MR. BLOCK: Understood.

9 MS. MONTGOMERY: -- I -- I won't speak for
10 them, but I think they now --

11 MR. BLOCK: I believe they understand.

12 MS. MONTGOMERY: Okay, thank you.

13 MR. BLOCK: And thank you.

14 HEARING EXAMINER RIVERA: Thank you.

15 MR. BLOCK: Anything else?

16 HEARING EXAMINER RIVERA: That was all for
17 now. Thank you.

18 MR. BLOCK: Okay. Following me will be
19 Mr. Fiigon from the Port Authority staff. I
20 apologize, I have not had the opportunity to
21 say his name very often. It's like trying to
22 first say Chahram Badamtchian's, or other
23 planners' names that have had difficulty being
24 pronounced. And I've learned over time, I'm
25 working with Mr. Fiigon. He will have a

1 resume'; he has not been accepted as an expert
2 witness, but he will be offering up the
3 opportunity to be called an expert witness
4 after today's hearing.

5 HEARING EXAMINER RIVERA: Okay, thank you.

6 MR. FIIGON: Still morning? Yes. Good
7 morning --

8 HEARING EXAMINER RIVERA: It is still
9 morning.

10 MR. FIIGON: -- Madam Hearing Examiner.
11 Thank you for the opportunity to speak before
12 you today.

13 I do have a copy of my resume' for your
14 consideration.

15 HEARING EXAMINER RIVERA: Thank you.

16 MR. FIIGON: And one for the applicant as
17 well.

18 MS. MONTGOMERY: I've had the privilege to
19 work with Mr. Fiigon in Bonita, so...

20 MR. FIIGON: And while it is my first time
21 testifying here today, I do have zoning and
22 land use experience that goes back to 2013 with
23 another Lee County jurisdiction, I'm very
24 familiar with the rezoning process, the comp.
25 plan process, development reviews, conditions,

1 approvals, findings, conclusions, all the fun
2 stuff that we deal with in this hearing today,
3 so if you have any questions for me, I'd be
4 happy to answer them.

5 HEARING EXAMINER RIVERA: Just what area I
6 guess would you be seeking to be an expert in?
7 In land use planning or zoning broadly or --

8 MR. FIIGON: As it relates to Lee County
9 Port Authority and airport development.

10 HEARING EXAMINER RIVERA: Okay. I don't
11 have any objections.

12 MS. MONTGOMERY: No objections.

13 HEARING EXAMINER RIVERA: Thank you.

14 MR. FIIGON: Thank you. So I'll keep it
15 short and sweet.

16 Again, the goal of this was just to get on
17 the record and introduce myself and meet some
18 of you today.

19 One of the conditions that was brought up
20 earlier before, which was -- has already been
21 discussed is with regards to 3-C for the noise
22 disclosure statement, which of course as we
23 know is one of those goofy little things in the
24 Land Development Code where it is a requirement
25 to be a condition of approval.

1 Most of the other conditions that relate
2 to Lee County Port Authority can typically be
3 handled by that blanket statement of just be
4 consistent with the LDC. This is one of those
5 odd occurrences where when we see a project
6 that does impact one of the noise zones for the
7 airport, that there is an explicit statement
8 that needs to be included as a condition of
9 approval.

10 And it does appear twice in the
11 conditions: It appears in 2-G and 3-C, and
12 that was because Lee County Port Authority
13 staff reviewed it similar to Lee County
14 Community Development staff in that we reviewed
15 it against both master concept plans, so
16 understanding that condition 2 related to the
17 '05 plan, and condition 3 related to the 2019
18 proposal, we thought it was appropriate to
19 include it in both areas.

20 I'll keep it short and sweet; that's all I
21 have right now, unless there are any questions
22 from the Hearing Examiner or the applicant.

23 HEARING EXAMINER RIVERA: No questions.
24 Thank you so much for coming today.

25 MR. FIIGON: Thank you.

1 HEARING EXAMINER RIVERA: Good morning.

2 MR. EVANS: Good morning. I can still say
3 good morning as well.

4 Marcus Evans with the Lee County
5 Department of Community Development,
6 Development Services. I'm an engineer with the
7 department, and am a professional engineer with
8 the State of Florida, and in the past have been
9 qualified as an expert in transportation
10 planning and traffic engineering. My resume'
11 is on file and I have been sworn in as well.

12 HEARING EXAMINER RIVERA: Thank you.

13 MR. EVANS: There's been a lot of
14 discussion about the condition 3.A that -- or
15 3.E, excuse me, that's been proposed. And that
16 highlights a number of elements that include
17 considering the need for site-related
18 transportation improvements, as well as the
19 need for property owners within the plan
20 development to equitably share costs of
21 cumulative development or site-related
22 improvements.

23 So I'd like to highlight some points
24 related to again site-related improvements and
25 then the thought in the condition, the proposed

1 condition that talks about the equitable
2 sharing of costs for cumulative development of
3 site-related improvements.

4 A number of provisions in the Lee Plan, as
5 well as the Lee County Land Development Code
6 apply specifically to site-related site
7 improvements and stress the importance of
8 having adequate infrastructure assured or in
9 place to support development growth.

10 And I'd like to step through a few of
11 those policies or objectives, goals, in the Lee
12 Plan, as well as highlight some elements as
13 well in the Land Development Code.

14 Looking at the Lee Plan in goal 2, growth
15 management indicates that the goal is to
16 provide for an economically feasible plan which
17 coordinates the location and timing of new
18 development with the provision of
19 infrastructure, government agencies, private
20 utilities and other sources. So it highlights
21 there again the need for a provision for
22 infrastructure, the importance of that.

23 Objective 2.1 discusses development
24 location, and I'll talk about that later in the
25 presentation.

1 Objective 2.2 of the Lee Plan discusses
2 development timing. And it indicates that the
3 objective is to direct new growth to those
4 portions of the future urban areas where
5 adequate public facilities exist or are assured
6 and where contact and contiguous development
7 patterns can be created. So there again, an
8 emphasis on adequate public facilities, either
9 existing or assured.

10 Policy 2.2.1 indicates, and I'll
11 paraphrase, it says that rezonings will be
12 evaluated as to the availability and proximity
13 of the road network, central sewer and water
14 lines, community facilities as services such as
15 schools, EMS, fire and police protection and
16 other public facilities, compatibility with the
17 surrounding land uses and any other relevant
18 facts affecting public health, safety and
19 welfare. So again, discussion about
20 facilities, adequate facilities there as well.

21 Goal 6 relating to commercial land uses,
22 in Policy 6.1.1, it says in part that all
23 applications for commercial development will be
24 reviewed and evaluated as to traffic and access
25 impacts. And again this is paraphrasing,

1 there's some other elements there as well. It
2 also says that it will be reviewed and
3 evaluated as to the availability and adequacy
4 of services and facilities.

5 There again, an emphasis that that be
6 considered.

7 Policy 6.1.3 of the Lee Plan indicates
8 that commercial developments requiring zoning
9 and meeting development of county impact or DCI
10 thresholds must be developed as commercial
11 planned developments, designed to arrange uses
12 in an integrated and cohesive unit in order
13 to -- again it mentions a number of elements,
14 including to provide necessary services and
15 facilities where they are inadequate to serve
16 the proposed use. Again, another emphasis on
17 having those facilities.

18 Policy 6.1.4, commercial development will
19 be approved only when compatible with adjacent
20 existing and proposed land uses and with
21 existing and programmed public services and
22 facilities. There again, mention of public
23 services and facilities.

24 Policy 6.1.5, land development regulations
25 will require that commercial development be

1 designed to protect the traffic-carrying
2 capacity of roads and streets. Methods to
3 achieve this include but are not limited to --
4 and that's also a key phrase as well. It
5 mentions a number of different improvements
6 including signalization and intersection
7 improvements. Again, the importance of having
8 facilities available for development.

9 It was mentioned prior, in fact, more than
10 once in the prior presentations, in the Lee
11 Plan in the glossary is a definition of
12 site-related improvements, and it states that
13 it includes capital improvements and
14 right-of-way dedications for direct access
15 improvement to the development, and then it
16 makes the statement, direct access improvements
17 include, and then again a key point, but are
18 not limited to, the following. There were five
19 different elements mentioned there. The first
20 four, as you may recall, related to specific
21 direct access to the site. And the last one,
22 and I'll read it, says -- so again, just to
23 complete the sentence: Direct access
24 improvements include but are not limited to the
25 following, one through four, number five, roads

1 or intersection improvements whose primary
2 purpose at the time of construction is to
3 provide access to the development.

4 Now, as I read that, the way that that's
5 constructed, what I understand from that
6 sentence or that statement is that the
7 improvements serve the purpose at the time of
8 construction to provide access to the
9 development, not that the intersection or
10 roadway provides direct access to the -- or the
11 primary purpose of the intersection or access
12 is primary to the -- provides primary access to
13 development, but the improvements have the
14 primary purpose at the time of construction to
15 provide access to the development.

16 So again, maybe it's an interpretation of
17 how I'm seeing it, I may be wrong, I may be
18 right, but again, it's something that catches
19 my attention with respect to this particular
20 case, and specifically the condition that we're
21 asking be considered.

22 County staff did review the traffic study
23 that was prepared by the applicant, submitted
24 with the application, and specifically noted
25 some concerns at the intersection of Alico Road

1 and Three Oaks Parkway. For one, the project
2 proposes an increase in trips over the prior
3 zoning. That was clearly understood. So
4 additional trips associated with the proposal.

5 The nearest site access to the -- direct
6 site access, as shown in the master concept
7 plan, is less than 600 feet away from that
8 major intersection of Three Oaks Parkway and
9 Alico Road. So it's very close to that major
10 intersection. As well, this intersection of
11 Three Oaks Parkway and Alico Road is very close
12 to the interchange here. The interchange of
13 Alico -- or the Alico Road intersection with
14 I-75.

15 Now, what's interesting too is when Three
16 Oaks Parkway is extended to the north, it will
17 be connecting to a portion of Daniels Parkway
18 that is a constrained roadway. That roadway
19 currently operates at service of level F,
20 especially during the p.m. peak hour, it's a
21 very busy roadway. Being that this site is
22 located quite close to Alico Road, sure,
23 there's going to be some traffic going to the
24 north and using that connection up to the
25 north. But being that it's so close to Alico

1 Road, likely a lot of the traffic is going to
2 be using this particular intersection.

3 In addition to that, there is in the works
4 an Alico Road extension further down Alico
5 Road, connecting Alico Road to SR82. When that
6 connection is completed, there is some
7 assumption that there's going to be a fair
8 amount of traffic that is going to be drawn to
9 Alico Road. Because it's going to make a
10 pretty nice east-west connection, a regional
11 connection here in the county, and so that's
12 going to likely put that much more traffic at
13 this intersection as well.

14 The intersection under maximum build-out
15 scenario that was considered in the traffic
16 study is expected to be significantly impacted
17 by the traffic associated with the subject
18 site, specifically during the p.m. peak hour.
19 And that was again a finding that was made
20 based on the review of the traffic study.

21 The existing intersection operations,
22 specifically during the p.m. peak hours, are
23 estimated as poor, level of service F. And
24 again, that's an existing situation with
25 additional traffic. That level of service F

1 doesn't change; there's no getting worse than
2 the level of service F.

3 However, if you again look closer at the
4 traffic study, you'll see the delay is
5 increased, which is expected. You add that
6 much more traffic to an intersection that's
7 already congested and your delay or your wait
8 time is going to likely increase.

9 The existing and future intersection
10 traffic operations again may be estimated as
11 poor at this location, but there's another
12 element that really needs to be considered and
13 that is traffic safety. I'd like to just make
14 mention of some points from the county's turn
15 lane policy, CC 11-4.

16 Actually, you know what, before I do that,
17 I neglected to cover some points from the Land
18 Development Code. I apologize. That's what
19 happens when you have kind of put this together
20 a little more last minute than I would have
21 liked to.

22 I'm going to back up just a moment, if I
23 may.

24 HEARING EXAMINER RIVERA: Certainly.

25 MR. EVANS: I covered some points from the

1 Lee Plan, and I did not cover some points
2 related to site-related improvements from the
3 Land Development Code. There are just a few.

4 The section -- Section 10.1 of the Land
5 Development Code in the definitions relates or
6 references site-related road improvements and
7 what that means. That very closely resembles
8 what is mentioned in the Lee Plan, which it
9 should.

10 Section 10-7 in the general requirements
11 for developments indicates under parens B, the
12 last sentence, that the developer will be
13 responsible for the full cost of site-related
14 improvements, which I believe is pretty well
15 understood.

16 Section 10-286 relating to development
17 order, traffic impact statements indicates that
18 traffic generated by the proposed development
19 will have 300 or more vehicle trips during the
20 peak hour to the adjacent road system. The
21 developer must submit a traffic impact
22 statement providing comprehensive assessment of
23 the development impacts on the surrounding road
24 systems.

25 So in other words, for a larger

1 development that generates more than 300 trips,
2 we look beyond the access points to see what
3 type of impacts there might be, again, outside
4 of the specific access points there.

5 Section 10-287, as Ms. Montgomery had
6 mentioned before, does cover traffic impact
7 plan, mitigation plan. So very good, your
8 memory serves you well.

9 MS. MONTGOMERY: I get a gold star on that
10 one.

11 MR. EVANS: And in -- under parens 2 it
12 makes a comment that it's a fundamental policy
13 assumption that road improvements specified by
14 the traffic impact mitigation plan are
15 improvements deemed to be over and above the
16 required improvements of the Lee Plan's road
17 network funded by roads impact fee.

18 So again, I think that that's a fairly
19 well understood statement.

20 Now, the question, and this has been
21 touched upon to some degree as well, is what
22 time are those roads impact fees -- and it is
23 roads impact fees. I have to keep stumbling
24 over that. I like to say road impact fees.
25 The way the code describes it, roads impact

1 fees.

2 At the time that those are paid are at the
3 time of the building permit issuance. And
4 that's section 2-265(a) of the Land Development
5 Code.

6 In 2-270(a), it states that funds
7 collected from roads impact fees must be used
8 for the purpose of capital improvements to
9 improved roads. Such improvements must
10 increase road capacity and be of the type made
11 necessary by the new development.

12 So again those fees would be used to
13 increase roadway capacity.

14 Now, what's interesting is that in Lee
15 County the roads impact fees are indeed used
16 for capacity projects; they're used to widen
17 roads and that sort of thing. However,
18 intersection improvements are paid for using
19 gas tax funds, is my understanding. So again,
20 it's a little different. That's how the funds
21 indeed are used.

