

THE OFFICE OF THE LEE COUNTY
HEARING EXAMINER

CASE NO.: DCI2022-00018

IN RE: GRAND BAY MINOR MPD

_____ /

PROCEEDINGS: PUBLIC HEARING

BEFORE: Amanda Rivera
Hearing Examiner

DATE: February 9, 2023

TIME: 9:00 a.m. to 10:25 a.m.

LOCATION: Lee County Hearing Examiner
Hearing Examiner Room, Second Floor
1500 Monroe Street
Fort Myers, FL 33901

REPORTER: Deborah M. Bruns
Florida Professional Reporter

ORIGINAL

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17 ALSO PRESENT:

18 Kurt P. Kehoe, The NRP Group
19 Kenneth W. Kellum, Banks Engineering
20 Ashley Palmer, DexBender Environmental Services
21 Yury Bykau, TR Transportation Consultants
22
23
24
25

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

2 HEARING EXAMINER RIVERA: Good morning.

3 MR. HARTSELL: Good morning.

4 MS. WORKMAN: Good morning.

5 HEARING EXAMINER RIVERA: Excuse me, I have a
6 throat tickle today, but I'm not sick.7 My name is Amanda Rivera. I'm the Hearing
8 Examiner presiding over today's case. The date is
9 February 9th, 2023, and this is case DCI2022-00018.
10 It's a request to rezone from CG to MPD in South Fort
11 Myers.12 Because this is a quasi-judicial hearing, all
13 evidence and testimony must be taken under oath. So if
14 you intend to speak, if you could please raise your
15 hand.

16 (Participants sworn in en masse.)

17 HEARING EXAMINER RIVERA: Thank you.

18 Do we have members of the public here today?

19 MS. WORKMAN: Yes.

20 HEARING EXAMINER RIVERA: Thank you, okay. So we
21 will go over briefly how things will proceed this
22 morning.23 First we're going to hear from the Applicant.
24 They'll present their request and any witnesses that
25 they may have to support that request.

1 Following their presentation, we'll hear from the
2 County Staff, who will go over their Staff Report. In
3 this case they are recommending approval with
4 conditions and a deviation.

5 After Staff has completed their presentation, we
6 will call for public comment. If you would like to
7 speak, if you could please fill out one of the cards by
8 the door, and then I'll call you in the order that I
9 receive those. There is only one opportunity to speak.
10 So if you could please take notes as we go through
11 things this morning to make the most of your time while
12 you're at the podium, that would be very helpful.

13 After we conclude public comment, we'll come back
14 to the Applicant and the Staff for their closing
15 comments and any rebuttal to address any questions that
16 may come up during public comment.

17 So with that, we can begin with the Applicant.
18 Good morning.

19 MR. HARTSELL: Good morning.

20 MS. HEWITT: Good morning.

21 MR. HARTSELL: Good morning, Madam Hearing
22 Examiner. I'm Steve Hartsell with Pavese Law Firm.
23 I'm here on behalf of the Applicant, The NRP Group,
24 Grand Bay MF, LLC. With me today is the Applicant's
25 representative, Kurt Kehoe, who is senior vice

1 president of Grand Bay and The NRP Group; Stacy Hewitt
2 is planning director of Banks Engineering; Ken Kellum
3 is our project engineer, also an engineer with Banks
4 Engineering; Ashley Palmer is an ecologist with
5 DexBender & Associates; and Yury Bykau is our
6 transportation engineer.

7 Just in kind of brief introduction and kind of
8 getting you located, the project is located on South
9 41. It's on the west side of South Tamiami Trail.
10 It's at the intersection of San Carlos Boulevard, which
11 is a major collector on the east side of the road
12 there. It is also, coincidentally, scheduled for
13 signalization by FDOT. There are four parcels. You
14 can see them there, four tax parcels that total 46.33
15 acres.

16 Our request today is to rezone the property from
17 MH-1 and CG, commercial general, to a minor mixed-use
18 planned development to allow 30,000 square feet of
19 commercial, retail, or office, along with 300 dwelling
20 units, consisting of 186 standard units and 114 bonus
21 of density, and a maximum height of 56 feet.

