

THE OFFICE OF THE LEE COUNTY

HEARING EXAMINER

CASE NO. DCI-2022-00017

IN RE: Calusa Cay CPD

PROCEEDINGS:

PUBLIC HEARING

BEFORE:

Amanda Rivera
Hearing Examiner

DATE:

August 31, 2022

TIME:

9:03 a.m. to 9:58 a.m.

LOCATION:

Hearing Examiner's
Hearing Room
1500 Monroe
Second Floor
Fort Myers, Florida 33901

REPORTED BY:

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1	EXHIBITS		
2	NUMBER	DESCRIPTION	PAGE
3	APPLICANT EXHIBITS:		
4	Exhibit 1	PowerPoint	6
5	Exhibit 2	Full-size master plan	6
6	Exhibit 3	Elevation slides	47
7			
8	STAFF EXHIBITS:		
9	Exhibit 1	Staff Report	25
10	Exhibit 2	Infrastructure Planning report	25
11			
12	PUBLIC EXHIBITS:		
13	Exhibit 1	Public speaker documents	39
14	* * * * *		
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

1 P R O C E E D I N G S

2 HEARING EXAMINER RIVERA: Good morning. My
3 name is Amanda Rivera. I'm the Hearing Examiner
4 presiding over today's hearing.

5 The date is August 31st, 2022, and this is
6 Case DCI2022-00017. It's an amendment to the
7 Calusa Cay CPD.

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

12 Do you swear or affirm the testimony you will
13 provide is the truth?

14 (All participants indicated in the
15 affirmative.)

16 HEARING EXAMINER RIVERA: Welcome. I see I
17 have one member of the public here today. Have you
18 been familiar with this process before, or would
19 you like for me to go through?

20 MS. SWISHER-HICKS: Please.

21 HEARING EXAMINER RIVERA: Okay. So the way
22 that we'll proceed this morning is first we're
23 going to hear from the applicant. They're going to
24 present their request in this case and call any
25 witnesses that they may have to support their

1 request. Following that, we will hear from the
2 county staff. They're going to go over their
3 recommendation in this case, which is a
4 recommendation of approval with conditions,
5 including deviations.

6 After that we will call public hearing and
7 so -- you filled out a card, thank you -- so I'll
8 call you at that time. That would be your
9 opportunity to come to the podium and place any
10 comments that you may have into the record. You
11 may ask questions at that time, but we won't answer
12 them immediately. We'll take note of those and
13 then address them when we get back to the applicant
14 and the staff following the public comment period.

15 Following that, we will get into rebuttal and
16 closing comments from the parties, and that would
17 conclude the hearing for today.

18 This is a rezoning request, so I will be
19 making a recommendation to the Board of County
20 Commissioners in this case, and they will have the
21 final hearing on the matter. So because you filled
22 out a card, you will receive notice of that hearing
23 and a copy of my recommendation as well.

24 So with that, we can begin with the applicant.

25 MS. HEWITT: Okay, thank you.

1 HEARING EXAMINER RIVERA: Good morning.

2 MS. HEWITT: Good morning, Madam Hearing
3 Examiner. Stacy Hewitt with Banks Engineering
4 representing the applicant.

5 I've previously been accepted as an expert
6 witness in land-use planning and zoning matters,
7 and I'd like to request to be accepted as such this
8 morning.

9 HEARING EXAMINER RIVERA: Yes, thank you.

10 MS. HEWITT: Thank you.

11 I'd like to -- per the 48-hour notice, I've
12 got a full-size copy of the Master Concept Plan and
13 a copy of the PowerPoint.

14 (Applicant's Exhibits 1 and 2 were marked for
15 identification.)

16 HEARING EXAMINER RIVERA: Okay. Thank you.

17 So the PowerPoint will be Applicant's
18 Exhibit 1, and the full-size master plan will be
19 Applicant's Exhibit 2. And this does match exactly
20 what was provided in the 48-hour letter?

21 MS. HEWITT: Yes, it does.

22 HEARING EXAMINER RIVERA: Okay. Thank you.

23 MS. HEWITT: Thank you.

24 With me today is also Ted Treesh with TR
25 Transportation Consultants, and also the applicant

1 representative is here as well.

2 The site is 26.77 acres on the north side of
3 Pine Island Road approximately 320 feet east of
4 Betty Parkway and east of Pine Island Elementary
5 School.

6 The future land use for the site is urban
7 community with urban community surrounding it to
8 the north, south, and west, and public facilities
9 for the school to the west, and conservation lands
10 and wetlands to the east.

11 The zoning for the site is Commercial Planned
12 Development, and there is RM-2, multifamily zoning
13 to the north, AG-2 zoning to the west, as well as
14 two-family conversation district, and some C-1
15 zoning and CG across the street.

16 The request is to amend the existing
17 Commercial Planned Development to modify the
18 schedule of uses to add EMS, fire, or sheriff's
19 station limited to a sheriff's station in the
20 retail tract, to add warehouse, public, and
21 mini-warehouse to Parcel 3, to reduce the retail
22 square footage from 96,500 square feet to 89,600
23 square feet, to add an option for 60,000 square
24 feet of self-storage use within Parcel 3, to
25 increase the height allowed on Parcel 3 for the

1 self-storage use only from 35 feet to 38 feet above
2 average grade or 45 feet above mean sea level,
3 whichever is lower, and also to update the Master
4 Concept Plan to reflect these changes. The
5 planning community is Greater Pine Island, and it
6 is in the Urban Community Future Land Use category.

7 This is an aerial of the site, and I have
8 noted on here this is the existing Publix. The
9 retail tract that you'll hear referenced is this
10 tract that contains two buildings on the eastern
11 portion of the site. Outparcels 1 and 2 are along
12 the frontage, and Parcel 3 for the storage use
13 request is tucked in behind the existing Publix
14 building.

15 The staff report does recommend approval with
16 conditions, and the applicant is in agreement with
17 the proposed conditions as amended by the 48-hour
18 notice. And I'd like to request to incorporate the
19 staff report and the 48-hour notice with
20 attachments as part of my testimony today.

21 A little bit of history on the zoning of the
22 site. It was approved in June of 2013, rezoned it
23 from agricultural at C-1A to Commercial Planned
24 Development which allowed the maximum 96,500 square
25 feet of commercial uses.

1 It was administratively amended in 2020 to
2 revise the Master Concept Plan and the building
3 square footage and the site layout. And at that
4 time there -- originally, there were two
5 outparcels. In 2020 it updated to three outparcels
6 and updated the wetland enhancement and creation of
7 the plan.

8 In '21, by administrative amendment in August,
9 the Master Concept Plan was amended to subdivide
10 the grocery tract into the two parcels, and it also
11 reduced on the Master Concept Plan one of the
12 retail parcels from 10,000 to 7,000 square feet,
13 and it amended the property development
14 regulations, added access and signage deviations.

15 This is the existing approved Master Concept
16 Plan. It was approved December 8th of '21 by
17 Z-21-015 which added the package store use and
18 added a deviation to allow the package store within
19 319 feet from a non-commercial school.

20 This is a blowup of the existing Master
21 Concept Plan. The only changes that are proposed
22 are within the breakdown of the commercial floor
23 area. This is the proposed Master Concept Plan and
24 a blowup of that area to demonstrate the breakdown.

25 The retail is being reduced from the

1 originally approved 96,500 square feet down to
2 89,600 square feet and an option of the
3 60,000-square-foot self-storage on Parcel 3, which
4 would -- is requesting the increased height.

5 The self-storage use, again, would be on
6 Parcel 3 behind the grocery store, and the EMS or,
7 excuse me, the sheriff's station use would be
8 within the retail tract.

9 I did have a breakdown. The existing approval
10 allowed the grocery at 30,000 square feet, the
11 retail tract north building was 10,000 square feet,
12 the retail tract south building was 26,500, and the
13 outparcels were limited to 30,000 square feet.

14 With this request, there is a reduction of the
15 retail proposed to demonstrate what was actually
16 constructed, the 29,100 square feet of the grocery,
17 the retail tract was reduced to the 7,000 square
18 feet for the north building, the south building was
19 reduced to 23,500 square feet, and the outparcels
20 are limited to 30,000 square feet for either
21 Parcels 1 through 3, or Parcel 3 can alternatively
22 be developed with the 60,000 square feet of
23 self-storage, and then that 30,000 square feet of
24 retail would be left over to be split between
25 Outparcels 1 and 2.

1 So the total square footage with the request
2 is 149,600 square feet but, again, the retail is
3 reduced to 89,600, and the self-storage option
4 would be the 60,000 square feet on top of that.

5 HEARING EXAMINER RIVERA: And that 60,000
6 square feet is tied solely to self-storage.

7 MS. HEWITT: Correct.

8 HEARING EXAMINER RIVERA: So if that
9 particular use is not implemented, then it reverts
10 back to 30,000 square feet for the entirety of the
11 three parcels?

12 MS. HEWITT: That is correct. The maximum
13 that could be -- it would either be just the 89,600
14 square feet or the 89,600 square feet retail and
15 the 60,000 square foot self-storage.

16 And that's what actually was analyzed as part
17 of the traffic, which Ted will be going through.

18 And the request does result in a reduction in
19 traffic of 444 daily trips, 20 a.m. peak hour, and
20 44 p.m. peak hour trips, and -- when compared for
21 the proposed maximum to the existing, what's
22 approved today.

23 It also results in a reduction in utility
24 impacts. The 6,900-square-foot reduction in retail
25 is 1,035 GPD, approximate gallons per day, and the

1 self-storage use is approximately 400 gallons per
2 day.

3 HEARING EXAMINER RIVERA: And I can ask this
4 to Ted. I don't recall seeing it. When you're
5 talking about retail, that's inclusive of the
6 sheriff's station? Was that specifically
7 identified? Because I would imagine that use is a
8 much lower generator on all counts than a retail
9 use would be.

10 MS. HEWITT: I'll let Ted confirm when he
11 comes up, but I -- my understanding is that it's --
12 the retail is the highest generated use and that
13 that would be lower.

14 HEARING EXAMINER RIVERA: And that that was
15 what was evaluated.

16 MS. HEWITT: And what's -- yeah, so he'll
17 clarify when he comes up, and I believe it's
18 actually his turn to -- I'll turn it over to Ted,
19 and then I'll come back for the Comp Plan and
20 findings of the Land Development Codes.