22 The LDC chapter -- or Section 2-264
23 further defines those capital improvements
24 again that are covered using road impact fee
25 monies. Those capital improvements, and again

1 I'll paraphrase, would include all the
2 necessary features for any non-related road
3 construction project including but not limited
4 to, and included in that may be constructing
5 new through lanes, constructing new turn lanes.
6 So we're talking about new infrastructure of
7 their -- again, that's what the capital
8 improvements would be that would be paid for
9 using road impact fees.

10 The -- in further looking at that
11 definition of what those road impact fee- --
12 roads impact fees would be used for, it does
13 not include in that list site-related
14 improvements.

15 So site-related improvements, the LDC
16 defines in section 2-264, it means the capital
17 improvements and the right-of-way dedications
18 for direct access improvements to the
19 development in question, and direct access
20 improvements include -- and it would be very
21 similar to what the Lee Plan indicates, site
22 driveways and roads, right turn/left turn,
23 deceleration/acceleration lanes leading to and
24 from the driveways or roads. But it also
25 includes in there at number six, roads or

1 intersection improvements whose primary
2 purpose -- again the improvements whose purpose
3 at the time of construction -- is to provide
4 access to or within the site.

5 So those are just some references related
6 to again site-related improvements that are
7 found in the Land Development Code, and again
8 prior mentioned I believe by Mr. Block.

9 Apologize for the little side trip there.

10 So getting back to just some of the
11 discussion or the commentary regarding the
12 traffic study; we looked at the location, we
13 looked at some of the potential impacts of this
14 development on that particular intersection.
15 But I did want to share with you some comments
16 related to the safety elements. So we looked
17 at operations, level of service, level of
18 service F with the project, increased delays,
19 still level of service F at that intersection.
20 But we don't want to neglect the thought about
21 turn lanes and the primary purpose of those
22 turn lanes.

23 We look at the turn lane policy, AC-11-4
24 under the scope, numeral one, it indicates that
25 the deceleration, left and right turn lanes are

1 desirable for the safe execution of speed
2 change maneuvers and for storage and protection
3 of left and right turning vehicles.

4 That's the introductory statement in that
5 Administrative Code. And really, the highlight
6 is on safety; the focus is on safety. Safe
7 execution, protection of those turning
8 vehicles.

9 If you look further into that
10 Administrative Code, section III,
11 classification, function and warrants, it
12 describes under A -- 2.a, for left turn, the
13 primary function of a left turn lane is to
14 provide a protected area separated from the
15 flow of through traffic in the same direction
16 where left-turning vehicles can slow to a stop
17 and wait until a suitable gap occurs or is
18 provided in the opposing flow of traffic to
19 allow the turning maneuver to be safely
20 completed.

21 So the primary function is to provide that
22 protected area to allow for a turning movement
23 to be safely completed. So two elements there
24 relate very well to safety. So the primary
25 function, we could understand, would be safety.

1 The secondary function, it states, is to
2 then eliminate delay and congestion which would
3 allow the through traffic movement in the same
4 direction while the left-turning vehicles
5 slowed down and waited for a safe and adequate
6 gap in the opposing flow of traffic to complete
7 the turning maneuver.

8 So the second function, as indicated in
9 the policy -- or the code here, is to eliminate
10 delay and congestion, which are more
11 operational focused.

12 So primary function seems to be safety
13 here; the secondary function would be more
14 geared toward the operations.

15 A right-turn lane very similar, it
16 describes a protected area as the primary
17 purpose being that protected area, as well as
18 allowing for that safe maneuver to be
19 completed.

20 Number one, safety, number two, secondary
21 purpose, to eliminate lane congestion. So
22 again operationally focused.

23 So again, when we look at level of
24 service, that's important. But we also want to
25 not forget about the safety element there as

1 well, which is not really encapsulated per se
2 in just a simple it's a level of service F
3 that's so much delayed, you might say.

4 So then really, if turn lane links are
5 inadequate to store turning vehicles, then
6 intersection crashes and intersection delay can
7 both increase, and so traffic safety and
8 operations may both be adversely affected if
9 turn lane lengths aren't long enough really to
10 store those turning vehicles.

11 So then the question: Are the existing
12 turn lane links adequate at this intersection
13 to accommodate a maximum build-out intensity?
14 It's been stated before, we don't know how
15 intense this development will be. We know what
16 the maximum is. But looking at the traffic
17 study and seeing again how this intersection
18 may function, what additional trips may be
19 added to that intersection, county staff
20 believes that based on a review of the study,
21 that the following existing intersection turn
22 lane links under that worst case scenario don't
23 appear adequate in the southbound right-turn
24 lane, the eastbound right-turn lane, and then
25 the eastbound left-turn lane.

1 Now, all of those three movements, the one
2 in particular that seems to be affected the
3 most or the most area of concern is probably
4 the eastbound left, that it very likely will
5 need to be lengthened and in fact another turn
6 lane would be -- may very well be warranted as
7 well. So those are the areas of concern with
8 that intersection.

9 Now, proposed condition 3.E also
10 highlights the need for property owners within
11 the plan development to equitably share the
12 cost of cumulative development for site-related
13 improvements.

14 So the question then, why may this be
15 important? Well, if individual parcels are
16 developed and expected to solely bear the
17 site-related improvement costs for shared
18 impacts related to prior approved development,
19 then the last parcels within the planned
20 development may not ultimately be developed or
21 development may be delayed.

22 And to give an example, try to simplify
23 this to better understand it, we have a small
24 three-parcel planned development, very small
25 development with three parcels. The first two

1 parcels are developed and turn lanes aren't
2 warranted at maybe a shared access point.

3 Prospective buyer comes in and looks at
4 the third parcel and does his or her due
5 diligence and tries to come up with some costs
6 associated with developing that final site.
7 They find that the traffic generated is going
8 to result in the need for a turn lane, based on
9 the cumulative traffic using that particular
10 site. That buyer may then decide that well,
11 those costs are excessive, they're more than
12 they wish to take on, and there are other sites
13 in the area, and so they may choose other
14 sites, leaving that site in that three-parcel
15 planned development perhaps vacant for a long
16 period of time or, for that matter, never being
17 developed. Because whoever buys that knows
18 that they're going to be bearing the brunt, you
19 might say, of those costs for that improvement.
20 Because again, the cumulative traffic is going
21 to require those turn lane improvements.

22 So again, if all parcel owners equitably
23 share the costs related to site-related
24 improvements, then the Lee Plan objective 2.1
25 may be better realized. And so that objective

1 states this: Under development
2 location against this -- again, this is
3 objective 2.1 of the Lee Plan, it says:
4 Contiguous and compact growth patterns will be
5 promoted through the rezoning process to
6 contain urban sprawl, minimize energy costs,
7 conserve land, water, and natural resources,
8 minimize the cost of services, prevent
9 development patterns where large tracts of land
10 are by-passed in favor of development more
11 distant from services and existing communities.

12 So the tendency again, if we can look at
13 some of these areas and make sure that they get
14 fully developed or are going to lessen the
15 likelihood that folks are -- buyers, potential
16 buyers or developers, are going to expand
17 beyond this area where infrastructure may be
18 available into areas where it's not as readily
19 available.

20 So in considering the proposed condition,
21 staff has considered, in summary, the public
22 health, safety and welfare, as well as the need
23 for adequate infrastructure to be assured or in
24 place for the cumulative approved development
25 consistent with both the Lee Plan and the Lee

1 County Land Development Code.

2 So that does conclude my presentation, and
3 I am glad -- I know there will be some
4 questions, and glad to answer those.

5 MR. BLOCK: If I may?

6 HEARING EXAMINER RIVERA: Yes. I'm sorry,
7 go ahead, Chip.

8 MR. BLOCK: Certainly.

9 So Marcus, I believe your summary helps to
10 sum up your findings. Those elements. Can you
11 repeat your summary there? Because I believe
12 some of those are findings that are required
13 under the Lee County Land Development Code. Is
14 it your opinion that the condition as offered
15 is achieving those last points that you made in
16 your presentation? And repeat those points.

17 MR. EVANS: I believe it does. And I will
18 repeat them. In summary, I stated that as we
19 consider the proposed condition, staff
20 considered the public health, safety and
21 welfare, as well as the need for adequate
22 infrastructure to be assured or in place for
23 the cumulative approved development, consistent
24 with both the Lee Plan and the Lee County Land
25 Development Code.

1 MR. BLOCK: So your finding is without
2 that condition, those elements cannot be found
3 consistent with the Land Development Code or
4 comprehensive plan? That condition.

5 MR. EVANS: Without the condition?

6 MR. BLOCK: Correct.

7 MR. EVANS: There are a number of
8 elements, as I discussed, in the Lee Plan, as
9 well as Land Development Code that I believe
10 cover our needs. However, the concern,
11 especially with the last portion of my
12 discussion, related to the last person in being
13 stuck with a lot of additional improvements.

14 This particular condition I believe can
15 assist to make sure that that doesn't happen.
16 Which again may lead to some negative
17 consequences of urban sprawl and some of the
18 other elements that are mentioned there in
19 objective 2.1 of the Lee Plan.

20 I'm not sure if I'm answering your
21 question.

22 MR. BLOCK: Well, you've answered the
23 question, but I will ask the next part of that
24 question.

25 With the condition as being recommended,

1 and you also mentioned regarding public
2 interest, which would be the future owners
3 within the development, could be that, that
4 recommended condition, in your opinion, does
5 that provide sufficient safeguard to the public
6 interest?

7 MR. EVANS: I think it ties it up pretty
8 well, yes.

9 MR. BLOCK: Okay. So without that
10 condition, it does not protect the public
11 health, safety and welfare, it does not provide
12 sufficient safeguards to the public interest,
13 and in total you do not believe that there's
14 adequate inf- -- without the condition that
15 there will be adequate infrastructure to
16 support the development?

17 MR. EVANS: No, I don't believe there is
18 adequate infrastructure to support this
19 development.

20 MR. BLOCK: Thank you very much.

21 HEARING EXAMINER RIVERA: Does the
22 applicant have questions?

23 MS. MONTGOMERY: Yes.

24 HEARING EXAMINER RIVERA: Go ahead.

25

1 MS. MONTGOMERY: Marcus, you went through
2 a long list of --

3 MR. EVANS: I did, yes. I apologize.

4 MS. MONTGOMERY: -- Lee Plan provisions.
5 So I probably missed some.

6 But I think the first one you mentioned
7 was goal 2, which is just a general statement
8 to provide for an economically feasible plan
9 which coordinates the location and timing of
10 new development with the provision of
11 infrastructure. So that's a general statement;
12 do you agree?

13 And then I think you mentioned objective
14 2.1. And generally when we talk about that
15 particular objective, compact and contiguous
16 growth patterns will be promoted through --

17 THE COURT REPORTER: Say that again,
18 please.

19 MS. MONTGOMERY: -- the zoning process to
20 contain urban sprawl.

21 HEARING EXAMINER RIVERA: Excuse me,
22 Neale.

23 MS. MONTGOMERY: And then the rest --

24 HEARING EXAMINER RIVERA: I'm sorry, the
25 court reporter needed to have that repeated.

1 THE COURT REPORTER: Just repeat the first
2 part of that sentence, please.

3 MS. MONTGOMERY: Okay. Objective 2.1
4 promotes compact and continuous growth patterns
5 that contain urban sprawl. And then the rest
6 of that objective essentially defines the
7 benefits of containing urban sprawl.

8 Do you have an opinion as to whether or
9 not this is consistent with a compact and
10 consistent growth pattern?

11 MR. EVANS: Yeah, it would appear so,
12 sure.

13 MS. MONTGOMERY: And then objective 2.2
14 says: Direct new growth to those portions of
15 the future urban areas where adequate public
16 facilities exist or are assured and where
17 compact and contiguous development patterns can
18 be created.

19 And then there's a bunch of code
20 references, including a code reference to
21 concurrency requirements in the Land
22 Development Code.

23 So the first part is, again, is it compact
24 and contiguous, and I think we agree it is.

25 MR. EVANS: Yes.

1 MS. MONTGOMERY: And then the second part
2 is essentially putting people on notice that
3 you have to meet the regulatory concurrency
4 requirements of 163 as implemented in the Lee
5 County Land Development Code, correct?

6 MR. EVANS: I'm not sure I'm following you
7 when you say that.

8 MS. MONTGOMERY: What the policy says is
9 that you're going to -- development orders and
10 permits --

11 MR. EVANS: Yeah, okay.

12 MS. MONTGOMERY: -- as defined in
13 163.3164(7), will be granted only when
14 consistent with the provisions of 163.3202 and
15 163.3180, and the concurrency requirements of
16 the Land Development Code.

17 MR. EVANS: Right.

18 MS. MONTGOMERY: So 163.3180 is the
19 concurrency provision --

20 MR. EVANS: Yes, it is.

21 MS. MONTGOMERY: -- of the Florida
22 Statutes.

23 MR. EVANS: Yes, I'm familiar with that.

24 MS. MONTGOMERY: And then there's a
25 reference to the county concurrency provision.

1 So when I read that, what I think it says
2 is I've got to be compact and contiguous, which
3 we are, and then I won't get a development
4 order unless I meet the county's concurrency
5 requirements.

6 MR. EVANS: Yes, that's correct.

7 MS. MONTGOMERY: So we're not
8 predetermining, I don't think, at this point
9 whether or not we meet the concurrency
10 requirement, because we'll have to --

11 MR. EVANS: This is premature to do
12 that --

13 MS. MONTGOMERY: Right.

14 MR. EVANS: -- you're correct.

15 MS. MONTGOMERY: Okay. And then I think
16 you referenced Policy 2.2.1 which says
17 rezonings are going to be evaluated as to the
18 availability and proximity of the road
19 networks, sewer, water, community facilities
20 and services such as schools, EMS, fire, police
21 and other public facilities, and compatibility
22 with the surrounding land uses and other
23 relevant factors.

24 So that's a requirement, as I read it, on
25 the county to evaluate the development, to see

1 what infrastructure is around it; is that
2 correct?

3 MR. EVANS: I think that it's a
4 responsibility of the county to do that, but it's
5 also the responsibility of the applicant to
6 assist in that review as well. And maybe I'm
7 wrong, that's --

8 MS. MONTGOMERY: Yeah --

9 MR. EVANS: -- an interpretation of how it
10 could be looked at.

11 MS. MONTGOMERY: And this may be on my
12 part, but it's always my --

13 MR. EVANS: It's a rezoning --

14 MS. MONTGOMERY: -- understanding,
15 identify where in the policy, and then it's an
16 obligation that the county has to do that
17 evaluation.

