

LEE COUNTY, FLORIDA
DEPARTMENT OF COMMUNITY DEVELOPMENT
ZONING SECTION

IN RE: Bayshore Pines RPD

CASE NO. DC12022-00048

TYPE OF CASE: Planned Development

TRANSCRIPT OF PROCEEDINGS

Before DONNA MARIE COLLINS, Hearing Examiner, at
a hearing held in the above-entitled matter at
the Lee County Hearing Examiner's Office,
Fort Myers, Florida, on May 5, 2023.

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APPEARANCES:

For the Applicant:

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By: Neale Montgomery, Esquire

For the Staff: Chahram Badamtchian, Senior Planner

Also present:

Tim Keene, Keene Engineering
Alexis Crespo, AICP, RVi
Ted Treesh, TR Transportation Consultants
Church Roberts, environmental consultant

Members of the public:

Sydney Adams
Michele Latorre
Linda Jarrell
Barbara Deboer
Pam Griffin
Shawna Cane

- - - - -

1 (Thereupon, commencing at 9:06 a.m. the
2 following proceedings were had:)

3 THE HEARING EXAMINER: Good morning. My name
4 is Donna Marie Collins. I'm the hearing examiner
5 that will be presiding over today's hearing. This
6 is a continued hearing. We finished the hearing
7 last time we met in the middle of public input; so
8 we are going to resume with public input. Because
9 there's been quite some time since we last
10 convened, I would like to administer the oath to
11 everyone once again, and remind everyone that we
12 anticipate that you will tell the truth when you
13 come up to the podium.

14 Please raise your right hand.

15 Do you swear or affirm the testimony and
16 evidence you enter into the record will be the
17 truth?

18 MEMBERS OF THE PUBLIC: Yes.

19 THE HEARING EXAMINER: Okay. Allow me to say
20 that, if you have already spoken, you will not be
21 given another opportunity to speak. I'm going to
22 resume with the sheets from last time of the people
23 who did not get a chance to speak. I will reread
24 off the names, and when I go through all of these,
25 then I'll turn to the new sheets that have been

1 submitted today. If you have already submitted a
2 sheet because you were here last time, it's not
3 necessary for you to fill out another sheet; so I
4 don't know whether we'll encounter duplicates here,
5 but if we do, we're just going to put them to the
6 side.

7 Okay. Is there anything else that needs to be
8 said before we resume?

9 MS. MONTGOMERY: I don't think so.

10 THE HEARING EXAMINER: Okay. Very good.

11 David Van Laningham.

12 Carlene Van Laningham.

13 Sheryl Hampton.

14 Alcina Galego.

15 Debbie Hardin.

16 Ralph Hardin.

17 Lee Pence.

18 Oh, boy. Bernadine Welikovich.

19 Willa Reams.

20 MS. REAMS: I'm not speaking.

21 THE HEARING EXAMINER: Okay. Sidney Adams.

22 DR. ADAMS: Present.

23 THE HEARING EXAMINER: Okay. Would you like
24 to put comments on the record, sir?

25 DR. ADAMS: Yes, ma'am.

1 THE HEARING EXAMINER: Then I'm going to ask
2 you to please come to the podium. This is Sidney
3 Adams.

4 DR. ADAMS: Good morning, Madam Chairperson,
5 and other members of your board. I'm here to
6 express some concerns that we have with this
7 proposed development. I'm Dr. Sidney Adams. I
8 reside at 206 Carriage Lane in Carriage Village in
9 North Fort Myers.

10 Some of our concerns are the proposed Florida
11 Department of Transportation's changes that they're
12 making to Bayshore Drive. They're eliminating the
13 left turn -- or center left/right-turn lane, and
14 they're only making a left-turn lane at the traffic
15 light; so that would make our residents have to go
16 clear to the -- up to the traffic light to make a
17 left turn and make a U-turn and come back down. If
18 they want to come home, they would have to, you
19 know -- they would be able to come in the regular
20 way.

21 Our concerns are the traffic that this is
22 going to cause, not only, you know, from the change
23 in the road, but the change in the population of
24 the area, and that this is going to increase the
25 flow of traffic. I don't remember now exactly how

1 many units there was going to be there, but
2 everybody, I understand, has two parking spaces,
3 and in today's lifestyle, we spend most of our time
4 working and most the time it takes two people to
5 survive comfortably; so this is going to increase
6 that a lot.

7 So when buses or trucks -- or buses are --
8 school buses come and stop, you know, that's going
9 to back traffic up to both directions clear up to
10 Old Bridge Drive. You can come by there at any
11 time at 5:00 in the evening, and you will see
12 exactly what I mean.

13 And then if you eliminate that left-turn lane,
14 that's going to put all those left-turn laners over
15 into that normal flow of traffic and that sort of
16 thing.

17 The entrance to this, as we saw, is going to
18 create problems for, like, a ladder truck, fire
19 ladder truck getting in, because, if you're going
20 to have a four-story building, you're going to have
21 to have a ladder truck able to get into the
22 driveway -- or get into the entrance and out.

23 There's additional garbage pickup, the
24 recycling pickup, the --

25 The program you showed for the trees to block

1 the view, that's fine if you're standing right next
2 to the building, but if you get 150 yards away --
3 and you don't even have to get that far -- you'll
4 be looking right down into some of our residents'
5 yards or their units and eliminating a certain
6 amount of their privacy and that sort of thing; so
7 that's another high interest of -- or concern that
8 we have for --

9 There's no barrier or no wall being planned
10 that would keep, you know -- help reduce the sound
11 and that sort of stuff. There's no amenities
12 planned for this building, you know, so -- and
13 they're bound to have children, and they're going
14 to look over there and say, "Oh, they have a pool
15 over there, and we'll sneak over there tonight and
16 go swimming," and that sort of thing. There's not
17 going to be any barrier that's going to keep them
18 from just going right across the properties into --

19 So there's going to be high theft -- possible
20 high theft and crime committed in that area. We
21 already have enough problems with that without the
22 addition of this building and that there.

23 So I thank you for your time.

24 THE HEARING EXAMINER: Thank you for coming,
25 sir.

1 Ron Davis.

2 Coleen Arnold and Steven Arnold.

3 Kevin Bostic, Jr.

4 Michele Latorre.

5 Good morning.

6 MS. LATORRE: Good morning.

7 My name is Michelle Latorre. I'm at 158
8 Santa Fe Trail, and our unit backs directly up to
9 the northwest end of this property. I have a flash
10 drive of an accumulation of photographs; so when I
11 get to this area of the gopher tortoises, I believe
12 that our neighbor already took some pictures, but
13 there has been additional photographs, and I put it
14 on flash drive. I don't know if that's -- if you
15 can look at that or not.

16 THE HEARING EXAMINER: We -- just for safety
17 reasons in terms of potential viruses and stuff,
18 we -- no offense intended, don't take flash drives.

19 MS. LATORRE: Okay. We can provide that
20 somehow if you give us the opportunity to send
21 those.

22 THE HEARING EXAMINER: Okay.

23 MS. LATORRE: Maybe email or something.

24 He touched on some of the issues that we are
25 concerned about. I think, again, the lack of

1 barrier, fencing. We've had several units,
2 obviously, half of the community is full time, and
3 the other half are snowbirds, and I know at some
4 point there have been break-ins of some of these
5 homes that are -- the people have left up north,
6 and there have been squatters inside these -- or
7 our neighbors.

8 The foot traffic is a problem as well. We
9 already have that, and so our biggest issue, again,
10 is we've had robberies of golf carts, et cetera; so
11 we'd love to see at least, like, a block wall of
12 some sort put up, at least surrounding or where the
13 property is adjacent to CVLA.

14 Again, the height of the units are really not
15 compatible to the area. We took a drive and looked
16 around. There are no other buildings within a
17 two-and-a-half-mile perimeter of us with buildings
18 of this height. Privacy, with, again, people
19 standing on a third or fourth balcony, looking over
20 is -- with the brush and some trees that are only
21 going to be 10 or 15 feet, would not obscure enough
22 of that, especially at that height.

23 If they could possibly keep more of the
24 natural habitat and some of the taller trees, that
25 would help provide more privacy, or if they keep

1 the current zoning, which would keep the height of
2 the units at two stories and would be beneficial
3 for a lot of these problems, especially for the
4 traffic out on Bayshore.

5 We -- there's the medians that will be going
6 in from Hart Road to Evalena that, from what we
7 understand from the FDOT meeting, they're going to
8 begin that sometime at the end of this year.
9 They'd like to complete that by fall of 2024, and
10 the traffic models were from 2015 to 2019, and they
11 do not reflect the growth in the area since then.

12 They've got the Del Webb Oak Creek, which they
13 have -- it's a 55-plus community, 821 homes that
14 will be built, which is four miles east of us,
15 Spring at Coral Shores is another multi-family
16 development. That's four miles west of us. They
17 have 319 units. And another mile and a half
18 further west is another multi-family development of
19 189 units called The Strand at Judd Creek.

20 I'm not quite sure where all this traffic is
21 going to go to because FDOT from my understanding
22 does not have any works in their plans to widen
23 Bayshore; so it's just going to -- everything is
24 just going to bottleneck and just back up further.
25 He touched on the emergency vehicles. That is true

1 if you've got a four-story building. How are they
2 going to get the ladder trucks in? I know that was
3 addressed, and I don't know if they have something
4 new -- new information for us, but that would be
5 good to know about.

6 We did take those pictures, the pictures that
7 I have, our collection from February 12th to
8 present, and what -- our biggest concern is that
9 they wouldn't be properly counted, the tortoises
10 and their burrows. And then once excavation
11 begins, due to the lack of the proper count,
12 they'll just be bulldozed over.

13 What we'd like to see is the developer have
14 the Florida Fish & Wildlife Conservation Commission
15 accurately assess the population and provide proof
16 that they've hired a licensed authority for
17 appropriate resettling per Florida state law.

18 The adding of a play area for the kids is --
19 you know, something else we asked about. I don't
20 know if they've got something new to talk about
21 today.

22 And then the school buses, are they going --
23 are the kids going to be picked up within the
24 community or the area that they're living in, or
25 are they going to have to go out to Bayshore and be

1 picked up out there? And what are their plans for
2 traffic backed up for that?

3 Other than that, if we could get the pictures
4 to you at a later date, let me know how to do that.

5 THE HEARING EXAMINER: I may leave the written
6 record open for a few days, depending, and then I
7 have to ask that you provide copies or will provide
8 copies, but I'm assuming they're pictures similar
9 to this, showing gopher tortoises.

10 MS. LATORRE: Correct.

11 MS. MONTGOMERY: So these are pictures from
12 when you trespassed on the subject property?

13 MS. LATORRE: This is from prior to that.

14 MS. MONTGOMERY: Are they pictures on the
15 subject property?

16 MS. LATORRE: They are on the subject
17 property. There were no signs saying there was no
18 trespassing at the time.

19 THE HEARING EXAMINER: Okay. You know, can we
20 keep moving? Do you have anything else to say?

21 MS. LATORRE: No.

22 THE HEARING EXAMINER: Okay. Thank you very
23 much, Michele.

24 Gary Griffin.

25 Ben Foster.

1 Ken Eaton.

2 Ivan Lam.

3 MR LAM: Here. I have no comment at this
4 time.

5 THE HEARING EXAMINER: Okay. Thank you.

6 Alyce Lachman.

7 MS. LACHMAN: I'm not talking today.

8 THE HEARING EXAMINER: Kathleen Caughey.

9 Greg Foy. Did I call him already?

10 Rhonda White.

11 Carol Robinson.

12 Denise Sexton.

13 MS. SEXTON: Pass.

14 THE HEARING EXAMINER: Linda Jarrell, would
15 you like to speak?

16 MS. JARRELL: Yeah.

17 THE HEARING EXAMINER: Okay. Please come to
18 the podium. Thank you.

19 MS. JARRELL: My name is Linda Jarrell. I
20 live at 106 Carriage Lane at Carriage Village. I
21 live right on Bayshore Road. There's a bunch of
22 houses that are on that little strip of land that
23 they say they're going to take part of the
24 shrubbery out and they're going to put new trees
25 and shrubs in. Well, it's going to take a while

1 for them to grow, and if they take out what's there
2 now, people will be able to walk right through our
3 yards; and if they see our pool, they're going to
4 go in.