21 HEARING EXAMINER RIVERA: Thank you.

22 MS. HEWITT: Thank you.

23 HEARING EXAMINER RIVERA: Good morning.

24 MR. TREESH: Good morning. Ted Treesh, TR
25 Transportation Consultants.

1 Yes, as Stacy indicated, this is a reduction
2 in trips. As staff indicated in their staff
3 report, the self-storage use that's proposed is
4 considerably lower in terms of trip generation. So
5 even though it's a much larger square footage, that
6 use generates a considerable amount less trips than
7 a retail use.

8 So, overall, the project as a whole as
9 proposed would generate less traffic than it was
10 originally analyzed at 96,500 square feet. So as
11 indicated in the staff report, under the discussion
12 under the transportation impacts, it's a reduction
13 in the overall transportation impacts than what was
14 originally analyzed in the original zoning
15 application. So it's consistent with the goals and
16 objectives of the Comprehensive Plan and the Land
17 Development Code.

18 The access drives aren't being changed.
19 There's already a development order that's been
20 approved of the Publix -- for the Publix. The turn
21 lanes are already constructed on Pine Island Road
22 that will serve the project.

23 So you're right, the sheriff's substation will
24 be located within the retail component, and it does
25 generate substantially less traffic than if a

1 retail space were to occupy that same square
2 footage, so...

3 HEARING EXAMINER RIVERA: Do we know what the
4 square footage is that's proposed for that use?

5 MR. TREESH: I'm not sure what -- if they've
6 determined what space they would occupy. I've seen
7 their facilities and other similar type. It ranges
8 in square footage. Perhaps the applicant's
9 representative might have a better idea, but it's
10 not a large space that they occupy. Typically it's
11 for --

12 HEARING EXAMINER RIVERA: Okay.

13 MR. TREESH: I know they have one -- I can't
14 remember where I saw it, but it was a typical
15 tenant space, several thousand square feet that a
16 typical tenant might occupy, so...

17 HEARING EXAMINER RIVERA: Okay.

18 MR. TREESH: Again, the access drives are all
19 constructed. The self-storage use, again, will
20 serve -- just as we testified when this zoning came
21 through originally with the grocery store, this use
22 is really intended to serve the island residents.
23 And, again, the self-storage, because of the
24 proliferation of self-storage on the mainland, this
25 use will really serve the Pine Island residents.

1 So even though our traffic study looked at new
2 trips added, it's really going to capture trips
3 from the island that otherwise might have to go off
4 island to utilize self-storage facilities that may
5 not be available on the island. So the level of
6 service are -- there's sufficient capacity on Pine
7 Island Road to accommodate the trips based on our
8 analysis.

9 And I'd be more than happy to answer any
10 questions.

11 HEARING EXAMINER RIVERA: That was the extent
12 of my questions. Thank you.

13 MR. TREESH: All right. Thank you.

14 MS. HEWITT: Again, Stacy Hewitt, for the
15 record. And the applicant's representative did
16 clarify that the anticipated square footage at that
17 use for the sheriff's station would be
18 approximately 1,400 square feet.

19 HEARING EXAMINER RIVERA: Okay.

20 MS. HEWITT: I do have the applicant's 48-hour
21 notice up in case there were any questions. I
22 could go through it in detail.

23 HEARING EXAMINER RIVERA: You don't have to go
24 through necessarily each highlight and underline,
25 because I understand some of it was housekeeping to

1 marry --

2 MS. HEWITT: Yes.

3 HEARING EXAMINER RIVERA: -- the actual
4 adoption resolution with what was being proposed.
5 But with respect to the height, if you could touch
6 on that just a little bit more, the difference,
7 because I noticed in the public community meeting
8 that was held there was substantial questions about
9 that and what the height differential was going to
10 be for this particular tract, for Parcel 3.

11 MS. HEWITT: Understood. Yes, the maximum
12 height -- if we go to -- this is the conditions
13 here. The development parameters were just being
14 updated to match what we just discussed this
15 morning. And the height right now is limited to
16 35 feet for the entire planned development.

17 And we're requesting to amend that to match
18 what's the limitation in the Land Development Code
19 for Pine Island, which is 38 feet above average
20 grade or 45 feet above mean sea level, whichever is
21 lower. And in the narrative of the request, what
22 the calculations for that have been is the average
23 grade is approximately four feet. And it could be
24 38 feet over the average grade, which we're
25 probably 42 feet. And the other calculation of the

1 45 feet above mean sea level would be -- excuse me.
2 The 45 feet minus the base flood elevation of seven
3 would equal 38 feet.

4 So that's why -- our original application had
5 come in requesting to increase it from 35 feet to
6 38 feet, but because of the Comp Plan language and
7 the Land Development Code language, they wanted --
8 staff would like to keep that language consistent
9 throughout, so there's no question as far as
10 consistency.

11 HEARING EXAMINER RIVERA: And, again, that's
12 only tied -- the height increase is only tied to
13 self-storage on Parcel 3?

14 MS. HEWITT: Yes. It would only be if the
15 self-storage use comes through. It would only be
16 limited to Parcel 3, which is located behind the
17 Publix building.

18 HEARING EXAMINER RIVERA: And I think in the
19 discussion of that community meeting in the minutes
20 it reflected that it's not actually developable,
21 for lack of a better word, space. It's something
22 to do with the architecture of the building. Is
23 that why this additional three feet is needed?

24 MS. HEWITT: Yes. It has to do with the level
25 of stories needed for self-storage.

1 HEARING EXAMINER RIVERA: Okay.

2 MS. HEWITT: And one other note that was
3 brought to my attention by the applicant's
4 representative as well is that they had seen an ad
5 out on the island that right now there's only one
6 self-storage use that services the whole island.
7 So they're excited to bring an additional one on
8 board.

9 There were two other minor corrections, just
10 changes that were involved to update Deviation 2.
11 Just to clarify, the square footages of the -- the
12 reduced square footages of the building's
13 consistent with this request. And Deviation 4
14 had -- regarding the buffers, the roadway buffer,
15 during the certificate of completion for this
16 project, there -- some of the trees had died in the
17 buffer, and so this request is just to allow an
18 additional plant species for that to -- that were
19 planted already -- they've already been replanted,
20 but just to allow that to be consistent with the --
21 with the conditions in the plan.

22 I believe it was limited to slash pine, and
23 now they're just adding green buttonwood or other
24 appropriate species just so that we can make sure
25 that the buffer thrives.

1 HEARING EXAMINER RIVERA: And that's been
2 worked out with staff to resolve the code
3 violation?

4 MS. HEWITT: As far as I know, it's pending
5 approval of this zoning amendment. Once this goes
6 through, then everything should be okay with the --
7 with the CC.

8 HEARING EXAMINER RIVERA: Okay.

9 MS. HEWITT: The request is consistent with
10 the Land Development Code Section 34.145(d)(4)a.1,
11 the findings required for zoning matters. The
12 request does comply with the Lee Plan,
13 Policy 1.1.4, the Urban Community policy, as it
14 provides a mix of commercial uses along an arterial
15 roadway. It was previously found and remains
16 consistent with this policy. It's consistent with
17 Objective 2.1, Policies 2.1.1 and 2.1.2 on
18 development location. This allows for infill
19 development on an existing parcel and provides
20 compact and contiguous development in a Future
21 Urban Area.

22 It's consistent with Objective 2.2,
23 Policy 2.2.1, on development timing. Again, it's
24 infill development, and adequate public facilities
25 exist.

1 It's consistent with Policy 5.1.5 on
2 protecting residential uses. The sheriff is
3 located in -- Sheriff's Office would be located in
4 the retail tract, and the self-storage use would be
5 tucked behind the grocery and, with a minor
6 increase in height consistent with the Pine Island
7 plan, the project's previously been found
8 consistent with this policy and remains consistent.

9 Consistent with Policy 6.1.4, as the requested
10 uses are similar or less intense than the existing
11 approved uses, and adequate public facilities do
12 exist.

13 It's consistent with Policy 24.4.1, the Pine
14 Island commercial land uses, as the uses in the
15 development provide employment opportunities and
16 serve the day-to-day needs of residents and
17 visitors.

18 It does provide a positive impact on traffic
19 patterns within the Greater Pine Island community,
20 as it reduces the number of vehicular trips through
21 Matlacha, and it was previously found and remains
22 consistent.

23 Again, the TIS demonstrates a reduction in
24 traffic as a result of the request compared to the
25 existing approval.

1 It's consistent with the Land Development Code
2 and other applicable county regulations or
3 qualifies for the deviations. A community meeting
4 was held May 3rd of 2022 consistent with Section
5 33-1003, and the requested height is consistent
6 with Section 33-1087 with -- the minor changes to
7 Deviations 2 and 4 still qualify for the deviation
8 request to meet the criteria.

9 The request is compatible with existing and
10 planned uses in the surrounding area, and the
11 requested changes do not change that compatibility.
12 It will provide access sufficient to support the
13 proposed development intensity. Again, the request
14 results in a reduction compared to the existing
15 approval, and no changes are proposed to the
16 existing access points.

17 The expected impacts on transportation
18 facilities will be addressed by existing county
19 regulations and conditions. And then there are no
20 changes to the environmental conditions, so the
21 request will not adversely affect environmentally
22 critical or sensitive areas or natural resources.

23 The request results in a reduction in traffic
24 and utility generation, and so it will be served by
25 urban services defined in the Lee Plan.

1 The proposed use and mix of uses is
2 appropriate at the proposed location. The
3 sheriff's station and self-storage use are
4 appropriate, and the proposed -- at the proposed
5 location, and they added a variety uses in the
6 existing approved development. They are limited to
7 specific parcels and, again, are internal, and
8 they're appropriate at the subject location.

9 The recommended conditions provide sufficient
10 safeguards to the public interest and are
11 reasonably related to the impacts of the project.
12 The request codifies previously approved
13 conditions.

14 Each of the requested deviations do enhance
15 the achievement of the objectives of the planned
16 development and preserve and promote the general
17 intent of the code. There are no new deviation
18 requests, but the minor amendments to Deviations 2
19 and 4 do remain consistent.

20 And that concludes my presentation unless you
21 have any questions.

22 HEARING EXAMINER RIVERA: I have not done my
23 site visit yet for this case. What's the status of
24 the residential community that's going immediately
25 north of this? Because I would think that's also

1 going to generate some need for this type of use.

2 MS. HEWITT: This -- it's still under
3 development order review. It has not been approved
4 yet --

5 HEARING EXAMINER RIVERA: Okay.

6 MS. HEWITT: -- but it is still going through
7 the process.

8 HEARING EXAMINER RIVERA: Okay. That is the
9 intended or proposed use of that site still?

10 MS. HEWITT: The north -- the site north of
11 this, yes --

12 HEARING EXAMINER RIVERA: Yes.

13 MS. HEWITT: -- is the residential. It's got
14 existing multifamily zoning. So it won't be going
15 through a zoning action that I'm aware of at this
16 time, but it is -- it is under development order
17 review.