22 The benefits here, it clusters development on the
23 east side closer to 41, effectively allowing for
24 preservation of nearly two-thirds of the site, over 30
25 acres, that's located within the coastal high hazard

1 area and is adjacent to the Estero Bay State Preserve.

2 In conjunction with this zoning application were
3 two plan amendments: One, a map amendment that will
4 add 15.64 acres to the mixed-use overlay; and the
5 second is a text amendment to Policy 5.1.10,
6 effectively allowing the transfer of density from the
7 preserved rural lands that's on the west that we're
8 preserving to the mixed-use overlay in the urban
9 community land use category. Those were both deemed to
10 be consistent with the Lee Plan and the Land
11 Development Code and have been transmitted by the
12 Board, and Stacy will give you a little bit more in
13 terms of the details.

14 Staff recommends approval, as you can see, with
15 conditions. We provided in the 48-hour notice a couple
16 of minor clarifications and revisions that have been
17 coordinated with Staff, and Staff is in agreement with
18 those. And we would request, for the record, to
19 incorporate the Staff Report and the attachments, as
20 well as our 48-hour notice.

21 I also brought -- I didn't. Stacy brought, and
22 gave them to me, copies of the PowerPoint and the large
23 24-by-36 of the master concept plan, and I will provide
24 those to you now, if that makes sense.

25 HEARING EXAMINER RIVERA: Yes, thank you. So the

1 PowerPoint will be Applicant's Exhibit 1 --

2 (Applicant Exhibits 1 and 2 submitted.)

3 HEARING EXAMINER RIVERA: Thank you.

4 MR. HARTSELL: You bet.

5 HEARING EXAMINER RIVERA: -- and the MCP will be
6 Applicant's Exhibit 2. But there are no changes to the
7 MCP from what I have in the Staff Report?

8 MR. HARTSELL: No.

9 HEARING EXAMINER RIVERA: Okay, thank you.

10 MR. HARTSELL: As noted in the 48-hour letter,
11 we're providing expert testimony from Stacy Hewitt,
12 Yury Bykau, Ken Kellum, Ashley Palmer. They've all
13 been qualified before. You're familiar with all of
14 them. I'm sure their resumés are on file. Just as
15 a -- in an effort to save some time, I would submit all
16 four of them as experts in the fields that we've
17 demonstrated in the 48-hour letter.

18 HEARING EXAMINER RIVERA: Yes, thank you.

19 MR. HARTSELL: Thank you.

20 At this time I'm going to introduce Kurt Kehoe to
21 describe a little bit about The NRP Group and what they
22 do. After Kurt sits down, Stacy will get up, and
23 she'll do the land use and planning analysis; Ken will
24 talk about the drainage; Ashley will then describe the
25 environmental; and Yury will wrap it up with a brief

1 description of the transportation and trip generation;
2 and then Stacy will come back and finish up with
3 findings, conclusions, and then go over the 48-hour
4 letter.

5 HEARING EXAMINER RIVERA: Thank you.

6 MR. HARTSELL: And with that, Mr. Kehoe.

7 MR. KEHOE: Thank you, good morning.

8 HEARING EXAMINER RIVERA: Good morning.

9 MR. KEHOE: As Mr. Hartsell mentioned, my name is
10 Kurt Kehoe with The NRP Group. I just wanted to take a
11 few minutes to tell you who we are and what we do. We
12 are a national builder, contract -- excuse me,
13 developer/builder, a con -- contractor -- excuse me --
14 and property manager of luxury multi-family housing.
15 That's -- that's really all that we do. I lead the
16 Florida region here, and we have over 80 employees in
17 Florida. We've developed over 20 communities, counting
18 everything -- probably around 6,000 units. And two of
19 them are shown here on the screen, the first one being
20 Las Palmas right here in Lee County, and then the
21 second one is in downtown St. Petersburg.