5 We do have wristbands and that that have to be
6 worn, but people have been sneaking in, and I think
7 that's going to -- plus, when they talked about the
8 crime, they could easily have access to come into
9 our -- our park. I don't know what the cost of the
10 trees and the shrubs compared to a wall, and --
11 because in our village, we're not allowed to have
12 anything over four-foot. It's four feet. Yeah, if
13 you have a six-foot or taller fence, you can't have
14 it.

15 And then if we -- if they do what they do, all
16 those people on that side are going to have a cost
17 of putting fences in, but they'd only be four-foot,
18 which people could easily go over, and my concern
19 is the privacy, of course. I'm used to the noise.
20 I'm used to the noise of this traffic, but the
21 shrubbery in there that's now is just wild, is
22 really helping with that, but if they take that
23 away, you know, we're going to have -- we're going
24 to be hearing all those cars and trucks and
25 everything else, you know, going by. That is my

1 concern.

2 I also do have a concern about the turtles.
3 Some people have them in our backyards already; so
4 which means -- it's a large group, and if they are
5 only going to be moving a portion of them, then
6 what happens to the other ones because they stated
7 at the last meeting something about 15 of them, and
8 it does cost a lot of money, but we know that
9 there's probably more than 15 of them in there.

10 I have not been on the property. Well, I was
11 on the property once because my dog was lost, and I
12 know that the -- how can I say this? The people
13 that don't have homes, they had tents and
14 everything back there, and I went back to see if
15 they might have had my dog; so I was on the
16 property, you know, but that was my reason, okay.

17 I thank you very much for hearing me, and
18 that's my concerns.

19 THE HEARING EXAMINER: Thank you very much.

20 Bev Foster.

21 Susan Fritsch.

22 Mike and Benadine Welkovich.

23 MEMBER OF THE PUBLIC: They left, went home.

24 THE HEARING EXAMINER: Okay. This just says
25 Barbara.

1 MS. DEBOER: I didn't put my last name on
2 there?

3 THE HEARING EXAMINER: No. If you can spell
4 it for us. Barbara, we're friends now.

5 MEMBER OF THE PUBLIC: We call her Barbie.

6 MS. DEBOER: Well, everybody calls me Barbie
7 also.

8 THE HEARING EXAMINER: Can you spell your last
9 name, please.

10 MS. DEBOER: It's D-e-b-o-e-r, and I reside at
11 154 Santa Fe Trail. I started to put Barbie, and I
12 thought that's kind of too personal, but that's how
13 everybody knows me.

14 I'm short and sweet here. I can actually see
15 the turtles from my property as they cross my
16 property, and they also burrow in my property, in
17 my yard, which I don't like that very well, but
18 what can you do about it, right? I try to
19 encourage them by, you know, leave, go where -- you
20 know, back in that land, but sometimes they don't
21 behave; so kind of like my dog.

22 Anyhow, I beg of you to please think about all
23 these situations on this rezoning because it really
24 is a dangerous thing, and it's very dangerous for
25 all the people that's coming and all the people

1 that live there.

2 And also, it's such a small area there. We
3 have, like, 400 people in our park, and I
4 understand there's going to be 400 people in the --
5 that's coming; so for that many people in such a
6 small area. I just want you to think about how
7 dangerous that can be in that small area.

8 Again, I want to touch on the children that
9 will have no place to play, and, you know, that
10 it's more than likely they will infringe on our
11 facilities, and that's it.

12 THE HEARING EXAMINER: Thank you very much.

13 MS. DEBOER: Thank you.

14 THE HEARING EXAMINER: Pam Griffin.

15 That's the last speaker I have.

16 MS. GRIFFIN: Hi, my name's Pam Griffin. I
17 live at 160 Santa Fe Trail. I butt right up
18 against the land that's in this proposal, and all
19 that I want to say is, we moved to Florida for the
20 sunshine and warm weather. We picked a location
21 where all the homes and businesses are one story.
22 You know, everything's one story high. Now, a
23 group wants to put up four apartments, buildings,
24 four-story high. They're 30 to 150 feet from our
25 backyards.

1 If we actually put this in perspective, an
2 Olympic-sized pool, the length of it is 164 feet.
3 Now, if we go the 30 feet, the pickup trucks with
4 extended cabs on our roads, they are 24 feet. This
5 is very close. We have our property over there
6 that now we could be having our morning and
7 midmorning sunshine blocked from four stories, the
8 noise in our back yards. I would honestly think
9 that they should be, you know, put in a big enough
10 area for their surroundings. I mean, place them
11 with other three or four-story buildings in a
12 location that isn't built up. They don't even want
13 to put a fence around. Again, we're talking
14 30 feet to 150 feet.

15 I want to say about the gopher tortoises
16 though, we had a turtle biologist at our home
17 because of one of your turtles on that property
18 came on over to our yard and decided to take up
19 residence underneath my house. Okay. This turtle
20 biologist, naturally, you have to have permits.
21 You have to have all this, and was taken out from
22 underneath our house. Okay. They could not take
23 that turtle and relocate that turtle at any other
24 area. They decided to keep it right in this area
25 because of all the tortoises that live in that

1 9.3 acres behind the house, and all that I got to
2 say is that we do not have to trespass on your
3 property. These turtles come into our yard on a
4 regular basis. In the morning I can have three to
5 five turtles out there every day. They cross our
6 roads, they go out, they come right back.

7 Now, I was told it's from the smell of their
8 urine where they know where to go, but all that I'm
9 saying is that I really feel as if these apartments
10 should be sized towards the area, not towards a
11 living area. Keep it within the prospects of the
12 whole area in general, and I thank you for your
13 time.

14 THE HEARING EXAMINER: Thank you very much.
15 That was the last speaker.

16 Is there anyone else in the audience that did
17 not fill out a card that would like to speak?

18 MS. CANE: I had to leave last time, and I had
19 one filled out; so that should have been in the
20 pile from the previous ones.

21 THE HEARING EXAMINER: And I didn't call your
22 name?

23 MS. CANE: No, Shawna Cane.

24 THE HEARING EXAMINER: Come on up.

25 MS. CANE: Should I give you this one?

1 THE HEARING EXAMINER: And I apologize for
2 that.

3 MS. CANE: Sure.

4 THE HEARING EXAMINER: I thought we went
5 through. There's a lot of papers.

6 MS. CANE: I saw that.

7 THE HEARING EXAMINER: Welcome. Good morning.

8 MS. CANE: Thank you. I really appreciate the
9 chance to speak. My name is Shawna Cane, and I
10 live at 210 Carriage Lane. My property backs up to
11 the middle of this project. I will try not to
12 speak on the things that other people have already
13 brought up. I moved into Carriage Village four
14 years ago, and I ended up paying \$5,000 over the
15 asking price so I could have that backyard. Now
16 I'm not going to have that backyard.

17 That height -- that site line that they showed
18 I don't think is accurate. I'm going to have
19 people staring into my home, into my windows. You
20 know, when I moved in, there was homeless people
21 living on that property, and they said they get to
22 live there until the owner puts up a no
23 trespassing, and they didn't put the no
24 trespassing.

25 I had -- you know, they said, "Please watch my

1 house when I leave for the summer -- or the
2 winter -- come summer, because we don't want them
3 taking my water, using my water, turning the water
4 on." I found that terrifying to know that people
5 may be coming into my backyard. Eventually the
6 owner did put a no trespassing, and we hadn't had
7 for a while any homeless people living there.
8 Apparently, they're back.

9 Also, what I heard, when I first moved in, is
10 that there was a possibility of a strip mall.
11 Okay. What happened to the strip mall? Now you
12 want to put a four-story building with 400
13 sometimes two, 800 -- is it, 400 units with
14 possibly two people. That's 800 more people.

15 About two years ago, one of our full-time
16 residents was killed coming in on his bike into our
17 property, which started our process of reopening
18 our back gate because we were having so much
19 trouble getting out and especially coming in.

20 Coming east -- or coming -- yeah, coming east
21 to take a left turn into Carriage Village, if FDOT
22 takes away that turn lane, that's all of us going
23 down to make a U-turn. How are these emergency
24 vehicles going to get in here? You know, we have a
25 55-plus neighborhood. We have ambulances and fire

1 trucks in there weekly --

2 MEMBERS OF THE PUBLIC: Daily.

3 MS. CANE: We spent two years getting our gate
4 opened at a cost of \$35,000 to get that back gate
5 opened so that we can get out safely. That -- that
6 new development, they have no option to open a
7 gate. They're going to have one entrance.

8 Yesterday I was coming home, I was taking a
9 left turn, I had to wait for a whole traffic light
10 because, after the traffic light, we've got right
11 turners on -- coming off of Hart; so I waited for a
12 whole cycle, which, by the way, it was, like,
13 trucks, mostly trucks that have to slow -- or, you
14 know, it takes a while to get their speed up; so
15 this is already a problem getting in.

16 Someone spoke of three large properties that
17 are coming in. This week on the news, there's
18 another one, another mobile home park that's going
19 to go up in North Fort Myers; so that's four that
20 are already approved. The traffic numbers are
21 really understated. I just don't see how it can
22 hold any more traffic there.

23 I'm very concerned about the trucks. There
24 are so many trucks coming west in the morning and
25 going east in the afternoon; so I just feel this is

1 an inappropriate plan.

2 I want to know what happened to the strip
3 mall. That space is too small. There are many
4 costs for the developer that are very expensive.
5 To squeeze this huge development into a little
6 sliver of land. I have turtles, as they spoke
7 about, in my yard every single day, and somebody is
8 marking the turtles, and I have seen "2" on the
9 back of a turtle. I've seen up to "18" on a
10 turtle. Just this week two of our residents
11 brought baby turtles to let loose in my property to
12 go into that area. So it's very understated how
13 many turtles there are there.

14 When I first moved in four years ago, only
15 23 percent of our residents were full time. We are
16 up to 44 percent; so it just keeps growing.

17 I don't want to cover all the other things
18 that people have already spoken about, but I don't
19 remember hearing about what their evacuation plan
20 was going to be, and also if someone could touch
21 on -- maybe you did -- but is this going to be
22 built hurricane construction? And I thank you for
23 your time.

24 THE HEARING EXAMINER: Thank you very much for
25 coming. Is there anyone else present that has not

1 spoken that would like an opportunity to speak?

2 Public input is now closed, and we're back to
3 the parties. There were a number of issues raised
4 by the public, requests for clarification; so I
5 encourage you to incorporate that into your
6 presentation. I also asked for some additional
7 information on a few items; so I'm going to let the
8 parties decide who's going to speak first, and what
9 they're going to say, and I'm hear to listen.

10 MS. MONTGOMERY: Ron, did you want to go
11 first?

12 THE HEARING EXAMINER: If there's a new
13 PowerPoint, I'd like a copy so I can enter it into
14 the record.

15 MS. MONTGOMERY: First witness will be
16 Mr. Keene. He's got a copy -- he's got a big copy;
17 so you go do more writing.

18 THE HEARING EXAMINER: This will be applicant
19 Exhibit 7. This is your second PowerPoint; right?

20 MS. MONTGOMERY: Yes.

21 MR. KEENE: Excuse me. I've got a few things
22 to give you.

23 THE HEARING EXAMINER: Okay. Take your time.

24 MR. KEENE: Okay. So here's a large side of
25 the slides.

1 THE HEARING EXAMINER: Thank you.

2 MR. KEENE: Do you need a copy?

3 THE HEARING EXAMINER: This is the revised?

4 MR. KEENE: This is the revised master concept
5 plan, and here's 24 by 36 if you have trouble
6 seeing that. This is the same thing.

7 THE HEARING EXAMINER: So this will be -- this
8 is the revised master concept plan?

9 MR. KEENE: Correct, and we previously
10 provided a copy to staff.

11 THE HEARING EXAMINER: And the date on this
12 is?

13 MR. KEENE: 4-28-23.

14 THE HEARING EXAMINER: And this is an enlarged
15 copy?

16 MR. KEENE: Correct.

17 THE HEARING EXAMINER: Okay. So the revised
18 master concept plan will be Exhibit 8, and the
19 enlarged copy will be Exhibit 9. Thank you for the
20 enlarged copy, 4-28-23. Okay.

21 (Exhibit 8 marked for identification.)