18 HEARING EXAMINER RIVERA: Okay. Thank you.

19 MS. HEWITT: All right. Thank you.

20 HEARING EXAMINER RIVERA: So we're ready for
21 the staff whenever you're ready.

22 MS. WORKMAN: Okay. For the record, Beth
23 Workman, senior planner with the Zoning section.

24 I'm not going to belabor because Ms. Hewitt
25 did a really good job going through and laying it

1 out, because it does get a little confusing with
2 the square footages going different ways. But she
3 laid it out really nicely in her PowerPoint
4 presentation.

5 I just want to touch on a few things. First
6 of all, the 48-hour letter, staff is in agreement.
7 When staff was writing the staff report, the
8 conditions used for the Zoning staff report
9 conditions, and not the recommended conditions by
10 the Hearing Examiner, it had some editorial
11 changes. So Ms. Hewitt made the changes in the
12 48-hour letter, and staff is in agreement.

13 I want to just go over really quickly
14 Deviation -- or the Condition No. 2 that has the
15 square feet changes. It was Deviation No. 2, the
16 square feet changes. That is accurate with what is
17 being proposed. We needed to make a change on that
18 as well as the Master Concept Plan to allow the
19 30 percent square feet of the retail on all the
20 parcels, all the outparcels and not just Parcel 2
21 and 3 as was previously mentioned in the packet.

22 Also, the buffer changes. What happened was
23 the slash pines could not survive in the conditions
24 in the field, and so that condition needed to be
25 changed with a species that would be more

1 compatible in that area. And so that has already
2 been done. They're planted in the field, so we
3 just needed to memorialize in the condition that
4 green buttonwood was allowed. And staff is aware
5 of that, Development Service staff is aware, and
6 Code Enforcement as well. So that will be abated
7 through that process.

8 Another little housekeeping item that I wanted
9 to mention was the traffic. I had Infrastructure
10 Planning review the traffic one more time just to
11 take a look at, you know, if the retail went
12 forward and no warehouse and if the warehouse went
13 in and the 30,000 was based on Parcel 2 and 3, and
14 I just want to give that -- the applicant does have
15 a copy of that.

16 (Staff Exhibits 1 and 2 were marked for
17 identification.)

18 HEARING EXAMINER RIVERA: Okay. Thank you.
19 And that will be Staff Exhibit 2, because Staff
20 Exhibit 1 is the staff report. Thank you.

21 MS. WORKMAN: And what Infrastructure Planning
22 stated in that email was that there would be a
23 reduction; because the warehouse use is so
24 different than a retail use, that it would not
25 generate a lot of traffic. So that wouldn't have a

1 negative impact on the surrounding areas.

2 Going through the Lee Plan analysis, again,
3 Ms. Hewitt did a really good job of running
4 through. I just want to touch on a couple things.
5 It is in the Urban Community future land-use
6 category, which is described in the Lee Plan as a
7 mix of relatively intense commercial and
8 residential uses.

9 So you have, as mentioned, residential going
10 to the north of this parcel and -- so that's the
11 residential to the north. You have the warehouse
12 that possibly could go here, more retail, and then
13 you have the Outparcel 2 and 3, and then you have
14 more retail here, and then the Publix. Next door
15 to this is -- it's like an auto repair service
16 center. There's a gas station that just went in
17 recently that's across -- across the way down a
18 bit, and then you have the center, the town center.
19 As you work closer to the west, you have the town
20 center at the four-way stop.

21 So this has a good mix with the school in
22 here, and then you go into the half-acre
23 residential lots with some strip centers in here
24 with commercial. So this does fit into that
25 outlook.

1 As you look to the east, you get in more of
2 the state lands and mitigation lands. This is part
3 of the preservation area as part of this
4 development. And Ms. Hewitt mentioned the
5 restoration plan and the creation for tidal --
6 tidally influenced salt flats in here, which
7 provides good coverage for wildlife, so
8 compatibility in there.

9 Policy 5.1.5 is encroachment of uses. So when
10 this new use, the warehouse, comes in, the
11 sheriff's substation -- to add the sheriff's
12 substation to the retail tract provides an urban
13 service to this area to support the Greater Pine
14 Island community. And it is consistent with the
15 uses allowed to the Commercial Planned Development
16 per the Land Development Code in Section 34-934.

17 The request to add the warehouse,
18 mini-warehouse, and public warehouse is also
19 consistent with that -- with that Land Development
20 Code 34-934.

21 Speaking to the revised height limitation, the
22 original zoning resolution conditioned a 25-foot
23 height in the zoning resolution. Just on Parcel 3,
24 for the warehouse use, the resolution is being
25 changed to allow what is currently in the Land

1 Development Code, 33-1087. 33-1087 states that the
2 measurement -- the height must be measured from a
3 35 feet to a 38 feet above average grade or 45 feet
4 above mean sea level, whichever is lower. This is
5 in the Land Development Code. This is allowed
6 across the board in the Greater Pine Island area.

7 The reason that the applicant had to bring
8 this before the Hearing Examiner and go to the
9 Board of County Commissioners is because it was a
10 change from what was previously approved in the
11 property development regulations originally. So we
12 wanted to add that. There is an asterisk in the
13 property development regulations that that just
14 applies to Parcel 3 for the warehouse use.

15 Moving on to Policy 6.1.4.

16 HEARING EXAMINER RIVERA: One second. So the
17 multifamily that's going to the north, they would
18 be held to the same 35 foot? So that --

19 MS. WORKMAN: Yes.

20 HEARING EXAMINER RIVERA: It would not be --
21 because this will be different than rest of the
22 existing CPD. It will be slightly -- I mean, three
23 feet taller. We're not talking a ton of height
24 here --

25 MS. WORKMAN: Correct.

1 HEARING EXAMINER RIVERA: -- but it will be
2 consistent with the multifamily to the north,
3 potentially, depending on how they develop?

4 MS. WORKMAN: Correct. And it's my
5 understanding from reading the public information
6 meeting, that that three feet is because of
7 architectural standards for commercial. It's like
8 a parapet or, like, changing the roof elevation, so
9 that gives you that bump up. So that's -- we have
10 to look at the whole, what the tallest point is.
11 So that applies, and it does meet the Land
12 Development Code. So anything on the residential
13 that would come in, if they had something like
14 that, it would kind of match up with that.

15 HEARING EXAMINER RIVERA: Okay. Thank you.

16 MS. WORKMAN: Moving on to Policy 6.1.4,
17 commercial approved, when compatible with the
18 existing and proposed land uses. Previously, the
19 Commercial Planned Development was approved with
20 indoor storage only in the schedule of uses. The
21 applicant is proposing to add mini-warehouse and
22 public warehouse, limiting it to Parcel 3. This
23 change does not substantially alter the
24 compatibility of the commercial development. The
25 developer will be limited to the height

1 restrictions, as mentioned, just to Parcel 3. This
2 parcel abuts an agriculturally zoned property owned
3 by Lee County -- it's in public facilities -- to
4 the west, residential RM-2 to the north, and
5 conservation land to the east.

6 Staff finds that this does not have a negative
7 impact on the surrounding uses, as the buffers
8 still apply as previously approved in zoning as
9 well as in the Land Development Code.

10 Policy 24.4.1, nonresidential developments
11 within the Greater Pine Island Community Plan
12 should provide employment opportunities, serve the
13 day-to-day needs of the residents and visitors, and
14 reduce the number of vehicular trips through
15 Matlacha. Staff believes that with this warehouse
16 use, with the added sheriff substation in the
17 retail tract, that this provides more of services
18 to the Greater Pine Island area, and the overall
19 zoning that was approved, you know, had the
20 schedule of uses that had the retail and the office
21 commercial floor area to support the surrounding
22 residents, so it does meet Policy 24.4.1.

23 The applicant did have a public informational
24 meeting, as mentioned, on May 3rd, 2022. The
25 public was out, and I, just on a staff perspective,

1 enjoyed the comments and the answers that were
2 given. And it was just a really nice thing to have
3 to review this case to look at to make sure we were
4 covering all of our bases to protect the public and
5 the Greater Pine Island area.

6 Staff does believe that the changes in this
7 case meet the Zoning Matters Criteria and Land
8 Development Code 34-145(d)(4)a.2 and, as mentioned,
9 it's in favor and approves the changes provided in
10 the 48-hour letter.

11 HEARING EXAMINER RIVERA: Thank you.

12 Does the applicant have any questions of
13 staff?

14 MS. HEWITT: No. Thank you.

15 HEARING EXAMINER RIVERA: Thank you.

16 All right. So with that, I will call the
17 comment cards that I have here, since we're opening
18 our public comment period. So the first one I have
19 is Deborah Swisher-Hicks.

20 Good morning.

21 MS. SWISHER-HICKS: Good morning. My name is
22 Deborah Swisher-Hicks. I am a Pine Island
23 resident. I went to the meetings, and so -- I'm
24 not a public speaker.

25 Okay. So as a Pine Island resident and,

1 actually, as -- I have a very large concern
2 regarding the raising of the three feet. It may
3 sound minor, and they even wrote word "minor."
4 It's not minor to the people on the island. The
5 largest part of that is because the Pine Island
6 plan was written, and it was purposely stated
7 that -- let me get the right page out -- the
8 maximum height is 33-1087. It says on (D), no
9 deviation from these height restrictions may be
10 granted through the planned development process.
11 It also further states that the relief on that is
12 only to -- relief is required to maintain or
13 improve the health, safety, welfare, and the
14 general public.

15 Because they have to put a facade on the front
16 doesn't qualify underneath that. Because they had
17 to -- and during the meeting, they said the reason
18 why it was -- they had to have the deviation is
19 because they had to put three -- no, four feet of
20 fill. That's part of Pine Island. Pine Island is
21 an island. So the lot that they actually bought
22 and chose was actually a very low -- you know, it
23 was wetland at one time. I actually have evidence,
24 you know, the paper going back in time showing that
25 the landowner knew that was wetlands. So he had to

1 bring in a lot of fill. So he had to bring in four
2 feet of fill.

3 So -- and we're very strong, the Pine Island
4 folks, that we do not want this to be any deviation
5 to it, because this will set precedence for the
6 rest of the island. Someone's going to say, well,
7 they were able to do it, so why can't I? It's only
8 a facade. It's just an antenna. You know, it
9 just -- it has a life of its own. It's going to
10 continue to grow. Very strong feelings from, you
11 know, the island folks. Unfortunately, not
12 everybody could be here. I wanted to make sure
13 that one was (indicating).