22 So I just wanted to make a brief statement, and
23 I'll be glad to answer any questions.

24 HEARING EXAMINER RIVERA: Thank you.

25 MR. HARTSELL: Thanks, Kurt.

1 MS. HEWITT: For the record, Stacy Hewitt.

2 This is the future land use map for the property
3 and the surrounding area. The site is made up of three
4 separate future land use categories. It's in urban
5 community, rural, and wetlands, and the -- adjacent to
6 the west is conservation lands, uplands, and further to
7 the east is some suburban future land use.

8 This is the proposed and existing mixed-use
9 overlay. I did want to point out there was one
10 correction to the future land use map here. There's a
11 little piece of wetland that is more accurately
12 depicted on this map, just for clarification. And the
13 mixed-use overlay is existing on the other side of
14 US 41, and we are proposing 15.64 acres in the
15 mixed-use overlay, and that's where the development is
16 concentrated.

17 The subject property has existing 2.73 acres that
18 are zoned CG, and about 43.6 acres zoned MH-1. The
19 site's vacant with a dirt trail that goes through the
20 property, and it's been approved for a development
21 order for the shared access road coming into the site,
22 aligning with San Carlos Boulevard, that's under
23 construction by the development to the south, Estero
24 Vista. And as Mr. Hartsell mentioned, FDOT is
25 scheduled to construct a traffic signal at San Carlos

1 and US 41.

2 Adjacent to the north, there is a CPD fronting 41
3 that is vacant for commercial, and then there's also
4 the MH-2 zoned property that is the Sheltering Pines
5 Mobile Home Village. That is platted at a density of
6 8.62 dwelling units per acre, and it's built at
7 approximately 7.05 dwelling units per acre.

8 Along the south is zoned MH-1 and RV-3, and it's
9 the Calusa Cove RV Park that was platted at
10 approximately 6.55 dwelling units per acre.

11 And to the south also is the Estero Vista RPD,
12 which is under construction for -- with an approved
13 development order for 144 multi-family dwelling units
14 including bonus density.

15 Then we also have Santa Maria Street to the south,
16 and then Marina Mike's boat sales that's zoned CG.

17 To the east is US 41, then C-1 zoned properties
18 consisting of a church, shopping centers, and a car
19 wash.

20 And then, again, to the west is the conservation
21 lands. It's zoned RPD, but it's the Estero Bay State
22 Buffer Preserve.

23 HEARING EXAMINER RIVERA: Just to clarify then, so
24 the RPD that's shown in blue directly to the south,
25 that's the shared access road that's under the current

1 DO right now that's under construction?

2 MS. HEWITT: There's two DOs that are attached to
3 the Staff Report. One is for the access road that
4 comes through -- that aligns with San Carlos Boulevard
5 and comes to Estero Vista, and then there's a
6 development order for Estero Vista also that are both
7 attached to the Staff Report.

8 HEARING EXAMINER RIVERA: Okay, thank you.

9 MS. HEWITT: Thank you.

10 There are the concurrent Comprehensive Plan
11 amendments. One is to amend Lee Plan Map 1-C to
12 include 15.64 acres in the mixed-use overlay, as well
13 as an amendment to Lee Plan Policy 5.1.10 to align how
14 density is calculated with how it's defined in the
15 glossary and with existing processes. Again, this
16 allows for the clustering of the development on the
17 east side of the property, and substantial preservation
18 on the west side of the property within the coastal
19 high hazard and abutting Estero Bay Buffer Preserve.
20 Staff and the local planning agency found it consistent
21 with the Lee Plan and approved transmittal on January
22 18th.

23 The text amendment, again, is for -- the overall
24 site has the three future land use categories, and a
25 literal interpretation of the current language in

1 5.1.10.3 would have prevented transfer of the 21
2 dwelling units from the rural land use abutting the
3 preserve over to urban community.

4 The approval facilitates the preservation on the
5 west side of the site, and then through the process
6 Staff did request some additional amendments to align
7 the policy with the Lee Plan's definition, and also to
8 remove some arbitrary 1992 project-specific language in
9 the plan.