18 And you did that evaluation, right, you
19 evaluated?

20 MR. EVANS: I reviewed the traffic study
21 and yes, I --

22 MS. MONTGOMERY: Okay.

23 MR. EVANS: -- yes.

24 MS. MONTGOMERY: Let me ask you a
25 question, if you know: Is the Lee Plan

1 implemented through the Land Development Code?

2 MR. EVANS: No. The Lee Plan provides a
3 basis for, as I understand it, for the Land
4 Development Code. It provides the policies,
5 goals and objectives from which the policy
6 document, the Land Development Code, is --
7 draws from, you might say. That's as I
8 understand it. And I --

9 MS. MONTGOMERY: Okay. And let -- I might
10 not have asked the right question.

11 MR. EVANS: Okay.

12 MS. MONTGOMERY: Your -- I agree with you,
13 the policy guidance is in the Lee Plan.

14 MR. EVANS: Right.

15 MS. MONTGOMERY: And based on that policy
16 guidance, the county comes along and adopts the
17 Land Development Code that's consistent with
18 this.

19 MR. EVANS: Yes, that is --

20 MS. MONTGOMERY: And which --

21 MR. EVANS: -- correct.

22 MS. MONTGOMERY: -- implements --

23 MR. EVANS: That's correct.

24 MS. MONTGOMERY: -- these requirements.

25 MR. EVANS: That is correct.

1 MS. MONTGOMERY: So these things in here
2 are implemented through the Land Development
3 Code.

4 MR. EVANS: In -- yes, yes, you are
5 correct. At least that's again how I would
6 understand it.

7 MS. MONTGOMERY: Yeah, that's -- so we
8 agree on that.

9 MR. EVANS: Uh-huh.

10 MS. MONTGOMERY: Okay, so you reference
11 goal six, and that says: To permit orderly and
12 well-planned commercial development at
13 appropriate locations within the county.

14 An interchange area at the intersection of
15 two arterials is generally a good location for
16 commercial; wouldn't you agree?

17 MR. EVANS: I would agree.

18 MS. MONTGOMERY: And then you -- I think
19 you referenced Policy 6.1.1?

20 MR. EVANS: I did.

21 MS. MONTGOMERY: Which is another one that
22 says all applications are going to be
23 evaluated. So we've already talked about that.

24 MR. EVANS: Yeah.

25 MS. MONTGOMERY: The county has evaluated

1 and will continue to evaluate it at the D.O.
2 stage.

3 MR. EVANS: Yes.

4 MS. MONTGOMERY: Okay. And then you
5 referenced 6.1.3, which is more of a design
6 requirement. So I'm assuming you don't deal
7 with the visual harmony and screening, that's
8 not your thing.

9 MR. EVANS: No, it is not.

10 MS. MONTGOMERY: It says reduce dependence
11 on the automobile. And you were here, I
12 believe, when Chip indicated that the site was
13 going to have access to a bus stop and could at
14 the time of D.O be required to upgrade that bus
15 stop. Because the county wants to, consistent
16 with this, reduce dependence on the automobile.
17 And I'm going to assume at the D.O. stage the
18 county's also going to require sidewalks in
19 accordance with the sidewalk requirements to
20 promote pedestrian activity.

21 MR. EVANS: That's correct.

22 MS. MONTGOMERY: When you evaluate the
23 traffic, do you do any kind of reduction
24 because of the multimodal, because of providing
25 for transit, providing for pedestrian,

1 providing for bicycles? Is there any kind of
2 acknowledgment that the development will be
3 enhancing that multimodal component?

4 MR. EVANS: We often do not. And with the
5 IT Trip Generation Manual or software that is
6 now available, there is opportunity to look at,
7 depending on the site location, if it's an
8 urban area, for instance, the trip generation
9 numbers will reflect the fact that again some
10 trips will be reduced because people are
11 walking or riding their bikes, that sort of
12 thing. This is a little more suburban, and so
13 with respect to the Trip Generation Manual or
14 software, that will likely reflect again a
15 similar situation in a -- I'm generalizing
16 because the samples are many and they're from
17 different parts of the country, but in the
18 suburban area there is some assumption likely
19 that there would be some blanket use.

20 MS. MONTGOMERY: Okay. So you haven't in
21 the past. Will you -- rather than be general,
22 will you be using new ITE that acknowledges
23 transit and pedestrian and multimodal for this
24 development, or we don't know?

25 MR. EVANS: We would likely not, because

1 again, the Trip Generation Man- -- we would
2 look at a suburban location that would be
3 similar to this, and with the same type of
4 uses, and use the generalized numbers, the
5 averages that come from that.

6 Again, I'm kind of simplifying it, but
7 that's --

8 MS. MONTGOMERY: Okay. You reference
9 Policy 6.1.5. And this to me looks like a
10 policy that requires the county to adopt Land
11 Development Code provisions that address
12 frontage road clustering, limiting access,
13 sharing access. And let me just stop there.
14 Because access to this site is limited to the
15 two access points that are already provided.
16 And the county did require sharing an
17 interconnection and access with the properties
18 to the north.

19 MR. EVANS: That's correct.

20 MS. MONTGOMERY: And you address that fact
21 from right-of-way, so that's addressed.

22 And it does talk about turn lanes as a
23 method and signalization and intersection
24 improvements. So those are general
25 requirements that you're going to evaluate.

1 MR. EVANS: True.

2 MS. MONTGOMERY: Okay. You mentioned the
3 Administrative Code 11-4.

4 MR. EVANS: Yes.

5 MS. MONTGOMERY: And I'm looking at the
6 scope. Do you have it with you?

7 MR. EVANS: I don't have the full -- I
8 have two sheets of it.

9 MS. MONTGOMERY: How about the first page?

10 MR. EVANS: Pages 1 and 2.

11 MS. MONTGOMERY: I think we might be good.

12 MR. EVANS: So I can work with pages 1 and
13 2.

14 MS. MONTGOMERY: All right. Well, look at
15 the first paragraph under scope on Page 1.

16 MR. EVANS: Yes.

17 MS. MONTGOMERY: It says: These
18 additional lanes, referring to turn lanes, for
19 exit or entrance maneuvers shall be provided in
20 accordance with county design standards herein.

21 I'm not the traffic expert, you are, but
22 when I see exit and entrance, to me that's a
23 reference to the access point, because that's
24 where I enter and exit the site. Am I correct
25 in my understanding?

1 MR. EVANS: Can you point out again where
2 it's at? I --

3 MS. MONTGOMERY: Yeah, it's the second
4 sentence under scope.

5 MR. EVANS: The second sentence, okay.

6 MS. MONTGOMERY: So it says: These
7 additional lanes, referring to turn lanes, for
8 exit or entrance maneuvers shall be provided in
9 accordance with county design standards herein.

10 So when I read exit and entrance, to me
11 that's referring to the site access points. Is
12 that right, or not right?

13 MR. EVANS: It could be understood that
14 way, yes.

15 MS. MONTGOMERY: Okay. Now, it says in
16 the second paragraph --

17 MR. EVANS: Can I back up?

18 MS. MONTGOMERY: Sure.

19 MR. EVANS: Just -- and again, I --
20 looking at this in context, additional lanes
21 for exit and entrance maneuvers could be
22 related to exiting the through lane and
23 entering into a lane; you might say, as well.

24 MS. MONTGOMERY: I wouldn't read it that
25 way, but...

1 MR. EVANS: Okay. And then again, I'm a
2 little on the spot here, so....

3 MS. MONTGOMERY: Yeah, I know, I
4 understand.

5 MR. EVANS: Appreciate that.

6 MS. MONTGOMERY: But, I mean, the Hearing
7 Examiner is also going to have to make the
8 decision as to what it is, site-related or not
9 site-related. I think she -- I won't speak for
10 her, but I think she recognizes that's the
11 pivotal issue, so she'll be able to evaluate
12 the point you just made.

13 MR. EVANS: That's fine, go ahead.

14 MS. MONTGOMERY: It goes on to say: It
15 should be realized that deceleration left and
16 right turn lanes constitute an integral part of
17 the geometric design of streets and highways.

18 That being the case, it seems to me that's
19 a county responsibility. If those lanes are an
20 integral part of a roadway and it's needed for
21 the public health, safety and welfare, that's
22 an improvement that the county, through its
23 impact fees, gas taxes and whatever that new
24 tax is, the commissioners created where the
25 increase in tax revenue goes into the DOT, that

1 that should be used to fund those capital
2 improvements.

3 MR. EVANS: And you're relating it to a
4 public road system or a private road system as
5 well? I assume a public road system.

6 MS. MONTGOMERY: Well, yes.

7 MR. EVANS: Because on a private road --

8 MS. MONTGOMERY: Because we aren't
9 talking -- we can all agree we're not talking
10 about a private road here today, we're talking
11 about two arterials, are we not?

12 MR. EVANS: It is a general practice that
13 when a new roadway is being constructed, if we
14 have a Burnt Store Road, an Alico Road, an
15 Alico Road extension, that some turn lanes will
16 be provided at the intersections at -- yes.

17 MS. MONTGOMERY: Okay. So when you build
18 a new public road, you include those when --
19 your design consultant in a case -- that
20 they're necessary for the public health, safety
21 and welfare?

22 MR. EVANS: And again, I don't get
23 involved with that with Lee County, but I'm
24 assuming that that's the case.

25 MS. MONTGOMERY: Okay. But we can agree

1 we're not dealing with a new replacement road
2 here, but at least we can agree --

3 MR. EVANS: It's existing.

4 MS. MONTGOMERY: -- that if we were -- and
5 then it goes on to say that at times
6 deceleration left and right turn lanes may need
7 to be installed at an existing intersection or
8 access point to improve the existing or
9 outdated design.

10 So that would be what we're talking about
11 here, right?

12 MR. EVANS: It would appear to apply, yes.

13 MS. MONTGOMERY: Okay. And it goes on to
14 say: If and when a traffic analysis shows that
15 the level of service is being degraded by the
16 proposed project traffic, or turning movements
17 at the intersection are being created at the
18 intersection by the proposed project's traffic,
19 and it goes on.

20 So it's limited to, I think, when you're
21 redesigning or rebuilding a road that doesn't
22 have an outdated design.

23 This is a relatively new intersection,
24 right? That road, Three Oaks Parkway, when did
25 it open to the public?

1 MR. EVANS: I don't know. As far as when
2 it was open to the public? Yeah, I am not
3 aware of it. It was fairly recently, I
4 believe.

5 MS. MONTGOMERY: Okay. So it doesn't have
6 an outdated design then.

7 MR. EVANS: I can't answer that. I
8 haven't looked at it. I don't know.

9 MS. MONTGOMERY: Okay.

10 MR. EVANS: Other than what I saw in the
11 traffic that indicated that there are some
12 areas that need to be looked at further,
13 especially that southbound right turn lane.

14 MS. MONTGOMERY: You made a point of your
15 three-parcel project and the concern about the
16 parcel that it wouldn't develop if it was the
17 last parcel in --

18 MR. EVANS: Yes.

19 MS. MONTGOMERY: -- because of the cost.

20 MR. EVANS: Right.

21 MS. MONTGOMERY: Did you do any evaluation
22 about whether or not any -- this site was
23 developed at all if someone was signing a blank
24 check?

25 MR. EVANS: I did not look at this

1 specifically; no, I did not. And it's my
2 understanding that in this particular case,
3 when Three Oaks Parkway was originally designed
4 there were turn lanes put in. Those turn lanes
5 were based on some judgment calls as to what
6 traffic might be using those access points.
7 But those turn lanes may need to be extended as
8 well. So there may be some additional site
9 improvements related to -- or on Three Oaks
10 Parkway too.

11 MS. MONTGOMERY: Okay. Do you have the
12 revised condition 3.E in front of you? Do you
13 have it available?

14 MR. EVANS: I do have the revised
15 condition, yes.

16 MS. MONTGOMERY: Okay. When you read that
17 condition, does a buyer have any idea, based on
18 this condition, what improvements you're going
19 to require?

20 MR. EVANS: No.

21 MS. MONTGOMERY: Do you have any idea when
22 they're going to be required?

23 MR. EVANS: There are a lot of unknowns,
24 you are correct.

25 MS. MONTGOMERY: So it could be five

1 years, 10 years. Could it be as far out as 15
2 years?

3 MR. EVANS: It could be beyond, we know
4 that, yes.

5 MS. MONTGOMERY: So we don't know what and
6 we don't know when, so I'm going to make an
7 assumption, but I'm going to ask you: Do we
8 know how much it would cost?

9 MR. EVANS: How much the cost will be?

10 MS. MONTGOMERY: Right.

11 MR. EVANS: No.

12 MS. MONTGOMERY: So --

13 MR. EVANS: I know that there was -- I
14 will say this: I know there were some numbers
15 thrown out, whether those numbers are high,
16 low. But at the same time, if those
17 improvements are required 10 years from now
18 versus today, it's a whole different scenario
19 as far as construction costs. And there's a
20 lot of elements that are unknown, and I will
21 admit that. That's -- that's obvious.

22 HEARING EXAMINER RIVERA: I don't want to
23 interrupt your cross-examination, but this was
24 my question about this, is can you kind of walk
25 me through how it's to be implemented? Because

1 that line of questioning that just happened and
2 your statements were that we don't know what
3 and we don't know when or how much.

4 So then how would -- if this were to be a
5 condition, how would staff be ensured that it
6 was actually being implemented and what
7 enforcement capability would it have to know if
8 it's even being complied with?

9 MR. EVANS: The intent would be that
10 during the development order process we would
11 evaluate through a traffic study what
12 improvements are needed. And let's just stick
13 to the site access points. I know that there's
14 some discussion also about the intersection,
15 which we don't want to forget; I mean, that's
16 part of this discussion as well.

17 But looking at the site access points, if
18 the traffic study shows that there are
19 additional improvements needed at those site
20 access points, additional length needs to be
21 added for turn lanes, then the cost of that
22 would be basically spread out to those owners'
23 parcels within the property.

24 And -- can I back up and just say that I
25 will do the best I can to answer this. This

1 was a -- staff put their heads -- our heads
2 together and put this together and this is not
3 just my -- strictly my condition, it's staff's
4 condition as we're bringing it forward. So
5 I'll do the best I can to answer that.