14 So they also state in the paperwork that on
15 Z-13-007, they were given -- the maximum allowance
16 on this property was 9,650 square feet. My
17 understanding is that was for the whole site. Just
18 because the developer or the applicant has decided
19 to parcel things out into different things, the
20 whole site should still be within that allowance.

21 I have pictures of the original plan that was
22 brought to the Pine Island folks back in 2013, I
23 think it was, and the lot has changed dramatically
24 from what they told the people that it was going to
25 be to -- you know, revision, revision, revision.

1 So here we are today.

2 Now, he wants to add 60,000 square foot of
3 mini-storage? Yes, the Pine Island already has
4 mini-storage that's only 25 percent full. Granted,
5 developers, they think of the future of what
6 they're going to do. And that amount of storage on
7 the island I don't see as being that great of an
8 asset, especially since just, literally, right
9 across the street is the mini-storage. You don't
10 see it in the picture.

11 Also, in the Pine Island plan there's a
12 restriction on what the buildings are supposed to
13 be looking like. And then 33-01083, commercial
14 building standards, it lists on there new
15 commercial buildings are limited to 1,000 [sic]
16 square feet of floor unless it needs to be approved
17 by variance. Changing something from 10,000 -- did
18 I say 1,000? I meant 10,000. I'm sorry -- 10,000
19 square feet to 60,000 square feet is not a small
20 amount. It's not a minor thing. It's a major
21 deviation.

22 It also states in there that any large
23 buildings approved by variance or deviation must be
24 designed to minimize the appearance of a single
25 large box which, according to the picture -- and

1 that's on C of that. According to the renderings,
2 other than the small little bump-ups, it looks like
3 a big square box. Yes, it's going to be behind the
4 Publix, but that doesn't matter. It's a big square
5 box. It's not within the Pine Island plan, so the
6 islanders are strongly against the renderings. I
7 understand that that can be changed along with the
8 height elevation that could be changed.

9 I probably have a lot more that I should have
10 to say.

11 HEARING EXAMINER RIVERA: Certainly. There's
12 no time limitation today, so please make sure you
13 get everything that you'd like on the record.

14 MS. SWISHER-HICKS: I appreciate that.

15 When I was actually looking over the
16 original -- and I didn't know there was a 48-hour
17 notice, so I didn't review all the changes.

18 When it comes to planting plants on Pine
19 Island, I would like the staff to be aware that
20 Pine Island is called "Pine" Island, and anything
21 that should be planted or deviate -- should always
22 consider Pine Islands, pines. So because staff is
23 here, I'd like to, you know...

24 I would like to give to you, if it's okay,
25 for --

1 HEARING EXAMINER RIVERA: Certainly.

2 MS. SWISHER-HICKS: It's the original sketch
3 of the island of that particular parcel that shows
4 the wetlands.

5 HEARING EXAMINER RIVERA: Okay.

6 MS. SWISHER-HICKS: I would like to give you,
7 which you may already have, is a copy of the code
8 that actually shows D and E, the no deviations to
9 the height.

10 HEARING EXAMINER RIVERA: Okay.

11 MS. SWISHER-HICKS: Also, to make sure that
12 it's understood that just because they have to put
13 four feet of fill does not give them four extra
14 feet of growth. It goes by the -- it goes by
15 sea -- sea level. It starts there, which it's a
16 low --

17 HEARING EXAMINER RIVERA: I don't want to
18 interrupt you, but I do want to -- I'm pulling it
19 up here just so I can read it along with you,
20 because I think you have a copy of it, 33-1087.

21 MS. SWISHER-HICKS: Yes.

22 HEARING EXAMINER RIVERA: Just to clarify that
23 staff's presentation is that the requirement is
24 that no building or structure can be erected so
25 that the peak of the roof exceeds 38 feet above the

1 average grade of the lot or 45. So that is what
2 the applicant is requesting. They're not seeking
3 to deviate from that requirement. What they're
4 seeking to change is -- the planned development
5 approval that they previously had limited them to
6 35 feet. So it was more restrictive than what the
7 code already allowed. So they're not seeking to
8 deviate. I just want to be sure that that's
9 understood, because it sounds like there's some
10 confusion. They are not seeking a deviation from
11 33-1087. They are seeking to change the current
12 CPD approval to match what this actually says.

13 MS. SWISHER-HICKS: So the original Z-13-007?

14 HEARING EXAMINER RIVERA: That was more
15 restrictive. So they agreed, I assume, at the
16 time -- I wasn't involved in that case. But they
17 agreed to do a more restrictive height. They
18 limited themselves to 35 feet, and now they're
19 coming in and asking that just for this parcel they
20 would be permitted to match what the code allows
21 for everywhere else on Pine Island.

22 MS. SWISHER-HICKS: I like the restriction.

23 HEARING EXAMINER RIVERA: I understand. I
24 just want to be sure that was clear, because I
25 wanted to make that known on the record so that

1 they're not seeking a deviation from that specific
2 requirement.

3 MS. SWISHER-HICKS: Okay. I don't have any
4 objection to the sheriff's station in the tract. I
5 don't agree that the amount of traffic is actually
6 going to be changing. Because they're adding
7 60,000 feet of possible storage, that's going to be
8 a lot of people going in and out when originally
9 there was nothing supposed to be back there,
10 according to the original plans that they submitted
11 on the Z-13. So there is an impact because they're
12 reducing the tract by, was it, 6,000 square feet or
13 something like that?

14 HEARING EXAMINER RIVERA: (Nods head.)

15 MS. SWISHER-HICKS: There really isn't much of
16 a traffic difference when it comes to overall. It
17 just doesn't seem to balance out. I am not a
18 traffic study person, but just logic, it just
19 doesn't sound -- because there's sound reasoning,
20 and there's things that sound reasonable, and
21 that's a big difference.

22 Thank you for your time.

23 HEARING EXAMINER RIVERA: Thank you.

24 MS. SWISHER-HICKS: I want to give you a copy
25 of what I talked about.

1 HEARING EXAMINER RIVERA: Yes, thank you, and
2 thank you for coming today. I'll label those as
3 exhibits and include them in the record. Thank you
4 so much.

5 MS. SWISHER-HICKS: Thank you.

6 (Public Exhibit 1 was marked for
7 identification.)

8 HEARING EXAMINER RIVERA: Thank you for coming
9 today.

10 That was the only card I had for public
11 comment. Were there any other members of the
12 public that wish to speak?

13 (No response.)

14 HEARING EXAMINER RIVERA: No? Okay. So we
15 will close public comment and come back to the
16 applicant and the staff.

17 MS. HEWITT: I believe the -- again, for the
18 record, Stacy Hewitt.

19 I believe the Hearing Examiner clarified that
20 there is no request of a deviation in the height.
21 We're just simply requesting to go to the code
22 requirements.

23 But there -- one item that came up as far as
24 the -- the section regarding the square footage of
25 buildings, that is something that needs to be

1 addressed that I just did not realize until just
2 this time that it is above the 10,000 feet, the
3 60,000 square feet, so it would need to be within
4 that -- Deviation 4 would need to be clarified to
5 allow for that, but it also talks about some
6 buildings over 10,000 square feet being located so
7 that they're -- I don't have the code in front of
8 me. Let me pull that back up. Pardon me one
9 second. I'm sorry.

10 It is Section 33-1083(c), new commercial
11 buildings are limited to 10,000 square feet of
12 floor area per building unless a larger size is
13 approved by variance or by deviation in a
14 Commercial Planned Development. Any larger
15 buildings approved by variance or deviation must be
16 designed to minimize the appearance of a single
17 large box or a standard franchise design.

18 That does apply to the requested self-storage
19 use. It has been tucked behind an existing grocery
20 store, so I believe it meets the requirements of
21 exceeding the 10,000 square feet.

22 There also is -- Beth, could you pull up my
23 PowerPoint, please. I want to see if I've got a
24 backup slide showing it. It is in the backup
25 material attached to the staff report for the

1 public information meeting. If I don't have it in
2 my PowerPoint, it is in the backup material showing
3 the conceptual rendering and also a demonstration
4 that was shown at the public meeting with an
5 individual, if they were to be looking at the
6 Publix, how they wouldn't even be able to see the
7 self-storage building.

8 I'm not seeing it in my backup documents, but
9 I thought I did include it. So forgive me. If
10 it's not attached, we'll refer to the staff report.
11 Oh, here it is. This is the rendering for the
12 existing Publix and the 7,000-square-foot retail
13 building. And this -- the development of this
14 rendering went through the public-hearing process
15 as well, and the colors were actually picked
16 because of community feedback, and there's a
17 condition that -- in the zoning resolution that new
18 buildings must comply with the overall
19 architectural theme for the development, which has
20 been proposed for this site as well.

21 And the -- this is a rendering showing an
22 individual looking at the Publix building and how
23 the view of the storage building would be blocked
24 because it is, again, tacked behind the existing
25 structure.

1 Any of the other -- it's just -- and as far as
2 the public's concerned, as far as the original
3 development in 2013, a lot of times things come up,
4 people that approach developments to be located
5 after the fact that weren't contemplated before,
6 and the development has gone through the
7 appropriate approval processes for each change and
8 has done public meetings involved, so I just wanted
9 to clarify that on the record.

10 And I believe that addresses all the comments,
11 unless there were any other questions.

12 HEARING EXAMINER RIVERA: Do you know -- the
13 other minimum storage that was mentioned is across
14 the street, and I think you had said that there was
15 only one other mini-storage on the island. Is that
16 the same facility that you're both referring to?

17 MS. HEWITT: That's what -- I believe so, yes.
18 I had just been forwarded an ad for them that they
19 were saying that they were the only one on the
20 island.

21 HEARING EXAMINER RIVERA: Okay. And so you're
22 requesting to add the deviation from 33-1083(c),
23 and your testimony is that it does enhance the
24 objectives of the planned development?

25 MS. HEWITT: Correct.

1 HEARING EXAMINER RIVERA: It meets the
2 requirement that would be supportive of that
3 deviation request?

4 MS. HEWITT: Yes, it does enhance. As you can
5 hear, you know, and in a lot of the policies, the
6 Land Development Code for Pine Island, traffic is a
7 concern, and this requested use enhances the
8 planned development by reducing the original
9 reviewed and approved uses on the site. So I do
10 believe it enhances the planned development and
11 meets the required criteria.

12 HEARING EXAMINER RIVERA: Thank you.

13 MS. HEWITT: Thank you.

14 HEARING EXAMINER RIVERA: Thank you. Did
15 staff have comments to place on the record?

16 MS. WORKMAN: Just one meant. I can --

17 HEARING EXAMINER RIVERA: Yes, please.

18 MS. WORKMAN: So I just want to address the
19 environmental comment about the condition about the
20 pine -- the pine trees.