10 The request is consistent with Policy 5.1.10 as
11 amended.

12 The density for the site, as demonstrated in the
13 Staff Report and attachments, is very detailed, and I'd
14 like to just take a moment to kind of go through
15 several categories.

16 There is reference to the adjacent right-of-way.
17 There's a private right-of-way that runs between the
18 parcels, and that -- there's also a density request
19 included from that acreage. The different -- there's
20 not only the urban community, but there's urban
21 community inside the coastal high hazard and outside
22 the coastal high hazard, and this line demonstrates
23 where that falls on the property.

24 The standard dwelling units in urban community are
25 up to six dwelling units per acre. The preserved

1 wetlands are also allowed to be transferred at the same
2 underlying density; and within the coastal high hazard,
3 both urban community and the preserved wetlands would
4 be the six standard dwelling units per acre, plus four
5 bonus units per acre; but those within the coastal high
6 hazard are limited to the Site-Built Affordable Housing
7 provisions.

8 Outside of the coastal high hazard, you have the
9 six dwelling units per acre standard density, then four
10 dwelling units per acre that can be any of the several
11 choices, whether it be the Site-Built Affordable
12 Housing, the Cash Contribution Affordable Housing, or
13 the transfer of development (sic) units from Southeast
14 Lee County, wetlands, or Greater Pine Island. Then
15 five additional units in -- outside the coastal high
16 hazard can consist of the Greater Pine Island transfer
17 development (sic) units. And then, of course, the
18 rural area is limited to the 21 dwelling units per
19 acre.

20 And with the proposed Comp Plan amendments, the
21 density can be moved all over -- further out of the
22 coastal high hazard, and any of the density -- we were
23 very careful through this to make sure any of the
24 density within the coastal high hazard can be
25 transferred out, but nothing generated outside of the

1 coastal high hazard can be generated in. And I'll
2 demonstrate that on the master concept plan where we've
3 specified that.

4 The conditions of approval:

5 Condition 1 requires compliance with the master
6 concept plan and the Land Development Code, and limits
7 the development to the 300 dwelling units with 114
8 bonus density units and 30,000 square feet of
9 commercial.

10 Condition 2.a is the schedule of uses, limits the
11 residential tract to multi-family and associated uses,
12 and Outparcels 1 and 2 are uses from the mixed-use
13 planned development table in the Land Development Code,
14 except the dwelling units are limited to live-work,
15 townhouse, or multi-family, and some of the commercial
16 uses were removed at the request of Staff during the
17 review process.

18 Condition 2.b is the site development regulations
19 which propose to adopt most of the mixed-use overlay
20 development regulations, which don't have minimum lot
21 size and depth requirements, to promote the urban
22 development. But we -- I did want to point out that we
23 were careful for Sheltering Pines Mobile Home Village
24 to the north. Instead of the typical mixed-use overlay
25 setbacks of zero, we looked at typical multi-family

1 setbacks, which would be 20 feet plus a half foot for
2 every 1 foot over 35 feet. And I'll show in the master
3 concept plan that the closest building is -- would be
4 allowed 27 feet under that calculation, and we're
5 providing and requiring 29 feet.

6 HEARING EXAMINER RIVERA: And you might talk about
7 that, but the height, as I understand it, is being
8 tiered so that it gets taller as you get closer to 41?

9 MS. HEWITT: That's correct.

10 HEARING EXAMINER RIVERA: Okay.

11 MS. HEWITT: This is the master concept plan for
12 the site. This is the access road that's under
13 construction and then Estero Vista to the south; the
14 two commercial outparcels, which are generally located
15 with the CG zoning is today; and then the residential
16 tract.

17 As you had mentioned, the multi-family buildings
18 stagger in height, with the one closest to 41 being a
19 maximum height of 56 feet; then the next one is a
20 maximum 54 feet; and then the one to the rear is a
21 maximum of 49 feet. And, again, we did provide -- we
22 oriented this building so that the narrow portion was
23 facing -- the closest portion is the narrow portion of
24 the building and has a requirement of a minimum setback
25 of 29 feet.