6 HEARING EXAMINER RIVERA: And that
7 actually goes to another question I had as to
8 whether or not a similar condition such as this
9 had previously been used so that you could know
10 how it's implemented and it will lead to --

11 MR. EVANS: There is --

12 HEARING EXAMINER RIVERA: -- achieve your
13 goal.

14 MR. EVANS: There is a condition in
15 chapter 34 -- or excuse me, yes, there is a
16 condition in chapter 34 related to airports, I
17 believe, that -- and I don't have the citation
18 number. Perhaps Chip might be able to --

19 HEARING EXAMINER RIVERA: On the
20 notification portion, you're talking about?

21 MR. EVANS: It references plats and
22 property owner documents that --

23 HEARING EXAMINER RIVERA: Right.

24 MR. EVANS: -- that it would be -- and
25 like I say, I don't --

1 HEARING EXAMINER RIVERA: But there's no
2 rezoning to your knowledge that has gone
3 forward that had this condition or something
4 similar to it with respect to traffic and
5 site-related improvements?

6 MR. EVANS: I'm not aware of it, no.

7 HEARING EXAMINER RIVERA: Okay.

8 MR. EVANS: And again, that's my limited
9 understanding and use of -- no, I'm not aware
10 of it.

11 HEARING EXAMINER RIVERA: And going back,
12 another question I had was kind of an evolution
13 of this condition, because -- and I'll bring it
14 back to you, Neal, I didn't mean to --

15 MS. MONTGOMERY: Oh, no, go ahead.

16 HEARING EXAMINER RIVERA: -- interrupt.
17 But I was trying to understand. Initially when
18 this came through, applicant was objecting to
19 3.E.

20 MR. EVANS: Right.

21 HEARING EXAMINER RIVERA: And now there's
22 been a new 3.E they're still objecting to.

23 So what was the modification language that
24 was provided this morning intended to resolve
25 some of applicant's concerns? Because it seems

1 to me the original 3.E only dealt with site
2 improvements, site-related turn improvements,
3 and now we're talk- -- at the intersection,
4 rather. Because it specifically went through
5 three bullet points of what those intersection
6 improvements were going to be. Now that's been
7 taken out, which adds in this uncertainty that
8 we've been talking about today.

9 So what was the impetus for that change?

10 MR. EVANS: The concern, we met with the
11 applicant after they responded to their
12 concerns about the proposed condition as
13 originally identified in my memo and put into
14 the staff report.

15 We met with them, I want to say Wednesday
16 afternoon of this week, and the concern was, as
17 was indicated, the uncertainty as far as --
18 well, for one, the numbers that we put together
19 were based on a more of a worst case scenario.
20 They didn't know exactly what was going to
21 be -- what will ultimately be built on the
22 site. And so to hold them to the worst case
23 scenario as far as traffic improvements at that
24 intersection was something that they had
25 concerns about. They had concerns about as

1 well the cost, and that's been mentioned here
2 as well.

3 We reconsidered that, our position on
4 that, and understood where they were coming
5 from and thought, you know what, we need to
6 address this during the development order
7 stage, the site-related improvements. That's
8 probably the best way to do it.

9 It is nice to have some idea as to, you
10 know, if indeed they're going to be required to
11 do site improvements at that intersection, what
12 are they looking at for lane lengths or, you
13 know, additional turn lanes, that sort of
14 thing. So we've identified that.

15 However, I do understand their concern as
16 to we don't know what we're going to build,
17 when we're going to build it and for them to
18 have to pay for those improvements up front, I
19 understood where they were coming from, and so
20 we backed away from the worst case scenario
21 situation requiring the specifics of when
22 improvements might be required at that
23 intersection.

24 HEARING EXAMINER RIVERA: So is your
25 understanding of the revised condition that's

1 been offered that it's intended to state that
2 the site-related improvements will be dealt
3 with at the time of D.O., however, you want the
4 notification now.

5 MR. EVANS: Yes.

6 HEARING EXAMINER RIVERA: So the specific
7 mention to the intersection of Alico Road and
8 Three Oaks Parkway is something that staff
9 agrees can be dealt with at the time of
10 development order, or is that language integral
11 to the condition being included today? Because
12 it doesn't sou- -- based on what you just said,
13 it sounds like we're not sure what the
14 development might be. There may not be impacts
15 that warrant a site-related -- what you would
16 consider to be a site-related improvement at
17 the intersection.

18 MR. EVANS: That's true. The word "may"
19 is actually used there, because it may generate
20 the need for certain site-related
21 transportation improvements, including the
22 intersection of Alico and Three Oaks Parkway.
23 We don't know, again, what the ultimate project
24 is going to be. Maybe -- again, there's some
25 thoughts as to it's going to be X, Y and Z, and

1 maybe it's none of the above, maybe it's
2 something different and it still complies with
3 the zoning.

4 HEARING EXAMINER RIVERA: Okay, thank you.

5 The applicant can resume, thank you.

6 MS. MONTGOMERY: Yeah. No, I appreciate
7 that line of questioning. Since you've opened
8 it up, let's talk about that.

9 You're right, we did have a meeting and we
10 did express concerns. One of the concerns, I
11 think you can agree we expressed was, these had
12 to be done with the first development order,
13 even if it was an infrastructure development
14 order where there was no impacts. So --

15 MR. EVANS: Uh-huh.

16 MS. MONTGOMERY: So that concern you did
17 address.

18 But the other concern obviously we
19 expressed was that in our opinion we didn't
20 think it was a site-related improvement. Would
21 you agree that --

22 MR. EVANS: Yes.

23 MS. MONTGOMERY: -- we expressed that
24 concern?

25 MR. EVANS: Your position was made clear,

1 yes.

2 MS. MONTGOMERY: So it was a timing
3 question, but it was the -- our concern, that
4 we were shifting the public improvement in our
5 opinion --

6 MR. EVANS: In your opinion, yes.

7 MS. MONTGOMERY: -- on to the private
8 landowner.

9 MR. EVANS: Uh-huh.

10 MS. MONTGOMERY: And we expressed the
11 concern that based on the engineer's cost
12 estimate those improvements were coming in at a
13 million dollars --

14 MR. EVANS: Yes.

15 MS. MONTGOMERY: -- and that was
16 problematic.

17 MR. EVANS: I can see from your
18 perspective and your side that would be
19 concerning, yes.

20 MS. MONTGOMERY: And while I do appreciate
21 the fact that the staff changed the condition,
22 our concern is this is worse, because while
23 timing may or may not be better, the blank
24 check creates the very problem that the site
25 might not develop at all because it's hard for

1 someone to sign onto I'm going to pay a share
2 of \$10 or \$10 million, we don't know.

3 MR. EVANS: It's a lot of unknowns,
4 uh-huh.

5 MS. MONTGOMERY: Yeah.

6 You indicated -- I want to clear up
7 something, because I'm confused.

8 MR. EVANS: Okay.

9 MS. MONTGOMERY: It's my understanding
10 that the staff, you, asked the traffic
11 consultant to analyze the project as though it
12 was connected to Daniels Parkway and all that
13 traffic was here.

14 If I understood Mr. Block's testimony, he
15 was saying, well, but Three Oaks is not going
16 to be connected until 2027. So which is it?
17 Is it going to be developed within the
18 build-out time frame of 2024, or is it 2027?

19 MR. EVANS: If I understand your question,
20 we don't know when build-out is. There's an
21 assumption made -- there was an assumption made
22 in the traffic analysis that indicated 2024.
23 We don't know.

24 MS. MONTGOMERY: But you did ask the
25 traffic consultant to include that traffic at

1 the intersection?

2 MR. EVANS: Whether it was me or it was
3 our infrastructure planning staff, I don't
4 recall. But yeah, it was included --

5 MS. MONTGOMERY: Someone on your side
6 asked for it.

7 MR. EVANS: Yeah, I don't think it was
8 unreasonable to ask that. I think that's a
9 reasonable question. And at the time -- and
10 again, I'm going back because this zoning case
11 has been in progress for a while now. I don't
12 recall if the county board had actually
13 approved that final connection at that time or
14 not. And so there was again some unknowns that
15 we were dealing with through the process.

16 But whether the build-out is 2024 or 2027,
17 if it's 2027, then the traffic numbers should
18 have been growing a few more years out. But
19 indeed what we looked at was with a fully
20 operational, you might say, Three Oaks Parkway
21 that was connected.

22 MS. MONTGOMERY: Yeah, and then you
23 mentioned public safety concerns, because we
24 know Alico Road is under construction and it's
25 going to be connected to State Road 82 and

1 there will be a lot more traffic.

2 MR. EVANS: Right.

3 MS. MONTGOMERY: But that traffic is
4 general public traffic --

5 MR. EVANS: It is.

6 MS. MONTGOMERY: -- for which the county
7 is responsible.

8 MR. EVANS: Yes, it is. It was just
9 making a point that this is going to be a
10 busier intersection, yes.

11 MS. MONTGOMERY: So the traffic from
12 Daniels and the traffic from 82 and the traffic
13 from the airport and the traffic from FGCU, all
14 those trips that you and Mr. Treesh have
15 identified are public traffic, not project
16 traffic.

17 MR. EVANS: You could argue that all of
18 it's public traffic, but yes, it's -- yes --

19 MS. MONTGOMERY: But you understand my
20 point.

21 MR. EVANS: -- it's non site-related and
22 site-related.

23 MS. MONTGOMERY: But my concern is, is
24 that it appears that the county's asking one
25 small private developer to improve what you

1 have identified, and I agree, as a huge major
2 intersection with two arterials that has
3 traffic from many parts of the county.

4 MR. EVANS: Uh-huh.

5 MS. MONTGOMERY: And even if I look at
6 your numbers based on the worst case analysis,
7 I want to say it's only like 10 percent or 13
8 percent of all that traffic?

9 MR. EVANS: I think, yeah, Ted had
10 indicated in his testimony 13 percent. Whether
11 it's 13 or 15, it's probably ballpark in that
12 area.

13 MS. MONTGOMERY: So if it's a \$2 million
14 improvement, that ought to be more like
15 200,000, not like 2 million for this developer,
16 if you were going to assume based on
17 significant and adverse -- like if this were a
18 DRI.

19 MR. EVANS: What we looked at, Neale --
20 Ms. Montgomery, excuse me.

21 MS. MONTGOMERY: That's okay.

22 MR. EVANS: I haven't worked with you as
23 long as Chip.

24 MS. MONTGOMERY: No, no. I recognize I
25 have a lot of last names, I'm okay.

1 MR. EVANS: So when we looked at the
2 original condition, we looked at specifically
3 what would be needed to accommodate a
4 worst-case scenario of build-out that is of the
5 site. And we looked at what type of -- or what
6 would be the extent of additional storage
7 needed in those is turn lanes for the site.
8 And what complicates matters with this specific
9 intersection is we have through queues,
10 traffic's queuing in the through lane, that
11 basically as the traffic builds those turn
12 lanes are going to -- folks need to get into
13 those turn lanes and so those turn lanes are
14 also going to need some length to deal with
15 that standing queue in the through lanes.
16 That's where --

17 MS. MONTGOMERY: Yeah, and --

18 MR. EVANS: -- the numbers originally came
19 from.

20 MS. MONTGOMERY: I'm not a traffic expert,
21 but I'm an expert at trying to get from one
22 point to another as fast as possible.

23 I've driven on that road and there are
24 slow-downs. My perception, it is not linked
25 specifically to this intersection. It's the

1 people trying to gain the system to figure out
2 how they can get expeditiously into the
3 segmented turn lanes at the interstate. You
4 know what I'm saying? There's a barrier there
5 some people don't know, and they do stupid
6 things, and some people do know and they try to
7 get in the fastest lane so they can cut in.
8 All that slows up traffic through this
9 intersection. Do you agree with that?

10 MR. EVANS: It can. And I'm not familiar
11 with this one specifically. But there's a lot
12 going on at this location because of that
13 interchange, yes.

14 MS. MONTGOMERY: Not necessarily related
15 to our project.

16 MR. EVANS: That is static right now, and
17 it does not.

18 MS. MONTGOMERY: I'm looking at your staff
19 memo dated November 7th now. And in the
20 purpose paragraph you do indicate that the
21 zoning traffic guidelines are not applicable
22 for determining traffic-related impacts for
23 local development order. In other words, this
24 is not the stage where you identify traffic
25 mitigation.

1 MR. EVANS: That is -- yes, that's true.

2 MS. MONTGOMERY: And I think you would
3 agree with Mr. Treesh, and the reason is
4 because -- and I think you've already stated
5 it, you don't really know.

6 MR. EVANS: Yes, that's correct.

7 MS. MONTGOMERY: Do you agree with Mr.
8 Treesh that if the project develops with a
9 residential component, that the trip generation
10 will be less than what the existing zoning
11 projects?

12 MR. EVANS: I would have to look at that
13 specifically, but generally when you're
14 comparing retail to residential, they have
15 different trip characteristics in the sense
16 that retail doesn't have a very high a.m. trip
17 count, residential will have more. But
18 generally speaking, residential tends to be a
19 lesser intensity, you might say, or trip
20 generator than retail.

21 MS. MONTGOMERY: And I'm assuming --
22 again, I'm going to play traffic planner for a
23 minute. I'm assuming if they have residential
24 and commercial, there's also a potential for
25 internal capture --

1 MR. EVANS: Yes.

2 MS. MONTGOMERY: -- which might not be
3 there.

4 MR. EVANS: That's correct, yes. That's a
5 real plus.

6 MS. MONTGOMERY: So we're improving
7 things.

8 MR. EVANS: Yeah, that's a very -- yeah,
9 having mixed use is a real plus from a traffic
10 standpoint.

11 MS. MONTGOMERY: Right. And that's what
12 we're talking about here, so --

13 MR. EVANS: Yeah.

14 MS. MONTGOMERY: -- okay.

15 I noticed in your memo when you looked at
16 site-related, you relied on the definition from
17 the road impact fee section of the LDC.

18 MR. EVANS: I did, yeah.

19 MS. MONTGOMERY: And we're not at the pay
20 road impact fees time. And my understanding,
21 and correct me if I'm wrong, is that language
22 is in the roads impact fee. So you can
23 determine whether if you're making Class I or
24 II or III road improvements whether it's
25 credible. Is that the reason for that

1 definition in that section of the LDC?

2 MR. EVANS: I can't specifically say. I
3 don't -- I'm not -- that's an area I don't deal
4 with a lot.

5 MS. MONTGOMERY: Okay. And I asked Mr.
6 Treesh about this, but when I look at table
7 five, it looks like the only roadway links
8 where we're significant are Lee and Oriole.