21 So the original condition had pine trees cited
22 in the condition to be planted. What happened was
23 the applicant -- or the developer did plant pine
24 trees and met the condition requirement for shrubs
25 and the pines. And what happened was, that's a

1 salt turn in there, and so pines do not tolerate
2 high salt content. The water has come up that far.
3 That's why we have a restoration plan in there for
4 the salt flat as well. We did that through another
5 application -- zoning application to do some
6 restoration in there to add more salt-tolerant
7 plant material.

8 The buffer that's conditioned as part of the
9 original zoning was to act like a blind for the
10 bald eagle nest that's across the street. The
11 Parcel 2 -- the Parcel 1 and 2 have a buffer with
12 similar plant species, but that has fill brought up
13 to it, so there's no salt flats in there. So as
14 you work towards the east, you have more of a
15 wetland situation with the tidally influenced.

16 The pines have -- they have died. There's a
17 violation because it doesn't meet the condition of
18 the zoning. So now what's happening is -- and I've
19 had conversations with the landscape architect to
20 plant buttonwoods in there because they're more
21 salt tolerant.

22 I happen to be the environmental person on
23 this site when it was originally cleared, so I've
24 been all over this site, the residential as well as
25 the commercial, so I'm very familiar with this

1 area. And that was the best thing that we could do
2 to have survivability in that area. So that's why
3 the buttonwood is added to there, the green
4 buttonwood.

5 HEARING EXAMINER RIVERA: So where is the
6 location? Is this for the entirety of the
7 buffering around the --

8 MS. WORKMAN: No. The location -- let me see
9 if I can -- I'll use your PowerPoint. Sorry,
10 Stacy.

11 MS. HEWITT: Sure.

12 MS. WORKMAN: Let me -- I can get to -- okay.
13 So this is on its side, so that's north up here,
14 south up here. It's right in this area.

15 HEARING EXAMINER RIVERA: Okay.

16 MS. WORKMAN: So this is the preserve, and
17 this is all salt flats in here. It's tidally
18 influenced. You can see salt crystals in here when
19 you're walking on it. And so what happened was,
20 this right here is filling with a mixed brackish
21 water. And the pines were planted in there to meet
22 that condition, and they all died. And there's a
23 couple that are surviving; they're hanging on.
24 They left those, and they planted buttonwood in
25 there, and they wanted -- and then the applicant

1 wanted to change the condition so that it meets
2 what is currently out in the field. They've
3 actually planted the buttonwood in here. The
4 buffer along here meets the condition. We left
5 that in place so that that would meet the condition
6 so that it provided more of a buffer for the bald
7 eagle nest that's over in this area right here, and
8 the zone kind of just clips that right there.

9 HEARING EXAMINER RIVERA: And the
10 differentiation is those were able to survive
11 because that was filled as part of the commercial
12 development --

13 MS. WORKMAN: Yes.

14 HEARING EXAMINER RIVERA: -- whereas, the area
15 that you're noting they did not survive was
16 untouched because that's part of the preserve area?

17 MS. WORKMAN: Yeah. This is natural grade,
18 and this has fill. So this is more of an
19 ornamental buffer, and this is more of a natural
20 situation.

21 HEARING EXAMINER RIVERA: And for those
22 traveling along Pine Island Road, it will be -- it
23 will be a seamless kind of buffering in terms of
24 the look? They're not going to be identical
25 plantings, but was that taken into consideration of

1 what that experience will be?

2 MS. WORKMAN: Yes, yes, because in this area
3 there are -- the other parts of that condition are
4 being met, are surveying. So as you work this way,
5 you're going to see -- and this buffer's been in
6 for a while, because they had to work with the bald
7 eagle conditions to get it in outside of bald eagle
8 nesting season.

9 HEARING EXAMINER RIVERA: Okay.

10 MS. WORKMAN: So...

11 HEARING EXAMINER RIVERA: Thank you. That was
12 the question I wanted to ask, so thank you very
13 much for putting that on the record.

14 Did applicant have final comments?

15 MS. HEWITT: I just want to add the two slides
16 that weren't in the original PowerPoint.

17 HEARING EXAMINER RIVERA: Thank you. And
18 these are the same that you showed on the screen?

19 MS. HEWITT: Yes.

20 (Applicant's Exhibit 3 was marked for
21 identification.)

22 HEARING EXAMINER RIVERA: Thank you so much.
23 These are elevations of the proposed building.
24 Those will be supplemental slides. I'll make that
25 as a separate exhibit. It's Applicant's Exhibit 3.

1 Thank you.

2 So with that, I will conclude the hearing for
3 today. As I mentioned, in this case I am making a
4 recommendation to the Board of County
5 Commissioners. So if you received -- if you filled
6 out a card, you'll receive a copy of that as well
7 as the schedule date of when this will go to the
8 Board for final hearing. And if you spoke at the
9 hearing today, you will have opportunity to speak
10 at the board as well before they make the final
11 decision in this matter.

12 Thank you, everyone, for coming today, and
13 please stay well. Thank you.

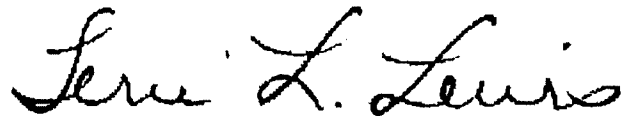
14 (Proceedings concluded at 9:58 a.m.)
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1 STATE OF FLORIDA)

2 COUNTY OF COLLIER)

3 I, Terri L. Lewis, RPR, FPR-C, and Notary
4 Public, do hereby certify that the foregoing proceedings
5 were taken before me at the date and place as stated in
6 the caption hereto on Page 1 hereof; that the foregoing
7 computer-assisted transcription, consisting of pages
8 numbered 4 through 47, inclusive, is a true record of my
9 Stenograph notes taken at said proceedings.

10 Dated this 6th day of September 2022.

11
12
13
14 

15 _____
16 TERRI L. LEWIS, RPR, FPR-C
17 Notary Public, State of Florida
18 Commission No: HH 125014
19 Commission Expires: August 23, 2025
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(	23,500 10:19	35 8:1 16:16 17:5 28:3,18 37:6,18	9:12 10:17	add 7:18,20,23 27:11, 17 28:12 29:21 34:2 42:22 44:6 47:15
(D) 32:8	24.4.1 20:13 30:10,22	38 8:1 16:19,24 17:3, 6 28:3 36:25	7,000-square-foot 41:12	added 9:14,17,18 15:2 22:5 30:16 45:3
1	25 34:4	3rd 21:4 30:24	8	adding 18:23 38:6
1 6:14,18 8:11 10:21,25 25:16,20 39:6 44:11	25-foot 27:22	4 18:13 21:7 22:19 40:4	89,600 7:22 10:2 11:3,13, 14	additional 17:23 18:7,18
1,000 34:15,18	26,500 10:12	400 12:1	8th 9:16	address 5:13 43:18
1,035 11:25	26.77 7:2	42 16:25	9	addressed 21:18 40:1
1,400 15:18	29,100 10:16	44 11:20	9,650 33:16	addresses 42:10
1.1.4 19:13	3 7:21,24,25 8:12 10:3,6,21 16:10 17:13,16 24:21 25:13 26:13 27:23 28:14 29:22 30:1 47:20,25	444 11:19	96,500 7:22 8:24 10:1 13:10	adequate 19:24 20:11
10,000 9:12 10:11 34:17, 18 40:2,6,11,21	30 24:19	45 8:2 16:20 17:1,2 28:3 37:1	9:58 48:14	administrative 9:8
149,600 11:2	30,000 10:10,13,20,23 11:10 25:13	48-hour 6:11,20 8:17,19 15:20 24:6,12 31:10 35:16	A	administratively 9:1
2	319 9:19	5	a.m. 11:19 48:14	adoption 16:4
2 6:14,19 8:11 10:25 18:10 21:7 22:18 24:14,15,20 25:13, 16,19 26:13 44:11	31st 4:5	5.1.5 20:1 27:9	abated 25:6	adversely 21:21
2.1 19:17	320 7:3	6	abuts 30:2	aerial 8:7
2.1.1 19:17	33-01083 34:13	6,000 38:12	accepted 6:5,7	affect 21:21
2.1.2 19:17	33-1003 21:5	6,900-square-foot 11:24	access 9:14 13:18 14:18 21:12,16	affirm 4:12
2.2 19:22	33-1083(c) 40:10 42:22	6.1.4 20:9 28:15 29:16	accommodate 15:7	affirmative 4:15
2.2.1 19:23	33-1087 21:6 28:1 32:8 36:20 37:11	60,000 7:23 10:22 11:4,5, 15 34:2,19 38:7 40:3	accurate 24:16	AG-2 7:13
20 11:19	34-145(d)(4)a.2 31:8	60,000-square-foot 10:3	achievement 22:15	agree 38:5
2013 8:22 33:22 42:3	34-934 27:16,20	7	acres 7:2	agreed 37:15,17
2020 9:1,5	34.145(d)(4)a.1 19:10	7,000	act 44:9	agreement 8:16 24:6,12
2022 4:5 21:4 30:24			action 23:15	agricultural 8:23
21 9:8,16			actual 16:3	agriculturally 30:2
			ad 18:4 42:18	allowance 33:15,20