1 And then we have the water management lake to the
2 west; the substantial preserve area; and the shaded
3 area here is the flow-way that goes through the site,
4 and this also connects to a preserve on Estero Vista's
5 site, and Ms. Palmer will go into more detail on the
6 environmental portion of the site.

7 But on the master concept plan there are two
8 conditions listed on there with Building 1, which is
9 the one furthest -- closest to 41 and -- including the
10 two outparcels, and the area outside of the coastal
11 high hazard area is a maximum of 144 dwelling units,
12 which includes up to 76 bonus density units, with the
13 option determined at the time of development order.
14 And if it -- and 18 bonus density units would be
15 limited to Site-Built Affordable Housing, which were
16 some transferred from coastal high hazard. A maximum
17 of 25 of these dwelling units can be built as mixed-use
18 on Outparcels 1 and 2.

19 Buildings 2 and 3 within the coastal high hazard
20 area, there's a maximum of 156 dwelling units,
21 including 20 bonus density units limited to the
22 Site-Built Affordable Housing.

23 The buffer along the north, the mixed-use overlay
24 allows a minimum ten-foot Type B buffer, and we are
25 proposing the addition of -- we're going to enhance

1 that with the addition of an opaque fence abutting the
2 existing mobile homes to the north.

3 Along US 41 and Santa Maria is proposed a
4 five-foot buffer per the mixed-use overlay with five
5 trees per 100 linear feet.

6 The second page of the master concept plan
7 provides the proposed Lee County perpetual stormwater
8 drainage and access easement that consists of
9 approximately 17.44 acres, and this includes the
10 floodway and the preserved wetlands, and it also has --
11 provides access for Lee County through the site. There
12 are two minor impacted wetlands that you're going to
13 hear about. One of them is located outside of the
14 coastal high hazard, and then there's a small .04-acre
15 impact that's within the coastal high hazard, but it's
16 a small isolated piece that's right about in this
17 location. And I just want to point out that the impact
18 is to provide for the access for Lee County to this
19 stormwater drainage easement, and so it is for a public
20 facility impact. And then there is also the referenced
21 compensating storage creation from a nonindigenous
22 upland that's proposed in this location to offset the
23 .04 acre of impact within the coastal high hazard.

24 The rest of the conditions of approval, the
25 environmental presentation, will address Conditions 3,

1 4, and 5; the engineering presentation will address
2 Conditions 4, 6, and 7; and then Conditions 8, 9, and
3 10 are regarding the deviations, which I'll go into
4 detail when I'm describing each of those, but each of
5 the deviations, as I'll demonstrate, do enhance the
6 achievement of the planned development and protect the
7 public health, safety, and welfare.

8 There are a plethora of public facilities,
9 services, and infrastructure available to this site,
10 and I'm not going to go through each of them -- they
11 are outlined in the Staff Report -- but I did want to
12 highlight just a couple.

13 The public transit, there are LeeTran Routes 240,
14 660, and 140 with Sunday service only abutting the site
15 with a bus stop within a quarter mile; there are
16 several schools within the vicinity; and of course the
17 drainage improvements that we're proposing with that
18 easement; and there are pedestrian facilities, a
19 sidewalk and bike lane located on the east and west
20 side of US 41, and the shared access road also has a
21 sidewalk coming in from 41.

22 There are several parks within the area, and the
23 employment opportunities along US 41, with restaurants,
24 businesses, and shopping centers, and most notable to
25 the north above Sheltering Pines is the Grand Bay

1 Publix plaza.

2 Deviation 1 seeks relief from Land Development
3 Code Section 10-291(3), which requires that residential
4 development of more than five acres provide more than
5 one means of ingress or egress to allow the two
6 residential access connections to the access road
7 approved under development order DOS2020-00128, which
8 provides a single access to US 41. Staff recommends
9 approval of the deviation, and that's subject to
10 Condition 8, which, as required in the Code, requires a
11 notice to all future property owners recorded that just
12 outlines the emergency access plan. And then Condition
13 8b requires at the time of development order that we
14 get letters of no objection from Public Safety, the
15 Sheriff's Office, and San Carlos Fire and Rescue.