22 (Exhibit 9 marked for identification.)

23 MR. KEENE: Here is the same master concept
24 plan.

25 THE HEARING EXAMINER: Superimposed?

1 MR. KEENE: Superimposed on an aerial.

2 THE HEARING EXAMINER: Exhibit 9, MCP over
3 aerial.

4 MR. KEENE: I'm sorry. I didn't bring an
5 enlarged copy of that. I can get you an enlarged
6 copy of that if you'd like.

7 THE HEARING EXAMINER: This is fine.

8 MS. MONTGOMERY: Would you restate your name
9 for the record?

10 MR. KEENE: For the record, Tim Keene, Keene
11 Development. I'm the civil engineer for the
12 project. I prepared the site plans. I'm a
13 professional engineer here in Lee County, and I
14 have been sworn as a -- I've been proffered as an
15 expert witness in this forum previously.

16 So we've heard a lot of the comments, and we
17 primarily went back and looked at our master
18 concept plan, and tried to -- you know, we tried to
19 address a lot of the comments that were made in the
20 prior hearing, and I think some of them addressed
21 some of the comments that were made this morning.

22 The main thing that we did is we've added an
23 amenity area. It's in the middle of the project
24 right here. On our prior -- right here in the
25 middle of the project right there. On our prior

1 project, this east building only had 36 units in
2 it; so we -- but it was still four stories, so we
3 moved some of the units between these two buildings
4 so that we could put that amenity area right --
5 right in the center. We felt it was an important
6 location to place it there since it was central to
7 all the -- all the units in the project, and it
8 would also be buffered by the buildings from the
9 surrounding property.

10 The other thing that we did is we -- I
11 restudied this entrance. I restudied the entrance,
12 and we were able to adjust the entrance in a couple
13 of ways. One of -- and it really has to do -- and
14 this is a little -- this is going to be a little
15 affected about when the -- you know, when the
16 median project might happen. It's scheduled for a
17 certain time. Will this -- if this project is
18 approved, will it be built before then, will it be
19 built after that -- the median project; so
20 there's -- the two things kind of interrelate, and
21 it has to do with the alignment with the street
22 across -- with the street across Bayshore Road.

23 So I doubled -- I double -- in the current
24 configuration, without the FDOT median project, I
25 restudied the alignment. I was able to shift our

1 entrance a little west to increase the buffer
2 between our entrance and this adjoining home right
3 here. So we've gone from -- I think 8 feet was our
4 last request, and now we're at 12 feet at the pinch
5 point. And I have a revised schedule of
6 deviations.

7 THE HEARING EXAMINER: This will be
8 Exhibit 10. This has been shared with County
9 staff?

10 MR. KEENE: Yes.

11 (Exhibit 10 marked for identification.)

12 THE HEARING EXAMINER: Okay. So explain to me
13 what's changed.

14 MR. KEENE: The only thing that's changed, as
15 far as the scheduled deviations, is the Deviation
16 Number 2, which deals with this -- with this
17 dimension between the wall and that common corner,
18 and it's just -- it's sort of a triangular problem.
19 We just have one small area that kind of pinches
20 right there; so that normally in this situation,
21 that wall would have to be 25 feet from that point,
22 but because we have to align the driveways without
23 the FDOT median, we have a little bit of a -- of a
24 problem right there.

25 If the median is not -- if the median is

1 constructed when we come in, then this driveway can
2 be moved a little further west, and we can meet the
3 code requirement of 25 feet.

4 So today we have to align because of -- and it
5 has to do with safety for the left turn out. So
6 you got someone coming out here making a left and
7 someone coming out of the opposite street making a
8 left.

9 THE HEARING EXAMINER: Don't misunderstand.
10 I'm not trying to redesign your project. I just
11 have a question.

12 MR. KEENE: Yup.

13 THE HEARING EXAMINER: In terms of your
14 election to put the access point at this location
15 versus aligned with Washington Drive.

16 MR. KEENE: Okay. So on my plan I've got two
17 dimensions. I got a dimension here, and I got a
18 dimension here, and I'll speak about the FDOT
19 spacing requirement, but this is the only location
20 that currently meets FDOT's spacing requirements.

21 THE HEARING EXAMINER: Because of the access
22 further to the west?

23 MR. KEENE: Because of this driveway, and then
24 Carriage Lane, the entrance to Carriage Lane, there
25 are minimum separation requirements. If we align

1 with the other street, then we have a separation
2 requirement with Shirley, I think is the name of
3 the street.

4 So we did study that. You know, there's a bus
5 stop there, but the bus stop can easily be
6 relocated. That's not the issue.

7 So but we'll talk about -- we'll talk about --
8 I'll come -- I'll come to a point where we talk a
9 little more about the FDOT --

10 THE HEARING EXAMINER: Just so that I
11 understand. If the project is constructed prior to
12 the --

13 MR. KEENE: Median.

14 THE HEARING EXAMINER: -- median construction,
15 the entrance will align with the Lincoln Avenue?

16 MR. KEENE: Yeah.

17 THE HEARING EXAMINER: But if the median is
18 installed prior to commencement of construction,
19 the plan is to shift the access to the west?

20 MR. KEENE: Yeah, we can then shift it. We
21 don't need the deviation. This driveway will be
22 shifted, and we can meet the buffer requirement.

23 THE HEARING EXAMINER: And you'll meet the
24 separation?

25 MR. KEENE: And we can still meet the

1 separation requirements, yeah.

2 THE HEARING EXAMINER: Okay. So are you
3 proposing conditions to that effect or --

4 MR. KEENE: We didn't propose a condition, but
5 we are -- we're amenable to a condition. We don't
6 have any objection to that.

7 THE HEARING EXAMINER: Okay.

8 MR. KEENE: I guess I'm trying to say that we
9 really don't have a choice in this location at the
10 moment, and we've proffered a wall and some
11 increased landscaping right here to kind of
12 mitigate the problem.

13 THE HEARING EXAMINER: So refresh my memory.
14 Once the median barrier is installed, it's going to
15 run from --

16 MS. MONTGOMERY: If we wait a second, he has
17 graphing on that and you'll be able to see it.

18 MR. KEENE: That will very much help you
19 understand the median project.

20 All right. So we have the aerial overlaid --
21 I mean, the master concept plan overlaid on that
22 aerial. I'm going to bring -- let me see. I'll
23 jump forward. I'll jump forward on the median
24 question.

25 THE HEARING EXAMINER: Well, I'm not trying to

1 interrupt your flow. If you're going to get to it,
2 that's fine.

3 MR. KEENE: Yeah, it's important. Everybody
4 seemed to be very interested in that. So -- okay.
5 So this is the FDOT median project as it currently
6 stands. Right now -- and the project is just from
7 Hart Road to Evalena, I think, over here.
8 Lee County Co-op's office is right here. They have
9 their main office. It's a big building, and all
10 their storage yard and everything is right there.

11 So right now they're proposing to put a -- a
12 westbound directional left into Washington, and
13 then an eastbound directional left into Shirley.
14 Everything else will be concrete barrier except for
15 a little spot of grass right here.

16 This is pretty white. I'm not certain why
17 they have concrete barrier here. This is a full
18 lane right here.

19 The little blowup of -- the red arrow is
20 approximately where our entrance could come in.

21 Now, this is the FDOT driveway requirement.
22 This is out of their access management workbook; so
23 this is the -- this right here, we are posted --
24 we're a classified road. We're posted at 50 miles
25 an hour; so our driveway spacing is 440 feet.

1 That's why -- we couldn't align with Washington,
2 that's the problem is the 440 foot. If there's a
3 median, we can actually apply to have a directional
4 left into our project. So what that would
5 happen -- what that would look like is this
6 driveway, and we've already had -- and Ted Treesh
7 can speak to this if necessary because he spoke to
8 FDOT about this. If they move forward with this
9 project, it's going to be in this configuration,
10 but we can relocate this directional left to
11 Lincoln and put a corresponding directional left to
12 the north, and that -- and that directional left
13 doesn't have to be right up against Lincoln. You
14 know, this entrance -- in that situation where the
15 median is there, our entrance can move slightly
16 west, and we can put it wherever the directional
17 left functions best; so our entrance would be
18 entitled under the FDOT spacing requirements to an
19 eastbound directional left into the project. That
20 would eliminate our traffic from U-turning at Hart
21 Road. It would address a lot of the concerns.

22 I mean, we can't -- we can't solve -- we
23 cannot solve Carriage Village's problems with not
24 being able to get into their project. They do have
25 a solution that's available to them, but it costs

1 money. So -- and I don't know who would be
2 responsible for that. I don't think it's -- the
3 problem they have is unrelated to this project or
4 whatever happens on this project, of their traffic
5 trying to U-turn, getting back into the project.
6 It has to do with their entrance on Hart Road.

7 THE HEARING EXAMINER: Okay. Folks, if you
8 would like to speak, please step outside if you
9 need to discuss anything with your neighbor. I'm
10 trying to concentrate, and it's difficult when I
11 have a lot of background noise.

12 MR. KEENE: So this is the rear entrance that
13 they paid nicely to put in. Not an entrance, an
14 exit onto Hart Road. This gives them access to the
15 traffic light at Hart Road and Bayshore Road. This
16 is looking at it from an aerial view. The
17 problem -- the problem they have, and Ted spoke
18 with Lee County -- Ted Treesh with Lee County DOT
19 about this. The problem they have is, because Hart
20 Road is a collector road, if they were to have a
21 full entrance in there, they would have to
22 construct a turn lane on Hart Road; so that's a
23 pretty substantial expense, but they have the
24 ability at some cost to create a full second
25 entrance into their project.

1 THE HEARING EXAMINER: So you're saying that,
2 based on the traffic volumes that would use that as
3 an access, that would trigger a site-related
4 improvement in the form of a decel lane or accel
5 lane?

6 MR. KEENE: No, left-turn lane, a northbound
7 left-turn lane. It would be whatever the normal
8 distance is for left-turn lanes. You'd have to --
9 you'd have to widen the road.

10 THE HEARING EXAMINER: So people would leave
11 Conestoga Trail and head north?

12 MR. KEENE: No. No, not exiting. I'm sorry.
13 Not exiting. This is to get back into.

14 THE HEARING EXAMINER: I understand, okay.

15 MR. KEENE: Instead of turning at Bayshore and
16 Hart, they can turn onto Hart, make a left onto
17 Hart, come up to Conestoga, and make a left into
18 their -- into their --

19 THE HEARING EXAMINER: And what you're saying
20 is there would need to be a left-turn lane
21 approaching Conestoga.

22 MR. KEENE: Correct. A northbound left-turn
23 lane on Hart Road because it's a collector road.
24 We obviously haven't done traffic counts or
25 analyses or things like that, but we think that was

1 the concern. They have an LDO approved for this
2 exit, and I think that seemed to be the discussion
3 in the LDO is that, if they had this -- if this was
4 full access, they would have to have this left-turn
5 lane.

6 THE HEARING EXAMINER: But it could be an exit
7 only.

8 MR. KEENE: It is today. It is today.

9 MS. MONTGOMERY: Go back to the picture.

10 MR. KEENE: That's what they have today. They
11 are working proactively to help solve their problem
12 because the problem they have is trying to get out
13 of Carriage Lane to go east, making a left on
14 Bayshore is unsignalized; so they put in exits, and
15 so they can go to Hart Road to make a left onto
16 Bayshore. So they've -- they've done some
17 self-help. There's an additional solution that
18 would address a lot of their worries about the
19 median project, but it costs more money.

20 THE HEARING EXAMINER: Right. Because they
21 don't -- right. With this self-help, they still
22 don't have the option of a left into their project?

23 MR. KEENE: Correct. Unfortunately, their
24 driveway would not -- it wouldn't meet the FDOT
25 spacing requirement. We can solve -- we can help

1 not -- we can take action to not aggravate the
2 problem that's coming for them by putting in a
3 directional left-turn lane, and we meet the spacing
4 requirements for that.

5 THE HEARING EXAMINER: But it looked like the
6 FDOT's map already shows a directional left going
7 the other way.

8 MR. KEENE: Correct. And that can be moved
9 because -- because our directional left could meet
10 the spacing requirements, and this is the
11 discussion we're having with FDOT right now is
12 about shifting this here.