allowed 7:25 8:24 10:10 25:4 27:15 28:5 37:7 alter 29:23 alternatively 10:21 Amanda 4:3 amend 7:16 16:17 amended 8:17 9:1,9,13 amendment 4:6 9:8 19:5 amendments 22:18 amount 13:6 34:6,20 38:5 analysis 15:8 26:2 analyzed 11:16 13:10,14 answers 31:1 antenna 33:8 anticipated 15:16 appearance 34:24 40:16 applicable 21:2 applicant 4:23 5:13,24 6:4, 25 8:16 25:14 28:7 29:21 30:23 31:12 33:18 37:2 39:16 43:23 45:25 47:14 applicant's 6:14,17,19 14:8 15:15,20 18:3 47:20,25 application 13:15 17:4 44:5 applies 28:14 29:11 apply 30:8 40:18	approach 42:4 approval 5:4 8:15 10:9 19:5 20:25 21:15 37:5, 12 42:7 approved 8:22 9:15,16 10:1 11:22 13:20 20:11 22:6,12 23:3 28:10 29:17,19 30:8,19 34:16,23 40:13,15 43:9 approves 31:9 approximate 11:25 approximately 7:3 12:1 15:18 16:23 architect 44:19 architectural 29:7 41:19 architecture 17:22 area 9:23,24 19:21 21:10 25:1 27:3,13 28:6 30:18,21 31:5 40:12 45:1,2,14 46:7,14,16 47:2 areas 21:22 26:1 arterial 19:14 asset 34:8 assume 37:15 asterisk 28:12 attached 40:25 41:10 attachments 8:20 attention 18:3 August 4:5 9:8	auto 26:15 average 8:2 16:19,22,24 28:3 37:1 aware 23:15 25:4,5 35:19 <hr/> B <hr/> back 5:13 11:10 12:19 32:24 33:22 38:9 39:15 40:8 backup 40:24 41:2,8 balance 38:17 bald 44:10 46:6 47:6,7 Banks 6:3 base 17:2 based 15:7 25:13 bases 31:4 begin 5:24 belabor 23:24 believes 30:15 Beth 23:22 40:22 Betty 7:4 big 35:3,4 38:21 bit 8:21 16:6 26:18 blind 44:9 blocked 41:23 blowup 9:20,24 board 5:19 18:8 28:6,9 48:4,8,10	bought 32:21 box 34:25 35:3,5 40:17 brackish 45:20 breakdown 9:22,24 10:9 bring 18:7 28:7 33:1 brought 18:3 33:22 44:12 buffer 18:14,17,25 24:22 44:8,11 46:4,6,19 buffer's 47:5 buffering 45:7 46:23 buffers 18:14 30:7 building 8:14 9:2 10:11,12, 18 17:17,22 34:14 36:24 40:12 41:7, 13,22,23 47:23 building's 18:12 buildings 8:10 34:12,15,23 39:25 40:6,11,15 41:18 bump 29:9 bump-ups 35:2 buttonwood 18:23 25:4 45:3,4, 24 46:3 buttonwoods 44:20 <hr/> C <hr/> C-1 7:14 C-1A 8:23 calculation 16:25	calculations 16:22 call 4:24 5:6,8 31:16 called 35:20 Calusa 4:7 capacity 15:6 capture 15:2 card 5:7,22 39:10 48:6 cards 31:17 case 4:6,24 5:3,20 15:21 22:23 31:3,7 37:16 48:3 category 8:6 26:6 Cay 4:7 center 26:16,18,20 centers 26:23 certificate 18:15 CG 7:15 change 21:11 24:17 28:10 29:23 37:4,11 42:7 46:1 changed 13:18 24:25 27:25 33:23 35:7,8 changing 29:8 34:17 38:6 chose 32:22 cited 43:21 clarified 39:19 40:4 clarify 12:17 15:16 18:11 36:22 42:9
---	--	--	---	--

clear 37:24 cleared 44:23 clips 46:8 close 39:15 closer 26:19 closing 5:16 code 13:17 16:18 17:7 19:2,10 21:1 22:17 25:6 27:16,20 28:1,5 29:12 30:9 31:8 36:7 37:7,20 39:21 40:7 43:6 Codes 12:20 codifies 22:12 colors 41:15 comment 5:14 31:17,18 39:11,15 43:19 comments 5:10,16 31:1 42:10 43:15 47:14 commercial 7:11,17 8:23,25 9:22 19:14 20:14 26:7,24 27:15 29:7,17,19,24 30:21 34:13,15 40:10,14 44:25 46:11 Commissioners 5:20 28:9 48:5 community 7:7 8:5,6 16:7 17:19 19:13 20:19 21:3 22:24 26:5 27:14 30:11 41:16 Comp 12:19 17:6 compact 19:20 compared	11:20 20:24 21:14 compatibility 21:11 27:8 29:24 compatible 21:9 25:1 29:17 completion 18:15 comply 19:12 41:18 component 13:24 Comprehensive 13:16 Concept 6:12 8:4 9:2,9,11, 15,21,23 24:18 conceptual 41:3 concern 32:1 43:7 concerned 42:2 conclude 5:17 48:2 concluded 48:14 concludes 22:20 condition 24:14,24 25:3 41:17 43:19,21,22, 24 44:17 45:22 46:1,4,5 47:3 conditioned 27:22 44:8 conditions 5:4 8:16,17 16:12 18:21 21:19,20 22:9,13 24:8,9,23 47:7 confirm 12:10 confusing 24:1 confusion 37:10 conservation 7:9 30:5 considerable 13:6	considerably 13:4 consideration 46:25 consistency 17:10 consistent 13:15 17:8 18:13, 20 19:9,16,22 20:1,6,8,9,13,22 21:1,4,5 22:19 27:14,19 29:2 constructed 10:16 13:21 14:19 Consultants 6:25 12:25 contemplated 42:5 content 44:2 contiguous 19:20 continue 33:10 conversation 7:14 conversations 44:19 copy 5:23 6:12,13 25:15 36:7,20 38:24 48:6 correct 11:7,12 28:25 29:4 42:25 corrections 18:9 counts 12:8 county 5:2,19 21:2,18 28:9 30:3 48:4 couple 26:4 45:23 coverage 27:7 covering 31:4 CPD 4:7 28:22 37:12 creation	9:6 27:5 criteria 21:8 31:7 43:11 critical 21:22 crystals 45:18 current 37:11 <hr/> D <hr/> daily 11:19 date 4:5 48:7 day 11:25 12:2 day-to-day 20:16 30:13 DCI2022-00017 4:6 Deborah 31:19,22 December 9:16 decided 33:18 decision 48:11 defined 21:25 demonstrate 9:24 10:15 demonstrates 20:23 demonstration 41:3 depending 29:3 design 40:17 designed 34:24 40:16 detail 15:22 determined 14:6 develop 29:3	developable 17:20 developed 10:22 developer 29:25 33:18 43:23 developers 34:5 development 7:12,17 8:24 9:13 12:20 13:17,19 16:13,16,18 17:7 19:10,18,19,20,23, 24 20:15 21:1,13 22:6,16 23:3,16 25:5 27:4,15,16,19 28:1,5,11,13 29:12,19,24 30:9 31:8 32:10 37:4 40:14 41:13,19 42:3,6,24 43:6,8, 10 46:12 developments 30:10 42:4 deviate 35:21 37:3,8 deviation 9:18 18:10,13 21:7 22:17 24:14,15 32:9,18 33:4 34:21,23 37:10 38:1 39:20 40:4, 13,15 42:22 43:3 deviations 5:5 9:14 21:3,7 22:14,18 36:8 died 18:16 44:16 45:22 difference 16:6 38:16,21 differential 16:9 differentiation 46:10 discussed 16:14 discussion 13:11 17:19 district 7:14 documents
---	--	--	--	--

41:8 door 26:14 dramatically 33:23 drives 13:18 14:18	environmentally 21:21 equal 17:3 erected 36:24 evaluated 12:15 evidence 4:9 32:23 Examiner 4:2,3,16,21 6:1,3, 9,16,22 11:5,8 12:3,14,21,23 14:3,12,17 15:11, 19,23 16:3 17:11, 18 18:1 19:1,8 22:22 23:5,8,12, 18,20 24:10 25:18 28:8,16,20 29:1,15 31:11,15 35:11 36:1,5,10,17,22 37:14,23 38:14,23 39:1,8,14,19 42:12,21 43:1,12, 14,17 45:5,15 46:9,14,21 47:9, 11,17,22 exceeding 40:21 exceeds 36:25 excited 18:7 excuse 10:7 17:1 exhibit 6:18,19 25:19,20 39:6 47:20,25 exhibits 6:14 25:16 39:3 exist 19:25 20:12 existing 7:16 8:8,13 9:15, 20 10:9 11:21 19:19 20:10,25 21:9,14,16,18 22:6 23:14 28:22 29:18 40:19 41:12,24 expected 21:17	experience 47:1 expert 6:5 extent 15:11 extra 36:13	final 5:21 47:14 48:8,10 findings 12:20 19:11 finds 30:6 fire 7:18 fit 26:24 flat 44:4 flats 27:6 44:13 45:17 flood 17:2 floor 9:22 30:21 34:16 40:12 folks 33:4,11,22 foot 11:15 28:18 34:2 footage 7:22 9:3 11:1 13:5 14:2,4,8 15:16 39:24 footages 18:11,12 24:2 forgive 41:9 forward 25:12 forwarded 42:18 found 19:15 20:7,21 four-way 26:20 franchise 40:17 front 32:15 40:7 frontage 8:12 full 34:4 full-size 6:12,18	future 7:6 8:6 19:20 26:5 34:5
E		F	G	
eagle 44:10 46:7 47:7 east 7:3,4,10 27:1 30:5 44:14 eastern 8:10 editorial 24:10 Elementary 7:4 elevation 17:2 29:8 35:8 elevations 47:23 email 25:22 employment 20:15 30:12 EMS 7:18 10:6 encroachment 27:9 Enforcement 25:6 Engineering 6:3 enhance 22:14 42:23 43:4 enhancement 9:6 enhances 43:7,10 enjoyed 31:1 entire 16:16 entirety 11:10 45:6 environmental 21:20 43:19 44:22	facade 32:15 33:8 facilities 7:8 14:7 15:4 19:24 20:11 21:18 30:3 facility 42:16 fact 42:5 familiar 4:18 44:25 favor 31:9 feedback 41:16 feelings 33:10 feet 7:3,22,23,24 8:1,2, 25 9:12,19 10:1,2, 10,11,13,16,18,19, 20,22,23 11:2,4,6, 10,14 13:10 14:15 15:18 16:16,19,20, 23,24,25 17:1,2,3, 5,6,23 24:15,16,19 28:3,23 29:6 32:2, 19 33:2,16 34:16, 19 36:13,14,25 37:6,18 38:7,12 40:2,3,6,11,21 field 24:24 25:2 46:2 fill 32:20 33:1,2 36:13 44:12 46:18 filled 5:7,21 46:11 48:5 filling 45:20		gallons 11:25 12:1 gas 26:16 general 22:16 32:14 generate 13:9,25 23:1 25:25 generated 12:12 generates 13:6 generation 13:4 21:24 generator 12:8 give 25:14 35:24 36:6, 13 38:24 goals 13:15 good 4:2 6:1,2 12:23,24 23:25 26:3,21 27:7 31:20,21 GPD 11:25 grade 8:2 16:20,23,24 28:3 37:1 46:17 granted 32:10 34:4 great 34:7 Greater 8:5 20:19 27:13 28:6 30:11,18 31:5 green 18:23 25:4 45:3 grocery 9:10 10:6,10,16 14:21 20:5 40:19 grow 33:10	