16 The access road, again, is under construction. It
17 has two residential connections, and they interconnect
18 with Estero Vista. And the master concept plan also
19 provides parking lot interconnection to the north at
20 the time of development order for Outparcel 1, as
21 required in the Code already.

22 HEARING EXAMINER RIVERA: Have initial discussions
23 been held with those agencies to know whether you're
24 likely to get the letters of no objection?

25 MS. HEWITT: Yes. As a matter of fact, I've got

1 Public Safety and Lee County, and I think we're
2 still -- this has been requested, but, yes, they're
3 coming in. This condition was released at the time of
4 the Staff Report so we -- we were trying to get them
5 all before the hearing, but we're still discussing with
6 San Carlos Fire, but we do have a comfort level that
7 those are obtainable.

8 MR. HARTSELL: Stacy?

9 MS. HEWITT: Yes.

10 MR. HARTSELL: Excuse me. Briefly explain that
11 we're also going through the development order -- we're
12 concurrently applying for a development order on this
13 so we're well into that development process.

14 HEARING EXAMINER RIVERA: Okay.

15 MS. HEWITT: Yes.

16 HEARING EXAMINER RIVERA: With this exact site
17 plan -- with the same master concept plan that's being
18 shown?

19 MR. HARTSELL: Yes.

20 MS. HEWITT: Yes.

21 HEARING EXAMINER RIVERA: Thank you.

22 MS. HEWITT: And I believe that case number is
23 referenced in the Staff Report, as well.

24 Deviation 2 seeks relief from Land Development
25 Code Section 34-1748(5), which requires a paved

1 turnaround, to allow the southern gate -- to allow no
2 turnaround for the southern gate at the secondary
3 resident-only access point, and that is located in this
4 location.

5 It's recommended for approval subject to Condition
6 9, which requires that we provide signage stating that
7 it's resident-only and also to get no objection from
8 San Carlos Fire. There's minimal traffic associated
9 with the resident-only access point, and the unique
10 configuration, Development Services Staff was
11 comfortable, and recommended approval with those
12 conditions.

13 Deviation 3 is withdrawn as deemed unnecessary,
14 and Deviation 4 seeks relief from Land Development Code
15 Section 10-261(a), which requires multi-family garbage
16 and recycling collection areas to allow a minimum of
17 106 square feet for the recycled material; and, again,
18 this is recommended for approval subject to Condition
19 10. This deviation is requested because we are
20 providing a compactor with the site, which really
21 reduces the amount of area needed. It's a request
22 that's allowable administratively, and it provides one
23 central location for pickup of the garbage and
24 recycling. And Staff recommends Condition 10 to
25 require a letter of no objection from Lee County Solid

1 Waste, which we're already coordinating on that, as
2 well.

3 With that, I'm going to turn it over to Ken
4 Kellum.

5 HEARING EXAMINER RIVERA: Thank you.

6 MS. HEWITT: Thank you.

7 HEARING EXAMINER RIVERA: Good morning.

8 MR. KELLUM: Good morning. For the record, I'm
9 Ken Kellum with Banks Engineering. I'm the engineer of
10 record for the project.

11 This is a list of the items that we're -- design
12 criteria we're going to meet. It's a little easier on
13 the graphic here to talk about them when you see them.

14 First of all, there's a number of culverts here,
15 existing culverts, that are in basically a
16 nonfunctional condition at this point. They're either
17 crushed or filled with sediment and other materials.
18 Those are going to be replaced by the Applicant with
19 like-sized pipes to restore the flow through the
20 floodway.

21 As Stacy mentioned earlier, we are providing an
22 access easement for the County so they can gain access
23 to provide -- to do maintenance and other work within
24 the floodway.

25 For water quality, the two commercial parcels up

1 front will be required to provide a half-inch of dry
2 pretreatment before they can discharge into the master
3 stormwater system.

4 HEARING EXAMINER RIVERA: And what -- can you
5 briefly describe the master stormwater system, which
6 way does the water flow, and where will it be directed?