13 THE HEARING EXAMINER: Okay.

14 MR. KEENE: And I don't have a bigger picture
15 showing the neighborhood across the street, but all
16 of -- all of -- this whole neighborhood, all of
17 these roads interconnect. There's an east/west
18 road over here; so all of these -- all of these
19 neighborhoods interconnect. So I just don't think
20 they connect well over to Hart Road, which is why
21 this left-bound lane is being proposed.

22 THE HEARING EXAMINER: And do we have an
23 estimate of FDOT's timing for these changes?

24 MR. KEENE: I think they -- I think it --
25 maybe I'll have Ted come up and say that because he

1 did speak with Chris Speese is the project manager
2 with FDOT. I think it is 2025, something like
3 that, when the construction may happen.

4 THE HEARING EXAMINER: And you anticipate
5 there's a likelihood your project will commence
6 development prior to that?

7 MR. KEENE: I don't know. Interest rates keep
8 going up.

9 THE HEARING EXAMINER: So there's -- okay.

10 MR. KEENE: You know, that's --

11 THE HEARING EXAMINER: But this is what it
12 would be if your project isn't underway, and you're
13 not able to make that change?

14 MR. KEENE: This is what it might likely be
15 built as, but FDOT so far is agreeable that -- if
16 that happens, we would be able to relocate. I
17 mean, it would be nicer if they built it here, but
18 I don't know that we can effect that change this
19 quickly, but it would be -- we would have the
20 ability to change this configuration to give us the
21 eastbound left-turn lane, and --

22 THE HEARING EXAMINER: And the purpose of all
23 these changes is what, to protect the traveling
24 capacity on the roadway by eliminating turning
25 movements?

1 MR. KEENE: So FDOT, they have an analysis of
2 why do the project, and for them it's this
3 bidirectional left-turn lane -- a lot of people
4 call it a suicide lane -- where you have a lot of
5 head-on -- not necessarily head-on crashes, but you
6 have a lot of head-on turning conflicts when you've
7 got this bidirectional left-turning lane, and I
8 think that they find that that's a safety issue.

9 I think this project may have been longer at
10 some point, but they've whittled it down to just
11 between these two traffic lights. It has the -- it
12 does have the -- it does have the effect of
13 increasing throughput on the -- on the traveling
14 road, the capacity, by limiting access, but I think
15 their main justification is it's a safety
16 improvement, which is a little odd because, you
17 know, from Carriage Village's perspective this is
18 less safe for them. That's their worry, is the
19 U-turn is less safe than the current condition for
20 them. So that's -- it's the greater good theory
21 for FDOT.

22 All right. So that's -- I want to go back,
23 and we're going to go back to -- I'll just go
24 through my presentation, and then we're going to
25 come back to buffering.

1 So one of the questions was about fire
2 protection and whether the buildings were going to
3 be sprinklered. So multi-family buildings under
4 the Florida Building Code are classed as a Group
5 R2. Group -- I hit the wrong button.

6 Group R buildings are required to be fire
7 sprinklered. The site has a 12-inch water main
8 along the front of the parcel for Lee County
9 Utilities, and as is normal, would extend water
10 mains into the project and have fire hydrants and
11 water services and fire line connections, et
12 cetera.

13 We did model the site for a ladder truck
14 vehicle, and typically the -- the ladder truck that
15 we used is a San Carlos Park. They have a
16 hundred-foot ladder truck, which is the biggest --
17 the biggest -- we have mutual agreements between
18 the fire department; so the biggest truck that we
19 use is the one that's possible could come here, and
20 so that's a hundred-foot ladder truck, and we show
21 how it can traverse easily through the project.

22 We do show a gate, a gated entrance. The
23 gated entrances would have EVAC radios on the
24 project. EVAC radios, which would allow -- which
25 would allow fire trucks and EMS and so forth to

1 open the gates automatically as they approach.

2 It's a standard requirement of any gate these days.

3 I spoke earlier about how we reanalyzed the
4 entrance. So under the Land Development Code, we
5 have a -- we use a standard unit vehicle. This
6 is -- this is per the LDC, and we showed how this
7 vehicle can make a full U-turn in our entrance. We
8 widened -- we widened this entrance north/south.
9 We did not ask for a deviation to basically make,
10 like, a K-turn, but that would -- that would shave
11 a little room off this, but this is a very wide and
12 ample entrance.

13 This is sort of a showing. These are small
14 cars showing how many vehicles. This kind of gives
15 you -- helps give you an actual perspective of how
16 big this entrance actually is. There's a lot of
17 worry that was expressed about -- you know, if the
18 gates aren't working and people are stacking up
19 into the road. Well, they could easily make a
20 U-turn, as demonstrated, but there's a lot of --
21 there's a lot of stacking. I don't think this
22 project would ever see this many vehicles parked
23 outside of its entrance.

24 The Lee County -- the same section in the code
25 that has the requirement for the standard unit

1 vehicle analysis also has a requirement that the
2 gates be at least a hundred foot from the
3 right-of-way, and this is -- this is far in excess
4 of that requirement.

5 Again, we talked previously. This is an
6 accessory gate. This could have EVAC radios or
7 what we call notch locks, which are locks that only
8 EMS and fire and police have the key to for
9 secondary access if there's some problem here.
10 There's actually a way, a secondary way to get in,
11 and this is part of one of the deviations we
12 discussed in the prior meeting.

13 And we have -- we have -- it's actually in
14 here -- in the -- we have letters of support for
15 having a single entrance from the -- from the fire
16 department, from the sheriff's department, from the
17 Lee County Emergency Services Department. It's
18 required that they support the deviation, which
19 they have.

20 THE HEARING EXAMINER: So they have the option
21 of going through the main gate with their special
22 access code --

23 MR. KEENE: Right.

24 THE HEARING EXAMINER: -- or this alternate
25 gate?

1 MR. KEENE: Correct. And what -- and the EVAC
2 radio process, and I maybe didn't mention this, but
3 the EVAC radio requirement requires that the
4 openers carry batteries in the opener, the motor
5 controller that moves the opener; so it has enough
6 battery capacity, in the event of a power failure
7 even, they could come up here and hit the EVAC
8 radio and the gate would still open on its own,
9 even if there was no power after a hurricane or
10 something like that.

11 So it's very unlikely -- you know, we've got
12 three gates. It's very unlikely they would have a
13 problem, but if we did, this one could open with a
14 key, or it could have an automatic opener on it.
15 I'm showing it as swing gates because I did not
16 show it as an automatic opener because what would
17 likely happen is it would never get used, and the
18 device wouldn't work when we wanted it to because
19 it wouldn't get exercised; so it's probably -- you
20 know, in my opinion it's better -- it's safer to
21 have a notched lock on it. They make special
22 padlocks that have special keys.

23 MS. MONTGOMERY: Wait. Wait. Before you
24 leave that, let me ask you a question, Tim. Does
25 it meet or exceed the County's stacking

1 requirements?

2 MR. KEENE: It exceeds the County's stacking
3 requirements.

4 MS. MONTGOMERY: Two times? Two times the
5 requirement?

6 MR. KEENE: Well, the County stacking
7 requirement is a hundred foot. I didn't -- I know
8 this is more than a hundred foot. I can't give you
9 the exact footage. It's one-and-a-half at least,
10 could be close to two, between one-and-a-half and
11 two. That distance is probably between
12 one-and-a-half and two times the County --

13 MS. MONTGOMERY: Okay. Thank you.

14 MR. KEENE: There were some discussions last
15 time about where are we going to get our sewer.
16 Some of these neighborhoods on the south side are
17 still on gravity -- still have a septic system.
18 There's no gravity sewer over here. There is a
19 large force main. This is right in front of
20 Lee County Co-op's office. There's a large force
21 main here, and there's also a force main at Hart
22 Road. Either way, we would be able to install a
23 force main from our site. Our most likely path
24 would be come down this piece of right-of-way here.
25 We've investigated this right-of-way for other

1 utilities and so forth. And because the road was
2 relocated -- when Bayshore Road was widened,
3 they -- and you can see these clipped parcels here
4 on the north side. Even this parcel we're talking
5 about today was wider on the north side before the
6 widening of Bayshore, but that left room in the
7 right-of-way for an easy force main path. I
8 previously mentioned that there's a Lee County
9 12-inch DIP water main right in front of our
10 parcel, which would give us plenty of water
11 capacity for this project.

12 The main sewer plant -- this is the concrete
13 bypass, and the main sewer plant for this area sits
14 at the back of Suncoast Estates. Hart Road leads
15 into Suncoast Estates. So, obviously, maybe about
16 a mile north is the main sewer plant. It was built
17 with -- by North Fort Myers Utilities, and now it's
18 owned by FGUA; so -- is their sewer provider for
19 this area. I think eventually that will become
20 Lee County Utilities.

21 MS. MONTGOMERY: And, Tim, the information you
22 have shown up there from FDOT, if the hearing
23 examiner wanted to, that information is available
24 online on FDOT's website?

25 MR. KEENE: Correct. Well, in various

1 capacities, yeah. You'd have to search for and
2 download the document, but it's an FDOT manual and
3 access management guidelines.

4 Spoken pretty much on all of these items.

5 Flood zone. So we just had a hurricane.
6 There's new maps that have been in the works, but
7 they came into adoption in November. There's a new
8 flood zone for this area. Previously only the
9 little corner of the project was within a flood
10 zone. Now this whole area's in a flood zone.

11 THE HEARING EXAMINER: Okay. So what does the
12 shading mean? Can you walk me through that?

13 MR. KEENE: Yeah. So the orange are things
14 that are out of the flood zone, the cayenne are
15 things that are in the flood zone. This map is a
16 little different. This area over here is zoned AE,
17 but we've got -- when you get closer to this
18 bypass, the elevations -- the elevations increase.

19 Lee County has a tool in their GIS system
20 where you can pick a parcel, and it will tell you
21 what the flood zone map is, and I think the tool
22 was built so the Building Department can easily
23 determine what a flood zone is on a piece of
24 property, and we think that -- it says 11.5 is what
25 the flood zone is for this property.

1 THE HEARING EXAMINER: So it's A11.5.

2 MR. KEENE: Yeah, yeah, yeah. To make it
3 simple, that's what it is, but this really isn't
4 that perfectly simple, and the reason we have
5 things south of the road outside of the flood zone
6 and things north of the road in the flood zone is
7 because Bayshore Road is acting as a bit of a damn.
8 We have the Powell Creek bypass bringing water this
9 way, and it will overbank this area here in the
10 models.

11 THE HEARING EXAMINER: So those little --

12 MR. KEENE: These little pieces right here.

13 THE HEARING EXAMINER: Yeah, what is that?

14 MR. KEENE: That's area that is out of the
15 flood zone.

16 THE HEARING EXAMINER: So they're just little
17 high areas on the property?

18 MR. KEENE: Yeah. So Lee County uses the
19 LIDAR. They've got LIDAR that they've flown, and
20 this is -- this is off the Lee County GIS system.
21 I took a screen snip of it. This is their LIDAR
22 elevations and these are the things that go into
23 their models. I presume that this is shared with
24 the consultants that work for FEMA to produce the
25 flood zone models. So this kind of tells us, you

1 know, you can see 11, 10.3, 9.7, 10.4; so 9 and a
2 half to 10 feet would be maybe the average grade of
3 this site.

4 THE HEARING EXAMINER: So it would have to be
5 raised up at least to 11.5.

6 MR. KEENE: Well, Chapter 2 of the Land
7 Development Code requires we build a foot above
8 that. So 12.5 would be the minimum finished floor.

9 THE HEARING EXAMINER: And height is measured
10 from that?

11 MR. KEENE: Building height is measured from
12 finished floor, and this is an important point to
13 make because we have revised our buffer diagrams,
14 and we have taken that three foot of fill into
15 consideration in the illustrations that we've
16 provided.

17 THE HEARING EXAMINER: Okay.

18 MR. KEENE: We wanted to make sure that we
19 weren't ignoring that fact that these buildings
20 will have to be filled.