growth 36:14	32:8,9 35:8 36:9 37:17 39:20	improve 32:13	14:22,25 15:3,4,5, 7 16:19 18:5,6 20:6,14,19 27:14 28:6 30:11,18 31:5,22,25 32:4,5, 20,21 33:3,6,11,22 34:3,7,11 35:5,19, 20 36:3 37:21 42:15,20 43:6 46:22	landscape 44:19
<hr/> H <hr/>	held 16:8 21:4 28:18	include 39:3 41:9		lanes 13:21
half-acre 26:22	Hewitt 5:25 6:2,3,10,21, 23 11:7,12 12:10, 16,22 15:14,20 16:2,11 17:14,24 18:2 19:4,9 23:2,6, 10,13,19,24 24:11 26:3 27:4 31:14 39:17,18 42:17,25 43:4,13 45:11 47:15,19	including 5:5		language 17:6,7,8
hands 4:11		inclusive 12:5		large 14:10 32:1 34:22, 25 40:17
hanging 45:23		incorporate 8:18	islanders 35:6	larger 13:5 40:12,14
happen 44:22		increase 7:25 17:5,12 20:6	Islands 35:22	largest 32:5
happened 24:22 43:22,25 45:19		increased 10:4	item 25:8 39:23	laying 23:25
happening 44:18	high 44:2	indicating 33:13	<hr/> J <hr/>	layout 9:3
happy 15:9	highest 12:12	individual 41:5,22	job 23:25 26:3	Lee 19:12 21:25 26:2,6 30:3
he'll 12:16	highlight 15:24	indoor 29:20	June 8:22	left 10:24 45:24 46:4
head 38:14	history 8:21	infill 19:18,24	<hr/> K <hr/>	letter 6:20 24:6,12 31:10
health 32:13	hour 11:19,20	influenced 27:6 44:15 45:18	kind 29:14 46:8,23	level 8:2 15:5 16:20 17:1,24 28:4 36:15
hear 4:23 5:1 8:9 43:5	housekeeping 15:25 25:8	information 29:5 41:1	knew 32:25	life 33:9
hearing 4:2,3,4,8,16,21 5:6,17,21,22 6:1,2, 9,16,22 11:5,8 12:3,14,21,23 14:3,12,17 15:11, 19,23 16:3 17:11, 18 18:1 19:1,8 22:22 23:5,8,12, 18,20 24:10 25:18 28:8,16,20 29:1,15 31:11,15 35:11 36:1,5,10,17,22 37:14,23 38:14,23 39:1,8,14,19 42:12,21 43:1,12, 14,17 45:5,15 46:9,14,21 47:9, 11,17,22 48:2,8,9	<hr/> I <hr/>	informational 30:23	<hr/> L <hr/>	limitation 16:18 27:21 35:12
	idea 14:9	infrastructure 25:9,21	label 39:2	limited 7:19 10:13,20 16:15 17:16 18:22 22:6 29:25 34:15 37:5,18 40:11
	identical 46:24	intend 4:10	lack 17:21	limiting 29:22
	identification 6:15 25:17 39:7 47:21	intended 14:22 23:9	laid 24:3	lists 34:14
	identified 12:7	intense 20:10 26:7	land 7:6 8:6 12:20 13:16 16:18 17:7 19:10 20:14 21:1 27:16,19,25 28:5 29:11,18 30:5,9 31:7 43:6	literally 34:8
	imagine 12:7	intensity 21:13	land-use 6:6 26:5	located 13:24 17:16 20:3 40:6 42:4
	immediately 5:12 22:24	intent 22:17	landowner 32:25	location 19:18 22:2,5,8 45:6,8
	impact 20:18 26:1 30:7 38:11	interest 22:10	lands 7:9 27:2	logic 38:18
	impacts 11:24 13:12,13 21:17 22:11	internal 22:7		
	implemented 11:9	interrupt 36:18		
		involved 18:10 37:16 42:8		
		island 7:3,4 8:5 13:21		

looked 15:1 lot 25:25 32:21 33:1, 23 35:9 37:1 38:8 42:3 43:5 lots 26:23 low 32:22 36:16 lower 8:3 12:8,13 13:4 16:21 28:4 <hr/> M <hr/> Madam 6:2 made 24:11 mainland 14:24 maintain 32:12 major 34:20 make 18:24 24:17 31:3 33:12 35:12 36:11 37:25 47:24 48:10 making 5:19 48:3 marked 6:14 25:16 39:6 47:20 marry 16:1 master 6:12,18 8:3 9:2,9, 11,15,20,23 24:18 match 6:19 16:14,17 29:14 37:12,20 material 40:25 41:2 44:7 Matlacha 20:21 30:15 matter 5:21 35:4 48:11 matters 6:6 19:11 31:7	maximum 8:24 11:12,21 16:11 32:8 33:15 meant 34:18 43:16 measured 28:2 measurement 28:2 meet 21:8 29:11 30:22 31:7 44:17 45:21 46:5 meeting 16:7 17:19 21:3 29:6 30:24 32:17 41:1,4 meetings 31:23 42:8 meets 40:20 43:1,11 46:1,4 member 4:17 members 39:11 memorialize 25:3 mention 25:9 mentioned 24:21 26:9 27:4 30:1,24 31:8 42:13 48:3 met 43:24 47:4 mini-storage 34:3,4,9 42:15 mini-warehouse 7:21 27:18 29:21 minimize 34:24 40:16 minimum 42:13 minor 18:9 20:5 21:6 22:18 32:3,4 34:20 minus 17:2 minutes 17:19	mitigation 27:2 mix 19:14 22:1 26:7,21 mixed 45:20 modify 7:17 morning 4:2,22 6:1,2,8 12:23,24 16:15 31:20,21 Moving 28:15 29:16 multifamily 7:12 23:14 28:17 29:2 <hr/> N <hr/> narrative 16:21 natural 21:22 46:17,19 necessarily 15:24 needed 17:23,25 24:17,24 25:3 negative 26:1 30:6 nest 44:10 46:7 nesting 47:8 nice 31:2 nicely 24:3 nods 38:14 non-commercial 9:19 nonresidential 30:10 north 7:2,8,13 10:11,18 22:25 23:10 26:10, 11 28:17 29:2 30:4 45:13	note 5:12 18:2 noted 8:8 notice 5:22 6:11 8:18,19 15:21 35:17 noticed 16:7 noting 46:15 number 20:20 30:14 <hr/> O <hr/> oath 4:9 objection 38:4 Objective 19:17,22 objectives 13:16 22:15 42:24 occupy 14:1,6,10,16 office 20:3 30:20 opening 31:17 opportunities 20:15 30:12 opportunity 5:9 48:9 option 7:23 10:2 11:3 order 13:19 23:3,16 original 13:14 17:4 27:22 33:21 35:16 36:2 37:13 38:10 42:2 43:8,21 44:9 47:16 originally 9:4 10:1 13:10,14 14:21 28:11 38:8 44:23 ornamental 46:19 outlook 26:25	Outparcel 26:13 outparcels 8:11 9:5 10:13,19, 25 24:20 owned 30:2 <hr/> P <hr/> p.m. 11:20 package 9:17,18 packet 24:21 paper 32:24 paperwork 33:14 parameters 16:13 parapet 29:8 parcel 7:21,24,25 8:12 10:3,6,21 16:10 17:13,16 19:19 24:20 25:13 26:10 27:23 28:14 29:22 30:1,2 33:19 36:3 37:19 44:11 parcels 9:10,12 10:21 11:11 22:7 24:20 Pardon 40:8 Parkway 7:4 part 8:20 11:16 27:2,3 32:5,20 44:8 46:11,16 participants 4:14 parties 5:16 parts 47:3 patterns 20:19
--	--	---	---	--

peak 11:19,20 36:25 pending 19:4 people 32:4 33:24 38:8 42:4 percent 24:19 34:4 period 5:14 31:18 permitted 37:20 person 38:18 44:22 perspective 30:25 picked 41:15 picture 34:10,25 pictures 33:21 pine 7:3,4 8:5 13:21 14:25 15:6 16:19 18:22 20:6,13,19 27:13 28:6 30:11, 18 31:5,22,25 32:5,20 33:3,22 34:3,11 35:5,18, 20,22 37:21 43:6, 20,21,23 46:22 pin 24:23 35:22 43:25 44:1,16 45:21 place 5:9 43:15 46:5 plan 6:12,18 8:4 9:2,7, 9,11,16,21,23 12:19 13:16 17:6 18:21 19:12 20:7 21:25 24:18 26:2,6 27:5 30:11 32:6 33:21 34:11 35:5 44:3 planned 7:11,17 8:23 16:16 21:10 22:15 27:15 29:19 32:10 37:4 40:14 42:24 43:8,	10 planner 23:23 planning 6:6 8:5 25:10,21 plans 38:10 plant 18:18 43:23 44:7, 12,20 planted 18:19 25:2 35:21 43:22 45:21,24 46:3 planting 35:18 plantings 46:25 plants 35:18 podium 5:9 point 29:10 points 21:16 policies 19:17 43:5 policy 19:13,16,23 20:1, 8,9,13 27:9 28:15 29:16 30:10,22 portion 8:11 positive 20:18 possibly 26:12 potentially 29:3 Powerpoint 6:13,17 24:3 40:23 41:2 45:9 47:16 precedence 33:5 present 4:24 presentation 22:20 24:4 36:23 preservation	27:3 preserve 22:16 45:16 46:16 presiding 4:4 previously 6:5 19:15 20:7,21 22:12 24:21 28:10 29:18 30:8 37:5 proceed 4:22 proceedings 48:14 process 4:18 23:7 25:7 32:10 41:14 processes 42:7 project 13:8,22 18:16 22:11 project's 20:7 proliferation 14:24 promote 22:16 property 9:13 28:11,13 30:2 33:16 proposed 8:17 9:21,23 10:15 11:21 13:3,9 14:4 16:4 21:13,15 22:1,2,4 23:9 24:17 29:18 41:20 47:23 proposing 29:21 protect 31:4 protecting 20:2 provide 4:13 20:15,18 21:12 22:9 30:12 provided 6:20 31:9 46:6 public 4:17 5:6,14 7:8,20 16:7 19:24 20:11	22:10 27:18 29:5, 22 30:3,23,25 31:4,18,24 32:14 39:6,10,12,15 41:1,4 42:8 public's 42:2 public-hearing 41:14 Publix 8:8,13 13:20 17:17 26:14 35:4 41:6, 12,22 pull 40:8,22 pulling 36:18 purposely 32:6 put 32:15,19 36:12 putting 47:13 <hr/> Q <hr/> qualifies 21:3 qualify 21:7 32:16 quasi-judicial 4:8 question 17:9 47:12 questions 5:11 15:10,12,21 16:8 22:21 31:12 42:11 quickly 24:13 <hr/> R <hr/> raise 4:11 raising 32:2 ranges 14:7 read 36:19	reading 29:5 ready 23:20,21 realize 40:1 reason 28:7 32:17 reasonable 38:20 reasoning 38:19 rebuttal 5:15 recall 12:4 receive 5:22 48:6 received 48:5 recently 26:17 recommend 8:15 recommendation 5:3,4,19,23 48:4 recommended 22:9 24:9 record 5:10 15:15 23:22 35:13 37:25 39:3, 18 42:9 43:15 47:13 reduce 7:21 30:14 reduced 9:11,25 10:17,19 11:3 18:12 reduces 20:20 reducing 38:12 43:8 reduction 10:14 11:18,23,24 13:1,12 20:23 21:14,23 25:23 refer 41:10 referenced 8:9
---	--	--	---	--