9 MR. EVANS: Yes, that is correct.

10 MS. MONTGOMERY: That being the case, that
11 would suggest that we are distributing trips in
12 different directions other than just for Alico
13 and Three Oaks.

14 MR. EVANS: Oh, yes, yes.

15 MS. MONTGOMERY: Okay.

16 MR. EVANS: Well, in the traffic analysis,
17 to get to or from those particular sections,
18 they do need to go through that intersection.

19 MS. MONTGOMERY: Well --

20 MR. EVANS: Under the conditions that
21 we -- the way we looked at the traffic, yes.

22 And again, once that opens to Daniels,
23 there's an understanding some of the traffic
24 will go north as well.

25 MS. MONTGOMERY: Yeah, and it's always

1 been my understanding that when you look at
2 trips, people tend to make decisions based on
3 where -- again, where they can get from point A
4 to point B more quickly.

5 By way of example, the Metro Parkway
6 extension hadn't even opened yet, but in the
7 model it was showing heavy volumes. And it was
8 like, well, how can that be, because it barely
9 even opened.

10 And the answer I was given by a traffic
11 consultant was because people will shift over
12 to that road from 41 or from 75 if it's more
13 free flowing. So people will adjust their
14 travel --

15 MR. EVANS: They will.

16 MS. MONTGOMERY: -- based on getting from
17 point A to point B.

18 MR. EVANS: The way the transportation
19 model is set up, as I understand it, is once
20 there's an area of congestion identified, that
21 people will adjust to that.

22 MS. MONTGOMERY: So if there's a light at
23 Lee and it's not congested and Alico and Three
24 Oaks is, smart drivers are going to go to that
25 light.

1 MR. EVANS: If they can, they likely will.

2 We all drive, we probably do that ourselves.

3 MS. MONTGOMERY: Yep. I take 17 to Polk

4 Expressway to get to Jacksonville to avoid 75,

5 so, I mean --

6 MR. EVANS: Sure.

7 MS. MONTGOMERY: -- that's an extreme

8 example, but...

9 In your lead-in paragraph to -- where you
10 talk about table six, again you're talking
11 about project build-out level of service. And
12 when I read that in conjunction with this
13 condition, it leads me to believe that we're
14 paying potentially for a condition some time
15 after build-out based on whatever the
16 conditions may be at that time. And you've
17 already pointed out that we expect that
18 build-out is 2024; you've already indicated you
19 think 2027 will be worse and things will cost
20 still more in 2027.

21 So help me understand when exactly you --
22 I mean, I still somehow need to know when
23 you're going to look at this so we can have
24 some concept of planning and cost.

25 MR. EVANS: The intent of the condition is

1 to look at this at the development order stage.

2 So when a development comes in, we will look at . . .
3 that spec- -- the improvements needed at that
4 time based on the cumulative development,
5 approved development at that point and see what
6 improvements are needed.

7 MS. MONTGOMERY: Okay. The Hearing
8 Examiner asked you a question. And I'll be
9 honest, I -- what I thought she was asking and
10 what you answered I thought were two different
11 things. So --

12 MR. EVANS: Okay. Well, let's clarify
13 that.

14 MS. MONTGOMERY: So I want to ask it
15 again.

16 She asked a question about whether or not
17 this is a condition that's been applied for so
18 we can see how it works. And you answered
19 with, I think there's a code section and you
20 had something --

21 MR. EVANS: There is, yes.

22 MS. MONTGOMERY: My question is --

23 MR. EVANS: A portion of the condition is
24 similar, as I recall, to a section of the code.

25 MS. MONTGOMERY: My question is, and I'll

1 start specifically with the Three Oaks
2 extension, Oriole and Lee. Is there a
3 condition in any of the zoning or development
4 orders for those projects that require what
5 staff is now calling site-related improvements
6 at the intersection of two arterials or an
7 arterial and a collector? Have you done that
8 before?

9 MR. EVANS: To have a condition related to
10 improvements in this particular area?

11 MS. MONTGOMERY: Can we agree that -- we
12 all agree that site-related improvements are at
13 our project access point; we all agree on that,
14 right?

15 MR. EVANS: Yes, that's -- that's the easy
16 one, yes.

17 MS. MONTGOMERY: What we're disagreeing on
18 is whether off-site non-project intersections
19 are site-related. In this case staff was
20 suggesting, and applicant disagrees, that the
21 intersection of two arterials is a site
22 improvement -- I think you made (phonetic)
23 site-related improvements.

24 Have you imposed a same or similar
25 condition on any other zoning or any other D.O.

1 in this area.

2 MR. EVANS: There is --

3 MS. MONTGOMERY: -- that's not a DRI?

4 MR. EVANS: Alico 254. There are some
5 improvements that are required at a certain
6 point off of the old Haitian Drive, I believe
7 it was. I don't know what the -- I don't
8 recall the --

9 MS. MONTGOMERY: They changed to Domestic,
10 I think.

11 MR. EVANS: The name was changed, I
12 believe.

13 MS. MONTGOMERY: Well, because they
14 thought it was an act of war so they changed it
15 to Domestic.

16 MR. EVANS: As I a recall, Domestic and
17 even maybe Lee, but I believe specifically
18 Domestic, there were some requirements for some
19 improvements to be done, or to look at those
20 improvements at a certain point, and that is in
21 the zoning, yes. That's as I recall. There
22 may be others in the area, but that's one that
23 I do recall.

24 MS. MONTGOMERY: Alico 254, is that
25 Lundquist (phonetic) property?

1 MR. EVANS: That -- I don't know exactly.
2 It's further to the west of this site. It's
3 Domestic and Lee. It's basically a north-south
4 strip of parcels. I think it's between
5 Domestic and Lee, if I remember right.

6 MS. MONTGOMERY: Okay. I assume we're
7 going to take a break, so we'll try to find it.

8 The condition as rewritten, the open-ended
9 condition, have you done this anyplace else
10 that you know of?

11 MR. EVANS: That specifically one, no, I
12 am not aware of it, no.

13 MS. MONTGOMERY: So to answer what I think
14 was the Hearing Examiner's question, we don't
15 know how this works because it hadn't been done
16 before.

17 MR. EVANS: That is -- to my
18 understanding, I'm not aware of others, so I
19 don't really know.

20 MS. MONTGOMERY: I'm not either, so that's
21 why I'm -- you know, that's why I don't know
22 how it works.

23 So if I can simplify this down based on
24 your testimony, and I may not be right, so I'm
25 going to ask, is you reference the glossary

1 definition of site-related from the comp. plan.

2 MR. EVANS: I did, yes.

3 MS. MONTGOMERY: And it's the same one
4 that Mr. Treesh and I discussed. And we
5 agreed, I think, on how 1, 2, 3 and 4 would
6 apply.

7 MR. EVANS: Those are a little more, yeah,
8 easier to understand, yes.

9 MS. MONTGOMERY: So the real focus then
10 for the Hearing Examiner to look at where I
11 think the disagreement is, is (5): Road or
12 intersection improvements whose primary purpose
13 at the time of the construction is to provide
14 access to the development.

15 And that relates back to the lead-in of
16 direct access. So your opinion is it is direct
17 access improvement that's needed just for us
18 and our opinion is it's not. Is that pretty
19 much it?

20 MR. EVANS: If I understand correctly,
21 that when it comes to looking at site-related
22 improvements, we're not just limited to the
23 access points. Once the traffic gets to be --
24 goes beyond 300 trips, then we look beyond the
25 access points.

1 MS. MONTGOMERY: And I guess beyond too
2 many trips -- is that project trips or the
3 general background traffic trips?

4 MR. EVANS: That would be project trips
5 during the peak hour. A peak hour, the
6 adjacent street is weighted, how our Land
7 Development Code describes it.

8 MS. MONTGOMERY: Well, you referenced in
9 your write-up policy 95.1.3, and I discussed
10 that a little bit with Mr. Treesh; do you agree
11 or disagree that under that policy the level of
12 service has been identified in the comp. plan
13 as non-regulatory?

14 MR. EVANS: That is correct, yes. For
15 road segments, the level of service, yes,
16 absolutely.

17 MS. MONTGOMERY: I don't think it's
18 limited to level of service. Well, I mean, it
19 is. So you're -- okay. So you pointed to
20 95.1.37 where it says: Level of service E is
21 the standard of level service for principal and
22 minor arterials and major collectors on
23 county-maintained transportation facilities.
24 And then you -- the policy goes on to talk
25 about, you know, state roads having a

1 different --

2 MR. EVANS: Yeah, there is a standard for
3 level of service for road segments, yes, you
4 are correct.

5 MS. MONTGOMERY: And what it says is
6 compliance with non-regulatory level of service
7 standards will not be a requirement for
8 continued development permitting. Do you agree
9 with that?

10 MR. EVANS: It's true.

11 MS. MONTGOMERY: But will be used for
12 facilities planning purposes.

13 MR. EVANS: That's true.

14 MS. MONTGOMERY: So that being the case,
15 if there's a level of service issue, then the
16 county should, as the part of facility planning
17 purposes, be programming and implementing the
18 necessary improvements.

19 MR. EVANS: From a level of service
20 deficiency or issue on a road segment, yes,
21 that is something that the county is required
22 to consider. We have some constraining roads
23 that obviously we're not going to be widening.
24 That's a policy decision. But in other areas,
25 that still is a policy decision.

1 MS. MONTGOMERY: Yeah, and I have been
2 told in fact by Mr. Levelin (phonetic)
3 that's -- and I think Mr. Treesh alluded to it,
4 is sometimes it looks like there's a level of
5 service or link issue. That gets resolved when
6 the county does intersection improvements. So
7 to the extent there's a level of service F and
8 you know that you're connecting to 82 and
9 you're connecting to Daniels, I still come back
10 to why isn't it incumbent on the county to
11 program the necessary improvements at this
12 intersection and have it be a public
13 improvement rather than trying to force one
14 landowner to pay for that overall improvement
15 under the guise of site-related?

16 MR. EVANS: It's a policy decision as to
17 what projects get programmed into the capital
18 improvements program. Certainly it's based on
19 input from county staff. The intent was to
20 look specifically -- and again, I mentioned
21 this before, specifically with that initial
22 condition we looked at a queue storage needed
23 for traffic related to the site.

24 Now, grant it, we looked at a worst case
25 scenario, but the intent was to look at what do

1 we need to mitigate traffic impacts associated
2 with that specific site in terms of queue
3 storage.

4 MS. MONTGOMERY: Okay.

5 MR. EVANS: That was the gist and the
6 direction, yes.

7 MS. MONTGOMERY: Mr. Block and you both
8 alluded to the fact that the condition as
9 reworded is being done to help us by putting us
10 on notice that there may be future improvements
11 at the D.O. stage. It seems to me either A,
12 it's not needed because we're going to have
13 to -- 10-286, we're going to have to do a D.O.
14 traffic analysis. 10.287 we'll have to --

15 MR. EVANS: That's correct.

16 MS. MONTGOMERY: -- identify mitigation.
17 And so buyers know that and sellers know that,
18 right?

19 MR. EVANS: That is the intent of the --
20 yes, the language.

21 MS. MONTGOMERY: And the market can react
22 to that and knows how to react to that. But a
23 condition that gets put on my deed restriction
24 and my plat that says at some point in time,
25 10, 15, 20 years down the road, you're going to

1 get a bill, the public doesn't know how to
2 react to that; that doesn't help the seller or
3 the buyer.

4 I mean, if that was your intent was to
5 help us by putting people on notice, it doesn't
6 help.

7 MR. EVANS: The intent is when future
8 buyers or people that are looking to purchase
9 their -- that they're aware of that there may
10 be some additional improvements needed for
11 the -- that relate to site development.

12 MS. MONTGOMERY: And I know that Mr. Block
13 said that the Hearing Examiner took out what
14 used to be the standard condition that says,
15 hey, you're going to have to do stuff in the
16 future -- I'm going to talk to the Hearing
17 Examiner for a moment. I would rather have
18 that condition that everybody can react to than
19 this one, so...

20 But with that, I don't have any further
21 questions, and I appreciate your time.

22 MR. EVANS: No, I appreciate your
23 questions. They were very good questions, and
24 I'm glad to answer additional questions as they
25 come up too.

1 HEARING EXAMINER RIVERA: Thank you. Does
2 staff have any further questions?

3 MR. BLOCK: No, ma'am.

4 HEARING EXAMINER RIVERA: With that, I
5 think everybody could probably use a break at
6 this point, so we're going to take a one-hour
7 break and be back here at 2:15, please, and
8 we'll reconvene public comment at that time.

9 MR. BLOCK: Actually, Madam Hearing
10 Examiner, we would not be --

11 HEARING EXAMINER RIVERA: Oh, I'm sorry,
12 staff --

13 MR. BLOCK: -- completed with the staff
14 presentation.

15 HEARING EXAMINER RIVERA: I apologize, I
16 thought that was your last witness.

17 MR. BLOCK: I am understanding that maybe
18 Mr. Jansen will want to speak about certain
19 points that he has heard on
20 transportation-related issues, and then I was
21 going to go to the 48-hour.

22 HEARING EXAMINER RIVERA: Okay. So we'll
23 resume with staff at 2:15. Thank you.

24 (Luncheon recess.)

25 HEARING EXAMINER RIVERA: We're back on

1 the record.

2 MR. BLOCK: Afternoon, Madam Hearing
3 Examiner. Before staff proceeds on with its
4 representation, we're going to have Steve
5 Jansen from Lee County DOT get up and make a
6 couple points. He's heard some things today he
7 thought would be necessary to qualify him, or
8 at least address.

9 There was a discussion about a planned
10 development case that had a condition
11 associated to it. It was called Alico 250. I
12 was able to find the resolution; I will provide
13 it to you for the record. The applicant
14 already has a copy of it, and I've already
15 tabbed the condition that I believe is the
16 relative condition. It's condition number 23
17 for the record. And so I just wanted you to
18 have that document so that you could refer back
19 to it as you read through and determine whether
20 or not it's appropriate.

21 HEARING EXAMINER RIVERA: Thank you, that
22 will be staff's Exhibit No. 5.

23 MS. MONTGOMERY: I have a question for the
24 record.

25 Attachment A to the Lee County staff

1 report, there's the witness list. I do not see
2 Mr. Jansen on that list.