21 You know, this LIDAR kind of gives us some
22 interesting perspective, and it has to do with kind
23 of the vintage of everything. You can see, you
24 know, from outside our parcel in here, Carriage
25 Village has some low areas in here where the road

1 is built, but it's -- you know, as a site engineer,
2 this is -- this is unusual. Everything is about
3 the same elevation. This is about the same
4 elevation, all total. We don't see any -- this
5 isn't the -- this isn't the low piece. If this
6 were -- if this area were newer, this would have
7 been the low piece because everybody would have
8 filled and put in new water management systems
9 because that's what we have to do today. In order
10 to build our water management systems and have
11 retention areas, we have to fill our land and put
12 water in our ponds, create free water, which this
13 is the last guy in; so he's going to have fill.
14 He's going to have to put in his water management
15 systems even though the surrounding neighborhoods
16 don't have -- unfortunately don't have -- they may
17 have drainage facilities, but they don't have water
18 management systems. So they don't have detention
19 systems and water treatment -- storm water
20 treatment features built into their subdivisions.
21 It's just the timeframe -- you know, the timeframe
22 when they were built.

23 So minimum finished floor 12.5, approximately
24 three foot above existing grade.

25 This is -- you heard some testimony in the

1 last hearing about some drainage problems inside of
2 Carriage Village. You can see their roads -- you
3 see these white stripes down their roads. This is
4 a paved -- not a paved, a concrete valley gutter
5 down the middle of the road where they're using
6 that to convey their drainage. In a couple of
7 spots it comes over, it goes down a pipe, and then
8 it goes -- it goes through some perimeter. This is
9 a concrete -- small concrete ditch that is on
10 Carriage Village. Over here, they actually have a
11 pipe. There are inlets right at the property line
12 that -- and there's a pipe that goes -- goes west,
13 and then it has a little kick north, I think, and
14 then it goes into the Powell Creek bypass. So
15 their main drainage -- their drainage is not onto
16 this piece of property.

17 They -- they bring -- this over here
18 conveys -- we'll have some photographs. We'll show
19 you some photographs that gives more information on
20 that, but this is the big -- this is the big
21 picture.

22 It relates to this thing, this particular
23 LIDAR image because you don't see any -- any -- any
24 grades, any drainage. You know, they were not
25 constructed to drain into this parcel.

1 Our -- when we build, it would have been, you
2 know, nice if we could hop into their pipe, but
3 that pipe is not very large. There would be no way
4 that we could add into that pipe and get over to
5 Powell Creek. We will come into the right-of-way
6 of FDOT, and this would likely go towards the east
7 to another conveyance past Hart Road that goes
8 south to the river.

9 MS. MONTGOMERY: Tim, let me interrupt you
10 here. I mean, there were several gentlemen that
11 live to the north of property in particular, who
12 were concerned that the development of this
13 property would exacerbate their standing water
14 flooding problem, and have you gone back out and
15 physically looked at the site and done drone
16 flyovers and everything?

17 MR. KEENE: Yeah. We do have a drone video
18 that shows it, that we can provide -- that we flew
19 around the property several times to give you
20 perspective. It's on the disc that we gave.

21 This property in my opinion, it's high and
22 dry. As an engineer, this is a very dry parcel.
23 There's no depressional areas. There's -- you
24 know, it's very dry. It's very sandy. It's well
25 drained.

1 We heard the problems inside of Carriage
2 Village. I think the problems inside of Carriage
3 Village has to do with an instantaneous flow
4 problem. When we get really hard rainfall, the
5 water can't get out fast enough. Their facilities
6 are fairly small. You know, they collect the water
7 in their roads; so all the instant runoff is going
8 to collect in the roads and block the roads until
9 it can drain off the roads. We'll show a
10 photograph. Over here there's actually -- they've
11 got their concrete plume, and then there's a pipe
12 that brings it to their entrance and down to State
13 Road 80, and they actually have some pumps there
14 where they're pumping the water out of the pipe
15 that comes from the road to get it more quickly
16 into State Road 80.

17 You heard some testimony previously that they
18 have a pump discharge. Well, it's informal sump
19 pumps. Go to the home store, buy a pump you plug
20 into an outlet. It's just a collection of small
21 pumps that they're using to help drain their roads
22 quicker. Has nothing to do with this piece of
23 property, and our construction will not aggravate
24 that situation.

25 I'm going to go back -- we're going to go back

1 and do the buffer section now, and I'm going to ask
2 Josh to come up and help with that.

3 MS. MONTGOMERY: Well, before you do, you
4 might have mentioned it, but you went through the
5 changes to the master concept plan, and you might
6 have said reduce building height, but I don't know
7 that I heard you.

8 MR. KEENE: Okay. We did not get there. I
9 apologize.

10 One of the things that we did go back and look
11 at -- and I'll just jump -- I'm sorry to jump
12 around on this. One of the things that we did go
13 back and look at is we looked at our floor-to-floor
14 elevations in our model, and I had 12 foot per
15 floor in here previously. We don't need 12 foot
16 per floor. We could make it a 9-foot ceiling and
17 have enough room for our structure between the
18 floors; so we're reducing our requested building
19 height to 52 feet.

20 THE HEARING EXAMINER: This is coming to me on
21 something?

22 MS. MONTGOMERY: On our PowerPoint at the top
23 it says, "Reduce building height from 60 to 52."
24 It's just -- we got sidetracked on the FDOT.

25 THE HEARING EXAMINER: Okay. I may ask --

1 leave the record open so together you can provide
2 me a new set of conditions with the property
3 development regulations.

4 MR. KEENE: I do need to apologize. I did
5 write up a new property development regulations,
6 and I neglected to print it out.

7 MR. BADAMTCHIAN: I have a copy here.

8 MR. KEENE: You have a copy? Awesome. Is
9 that the revised one, sir?

10 MR. BADAMTCHIAN: The only thing I would
11 recommend is get to Number 2, same -- we have to
12 measure building requirements per land development
13 code. It goes without saying.

14 MR. KEENE: Yeah. There's a footnote on there
15 that addresses how -- we label -- there's a
16 Footnote Number 2. Footnote Number 2 says that
17 we -- it just references the two code sections.

18 MR. BADAMTCHIAN: Which is not necessary.

19 MR. KEENE: You're saying Footnote Number 2 is
20 not necessary?

21 MR. BADAMTCHIAN: And then you're saying we're
22 going to comply with the code. That goes without
23 saying. You have to comply with the code.

24 MR. KEENE: That's fine. I just wanted to
25 make sure it was obvious.

1 THE HEARING EXAMINER: I don't see a Footnote
2 2 on this, I only see a Footnote 1. I see it, but
3 then there's no footnote.

4 MR. KEENE: It's right there.

5 THE HEARING EXAMINER: Yeah, but then where's
6 the footnote?

7 I'm going to leave the record open.

8 MS. MONTGOMERY: I saw that coming.

9 MR. KEENE: They're notes, they're not
10 footnotes. I'm sorry.

11 THE HEARING EXAMINER: No. Because sometimes,
12 when we make these changes, and then there's so
13 many papers, and then I release my recommendation,
14 and --

15 MR. KEENE: There's a mistake.

16 THE HEARING EXAMINER: -- there's a mistake.

17 MS. MONTGOMERY: We want to make sure what's
18 attached is correct.

19 MR. KEENE: Yeah. What you have there is the
20 revised -- the development regulations. Thank you,
21 Chahram for printing that out. I got distracted
22 with everything else I was printing.

23 THE HEARING EXAMINER: So height has been
24 reduced from 60 to 52?

25 MR. KEENE: Yes, from 60 to 52 feet.

1 THE HEARING EXAMINER: And setbacks are
2 maintained?

3 MR. KEENE: Setbacks did not change. We did
4 not change any setbacks. We do have a condition --
5 so staff report has one set of recommendations.
6 Our 48-hour letter, we went from his recommendation
7 was 40 feet. Our 48-hour letter was 40 feet to --
8 40 feet and 40 feet in height. I think it's
9 written there at Footnote Number 2 -- Footnote
10 Number 1 on the sheet that you have. Maximum of
11 40 feet at a 40-foot setback, and then a one-to-one
12 increase from there. Our -- up to 60 -- up to 60
13 foot, and then at 60 foot we would -- it's just --
14 60 maxed the prior 60 request. We're not changing
15 that though, the 60-foot setback; so it would be
16 52 feet at 60 feet.

17 52 feet, 60 feet. This is the property line.

18 Look at the emails I sent on Monday. Yeah,
19 let me read that into the record.

20 All right. So we put in our 48-hour letter,
21 we -- the staff report recommendation was a minimum
22 building setback of 40 feet, and we were agreeable
23 to 40 feet; so the footnote or the -- in the
24 48-hour letter we said the minimum setback will be
25 40 feet for buildings up to 40 feet. The minimum

1 setback will increase by one foot for each foot of
2 increased building setback above 40 feet to a
3 maximum height of 60 feet. Now that's been changed
4 to 52 feet.

5 MS. MONTGOMERY: And so that's how the
6 standard, like, RF2 district works?

7 MR. BADAMTCHIAN: The setbacks are showing 60.

8 THE HEARING EXAMINER: Right. You're showing
9 60 on the exhibit though; so is that to be 52?

10 MR. KEENE: No. We're actually -- we're
11 actually -- no, we're okay. This is 60. The
12 buildings we're showing on the master concept plan
13 are shown farther away than 60 feet.

14 MR. BADAMTCHIAN: That's not how it reads.

15 MR. KEENE: No, we've not --

16 (Multiple people speaking simultaneously.)

17 THE HEARING EXAMINER: Yes. Why are we having
18 this language? If it's going to be 60, why don't
19 we just say the setback is 60?

20 MR. KEENE: We are saying the setback is 60.
21 I didn't change the setback language, what I
22 changed was just the height.

23 MS. CRESPO: We will provide revised
24 property --

25 THE HEARING EXAMINER: You may proceed.

1 MR. KEENE: May I borrow this for a second?

2 MS. CRESPO: We have to change it to 60 so our
3 line of sight is accurate.

4 MR. KEENE: The line of sights are accurate.

5 MS. CRESPO: Only if we commit to a 60-foot
6 perimeter setback though.

7 MR. KEENE: We are committing to a 60 foot.

8 MS. CRESPO: Okay. So you will get that.

9 THE HEARING EXAMINER: So all this 40 feet and
10 then one foot for every 40 feet, that's no
11 longer -- okay. Very good. Simple is best.

12 MR. BADAMTCHIAN: Permit are --

13 THE HEARING EXAMINER: Okay. So now we're --
14 we're talking about this exhibit. Oh, no.

15 MR. KEENE: Well, I want to talk about the
16 perimeter setback and how that relates to our
17 perimeter design.

18 So what we've done is we've put our parking
19 lots around the perimeter to focus the buildings to
20 the inside so that -- you know, this has to do with
21 improving -- you know, reducing the impacts on the
22 surrounding properties. We did this very
23 intentionally. We concentrated everything in the
24 middle of the property.

25 On the north side, we've done our indigenous

1 preserve to the north side. We're doing indigenous
2 preserve towards Carriage Village. We're doing a
3 preserve on the stretch. You heard some testimony
4 this morning about this stretch, the panhandle
5 section that are between these houses that back up
6 to Bayshore Road -- these homes that back up to
7 Bayshore Road. So we very intentionally
8 increased -- you know, we've moved the buildings to
9 the middle of the project very intentionally, you
10 know, as a design effort to -- you know, out of
11 respect and consideration for our neighbors.

12 All right. So let me go back here, and last
13 time you asked for illustrations of the various
14 buffers; so Josh Kelley, and Josh can help me with
15 this if I need him to. He prepared these
16 illustrations of showing what a Type E buffer would
17 be. The normal multi-family to single-family
18 buffer requirement in the Land Development Code is
19 Type B. That's not changed by the North Fort Myers
20 regulations. The only thing on this property that
21 is affected by North Fort Myers regulations is the
22 right-of-way buffer. It goes from 15 to 20 feet in
23 North Fort Myers, and our site plan respects that.

24 THE HEARING EXAMINER: So this is the
25 perimeter buffer with the exception of Bayshore.

1 MR. KEENE: Two exceptions besides Bayshore:
2 So there's a Type F buffer requirement. So in the
3 vicinity -- I told you in our site plan how we very
4 intentionally put our parking around the perimeter
5 so -- to concentrate the buildings into the middle.
6 When we do that, we trigger a different piece of
7 the code that we now have asked -- we have parking
8 within 125 feet of single family. So Carriage
9 Village is treated as single family; so that
10 requires either a wall at 25 feet or a 30-foot Type
11 F buffer. So it could be a Type B with a wall at
12 25 feet or a -- or a -- or just a full Type F
13 buffer, which is what we're proposing with the
14 parking lot that's abutting the perimeter is a Type
15 F buffer.