referring 42:16	requests 22:18	41:12	salt 27:6 44:1,2,4,13, 21 45:17,18	sheriff 20:2 30:16
reflect 8:4	required 19:11 32:12 43:11	reverts 11:9	salt-tolerant 44:6	sheriff's 7:18,19 10:7 12:6 13:23 15:17 20:3 22:3 27:11 38:4
reflected 17:20	requirement 36:23 37:3 38:2 43:2,24	review 23:3,17 25:10 31:3 35:17	schedule 7:18 29:20 30:20 48:7	showed 47:18
regulations 9:14 21:2,19 28:11,13	requirements 39:22 40:20	reviewed 43:9	school 7:5,9 9:19 26:21	showing 32:24 40:24 41:2, 21
related 22:11	resident 31:23,25	revise 9:2	screen 47:18	shown 41:4
relief 32:11,12	residential 20:2 22:24 23:13 26:8,9,11,23 29:12 30:4 44:24	revised 27:21	sea 8:2 16:20 17:1 28:4 36:15	shows 36:3,8
remain 22:19	residents 14:22,25 20:16 30:13,22	revision 33:25	seamless 46:23	shrubs 43:24
remains 19:15 20:8,21	resolution 16:4 27:22,23,24 41:17	rezoned 8:22	season 47:8	sic 34:15
remember 14:14	resolve 19:2	rezoning 5:18	section 19:10 21:4,6 23:23 27:16 39:24 40:10	side 7:2 45:13
rendering 41:3,11,14,21	resources 21:22	Rivera 4:2,3,16,21 6:1,9, 16,22 11:5,8 12:3, 14,21,23 14:3,12, 17 15:11,19,23 16:3 17:11,18 18:1 19:1,8 22:22 23:5, 8,12,18,20 25:18 28:16,20 29:1,15 31:11,15 35:11 36:1,5,10,17,22 37:14,23 38:14,23 39:1,8,14 42:12,21 43:1,12,14,17 45:5,15 46:9,14,21 47:9,11,17,22	seeking 37:2,4,7,10,11 38:1	signage 9:14
renderings 35:1,6	respect 16:5		self-storage 7:24 8:1 10:3,5,23 11:3,6,15 12:1 13:3 14:19,23,24 15:4 17:13,15,25 18:6 20:4 22:3 40:18 41:7	similar 14:7 20:10 44:12
repair 26:15	response 39:13		senior 23:23	simply 39:21
replanted 18:19	rest 28:21 33:6		sensitive 21:22	single 34:24 40:16
report 8:15,19 13:3,11 24:7,8 25:20 40:25 41:10	restoration 27:5 44:3,6	RM-2 7:12 30:4	separate 47:25	site 7:2,6,11 8:7,11,22 9:3 22:23 23:9,10 33:17,20 41:20 43:9 44:23,24
representative 7:1 14:9 15:15 18:4	restriction 34:12 37:22	Road 7:3 13:21 15:7 46:22	serve 13:22 14:20,22,25 20:16 30:12	situation 44:15 46:20
representing 6:4	restrictions 30:1 32:9	roadway 18:14 19:15	served 21:24	size 40:12
request 4:24 5:1,18 6:7 7:16 8:13,18 10:14 11:1,18 16:21 18:13,17 19:9,12 20:24 21:8,9,13, 21,23 22:12 27:17 39:20 43:3	restrictive 37:6,15,17	roof 29:8 36:25	service 15:6 25:5 26:15 27:13	sketch 36:2
requested 20:9 21:5,11 22:14 40:18 43:7	result 11:18 20:24	running 26:3	services 18:6 21:25 30:17	slash 18:22 24:23
requesting 10:4 16:17 17:5 37:2 39:21 42:22	results 11:23 21:14,23		set 33:5	slide 40:24
	retail 7:20,21 8:9 9:12, 25 10:8,11,12,15, 17,24 11:2,14,24 12:5,8,12 13:7,24 14:1 20:4 24:19 25:11,24 26:12,14 27:12 30:17,20	<hr/> S <hr/>		slides 47:15,24
		safeguards 22:10		slightly 28:22
		safety 32:13		small 34:19 35:2

solely 11:6 Someone's 33:6 sound 32:3 38:19,20 sounds 37:9 south 7:8 10:12,18 45:14 space 14:1,6,10,15 17:21 speak 4:10 39:12 48:9 speaker 31:24 Speaking 27:21 species 18:18,24 24:25 44:12 specific 22:7 38:1 specifically 12:6 split 10:24 spoke 48:8 square 7:22,23 8:24 9:3, 12 10:1,2,10,11, 13,16,17,19,20,22, 23 11:1,2,4,6,10, 14,15 13:5,10 14:1,4,8,15 15:16, 18 18:11,12 24:2, 15,16,19 33:16 34:2,16,19 35:3,4 38:12 39:24 40:3, 6,11,21 Stacy 6:3 13:1 15:14 39:18 45:10 staff 5:2,14 8:15,19 13:2,11 17:8 19:2 23:21 24:6,7,8,12 25:4,5,16,19,20 30:6,15,25 31:6,13 35:19,22 39:16	40:25 41:10 43:15 staff's 36:23 standard 40:17 standards 29:7 34:14 starts 36:15 state 27:2 33:14 stated 25:22 32:6 states 28:1 32:11 34:22 station 7:19 10:7 12:6 15:17 22:3 26:16 38:4 status 22:23 stay 48:13 stop 26:20 storage 8:12 29:20 34:6 38:7 41:23 42:13 store 9:17,18 10:6 14:21 40:20 stories 17:25 street 7:15 34:9 42:14 44:10 strip 26:23 strong 33:3,10 strongly 35:6 structure 36:24 41:25 study 15:1 38:18 subdivide 9:9 subject 22:8	submitted 38:10 substantial 16:8 substantially 13:25 29:23 substation 13:23 27:11,12 30:16 sufficient 15:6 21:12 22:9 supplemental 47:24 support 4:25 21:12 27:13 30:21 supportive 43:2 supposed 34:12 38:9 surrounding 7:7 21:10 26:1 30:7,21 surveying 47:4 survivability 45:2 survive 24:23 46:10,15 surviving 45:23 swear 4:12 Swisher-hicks 4:20 31:19,21,22 35:14 36:2,6,11,21 37:13,22 38:3,15, 24 39:5 <hr/> T <hr/> tacked 41:24 talked 38:25 talking 12:5 28:23 talks 40:5 taller 28:23	tallest 29:10 Ted 6:24 11:17 12:4, 10,18,24 tenant 14:15,16 terms 13:4 46:23 testified 14:20 testimony 4:9,12 8:20 42:23 theme 41:19 thing 31:2 34:20 45:1 things 24:5 26:4 33:19 38:20 42:3 thought 41:9 thousand 14:15 thrives 18:25 tidal 27:5 tidally 27:6 44:15 45:17 tied 11:6 17:12 time 5:8,11 9:4 23:16 25:10 32:23,24 35:12 37:16 38:22 40:2 times 42:3 timing 19:23 TIS 20:23 today 4:17 5:17 6:24 8:20 11:22 34:1 35:12 39:2,9 48:3, 9,12 today's 4:4	told 33:24 tolerant 44:21 tolerate 44:1 ton 28:23 top 11:4 total 11:1 touch 16:5 24:5 26:4 town 26:18,19 TR 6:24 12:24 tract 7:20 8:9,10 9:10 10:8,11,12,17 16:10 20:4 27:12 30:17 38:4,12 traffic 11:17,19 13:9,25 15:1 20:18,24 21:23 25:9,10,25 38:5,16,18 43:6 transportation 6:25 12:25 13:12, 13 21:17 traveling 46:22 trees 18:16 43:20,21,24 Treesh 6:24 12:24 14:5, 13,18 15:13 trip 13:4 trips 11:19,20 13:2,6 15:2,7 20:20 30:14 truth 4:13 tucked 8:13 20:5 40:19 turn 12:18 13:20 44:1 two-family 7:14
--	--	--	---	--

type 14:7 23:1		
typical 14:14,16		
Typically 14:10		
U		
underline 15:24		
underneath 32:16		
understand 15:25 35:7 37:23		
understanding 12:11 29:5 33:17		
understood 16:11 36:12 37:9		
untouched 46:16		
update 8:3 18:10		
updated 9:5,6 16:14		
urban 7:6,7 8:6 19:13,21 21:25 26:5 27:12		
utility 11:23 21:24		
utilize 15:4		
V		
variance 34:17,23 40:13,15		
variety 22:5		
vehicular 20:20 30:14		
view 41:23		
violation 19:3 44:17		
visit 22:23		
visitors 20:17 30:13		
	W	Z
	walking 45:19	Z-13 38:11
	wanted 17:7 25:8 28:12 33:12 37:25 42:8 45:25 46:1 47:12	Z-13-007 33:15 37:13
	warehouse 7:20 25:12,23 26:11 27:10,17,18, 24 28:14 29:22 30:15	Z-21-015 9:17
	water 44:2 45:21	zone 46:8
	ways 24:2	zoned 30:2
	welfare 32:13	zoning 6:6 7:11,12,13,15 8:21 13:14 14:20 19:5,11 23:14,15, 23 24:8 27:22,23 30:8,19 31:7 41:17 44:5,9,18
	west 7:8,9,13 26:19 30:4	
	wetland 9:6 32:23 44:15	
	wetlands 7:10 32:25 36:4	
	whichever 8:3 16:20 28:4	
	wildlife 27:7	
	witnesses 4:25	
	word 17:21 32:3	
	work 26:19 44:14 47:4,6	
	worked 19:2	
	Workman 23:22,23 25:21 28:19,25 29:4,16 43:16,18 45:8,12, 16 46:13,17 47:2, 10	
	writing 24:7	
	written 32:6	
	wrote 32:3	