3 MR. BLOCK: That is a correct statement.

4 Madam Hearing Examiner, he was not on the
5 witness list. It's not unusual for other
6 members of county staff to come before the
7 Hearing Examiner and/or the board of county
8 commissioners during the course of a public
9 hearing to provide some additional information.
10 Mr. Jansen was here and has heard all of the
11 evidence that's been placed on the record
12 today. He just had a couple of points that he
13 would like to make. And I would request the
14 Hearing Examiner still go ahead and accept him
15 as a witness from the county for this case.

16 HEARING EXAMINER RIVERA: And the
17 substance of the matters that he's going to be
18 testifying to were those items that were
19 identified as transportation-related items?

20 MR. BLOCK: Things that have been
21 addressed today, to the best of my knowledge,
22 are things that Mr. Jansen will help provide
23 some clarification on. That's what I
24 understand.

25 HEARING EXAMINER RIVERA: Thank you.

1 MR. BLOCK: Now if it's not, I apologize.

2 HEARING EXAMINER RIVERA: We're going to
3 allow him. They would be permitted to recall
4 him as a rebuttal witness in any event, so I
5 think their testimony would be relevant at that
6 time. So it's a timing issue of whether we
7 hear it now or we hear it at rebuttal. So I am
8 having him proceed.

9 MR. BLOCK: Yeah, I wanted him to have the
10 opportunity to do it now so he could go back to
11 work.

12 HEARING EXAMINER RIVERA: And he testified
13 in the Hearing Examiner proceedings previously?

14 MR. BLOCK: I believe he has, yes, ma'am.
15 I think he's been accepted before as an expert
16 witness.

17 HEARING EXAMINER RIVERA: And his resume's
18 on file with our office?

19 MR. BLOCK: I believe it is. I'll let Mr.
20 Jansen explain that, but I'm --

21 MS. MONTGOMERY: And was he sworn?

22 MR. BLOCK: Yes, he was here this morning
23 and sworn in at the time, yes.

24 HEARING EXAMINER RIVERA: Thank you.

25 MR. BLOCK: Steve?

1 MR. JANSEN: For the record, Stephen
2 Jansen, County Traffic Engineer.

3 I am here to have some clarification on a
4 couple points made by Marcus Evans.

5 MR. BLOCK: If I may, Madam Hearing
6 Examiner, just to make sure that the record is
7 clear, has Mr. Jansen been accepted as an
8 expert witness for this case?

9 HEARING EXAMINER RIVERA: In the areas of
10 Lee County Transportation Planning?

11 MR. JANSEN: Traffic operations and
12 traffic safety.

13 HEARING EXAMINER RIVERA: Can you go over
14 it briefly? I guess most of the folks in the
15 room probably aren't familiar with your
16 history, if you could just brief us on how many
17 years.

18 MR. JANSEN: Okay. Civil engineer,
19 graduate from Clemson University in 1978;
20 Master's Clemson University, 1980. I've worked
21 for Lee County for 30 years in various
22 positions in the county DOT traffic engineering
23 section. I am currently the chief traffic
24 engineer for Lee County.

25 HEARING EXAMINER RIVERA: Okay, thank you..

1 Yes, I will accept him as an expert --

2 MR. BLOCK: Thank you.

3 HEARING EXAMINER RIVERA: -- in
4 transportation planning for Lee County.

5 MR. JANSEN: Well, one question was about
6 the -- on the turn lane policy about the -- the
7 comment on the outdated design, adding turn
8 lanes of outdated design.

9 And there (sic) was noted that the
10 northern leg of Three Oaks Parkway was just
11 very recently turned over to Lee County.
12 However, that section of -- that intersection
13 was built 10 to 15 years ago when Lee County
14 widened Alico Road. And at that time there was
15 no development on the north side, and so they
16 just provided a nominal storage lane plus the
17 normal deceleration. So it's a relatively
18 short lane -- short turn lane to serve that
19 area. And so I was at -- the design for that
20 was based upon an outdated -- you know, there
21 was nothing on that side so it was never built
22 to the -- to accept the traffic that is
23 currently being anticipated on that direction
24 on that side, so it is outdated.

25 And the other question was about

1 proportional share or shared cost for
2 developments related to the access to sites.
3 And Lee County DOT has very commonly has (sic)
4 proportional shares for traffic signals, you
5 know, in the vicinity of a development and has
6 asked the surrounding developing (sic) to
7 provide for their fair share for the
8 improvements related with that.

9 A couple very recent ones are on Ben Hill
10 Griffin and Hilton Garden Inn Lane, which is
11 just on the east side of the interstate from
12 the site. And there are like -- that's on the
13 north side of Alico Road. And there are a half
14 a dozen people now have proportional share
15 listed on this part of the development order to
16 when the signal becomes warranted, and they
17 will be paying their fair share of the
18 intersection.

19 And one which we currently have just
20 completed design and are now going to
21 construction on is at Lee Boulevard and Lee
22 Street where we have a couple of -- and those
23 are two public roads. And we have asked the
24 three businesses right at that intersection,
25 and they are each paid (sic) their fair share

1 for the installation of the traffic signal and
2 installation of turn lanes that are needed for
3 the unsafe (sic) and effective operation of
4 that intersection.

5 MS. MONTGOMERY: I have questions.

6 HEARING EXAMINER RIVERA: Does staff have

7 --

8 MR. BLOCK: Actually, I have just one.

9 HEARING EXAMINER RIVERA: Yes, staff has
10 questions.

11 MR. BLOCK: Mr. Jansen, can you provide
12 any information regarding your knowledge of
13 when Three Oaks Parkway is going to be extended
14 and completed as -- if you can, from a DOT
15 perspective?

16 MR. JANSEN: The current plan is that the
17 construction should be complete by 2027.

18 MR. BLOCK: Thank.

19 HEARING EXAMINER RIVERA: Does the
20 applicant have questions?

21 MS. MONTGOMERY: Yes.

22 Mr. Jansen, I want to talk about the
23 signal agreements. I'm very familiar with the
24 one at Ben Hill and north of Corkscrew because
25 I wrote it.

1 MR. JANSEN: Okay.

2 MS. MONTGOMERY: It was required because
3 of the DRI, development order, the Timberland
4 and Tiburon DRI. And the proportionate
5 analysis was done by David Plummer and
6 Associates. And Grandezza and various owners
7 all paid their share of that improvement. That
8 improvement was accelerated because of
9 Grandezza and Estero's request. So that is not
10 a typical situation. But in that case it was
11 done because it was required by the DRI. And
12 in that case, even though it was a DRI,
13 everybody paid their fair share.

14 I haven't heard any discussion about fair
15 share here, I've heard the original condition.
16 And in all discussions is even though the
17 maximum percentage impact is 13 percent, you're
18 asking this applicant and this developer to pay
19 100 percent. Do you see a difference between
20 100 percent and fair share?

21 MR. JANSEN: The proportional share of the
22 traffic that would -- is always is at the time
23 of the development order. 100 percent versus
24 whether it's a smaller percentage, but the
25 percentages -- percentages of traffic that

1 would be using that improvement or that
2 warrants that improvement.

3 The traffic that's on, say Alico Road,
4 that through traffic, east-west through
5 traffic, if your development wasn't there, they
6 would not need the improvement. Therefore,
7 that through traffic on Alico Road would not be
8 contributing to the need for the improvement.
9 And therefore, that would be removed from
10 the -- from the calculation.

11 MS. MONTGOMERY: So you don't see the
12 difference between 100 percent proportionate
13 share?

14 MR. JANSEN: Well, they would -- they
15 would pay their proportionate share of the --
16 of what's at the time of the development at the
17 time the improvement's needed.

18 MS. MONTGOMERY: That's not what the
19 conditions say, but thank you.

20 I want to talk about -- you indicated that
21 the road was built some time ago and there was
22 a nominal storage. Three Oaks was built -- I
23 don't know if he's still here -- it was built
24 by private landowners and it was funded
25 initially by all the landowners, including this

1 landowner. And the design was being improved
2 by the county; is that correct?

3 MR. JANSEN: Yes.

4 MS. MONTGOMERY: And the road and the turn
5 lanes and the storage lane, whether nominal or
6 not, were 100 percent impact fee credible; is
7 that correct?

8 MR. JANSEN: I am not -- I have no deals
9 with impact fee credits, so I don't know the
10 answer to that.

11 MS. MONTGOMERY: Okay. So you don't know
12 whether it was impact fee credible or how that
13 was done then?

14 MR. JANSEN: Correct.

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

17 MR. BLOCK: If I may, Madam Hearing
18 Examiner.

19 Neale, to help me out, your first question
20 to Mr. Jansen was related to a project related
21 to Timberlane and Tiburon, if I heard
22 correctly?

23 MS. MONTGOMERY: Mr. Jansen mentioned that
24 it's not unusual to have --

25 MR. BLOCK: Okay.

1 MS. MONTGOMERY: -- agreements relative to
2 paying a proportionate share of intersection
3 improvements. He specifically referenced the
4 University Highland Grandezza signal.

5 MR. BLOCK: No, I don't believe he did.

6 MR. JANSEN: It was Hilton --

7 MR. BLOCK: It was Hilton --

8 MS. MONTGOMERY: It was the last one.

9 MR. BLOCK: It was Hilton Garden Inn on
10 Ben Hill Griffin Parkway that I heard him say,
11 which is north of Alico Road.

12 MR. JANSEN: Yes.

13 MR. BLOCK: Not the same one that you --

14 MS. MONTGOMERY: Okay.

15 MR. BLOCK: -- questioned him about. I
16 just wanted to make sure it was clear. Thank
17 you.

18 HEARING EXAMINER RIVERA: Thank you.

19 Did staff have any other witnesses?

20 MR. BLOCK: Just myself, Madam Hearing
21 Examiner, to talk about the 48-hour.

22 HEARING EXAMINER RIVERA: Okay, thank you.

23 MR. BLOCK: I will try to keep this as
24 simple as I possibly can, Madam Hearing
25 Examiner.

1 The applicant's letter of November 19th is
2 what we're relating to in the first element
3 that was discussed. It is on page 1, and the
4 paragraph begins with the word "first", and it
5 talks about proposing a residential option in
6 the commercial planned development.

7 And if I've understood the intent of this
8 first discussion, is that the applicant now
9 does not want to have an option A or B, that it
10 would only be the option B development which is
11 being proposed for development today, with
12 350,000 square feet of commercial/industrial
13 floor area, office floor area, 300 hotel/motel
14 units and the maximum 308 residential dwelling
15 units. They're wanting to get rid of D.O. 5.

16 If that is the direction that will be
17 taken in this, which I believe that's the
18 intent of the applicant, then I think that we
19 need -- should go back, take some time, go back
20 and rewrite the conditions as a clear set of
21 conditions to you related to this project only.

22 Now, it may be duplicative of the
23 condition 3 that's contained in the zoning
24 action, but I think we need to go through them
25 just to make sure that we've included all the

1 conditions that are necessary; master concept
2 plan, development intensity and things of that
3 nature.

4 We may come back with a set of conditions
5 that are exactly the same as contained in the
6 recommended action; might be slightly modified.
7 I can't promise you that condition 3.E that we
8 have concentrated on very heavily today during
9 the public hearing will be changed, but at
10 least you know that (sic) the applicant's
11 position on it versus what the county's
12 position is on it.

13 So that is my first set of com- -- my
14 comments on the first items that the applicant
15 has raised.

16 The second is just that, condition 3.E,
17 which is the transportation-related items. I'm
18 not going to further address that. We've --
19 both sides have placed their evidence on the
20 record. There is still time for rebuttal by
21 the applicant to address some points that the
22 county may have had.

23 Condition 3.B is related to the property
24 development regulations and the requirement --
25 the applicant's desire to make sure that they

1 are entitled to, should they use Pine Island
2 density units, that they are able to get the
3 possibility of having a reduced amount of open
4 space within the project.

5 There's no need to restate it, it's one of
6 those instances where it is restating code.
7 It's under Section 2-152.C of the Land
8 Development Code. It's very clear what can and
9 cannot be done, and to what intensity the
10 amount of open space can be reduced under that
11 section.

12 I don't think it's necessary, but we would
13 acknowledge if the applicant uses Pine Island
14 units, then they could be and would be entitled
15 to at least request the reduction of open
16 space.

17 Condition 3.A is the condition where it's
18 discussed about note 10 under Land Development
19 Code Section 34.934, note 10. Reading it into
20 the record is: In parens, number 10, permitted
21 only in conjunction with at least 50,000 square
22 feet or more of commercial or industrial uses.
23 That's the note.

24 Zoning condition in the second paragraph
25 of 3.A has a little bit different language. It

1 has the word concurrently rather than in
2 conjunction. It also adds to prior to
3 construction to that language.

4 And that's absolutely correct, we did not
5 use the exact same language in the note. If
6 the applicant wants the note, that's perfectly
7 fine, you can remove that condition and add the
8 note.

9 But I would warn the applicant that if
10 they come in for a development order that seeks
11 development of residential units without being
12 in conjunction with 50,000 square feet of
13 commercial, just as the note says, the
14 residential permitted only in conjunction with
15 at least 50,000 square feet or more of
16 commercial or industrial uses, if they come in
17 for a developmental order for solely
18 residential use as part of that development
19 order, I suspect it's going to be likely
20 denied, because they do not have a development
21 order filed that's in conjunction with 50,000
22 square feet.

23 What the staff condition was attempting to
24 do was to acknowledge that yes, they need
25 50,000 square feet per that code. We also

1 wanted to acknowledge the possibility that they
2 might get commercial development first. And
3 rather than to limit the developer to have to
4 now develop another 50,000 square feet because
5 residential is not being developed as part of
6 that development order application for that use
7 of that multi-family residential, it might be
8 denied. We wanted to given the opportunity so
9 that if commercial had been developed first,
10 and it was at least 50,000 square feet, they
11 could file for an individual development order
12 for a residential project.

13 But if they want the note, I'm very happy
14 to just say the Land Development Code applies
15 and that's what they're allowed to do.
16 Perfectly fine. We just wanted to provide a
17 flexible option to the applicant.

18 The next element is discussion of 3.C in
19 the applicant's letter, because of its
20 proximity to the airport. Request that the
21 Hearing Examiner eliminate the condition. That
22 has been discussed during the course of the
23 public hearing. It is something that the code
24 absolutely requires. We recommend that you
25 include the condition related to the noise zone

1 and the international airport condition.

2 3.G is related to the zoning approval not
3 constituting a finding for concurrency
4 requirements. Request the Hearing Examiner
5 modify the condition to reference the
6 compliance with applicable regulatory
7 concurrency provisions of the Land Development
8 Code and the Administrative Code -- or -- yeah,
9 Administrative Code and Lee Plan. I don't have
10 my condition in front of me so...