16 THE HEARING EXAMINER: So this is basically on
17 the east and west boundaries of the site?

18 MR. KEENE: Correct. And we have some
19 profiles of that.

20 THE HEARING EXAMINER: And existing -- to the
21 extent existing vegetation meets tree requirement,
22 you would supplement. If the existing trees are
23 exotics, they'd be removed, and you would plant
24 new?

25 MR. KEENE: Well, there's an area that we have

1 indigenous preserve that we're going to basically
2 just clear the exotics; we're not going to change
3 the grade, but we can't do that everywhere because
4 we've got to put in water management. So on the
5 westbound, for instance, we've got to put in a
6 berm, we've got to put in a collection swale; and
7 so any vegetation there will come out. There's not
8 a lot there. We'll show you some photographs.

9 THE HEARING EXAMINER: But then you would have
10 to plant what looks like this?

11 MR. KEENE: Well, this -- yeah, exactly, Type
12 F buffer. And the goal, at least on the areas
13 where we have the 30-foot buffer, would be to let
14 them grow and create lush -- you know,
15 lush buffers.

16 Type D buffer. This is -- this is the buffer
17 along Bayshore Road. Pretty standard except that
18 it's -- except that it's, you know, 20 feet double
19 hedge row. It's just your typical right-of-way
20 buffer except that the --

21 THE HEARING EXAMINER: Five trees per 100
22 linear feet, double hedge row, and that's for the
23 length of your frontage?

24 MR. KEENE: Correct. We added a buffer
25 cross-section at the lake. You asked for that. So

1 this would be a -- this would be the Type B buffer;
2 so even our lake would be buffered from the
3 adjacent properties.

4 We are also showing a security fence around
5 the lake. This was the subject of one of our
6 deviations where we asked for reduced setback. We
7 asked for reduced setback to the edge of the water.
8 We basically have our buffer, we have our lake
9 maintenance easement, which would be required by
10 the Water Management District, and we also -- we
11 had shown this on our site plan to begin with, but
12 that became -- also became a condition in the staff
13 report, the security fence around the lake. That's
14 something that I would recommend for all my clients
15 in any case. Standard -- standard lake slopes.

16 So this is along the east -- I'm sorry, this
17 is along the north side of the property where we're
18 doing an indigenous preserve. Our goal is to
19 preserve any trees that are -- that are on the
20 site.

21 And then to my left would be Carriage Village.
22 To the left on the screen would be Carriage
23 Village. We would put in some perimeter storm
24 water control. Their drainage is roughly -- their
25 pipe on the north side -- this is where they have

1 pipe drainage and inlets right here. We would not
2 interrupt that. We would have a little bit of a
3 berm to keep our storm water on our site. This is
4 a shallow pretreatment area where the water is
5 being brought around the indigenous preserve to the
6 lake. In this view the lake would be beyond these
7 trees.

8 We would enhance that buffer, that indigenous
9 preserve area to also function as a buffer. The
10 minimum Type B buffer in this case, but it would
11 probably be greater than that with all the existing
12 vegetation as well, and certainly the distance is
13 pretty -- pretty substantial.

14 This was the building elevation that we
15 discussed about changing our height to 52 feet.
16 This would be along the west buffer. Most of the
17 homeowners over here -- there's only one property
18 over here on the west side that does not have a
19 rear fence. Most homeowners have a rear fence,
20 chain link fence, or in one case, an actual wall.
21 The piece of property that's right at Bayshore Road
22 actually have constructed a wall along their
23 property line. It's six-foot tall.

24 This is the west buffer. So you talked about
25 keeping the trees in the buffer; so we proposed

1 this. This is shown as the indigenous plan. We
2 have some photographs of these trees. There's some
3 large pines over there that we're going to attempt
4 to preserve within this buffer area towards --
5 towards Carriage Village would be to my right -- to
6 the screen right.

7 We're showing a 60 foot here, but actually on
8 our site plan, the buildings are actually further
9 away. We're just showing 60-foot to -- if
10 something changes in the future on the site plan.

11 I'm going to walk you through a series of
12 photographs.

13 I'll call you back.

14 THE HEARING EXAMINER: Okay. I would like to
15 take a break now. We've been going for an hour and
16 a half; so let's take a ten-minute break. We'll
17 come back at 20 minutes to 11:00 and resume.

18 (Recess held from 10:30 a.m. to 10:43 a.m.)

19 MR. KEENE: I think we were on this slide, and
20 what I was getting ready to discuss were this
21 series of slides has to do with. These are just
22 some pictures along the perimeter of our property,
23 and we put together a photo deck of -- of
24 photographs around the perimeter.

25 MS. MONTGOMERY: Are we on 11 now?

1 THE HEARING EXAMINER: 12.

2 MS. MONTGOMERY: 12.

3 MR. KEENE: We didn't obviously put all of the
4 photos that are in this photo deck in our
5 presentation. We just put some good representative
6 ones in there. In the last -- in the last page of
7 what I gave you is another aerial with an index of
8 where the photographs are like this so, if you look
9 at it later, you'll be able to see the photographs.

10 THE HEARING EXAMINER: So basically, you're
11 going around the perimeter of the site --

12 MR. KEENE: Yes.

13 THE HEARING EXAMINER: -- taking photographs
14 of --

15 MR. KEENE: Of the perimeter condition. I'm
16 going to be describing approximately where the
17 property line is as we go through this.

18 THE HEARING EXAMINER: I see a couple of code
19 violations.

20 MR. KEENE: That wasn't the purpose of the --
21 that wasn't the purpose of the photo deck.

22 THE HEARING EXAMINER: I'm an officer of the
23 court.

24 MR. KEENE: Fortunately, engineers have a
25 special allowance in the statute for trespassing.

1 We need to do our job. I'm allowed to. All right.
2 Surveyors have the same privilege.

3 So this is -- this is walking around the site;
4 so to my left is the panhandle piece. Further
5 beyond that, all that vegetation would be Bayshore
6 Road. It's a sidewalk, and then some trees along
7 Bayshore and then the pavement. What you see on
8 the left is the exotic vegetation that has to be
9 removed. It's a standard LDC requirement. It's
10 unfortunate. You know, you heard testimony
11 about --

12 MS. MONTGOMERY: Wait. Go back to that
13 though. Earlier, when you had the drainage
14 exhibit, you were talking about the small --

15 MR. KEENE: Correct. I'm going to speak on
16 that, yeah.

17 MS. MONTGOMERY: Okay.

18 MR. KEENE: So, you know, you heard testimony
19 from one of these -- one of these neighbors here,
20 how they would lose this; and you can see some of
21 the large trees here, this is what we're going to
22 preserve, and then in this area, we have to
23 completely clear; and this area, we just go and
24 remove. Keep the trees. We would not send the
25 bulldozers in there because that would kill the

1 pines. We would hand clear through here, and treat
2 these -- you know, chemically treat the exotics to
3 help keep them from coming back here. We can
4 mechanically clear because there's no trees, but we
5 would replant this area with vegetation to replace
6 the buffer. No, it's not a high Brazilian pepper
7 hedge, but we can't keep that unfortunately. But
8 the goal is you plant things in there, and you let
9 them go, you let them grow. Some of the vegetation
10 that we've kept, and we have -- there's an open
11 space plan in the -- in the case file, and this
12 replanting is detailed in that case file on the
13 open space plan. There's a special diagram. I
14 have a copy of it here in the presentation.

15 This is part of their drainage system; so
16 it's -- the roads -- the internal roads are to the
17 right. Carriage Lane or something is to the right.
18 It turns, and there's a concrete flume, concrete
19 flume. Here's where it goes into a pipe. Right
20 here there's a little headwall, and this is one of
21 the drainage pipes that come from their streets,
22 and this is where they installed some informal
23 pumps to help drain the roadways quicker, and
24 they're lifting the water into a pipe here. This
25 pipe comes towards us in this photograph to the

1 entrance of their project, and then would turn --
2 in this photograph, to our left towards State Road
3 80 -- or not State Road 80, Bayshore Road.

4 MS. MONTGOMERY: Whereabouts is the property
5 line?

6 MR. KEENE: The property line in this case is
7 probably, just judging by the power lines, the
8 property line is probably just to the left -- just
9 to the left of this concrete swale. You can see
10 the maintenance coming over the property line, just
11 to the left of the concrete swale.

12 We've come down, we've turned the corner.
13 This is -- this is -- would be -- and there are a
14 lot more photographs. I mean, as you go through
15 the photo stack, but I don't want to -- I don't
16 know. As a nerdy engineer, I find them
17 interesting, but I don't want to make this take
18 longer than it needs to.

19 Now I'm facing north on our east property
20 line. Again, power -- I'm standing right at about
21 the power line -- or right at about the property
22 line. There are gravity sewers back here. This
23 gravity sewer kind of meanders back and forth
24 across the property line, but you know, the tip of
25 that little patio is probably lapping over into the

1 property, but this is the area we're going to try
2 to keep, to keep those tall pines.

3 And you saw in Josh's illustrations where --
4 Josh Kelley's illustrations where, you know, we've
5 kind of illustrated some of these tall pines in
6 there; so that's what we're trying to show, that
7 we're going to keep these where we can in the
8 indigenous preserve area.

9 Moving north, this is where I talked about the
10 sewer meanders. So you can see this particular
11 cleanout is substantially into the property. The
12 property line would be right about here, maybe five
13 foot off the power line would be the property line;
14 so here, that sewer line is coming back and forth.
15 I don't know that this is going to be a problem if
16 it lands in that indigenous preserve area. It's
17 just not going to be an issue.

18 Now, this -- again, this is along the east
19 property line, but now I'm looking back south.
20 This is near the -- that north property corner, and
21 you can see, you know, the power line is about five
22 feet outside of our property. You can see, again,
23 how the sewer line is meandering, and how all this
24 area is maintained. This is where a number of the
25 gopher tortoises are, over in these taller areas

1 here. All this grass maintenance gives a foraging
2 area for the gopher tortoises.

3 So we've turned -- we've turned the north
4 corner, and now we're facing west. I'm not certain
5 whose house that is, but again, the property line
6 is right about here. There's a lot -- in the photo
7 deck, you'll see there's a lot of -- there's a lot
8 of this situation going on along the property line.
9 Obviously, this would have to move, but this whole
10 area is part of -- part of the property, the
11 subject property.

12 In our exhibits on the north side, what we've
13 done -- we've done the indigenous preserve. Some
14 of these trees in here are on that north indigenous
15 preserve, and I'm bringing the drainage around --
16 the proposed drainage around the indigenous
17 preserve to take advantage of where the land has
18 already been cleared so we don't have to clear
19 additional vegetation to bring the drainage over to
20 the pond. From about where I'm standing here, the
21 pond would be to my left. Again, I'm on the north
22 property line facing east -- facing west.

23 I've gone to the -- the northwest property
24 corner, and now I'm facing back south; so these are
25 the concrete single-family houses off of Shirley

1 Lane. Again, this is where I said earlier where
2 most of these -- most of these neighbors have some
3 sort of fence along their property line. The only
4 one that doesn't is the one immediately to my
5 right. They don't have a fence, but everybody else
6 from here to Bayshore Road has a fence. Again,
7 there's been clearing activities. Some people have
8 built gardens back here and things of that nature.
9 There's actually some active mowing maintenance.

10 Getting closer to Bayshore Road, again, west
11 property line looking south, one of the
12 neighborhoods has even planted some additional
13 Eureka palms behind their fence. The fence is
14 right at the property line in this case. This is
15 the home, this larger garage here, this house is
16 right up against Bayshore Road. That is actually a
17 concrete wall that they built right there, just
18 beyond those Brazilian peppers is the actual
19 Bayshore Road.

20 Again, this is an example of -- you know,
21 you've heard testimony of "Just leave it zoned as
22 is." It doesn't completely solve the visibility
23 problem for them. You know, the pool enclosure can
24 be closed. There's no buffer requirement, single
25 family to single family; there's no indigenous

1 requirements in single family. So there's less
2 preserve around the perimeter.