7 MR. KELLUM: Yes. Generally the surface water
8 flows from east to west. US 41 has an elevation of
9 about 14, and the creek back here has an elevation of
10 about 2.5. So there's a pretty good drop in elevation,
11 which is kind of unusual for the area. So everything
12 is going to be gravity flowed and collected in culverts
13 and inlets and directed to this wet detention pond in
14 the back, which will provide the majority of the water
15 quality treatment. And then it will be discharged
16 through a control structure in approximately this
17 location and directed to a spreader swale, rather than
18 coming out in just a single point source, that will
19 allow the water to come out in a more gentle manner
20 into the floodway. So we're going to provide --
21 continue to provide the hydrology that's currently in
22 place now.

23 Also, along the north side, we're going to provide
24 a conveyance swale that will allow -- that will collect
25 the runoff from the back side of the berm on our

1 property -- our project that's not going to be within
2 the control basin. It will also collect water from the
3 Sheltering Pines development that normally flows kind
4 of in this direction, from northeast to southwest,
5 towards the floodway, and it will direct that water to
6 the floodway itself where it's already going.

7 HEARING EXAMINER RIVERA: So right now with the
8 change in elevation like that, I would imagine you're
9 getting sheet flow that's just free-flowing down --

10 MR. KELLUM: Yes, ma'am.

11 HEARING EXAMINER RIVERA: -- to the south. So
12 after development --

13 MR. KELLUM: Well, it's -- it's not to the south.
14 It's kind of --

15 HEARING EXAMINER RIVERA: Southwest --

16 MR. KELLUM: Right.

17 HEARING EXAMINER RIVERA: -- right, kind of in
18 this direction. But the folks that are downstream,
19 essentially will they be -- will they have an improved
20 condition after your development because you'll be
21 collecting it and slowing it?

22 MR. KELLUM: They won't really see any difference.
23 Maybe a slight improvement but really --

24 HEARING EXAMINER RIVERA: But not worse basically?

25 MR. KELLUM: Right.

1 HEARING EXAMINER RIVERA: Okay, thank you.

2 MR. HARTSELL: And, Ken -- I'm sorry, let me
3 interrupt real quick -- with regard to that question in
4 terms of improvements, by replacing the four crushed
5 culverts -- you didn't mention the size of those. I
6 believe those are 36-inch culverts --

7 MR. KELLUM: Yes.

8 MR. HARTSELL: -- right?

9 MR. KELLUM: Yes, they are 36-inch culverts so
10 they're good-size pipes, and that will help restore the
11 flow in this floodway, which will help the folks that
12 are upstream because Mullock Creek kind of comes up and
13 wraps around and connects to the east side of 41.

14 HEARING EXAMINER RIVERA: Okay.

15 MR. KELLUM: So that will allow this water from
16 the east side of 41 to come down and flow out to Estero
17 Bay in a more easy manner.

18 HEARING EXAMINER RIVERA: Thank you.

19 MR. KELLUM: This green line represents the
20 established wetlands line, and we're going to be
21 staying on the upland side of that, except for the two
22 minor wetlands that are going to be impacted.

23 We are staying without -- outside of the floodway.
24 FEMA recently updated their flood maps so the new base
25 flood line is approximately in this location, and the

1 base flood elevation is 11, and by Florida Building
2 Code you have to be at least a foot above that. So we
3 have set our minimum finished floor elevation at 12.2
4 so we are meeting that Code.

5 We're also -- by moving the development's -- by
6 removing the development from the west side of the
7 creek, we are also removing the potential for wells and
8 septic tanks, which will include the -- improve the
9 water quality. And by providing the water quality
10 treatment from our water management system, we'll not
11 be having adverse impact on the water discharging into
12 the preserve.

13 Also, we are being required to have a water
14 quality monitoring plan. So during storm events we
15 will collect stormwater and have it analyzed in the lab
16 for a variety of constituents. If there is a -- an
17 exceedance for any of those, we have a contingency plan
18 in place to address those.