11 And if the Hearing Examiner believes it's
12 appropriate to take 3.G and make that, then
13 please go ahead and do it in that fashion,
14 under 3.G.

15 3.D relates to the cross-access easement.
16 And yes, we understand that the applicant is
17 working with the adjoining property owner to
18 come to a conclusion where they can move that
19 access point, as long as there's an
20 interconnection between the two projects. The
21 condition is intended to allow for that change
22 to occur.

23 MS. MONTGOMERY: Administratively.

24 MR. BLOCK: Pardon me?

25 MS. MONTGOMERY: Administratively. That's

1 the part.

2 MR. BLOCK: If it meets the Administrative
3 Code requirements, I would absolutely agree it
4 could be done administratively. And there is
5 not a provision that says -- that I recall now
6 in the code, it used to be, that it had to be
7 interior to the project.

8 MS. MONTGOMERY: Right, that's what I'm
9 worried about.

10 MR. BLOCK: That's now I don't think
11 involved. That's part of the provisions of the
12 code.

13 MS. MONTGOMERY: I agree with you, I just
14 don't want to find myself doing something we
15 all know we're going to deal with and have to
16 be back here just to do it.

17 MR. BLOCK: I think from an administrative
18 standpoint it can occur, based upon the way the
19 condition is read.

20 MS. MONTGOMERY: Okay, that's the
21 clarification --

22 MR. BLOCK: That's the --

23 MS. MONTGOMERY: -- I wanted. Thank you.

24 MR. BLOCK: -- intent, I think.

25 MS. MONTGOMERY: Yeah.

1 MR. BLOCK: Okay. Deviation 1, we had
2 suggested be withdrawn. Deviation was
3 regarding water body setback. Staff actually
4 now agrees that deviation 1 can be approved
5 because now the master concept plan
6 specifically notes the location of where that
7 deviation would be effective, plus demonstrates
8 that it's a 25-foot setback now, where
9 previously they did not. So we have no
10 objection with changing the recommendation on
11 deviation 1 to a recommendation of approval.

12 As to the denial of deviation 3, applicant
13 did disagree with that but has now taken the
14 position, my understanding, is that they're
15 withdrawing deviation 3 and will address
16 deviation 3 in the cul-de-sac versus hammerhead
17 turnaround. They will deal with that at the
18 time of local development order.

19 And we agree and concur with that, that
20 that would be the better time, because then you
21 will have a complete engineered drawing, or at
22 least an idea of the engineering associated to
23 the project and can more easily be reviewed,
24 not only in accordance with Chapter of the Land
25 Development Code, 10-104 of the Land

1 Development Code, since that's a section of the
2 code that's being deviated from, but also under
3 Land Development Code provisions under Land
4 Development Code Chapter 34 -- 34- that's 174-J
5 as in Joseph.

6 And with that being said, I believe that
7 completes our review of this. If you desire to
8 at the end of this public hearing take it upon
9 yourself to go through the conditions and
10 rewrite the conditions as you so desire, that's
11 perfectly fine, we have no objections to that.
12 If it's going to be left open, I would ask that
13 it be left open for at least a time period to
14 permit county staff and the applicant to share
15 the document, look at it, address it and then
16 be able to provide you the final document with
17 both sides' position. It may be totally in
18 agreement, probably not because of 3.E, but the
19 rest of it possibly acceptable. And we can
20 then provide that to you. And I do have a
21 suggested timeline down the road, should you
22 desire to do that.

23 HEARING EXAMINER RIVERA: Okay.

24 MR. BLOCK: And with that, I'm complete
25 with my presentation on the 48-hour letter and

1 ready to answer any questions that the
2 applicant or you have.

3 HEARING EXAMINER RIVERA: I didn't have
4 any questions. Does the applicant have any?

5 MS. MONTGOMERY: Yeah, I don't have any
6 questions, Chip. I was concerned when you said
7 about rewriting the conditions and they may
8 change. Obviously we've all had a hearing
9 based on the conditions that we've been
10 provided, so I would say if that's the option,
11 Hearing Examiner takes it, to the extent that
12 that changes them, we want to be able to
13 provide some kind of written commentary or come
14 back just for the limited purpose of discussing
15 that, should there be a problem.

16 HEARING EXAMINER RIVERA: Well, I think if
17 they're going to be substantively different,
18 we'd have to reopen another day of hearing to
19 discuss that. Because otherwise it would be
20 inappropriate outside of the public hearing to
21 be exchanging that kind of dialogue about this
22 document.

23 MR. BLOCK: I entirely agree with that
24 position, but I don't know if we can get to
25 that point, with the exception of 3.E.

1 Although Marcus has come in and he kind of
2 waved at me, so let me find out what they have.

3 Thank you, Madam Hearing Examiner, for the
4 quick delay there.

5 I had provided you Alico 254 that had the
6 one condition that we talked about. During
7 lunch Marcus was able to do some further
8 research on the projects in the I guess general
9 area, right, Marcus?

10 MR. EVANS: I just recalled one thing.

11 MR. BLOCK: He recalled a particular
12 project that might also have a similar styled
13 condition and he wanted to enter that into the
14 record. Would it be permissible to let him go
15 ahead and submit that for the record? He has
16 three copies; one for the applicant, one for
17 yourself and one for the record.

18 HEARING EXAMINER RIVERA: It's a zoning
19 resolution that's already been --

20 MR. BLOCK: It is a zoning resolution,
21 that's all it is.

22 He will -- my understanding, he will turn
23 in that resolution and point you to the
24 condition that's effective that he wanted to
25 present as another condition that might be out

1 there that has some relationship.

2 HEARING EXAMINER RIVERA: Does applicant
3 have any objections to it? Again, it's -- it
4 was I think in response to your questions, if
5 that condition were in any other zonings --

6 MS. MONTGOMERY: Right...

7 HEARING EXAMINER RIVERA: -- or similar,
8 so...

9 MS. MONTGOMERY: Looks like the same one,
10 Alico 2---

11 MR. BLOCK: I think Marcus has still got
12 his copies of --

13 MS. MONTGOMERY: Is that different than
14 Alico 254?

15 MR. BLOCK: Yes, it is.

16 MR. EVANS: It's just another one for
17 comparison.

18 MS. MONTGOMERY: Okay.

19 MR. EVANS: It's just to consider --

20 HEARING EXAMINER RIVERA: Certainly, if
21 it's a public record I'm able to take it, if
22 you'd like to submit --

23 MR. EVANS: I have three copies, so...

24 MS. MONTGOMERY: Thank you.

25 HEARING EXAMINER RIVERA: What's the name

1 of this project so I can refer to it in
2 exhibits? This is Alico Commercial Park.

3 MR. EVANS: Correct, yes.

4 HEARING EXAMINER RIVERA: Resolution. And
5 that will be staff Exhibit 6.

6 MR. BLOCK: The resolution number is
7 Z-00-075.

8 And I believe that concludes the staff
9 presentation, Madam Hearing Examiner.

10 We do recommend approval of the project
11 with conditions as outlined within the staff
12 report. And depending upon the final result of
13 today's hearing, if it gets continued to a date
14 certain or it gets continued for written
15 submissions, we will be willing to work with
16 the Hearing Examiner and the applicant on
17 getting that taken care of.

18 In the event that you just want to take it
19 upon yourself to go ahead and do it, we can
20 close the hearing today and let you consider it
21 for the evidence on the record.

22 HEARING EXAMINER RIVERA: Thank you.

23 So with that we will now move to public
24 comment. I only have one card here and I
25 believe I saw Mr. Freeman come back in.

1 HEARING EXAMINER RIVERA: Good morning.

2 MR. FREEMAN: Good afternoon. Alal
3 Freeman, for the record.

4 I am an adjoining or in the vicinity
5 property owner. I really didn't intend to
6 speak at the hearing but I wanted it to be on
7 record that I'm observing.

8 However, I am a little bit concerned about
9 conditions in zoning that have to do with
10 future road costs that are undetermined and not
11 definable. So I think that is an issue, not
12 only for this case, but if that were to become
13 precedent, that would become a very big
14 problem. I don't know your solution, but I
15 know it's a problem.

16 So with that I will sit down and let
17 everybody continue. Thank you.

18 HEARING EXAMINER RIVERA: Thank you, sir.

19 MR. MAUER: Thank you. Good afternoon.
20 May it please the Hearing Examiner. My name is
21 Michael Mauer, I'm with William Raveis Real
22 Estate, commercial real estate agent down here
23 since 2004. I've represented the CRM Companies
24 over the past six years, and I helped them
25 acquire the subject property that we're talking

1 about today. I'm also now charged with selling
2 the property as improved commercial lots.

3 I'd like to take just a quick minute to
4 give you a brief timeline of events, just to
5 paint a picture of what's transpired between my
6 client and staff and why I believe that the
7 condition 3.E, the one that we've all been
8 talking about today, should be removed.

9 I started marketing the site roughly 18
10 months ago, and the lead plan or the vision
11 study was proven correct. That particular
12 area, as we've seen with the corporate
13 headquarters relocating there, has become a
14 hotbed for mixed use development. And when I
15 brought the property to market, we had a number
16 of developers for multi-family make offers on
17 the site, as well as hotel developers that saw
18 the synergy between the airport, FGCU, the
19 corporate headquarters and the growth that was
20 happening in Estero.

21 So with that in mind -- and the market
22 demand that we have, this site was not approved
23 for multi-family or hotel, so we decided to go
24 ahead and start down the path of rezone and
25 having to do a comp. plan change.

1 We've been at this for about a year. And
2 nothing as it pertains to improvements to Alico
3 Road and Three Oaks intersection was brought up
4 to my client until this week.

5 Mr. Jansen had stated in his remarks that
6 one of the reasons and justifications for this
7 condition is that he's worried about the last
8 man in. Over the last 12 months we've seen a
9 number of people, corporations, target this
10 area because it's one of the last remaining
11 large tracts in that portion of Lee County.
12 And you've got Best Home Services at the end of
13 the road to the north.

14 I'm going to start from the northern part
15 of where Three Oaks dead-ends.

16 You've got Best Home Services, which is
17 going to have a 65,000 square feet corporate
18 headquarters.

19 Neo-Genomics has 150,000 square foot
20 corporate headquarters in the works, with the
21 ability to do a second phase for another
22 100,000 square feet.

23 The surgery center is in.

24 Mr. Freeman is trying to develop a Wa-Wa
25 Gas Station on the corner, as well as a hotel

1 that has this property under contract.

2 There's also an unnamed user that's coming
3 from Lee County Economic Development that has
4 -- opposite side of the street of Neo-Genomics
5 that's got 40 acres under contract for another
6 corporate headquarters.

7 And on the southeast corner of Alico and
8 Three Oaks, Collier family has got 300
9 apartments coming out of the ground.

10 None of these rezones, none of these
11 development orders, were asked to contribute to
12 the improvements that have been asked by staff
13 to Three Oaks. We feel like we're the last man
14 in at this point.

15 On Tuesday of this week we got the first
16 version of this condition 3.E. And to put it
17 lightly, my seller was very upset. We had our
18 architects and engineers put numbers to it and
19 it came out to roughly a million to a
20 million-one of expected cost to make the
21 improvements that were asked of the first
22 version of condition 3.E.

23 It seems that this was all put together at
24 the last minute. And Mr. Jansen testified when
25 he was up here, he actually apologized because

1 he got his stuff out of order and said: I
2 apologize because I was just putting this all
3 together in the last couple of days.

4 My question is, why is this coming up at
5 the 11th hour? We expressed our concerns
6 internally Wednesday of this week, two days ago
7 we met with staff and we expressed our concerns
8 to roughly 14, 15 people in the room, and a lot
9 of them were nodding that they agreed that we
10 had every right to be upset.

11 We made our case. Mr. Treesh explained
12 that these improvements could be funded through
13 existing channels, either via impact fees for
14 the roads or the gas tax for the intersection.

15 It was at that time that the head of the
16 D.O.T. in that meeting tried to negotiate the
17 improvements. And he looked at my client and
18 he said, is this all or nothing, or can you
19 give me something?

20 We said no.

21 Staff at that point said they needed time
22 to regroup and that they would be back at us.

23 So yesterday afternoon we got the revised
24 condition 3.E. And when we opened the email,
25 it made us even more surprised and upset. The

1 condition in our opinion got worse. There's no
2 scope defined, there's no dollar cap, there's
3 no time restriction, there's no pro rata
4 formula as to how any of this is calculated,
5 and now we've got to provide notice to my
6 customers, the people that are going to be
7 buying the land or tenants that are going to be
8 moving in, that at some point down the road
9 they're going to have to open their wallet for
10 an amount that we don't know what that amount's
11 going to be or what they're going to have to
12 do.

13 Simply put, this condition 3.E makes this
14 property unmarketable. I can't sell it. I
15 couldn't sell it for a dollar.

16 This is a clear case of government
17 overreach, stretching the definitions of the
18 code, misinterpreting definitions, all to try
19 to get in my client's pocket.

20 I respectfully request that this condition
21 be removed. Thank you.

22 HEARING EXAMINER RIVERA: Were there any
23 other members of the public that wish to speak
24 today?

25 (No response.)

1 HEARING EXAMINER RIVERA: All right, so
2 we'll come back to the applicant.

3 MS. MONTGOMERY: The applicant would
4 recall Mr. Arnold.

5 Mr. Arnold, did you have a chance to note
6 the comprehensive plan goals, objections and
7 policies that Mr. Evans recited?

8 MR. ARNOLD: I think I captured most of
9 those.

10 MS. MONTGOMERY: I know you have your
11 comp. plan here. Did you have a chance to look
12 at those?

13 MR. ARNOLD: I have read those, and some
14 of those were part of our presentation as well.

15 MS. MONTGOMERY: In your expert opinion as
16 a planner, do any of those goals, policies or
17 objectives require a single applicant to make
18 extensive improvements to arterial roads?

19 MR. ARNOLD: I don't think they do. I
20 think those are policies and in many cases are
21 implemented by the local government.

22 MS. MONTGOMERY: And in your experience as
23 a planner, are comprehensive plans, goals,
24 policies and objectives typically implemented
25 through the Land Development Code?

1 MR. ARNOLD: Yes, they are.

2 MS. MONTGOMERY: And is it your
3 understanding that roads impact fees, gas taxes
4 are part of the means by which the county makes
5 capital improvements?