3 We did a quick comparison between the two to
4 show you how we believe that this is probably a
5 better situation for them long term, buffering
6 around the perimeter. We've tried very hard to put
7 our soft edges around the perimeter, and
8 concentrating our hard construction into the middle
9 of the project. Again, this is an example of how
10 that buffer deviation changes at the entrance. I
11 was just illustrating some of the trees here. This
12 is the same illustration that's contained in the
13 amended buffer deviation package.

14 Josh has prepared an enhanced buffer, and what
15 the enhancement is is that the shrubs would not
16 be -- would not be trim to reduce height. So this
17 would be beyond the wall entrance, and again, this
18 is -- we had the discussion about our entrance
19 location relative to that common corner; and
20 without the median, we don't really have a choice.
21 With the median, we have a choice that we wouldn't
22 need this. We wouldn't have to do this situation.

23 THE HEARING EXAMINER: You wouldn't have to
24 what? What would you have to do?

25 MR. KEENE: We wouldn't need Deviation Number

1 2.

2 THE HEARING EXAMINER: It would still be a
3 wall with vegetation, it just wouldn't be a setback
4 issue.

5 MR. KEENE: There are two ways to do the
6 perimeter. If your pavement is within 125 feet,
7 you have two things that you have to do, either/or:
8 One is build a wall at 25 feet from the common
9 corner or put a 30-foot setback, and put a Type F
10 buffer; so one or the other. It's a wall with less
11 plantings. It's five foot more buffer with more
12 plantings. That's the two options in Lee
13 Development Code, a wall with a B buffer, or a
14 25 feet or --

15 THE HEARING EXAMINER: And this is all a
16 factor of timing, whether this project goes first
17 or the Bayshore improvement goes first?

18 MR. KEENE: Correct. Correct.

19 I think that is really -- I think it includes
20 everything between landscaping buffering. We do
21 have some additional environmental items. You've
22 seen -- we've gone through this part. All right.
23 Church, if you'd like to --

24 MS. MONTGOMERY: Before you leave, I have a
25 couple questions.

1 MR. KEENE: Absolutely.

2 MS. MONTGOMERY: Someone mentioned having a
3 hurricane evaluation plan.

4 MR. KEENE: Oh, yes.

5 MS. MONTGOMERY: At the time of the
6 development order, if you have a project with more
7 than 50 units, do you have to do a hurricane
8 evaluation plan and get it approved?

9 MR. KEENE: Yeah. It's part of the ordinary
10 development process is to prepare the hurricane
11 evaluation plan during the DO process. The
12 question was also asked about the structure, if the
13 structure's hurricane proof. Well, nothing can be
14 hurricane proof, but they are built to current --
15 they would be built to current -- whatever the then
16 current building code is for wind, et cetera.
17 Meeting FEMA requirements for flooding and surge is
18 part of that requirement.

19 MS. MONTGOMERY: And there's also been several
20 people, even today, who are concerned seemingly
21 that there's going to be a plethora of school
22 buses. Exhibit K to the staff report is a letter
23 from the school district to Chahram that indicates
24 a total of 21 school-age children will be generated
25 by this project. In your understanding, would that

1 be a plethora of school buses, or would that be
2 fairly limited?

3 MR. KEENE: I would think there would be maybe
4 one per school age group, but I don't think it's a
5 plethora of school buses. The 21 children, they
6 give statistics that they quote in their letter on
7 how they come across -- or how they calculate --
8 how they calculate the density of schoolchildren;
9 so it's not something that we generated, but it's
10 school district-wide averages that they use, and
11 it's in the staff report. It's not something we
12 solicited. I think it was something --

13 THE HEARING EXAMINER: So what's the plan for
14 the school bus stop?

15 MR. KEENE: So we don't have control of that.
16 We cannot invite them -- you can see from the
17 turning movements diagrams, we can get a
18 hundred-foot ladder truck through our project. We
19 would gladly have a school bus come into the
20 project and pick up kids. The school district
21 corresponded with us and said they would likely use
22 the existing Lee Tran bus stop at the front in the
23 middle of the site; so they would have a roughly
24 safe place for kids.

25 There is a -- there is a -- a bike lane on the

1 road; so the kids aren't, like, right next to the
2 travel lane. There's a large area -- you know,
3 there's a large concrete area between the sidewalks
4 and the concrete for this bus stop that is
5 available. We could even -- the neighborhood could
6 even enhance that, if they chose.

7 Part of our developmental requirement will be
8 to build a bigger platform, a bigger concrete
9 platform than what is already there, typically an 8
10 by 30-foot concrete landing. What's there today is
11 a concrete landing, but it's just not quite that
12 large, and typically we propose to lengthen it or
13 widen it, whatever the situation calls for. Every
14 situation's slightly different. This project isn't
15 big enough for us to put in -- there's, like, two
16 thresholds. It's not the bigger threshold. We
17 would not be putting in a pull-off lane or anything
18 like that. It's not warranted under the -- under
19 the code.

20 MR. KEENE: All right. Church.

21 MR. ROBERTS: All right. I'm Church Roberts
22 with Church Environmental, and I've been accepted
23 in this forum before as an expert witness. With
24 regard to the gopher tortoises, I do appreciate all
25 the public's concern and comments on gopher

1 tortoises. Over the last 29 years I've worked on
2 numerous projects throughout Lee County involving
3 gopher tortoises. I've worked on projects public
4 and private. I did the most recent gopher tortoise
5 project at the Lee County Powell Creek Filter
6 Marsh, the most recent phase of that, which is
7 downstream of this project. I did West Bay Club,
8 Shadow Wood Preserve, Crown Colony, Babcock Ranch
9 Community. So I'm intimately familiar with gopher
10 tortoises, the biology, and the regulations.

11 And for this project, the way the rules work
12 now is, if you have one burrow, you have a hundred
13 burrows. 90 days before construction, you have to
14 do a 100-percent survey of the area; so you have to
15 cover the entire parcel, and you apply for your
16 conservation permit from the Fish & Wildlife
17 Commission, and then you go and relocate all the
18 gopher tortoises to an approved offsite recipient
19 site. That's what you do on all projects in this
20 part of the state.

21 You asked last time about Coontie. Coontie is
22 a plant, it's a two-foot by three-foot low-growing
23 shrub. It's an evergreen plant, frequently used in
24 landscaping and other activities like that. We
25 have a small population of Coontie onsite. There

1 are three clusters, and those Coontie will be
2 relocated in the preserve area, and I'm sure Josh
3 can probably work in a few Coonties in the
4 landscape plan as well, and I think that's all.

5 We talked about the tree survey last time, and
6 I don't think I have to add anything. We're just
7 going to meet all the rules and requirements for
8 heritage tree mitigation.

9 MS. MONTGOMERY: Let me ask you a question.
10 There's a lot of discussion today about who's
11 tortoises they are. Does anyone actually own
12 tortoises? These aren't, like dogs; right?

13 MR. KEENE: No, they're not like dogs. You're
14 really not supposed to number them. You're not
15 supposed to feed them. All those things are in
16 violation of the laws, but they are, you know, warm
17 and fuzzy critters. I can appreciate how people
18 like them.

19 MS. MONTGOMERY: And are you allowed to move
20 the baby tortoises around if you don't have the
21 appropriate permits and qualifications?

22 MR. ROBERTS: No, you're not allowed to
23 without the appropriate permits, but one thing
24 about baby tortoises is this is a reproducing
25 population that's out there. So the survey that I

1 represent out there is static. It represents that
2 time that I did that survey. If you go out there
3 today, the burrows are going to move. There's
4 going to be new ones. Again, it's a reproducing
5 population, and our permit will cover all those
6 tortoises to be relocated.

7 MS. MONTGOMERY: Thank you.

8 MS. CRESPO: Alexis Crespo with RVI
9 Planning -- Planning and Landscape Architecture,
10 and I have been accepted as an expert in land use
11 planning, the Lee Plan, and the Lee Development
12 Code, and I am our last speaker; so I told folks,
13 "We could maybe get out before lunch."

14 So at the last hearing, you wanted more
15 information about built height and density in the
16 area, what's occurring in terms of redevelopment in
17 North Fort Myers; so we wanted to walk you through
18 that today. So -- and we'll get into some of the
19 built forum in the area and some projects that are
20 coming online here soon.

21 But I want to start the discussion with,
22 again, the discussion that we're in, the central
23 urban future land use category. This is our
24 second -- Lee County's second most intensive future
25 land use category. The only other area intended

1 for more dense and intense development is that blue
2 area labeled as "Intensive development" on this
3 slide. So this is where the Lee Plan is really
4 directing the County to locate infill and more
5 density and intensity in order to be able to
6 preserve the eastern lands within the county and
7 really put people where we have all the urban
8 services and facilities that we can service the
9 population.

10 And, certainly, when you're an infill project
11 like this, we happen to be on an arterial road,
12 proximate to all these services, but we are
13 surrounded by single-family and mobile home
14 communities that have been in place since the 1960s
15 and '70s; so the area was built up largely before
16 Lee County started its more rapid growth, and these
17 urban services came to be in place in those
18 immediate area. So we need to balance those items
19 certainly, and that's where we went back to the
20 master concept plan and modified some of the
21 development standards to try to -- or better
22 achieve that balance.

23 So we want to definitely put on the record --
24 and this is outlined well in the staff report, of
25 course -- but we are proposing this density. It is

1 bonus density, but we are locating it exactly where
2 Lee County is directing us to put it, which is in a
3 location where you're very proximate to schools.
4 We have elementary, middle, and high school all
5 within a five-mile radius of the project. Fire
6 station, hospitals, EMS. We have a great regional
7 park facility of less than a mile away. Transit
8 lines bus the property, and they are proximate to
9 downtown and employment, and the property does
10 front on an arterial roadway, which is also a place
11 where you wouldn't locate lower density but,
12 rather, where you look to locate higher density
13 intensity uses.

14 Height, this is fairly unique to Lee County,
15 but they actually look at future land use when
16 establishing the maximum building heights for a
17 planned development zoning district because -- and
18 it actually makes a lot of sense -- because they're
19 trying to direct growth to certain areas, and to
20 tie it back to height makes that a connection
21 between, if you want density/intensity, you also
22 have to allow certain heights in order to
23 accommodate the development.

24 So again, central urban is coupled with this
25 intensive development because they are the most

1 dense and intense categories in the county. This
2 category allows buildings to be as tall as 135 feet
3 and 12 stories in height; so certainly, considering
4 our context, I'm not submitting that that would be
5 appropriate here, but I'm just demonstrating that
6 at 52 feet we're proposing well below what the Lee
7 Plan anticipates in terms of maximum heights.

8 Looking at the heights allowed -- the other
9 thing I think it's important to note is that we're
10 well within the central urban. We're really not on
11 the edge of this category. It doesn't drop to the
12 suburban category for several miles to our east.
13 Suburban is allowed up to 75 feet as you transition
14 closer to the interstate or if you can see --
15 getting near Cape Coral, but again, this -- this
16 category is supportive of the height we are
17 requesting.

18 We did look at the zoning districts. Many of
19 these were zoned in the early 2000s, and again,
20 before some of the rapid growth we've been seeing
21 in Lee County occurred; so I cannot tell you that
22 there's a PD abutting us or in very close proximity
23 that has the height we are requesting, but I'll
24 note a recent amendment to Chapel Creek that's near
25 the interstate, that has requested 45 feet through

1 its amendment. A cell tower has been approved in
2 the Bayshore 42 project within 149 feet.

3 But I think what's important to note from a
4 zoning standpoint is some of the redevelopment
5 that's occurring, and it's really starting
6 logically along this 41 corridor, but we have
7 Merchants Crossing, who our office did an amendment
8 for a couple of years ago to redevelop a portion of
9 that site that was underutilized commercial with
10 apartment housing, and that zoning approval allows
11 for 50-foot tall multi-family buildings at a much
12 higher density than we're requesting. So that's
13 not built yet, but it was a zoning action that
14 occurred fairly recently, and I think it's a sign
15 that the redevelopment is coming to this area, and
16 it's going to be more consistent with that
17 long-range vision for the central, urban, and
18 intensive development areas.

19 Our office is also working on Hancock Bridge
20 Square, which is at Hancock Bridge Parkway and
21 U.S. 41, and I've got another slide that labels
22 that; and we are seeking again, multi-family,
23 converting underutilized commercial, and maximum
24 height 52 feet for those apartments.

25 Now getting into what I think you were more

1 specifically asking, which is what's the built
2 environment. We do have the four-story LCEC
3 building. It's set back off of Bayshore a little
4 bit. It's accessed by Bayline Drive. It's fairly
5 visible from the roadway network, and it's very
6 proximate also to the single-family community in
7 this area, and that is a four-story existing
8 building that's been in place in the area for a
9 very long time. My first planning job was in that
10 building actually. So there is height in the area
11 really in direct view of this property.

12 Then these are the other two projects that I
13 highlighted that are either under construction or
14 under permitting with Lee County. Merchants
15 Crossing is seeking -- or approved for 280 dwelling
16 units, which on the portion of the property used
17 for that, it's a 35-unit breaker density at 50 feet
18 for building height, and then Hancock Bridge
19 Apartments at 22-unit breaker and 52 feet, exactly
20 what we're seeking here, and they are within two
21 miles of the subject property as the crow flies.

22 There's also other projects under review by
23 Lee County in the area that they're not approved
24 yet; so I can't really rely on those too heavily,
25 but there is a project directly across the street

1 from the site that is seeking three stories in
2 height, and that has been filed, and I've noted --

3 THE HEARING EXAMINER: How many stories?
4 Three?

5 MS. CRESPO: Three stories. It is a mini
6 warehouse or unconditioned self-storage.

7 So to close up the testimony, the application,
8 as modified and presented to you today, is even
9 more consistent with the Lee Plan than it was when
10 we were here last time.

11 I really want to focus on the neighborhood
12 compatibility. We reduced the building height to
13 52 feet. We will submit development regulations
14 that commit to 60-foot minimum PD perimeter
15 setback, which is more than double the PD perimeter
16 setback specified in Chapter 34 of the code.

17 Through the buffers, the maintenance of
18 indigenous vegetation, and just the design of the
19 site, we are pulling the development into the
20 project in order to maintain compatibility with our
21 single-story neighbors.

22 And with the addition of the central amenity,
23 we were also very sensitive to locate that
24 centrally so it would not impact the neighbors as
25 those can have -- generate some noise.

1 This project is directly in compliance with
2 the intent for the central urban category. This is
3 the density/intensity that the Lee Plan prescribes
4 in this category and in a location such as this
5 where we have all the infrastructure to support the
6 growth. That's along with Objective 2.2 and also
7 supportive policies about timing development where
8 the infrastructure is in place to serve it, which
9 we demonstrated through this application in
10 locating it within the future urban areas.

11 I think it's also important to note that the
12 project will provide for Housing Diversity Policy
13 135.19 of the Lee Plan. A lot of North Fort Myers
14 was developed with single-family-type housing, and
15 so this is providing a new opportunity for either
16 young professionals, younger families. Obviously,
17 there's a strong demand for affordability, and
18 these higher density projects are typically more
19 affordable than purchasing a single-family home; so
20 it's in line with that -- that policy.

21 I forgot one project, and one of the ladies
22 actually mentioned it, and it was one of my
23 projects. It's in Cape Coral; so I didn't think of
24 mentioning it, but you can see it right here. It's
25 just past Merchants Crossing and just west of U.S.

1 41, but these are two Continental Apartment
2 projects in Judd Creek PD, which is in Cape Coral,
3 and those are apartments at 50 feet in height as
4 well; so I neglected to mention that.

5 THE HEARING EXAMINER: And what road is that
6 there? Is that Pine Island Road there?

7 MS. CRESPO: That's Pine Island, yes. And
8 then Barrett, and then this is Highway 41.

9 I submitted on the record at the previous
10 hearing that the application is consistent with the
11 LDC criteria and we're in agreement with your staff
12 that meet all of these criteria, particularly those
13 relating to compatibility. The deviations are
14 consistent also with those criteria and have been
15 modified even further to mitigate their impacts.

16 Chahram used 2146B, which I believe I should
17 have used, which is the bonus density criteria.
18 These are also in the section of the code, but I
19 wanted just to put on the record in terms of the
20 bonus density we're seeking, there's four criteria
21 in the LDC. The first is that the additional
22 traffic generated by this bonus density will not be
23 required to travel through lower density
24 neighborhoods before reaching an arterial or a
25 collector. We are fully consistent with that

1 policy. We have direct access onto an arterial
2 roadway.

3 Number 2 is existing committed public
4 facilities are not so overwhelmed that the density
5 increase would be contrary to the public interest.
6 We've demonstrated through the application
7 materials we have all the requisite infrastructure
8 for the density being proposed.

9 Number 3 is either providing additional
10 mitigation if you're located within the coastal
11 high hazard area. This is not subject to the
12 coastal high hazard area, and also is a good
13 indication of why it's proper to locate more
14 density on the site.

15 And then lastly, the resulting development
16 will be compatible with exiting and planned
17 surrounding land uses, and we would submit with the
18 modified MCP, we are meeting the definition of
19 compatibility by mitigating the impacts of visual,
20 noise, light, et cetera through the proposed
21 buffering and site design.

22 With that, I complete my testimony.

23 MS. MONTGOMERY: I have -- before you get to
24 that, I do have one question. I mean, we know the
25 property's zoned C1, which is commercial, and I

1 know everybody hasn't had a chance to totally
2 digest live local, but based on your understanding
3 of that bill that's been signed by the governor, is
4 it trying to provide for multi-family and infill
5 locations with higher density and heights?

6 MS. CRESPO: Yes. Yes. Do you want me to
7 expand on that?

8 MS. MONTGOMERY: I'm not going to quiz you on
9 it, no.

10 MS. CRESPO: Thank you.

11 MS. MONTGOMERY: Tim has something he wanted
12 to touch on.

13 MR. KEENE: I have one thing I neglected to
14 point out. On the master concept plan --

15 Again, for the record, Tim Keene.

16 On the master concept plan -- and a lot of
17 testimony this morning there was some worry that
18 there wasn't a fence around the property. Our site
19 plan does include a perimeter fence, it's just not
20 a wall. We do -- and that perimeter fencing
21 corresponds with having a gated entry. That's one
22 of the upgraded features this project can provide.
23 You know, they're worried about security, the
24 residents who live here might be worried about
25 security; so we are providing a type of fence. We

1 don't -- we haven't specified the material or the
2 exact height, but we do show a fence. It's
3 actually labeled on your master concept plan, and I
4 failed to point that out earlier; so I apologize.

5 THE HEARING EXAMINER: Thank you. Does that
6 conclude applicant's presentation?

7 MS. MONTGOMERY: Yes, it does unless there's a
8 question you have that remains unanswered.

9 THE HEARING EXAMINER: No questions. I want
10 to thank you for elaborating on the questions that
11 were raised by the public and for the modification
12 to your proposed height, and response to the
13 comments.

14 MR. BADAMTCHIAN: May I ask the applicant a
15 question, please?

16 THE HEARING EXAMINER: Yes.

17 MR. BADAMTCHIAN: People, they were talking
18 about residents of this development going and using
19 the pool. You're using amenity areas. Are you
20 proposing a pool?

21 MS. MONTGOMERY: I will note for the record,
22 the idea that people are going to trespass and swim
23 in their pool is not necessarily a well-founded
24 concern, and it's not a zoning criteria, but with
25 that --

1 MR. KEENE: With that, we did not specifically
2 show a quote, unquote, pool in our amenity area,
3 and one of the reasons is that a commercial pool
4 with ADA accessibility requirements are very
5 expensive. You're talking about pools that have to
6 have, like, a zero entry or some sort of mechanical
7 lift to comply with ADA requirements; so we're not
8 necessarily showing that. We don't wish that to be
9 a condition of approval. You know, there might
10 ultimately be a pool of some sort. I just don't
11 know. There's an area where a splash pad, an area
12 where children can be -- can be installed. That's
13 where a lot of developments are going. They're
14 just putting in an area for kids to get wet and
15 enjoy in the warm afternoon, a playground,
16 something of that, just a little amenity feature
17 for children and families to gather.

18 MR. BADAMTCHIAN: Okay. Thank you.

19 THE HEARING EXAMINER: Hi, Chahram, I'm just
20 checking, was there anything additional you wanted
21 to put in the record?

22 MR. BADAMTCHIAN: No, ma'am, except that we
23 have a letter from the Fire District, North
24 Fort Myers Fire Department, and they have no
25 objection to this development, and we have a letter

1 from the EMS, they have no objection, and also from
2 sheriff's department. They're all in the staff
3 report. That's all.

4 THE HEARING EXAMINER: Okay. Let's talk about
5 how long we're going to keep the record open. I am
6 requesting a codified, revised list of conditions,
7 deviations, property development regulations. I'm
8 hoping this won't take too long. I'm thinking
9 about 48 hours should be enough.

10 Michelle Latorre, I could not accept your
11 flash drive, but you also have 48 hours to provide
12 your photographs. We will ensure that a copy gets
13 sent to the applicant's team. I understand it's a
14 composite of photographs that you've taken. You
15 can stop in my office to find out the right email
16 address to send it to. I think it's
17 hearingexaminer@leegov.com, but I'm not sure
18 because I don't use that email. It goes to my
19 secretaries, and they can provide you with what
20 that is. Everyone else, please do not send any
21 emails to our office because the record is closed.
22 If I get anything other than those photographs that
23 I'm doing as a courtesy because we really can't
24 accept a foreign drive into our computer. I'm only
25 going to accept that, and copies will be provided

1 to the applicant and their team.

2 MS. MONTGOMERY: I have a question. Earlier,
3 in Mr. Keene's testimony when he was going over the
4 FDOT changes, he indicated that they are in the
5 process of working on getting that directional
6 left, and that the access point could be moved, and
7 you asked if he had a condition, and he said he
8 didn't. Is that something you'd like us to provide
9 a draft?

10 THE HEARING EXAMINER: Yes. That's why I'm
11 saying more than just -- if you could give me more
12 than just the new property development regulations.
13 If you could just give me a codified everything,
14 and then I know I rely on that document versus the
15 other ones that have been talked about or that are
16 in the staff report.

17 And if you don't mind, please send it to
18 Chahram first, make sure you're in accord with that
19 version. I know I said 48 hours, but why don't we
20 say --

21 MS. MONTGOMERY: You want us to work over the
22 weekend?

23 THE HEARING EXAMINER: No, I don't. How about
24 we say by next Friday? There's nothing stopping
25 you from getting it to me by Tuesday though. I'm

1 just saying let's put the date out there.

2 May 12th. If you could get that to us perhaps by
3 noon on May 12th.

4 The cutoff to get this case heard by the Board
5 of County Commissioners before their break is
6 May 26th. I will try my best, but I cannot
7 guarantee I will make that deadline especially
8 since I'm going to be on vacation the week of the
9 22nd, but I will start working on this case next
10 week, and I can still work on it before you submit
11 that portion of it. I just want you to know going
12 in that there is a chance I may not make that
13 deadline; although, I will try.

14 MS. MONTGOMERY: Did you have your big case?
15 I know you mentioned you have a long case coming
16 up. Did you get that yet?

17 THE HEARING EXAMINER: Yes. But that is
18 getting continued for an additional hearing day; so
19 you're well positioned, but I also make no
20 promises. If you don't make it before the board
21 break, you'll probably make the first hearing after
22 the board comes back.

23 MS. MONTGOMERY: But they're usually not happy
24 then.

25 THE HEARING EXAMINER: Well, thank you,

1 everyone for coming. I appreciate your comments.

2 I'm going to close the record now. I also

3 encourage you to continue conversations with the

4 applicant if you need clarification on anything or

5 there's any unresolved issue in your mind that they

6 can clarify for you. Thank you.

7 (Thereupon, the proceedings were concluded at
8 11:22 a.m.)

9 -----

STATE OF FLORIDA)
COUNTY OF LEE)

I, Heather J. Shelton, Registered Professional Reporter, do hereby certify that I was authorized to and did stenographically report and electronically record the foregoing proceedings consisting of pages 1 through 96 inclusive; and that the transcript is a true record of all proceedings had.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in this action.

Dated on May 17, 2023.



Heather J. Shelton, CSR, RPR, FPR

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