6 MR. ARNOLD: Absolutely.

7 MS. MONTGOMERY: And so the developer, the
8 construction traffic and future users will all
9 be contributing, won't they, to the gas tax?

10 MR. ARNOLD: Yes, anybody who's purchasing
11 gasoline in Lee County will be paying gas tax.

12 MS. MONTGOMERY: And it's my understanding
13 now that House Bill 7103, everywhere in Florida
14 that everyone will pay impact fees at the time
15 of building permits, so this landowner, like
16 any other, would pay at the time of building
17 permit?

18 MR. ARNOLD: That's my understanding too,
19 yes.

20 MS. MONTGOMERY: And so that there is a
21 mechanism for the county in the Land
22 Development Code to contribute to the impacts
23 of new development?

24 MR. ARNOLD: Yes, absolutely, there is.

25 MS. MONTGOMERY: And do you have an

1 opinion as to whether or not an individual
2 developer can be required to pay for existing
3 deficits or deficits not caused by the project?

4 MR. ARNOLD: I'm not the attorney, but
5 it's my understanding they cannot be asked to
6 do that.

7 MS. MONTGOMERY: And I don't know if you
8 said, but how long did you say you've been
9 working as a planner and have been in Lee
10 County?

11 MR. ARNOLD: Working in the Lee County
12 market for 29 years, approximately, I think,
13 somewhere in that vicinity. 20 plus years, I'm
14 sorry, 21 years, maybe.

15 MS. MONTGOMERY: And in that time, have
16 you ever had a situation where a zoning
17 applicant has been asked to fund the full cost
18 of major intersection improvements of two
19 arterials?

20 MR. ARNOLD: No. I've been involved with
21 developments of regional impact where there are
22 some proportionate share agreements, there's
23 some developer agreements and similarly there
24 can be developer agreements to do with off-site
25 improvements, but those typically involve a

1 public improvement as well.

2 MS. MONTGOMERY: Yeah, so Mr. Jansen
3 mentioned proportionate share of signal
4 improvements, and I tried to speed read
5 resolution Z-00-075 and it looks to be -- and
6 I'll hand it to you, but it looks to be a
7 proportionate share of signal improvements.
8 And I can't really read the map, but it looks
9 like the road in question goes through the
10 middle of the project and connects to Alico.
11 So do you see that situation as being similar?
12 I'll give you a chance to read it.

13 MR. ARNOLD: Yes, if I could have just a
14 moment to read the conditions. It's the first
15 time I've seen it.

16 I've read it. I'm not familiar with Gator
17 Road. I don't know if --

18 MS. MONTGOMERY: Well --

19 MR. ARNOLD: -- it's as a public or
20 private road.

21 MS. MONTGOMERY: -- that's where I can't
22 read it. I can read -- I can see the project
23 front from Alico, but I can't -- and it looks
24 like there's a road that goes from Alico
25 through the middle of the project, so it would

1 be the project's direct access is what it looks
2 like to me.

3 MR. ARNOLD: Yeah, it appears -- I'm
4 looking at the Exhibit C master concept plan
5 attached to the resolution provided, and it
6 appears what is Gator Road is their actual
7 access road and only connection to Alico Road
8 in this particular case. Again, I'm not
9 familiar with the case, but that's what it
10 appears from the master plan.

11 MS. MONTGOMERY: Yeah, in your opinion as
12 a planner, is that the same or similar
13 situation as what we're discussing here?

14 MR. ARNOLD: No. I mean, not on the
15 surface. We're dealing with what's probably a
16 private road versus two public roads, and road
17 improvements that have already been partially
18 made.

19 MS. MONTGOMERY: And does it appear that
20 it actually is site-related in the sense that
21 it is direct access to the arterial?

22 MR. ARNOLD: Just having read the
23 condition, it does reference turn lanes, for
24 instance, on Alico Road in this condition. But
25 if that's their only site access to Alico Road,

1 that makes perfect sense that they would need
2 to provide deceleration or left directional
3 turn lanes for the project.

4 MS. MONTGOMERY: And do you see that as
5 the same or similar to the subject property?

6 MR. ARNOLD: No, I think the testimony
7 from Mr. Treesh was that the access points we
8 have on Three Oaks Parkway, we would be
9 responsible for providing turn lanes on Three
10 Oaks Parkway because that is our direct project
11 access.

12 MS. MONTGOMERY: And you've been here
13 today and you've had the occasion to hear
14 testimony from Mr. Block and Mr. Jansen and
15 Mr. Evans. Is there anything in that testimony
16 that changes your expert opinion as to whether
17 or not the improvements they're seeking are
18 site-related?

19 MR. ARNOLD: No. My understanding of what
20 we've analyzed today is that these improvements
21 are commonly considered not site-related
22 improvements.

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

25 HEARING EXAMINER RIVERA: Does staff have

1 any questions?

2 MR. BLOCK: No.

3 MS. MONTGOMERY: Mr. Treesh.

4 MR. TREESH: Ted Treesh, for the record.

5 MS. MONTGOMERY: Did you have occasion to
6 be able to review, at least in part, the zoning
7 resolution relative to Alico 254 that Mr. Evans
8 mentioned in his testimony?

9 MR. TREESH: Yes, I did.

10 MS. MONTGOMERY: And do you have an
11 opinion as to whether or not that's comparable
12 to the subject situation?

13 MR. TREESH: Do I have an opinion? Yes.
14 I do not think it is. And one reason -- the
15 main reason I don't is the two roadways in
16 question, Domestic Avenue and Lee Road north of
17 Alico Road are both private roadways. In fact,
18 Lee Road is entirely within the 254 project.
19 So there's easements created over creating
20 access rights to the properties along there.
21 But those roadways are private roadways, so
22 essentially they serve as the access to that
23 IPD directly to Alico Road.

24 And both those roads terminate to the
25 north. They don't cross the canal,

1 Fiddlesticks Canal. They never will, due to
2 the existing residential development in the
3 Briarcliff area.

4 MS. MONTGOMERY: So then when you look at
5 the Lee County definition of site-related
6 improvements, those are site driveways and
7 roads that provide direct access --

8 MR. TREESH: Correct.

9 MS. MONTGOMERY: -- to the subject
10 property -- the property in question in that
11 resolution?

12 MR. TREESH: Correct.

13 MS. MONTGOMERY: I don't know, have you
14 had occasion to look at resolution Z-00-075
15 that was just submitted by the staff?

16 MR. TREESH: Yes.

17 MS. MONTGOMERY: And do you have an
18 opinion as to whether or not, in your
19 transportation planning opinion, whether that's
20 consistent or similar to the subject situation?

21 MR. TREESH: It is not. And again, as
22 indicated by Wayne, and I agree, that that --
23 the access to that property is directly
24 provided to Alico, opposite the Gator Road
25 intersection. So the condition was that the

1 developer would have to pay a proportionate
2 share of a future traffic signal and then for
3 turn lanes into their site access drive that
4 connects directly to Alico Road.

5 MS. MONTGOMERY: So in that instance,
6 again it would be consistent with items 1
7 through 5 of the site-related improvement --

8 MR. TREESH: That's correct. With the
9 exception of the proportionate share of the
10 signal. But again, that is also identified in
11 the --

12 MS. MONTGOMERY: And typically -- well,
13 let me ask you: When you're asked to do a
14 proportionate share of the signal, is it
15 generally like here where that's the road that
16 provides direct access to your project, the
17 signal at your entrance?

18 MR. TREESH: The ones I've been involved
19 with, yes, it's the signal that is providing
20 direct access to the project.

21 MS. MONTGOMERY: So the key still seems to
22 me is the direct access or the access point
23 connection to the major public roadway?

24 MR. TREESH: I agree, yes.

25 MS. MONTGOMERY: That's been a little bit

1 of discussion, and I think you have the
2 answers, to who asked you to do the analysis
3 that included Three Oaks being connected to
4 Daniels?

5 MR. TREESH: Right, let me explain that a
6 little bit.

7 Through the process -- and again, there's
8 been a comprehensive plan analysis done as well
9 as the zoning, so both -- and we were doing
10 those concurrently. The comprehensive plan
11 application went to the LPA, to the board, and
12 then the zoning comes here to the county. But
13 the same staff reviewed the traffic analysis.

14 So in that analysis it was infrastructure
15 planning staff that asked us to include the
16 volumes on Three Oaks with the connection up to
17 Daniels.

18 As I indicated in my previous testimony,
19 the funding is scheduled to be allocated for
20 those improvements beginning up through -- I
21 think -- again, as I think I previously
22 testified, there's three separate projects that
23 involved construction of Three Oaks up to
24 Daniels. And DOT can explain the intricacies
25 of why there's three, but -- so they're going

1 to be -- and they're funded in different years,
2 but they're all funded within the first three
3 years. We didn't look at when they're going to
4 be done, because as you know, once you start a
5 road project it can take two to three years to
6 finish. So the last phase of the project is
7 the north phase that goes and connects all the
8 way up to Daniels. So I don't disagree with
9 the statement that it may not be open till
10 2026, 2027.

11 But again, our analysis just looked at
12 2024. We pick a build-out year that seems
13 reasonable. We don't want to go out too far.
14 But again, as Marcus indicated, we don't know
15 when this is going to be built out. We have to
16 pick a date just -- and then settle on that.

17 But because the improvement is funded
18 within the first three years of the CIP, the
19 code allows us to take that capacity and that
20 roadway into account. And so that's -- that's
21 how we got to where we're at today.

22 MS. MONTGOMERY: Okay. I'll ask you the
23 same question that I asked Mr. Arnold. You've
24 been here all day, you've heard Mr. Block and
25 Mr. Evans and Mr. Jansen testify. Did you hear

1 anything today that changes your mind as to
2 whether or not the improvements that they're
3 asking for should be considered site-related?

4 MR. TREESH: No, there's been nothing that
5 I've heard that has changed my mind.

6 MS. MONTGOMERY: And so again, for the
7 record, your expert opinion is?

8 MR. TREESH: That the improvements at
9 Alico and Three Oaks should not be considered
10 site-related but should be considered to be
11 accommodated through the payment of our impact
12 fees. And that would be the mitigation to
13 accommodate the impacts we have at that
14 intersection.

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

17 HEARING EXAMINER RIVERA: Thank you.

18 Did you have any other rebuttal witnesses?

19 MS. MONTGOMERY: No, I don't.

20 HEARING EXAMINER RIVERA: Does staff have
21 any?

22 MR. BLOCK: No, ma'am, we do not have
23 anybody else.

24 HEARING EXAMINER RIVERA: So based on
25 that, I was going through briefly some of these

1 conditions, so my understanding is that the
2 applicant's essentially withdrawing option A,
3 which would -- essentially on hold (phonetic),
4 is that what I heard Mr. Block explaining to
5 me?

6 MR. ARNOLD: I think that's generally
7 correct. I also understand what Mr. Block
8 mentioned, that there may need to be some
9 blending of the two conditions.

10 HEARING EXAMINER RIVERA: Yeah, so I don't
11 want to drag this out anymore, but I also don't
12 want to be making that decision after this
13 hearing has closed where I'm guess which ones
14 it is that we wanted to include and which ones
15 we didn't.

16 So I've got some available dates that we
17 can open for the limited. I'm not taking any
18 additional public comment; I don't want to get
19 into any additional testimony on anything other
20 than the revised master concept plan that we
21 talked about and these revised conditions. But
22 that way if there's still disagreement, we're
23 not receiving anything that could be
24 potentially ex parte outside of the hearing.

25 So the dates that we have available would

1 be December 5th, December 19th, December 20th.
2 Or then we get into January, if you feel like
3 you need that much time.

4 MS. MONTGOMERY: I know Wayne's not
5 available on the 5th. And I can do the 19th
6 but only in the morning.

7 HEARING EXAMINER RIVERA: I don't expect
8 it will take terribly long.

9 MS. MONTGOMERY: Pardon me?

10 HEARING EXAMINER RIVERA: I don't expect
11 it's going to take terribly long since we're
12 only going to be talking about the conditions.
13 So does the 19th work for staff?

14 MR. BLOCK: It works for my purposes. And
15 I will make sure that I know all the
16 information necessary. If we place it on the
17 19th, I'll be here for it.

18 HEARING EXAMINER RIVERA: Okay. Thank
19 you.

20 So with that, if the applicant -- that
21 date works for the applicant?

22 I'm getting head nods.

23 MR. INTIHAR: Yeah, if I can't be here,
24 one of our other principals will be here.

25 HEARING EXAMINER RIVERA: Okay. So we'll

1 continue the hearing to 9:00 a.m. on December
2 19th for the limited purpose of receiving the
3 revised master concept plan.

4 If you could go ahead and revise the
5 scheduled deviations as part of the conditions
6 and just give me a holistic document and we can
7 discuss whatever still remains.

8 Not in agreement at that time, however
9 again, I don't want to open up this hearing for
10 another full day of testimony. It will simply
11 be if you agree, if you don't agree, and then I
12 can consider that after the hearing is closed.

13 So with that, thank you everyone for
14 coming and I will see you again on the 19th.

15 MR. BLOCK: If I may, Madam Hearing
16 Examiner, I will commit at that moment that I
17 will work with the applicant's team in the
18 rewrite of the conditions so that we can get it
19 down to specific points, if necessary, so when
20 we come in, we can concentrate on those points,
21 if necessary.

22 HEARING EXAMINER RIVERA: Thank you, I
23 appreciate that.

24 Thank you. The hearing's concluded for
25 today.

1 (Hearing concluded at 3:05 p.m.)
2
3
4

5 CERTIFICATE OF REPORTER
6

7 State of Florida)

8 County of Collier)
9

10 I, CHERIE' R. NOTTINGHAM, Notary Public, in
11 and for the State of Florida at Large, certify that
12 the transcript is a true record of my stenographic
13 notes.

14 I further certify that I am neither counsel
15 for, related to, nor employed by any of the parties
16 to the action in which this hearing was taken, and
17 further that I am not financially nor otherwise
18 interested in the outcome of the action.
19

20 Dated this 12th day of December, 2019.
21

22 *Cherie' R Nottingham*

23 CHERIE' R. NOTTINGHAM, FSR
24 My Commission No. GG-236783
25 Expiration: July 12, 2022

1 (Hearing concluded at 3:05 p.m.)

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3
4
5 CERTIFICATE OF REPORTER

6
7 State of Florida)

8 County of Collier)

9
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21
22 _____
23 CHERIE' R. NOTTINGHAM, FSR

24 My Commission No. GG-236783

25 Expiration: July 12, 2022

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