19 MR. HARTSELL: And just for the record, is that
20 related to Condition Number 6 that we worked on with
21 the Staff, the surface water quality monitoring --

22 MR. KELLUM: Yes.

23 MR. HARTSELL: -- condition? Okay.

24 MR. KELLUM: And in my opinion, this plan meets or
25 exceeds the surface water quality standards in the Lee

1 Plan.

2 HEARING EXAMINER RIVERA: Is the fact that there's
3 residential development in the coastal high hazard, is
4 that considered when you're going through the ERP with
5 the Water Management District? Do they require
6 anything by virtue of being in the coastal high --

7 MR. KELLUM: No, we are required to make sure that
8 the discharge rate from our site does not exceed what's
9 currently in place, and we also have to make sure that
10 the volume of water we're discharging is no greater
11 than what's currently discharging, and we also have to
12 make sure that we are above their 100-year flood stage,
13 which we are.

14 HEARING EXAMINER RIVERA: Thank you.

15 MR. KELLUM: Uh-huh.

16 And these are the conditions that we're meeting.
17 There's the wetland creation. There's approximately
18 .04 acres down here that's being created as -- because
19 of this impact up here. What's going to happen is
20 there's a small portion of the upland area that was
21 scooped out adjacent to the floodway, and it will be --
22 the volume will be equivalent to the volume that is
23 being displaced up here. The wetland vegetation will
24 be allowed to naturally (unintelligible) to replace
25 that.

1 We've got Condition 6, as Steve was mentioning, is
2 the surface water quality plan. We're going to have
3 that in place.

4 And Condition 7 is the replacement of the culverts
5 that are in this general area here.

6 MR. HARTSELL: Is that what the green dot
7 represents?

8 MR. KELLUM: Yes. It was probably better shown in
9 that graphic there.

10 MR. HARTSELL: Yeah.

11 HEARING EXAMINER RIVERA: Thank you.

12 MR. KELLUM: Uh-huh.

13 MR. HARTSELL: All right. Thanks, Ken.

14 And next, Ashley Palmer from DexBender will talk
15 about the environmental and the ecology.

16 HEARING EXAMINER RIVERA: Good morning.

17 MS. PALMER: Good morning. For the record, Ashley
18 Palmer with DexBender, the environmental consultant for
19 this project.

20 Currently the existing site consists of forested
21 uplands and wetlands. The forested uplands are
22 primarily pine flatwoods, and the wetlands are
23 low-quality mixed hardwood wetlands that have been
24 invaded by exotics.

25 A little history of the site: By 1979 a small

1 area of clearing was present in the western portion of
2 the site. Clearing on the eastern portion of the site
3 was also initiated prior to 1979 and continued
4 throughout the '90s.

5 The Applicant is proposing to preserve 30.63 acres
6 of the site, which is 66 percent of the site. This
7 will consist of the forested uplands and wetlands,
8 which will be enhanced through exotic vegetation
9 removal, and the -- the entire preserve will be placed
10 under a conservation easement.

11 So the preserve includes 10.59 acres of wetlands,
12 20 acres of uplands, and then the .04 acre of wetland
13 creation that Ken mentioned.

14 Currently on-site for protected species, we
15 identified 41 potentially occupied gopher tortoise
16 burrows. Only nine of those were within the proposed
17 development footprint, and any that are there will be
18 relocated through an FWC permit.

19 We identified 23 potential cavity trees during the
20 survey. Only one of these trees was within the
21 proposed development footprint, and it was kind of
22 right on the edge. We erred on the side of caution
23 because we do use handheld GPS units, but any trees
24 that are found within the development footprint that do
25 have the cavities for the bats will be visually

1 (unintelligible) and scoped prior to development; and
2 if we see anything, we will coordinate with Fish and
3 Wildlife Services.

4 We have not resurveyed the lot since Hurricane
5 Ian, but we do anticipate a reduction in the number of
6 tortoise burrows due to the flooding. But, again,
7 prior to initiation of any development activities, a
8 gopher tortoise burrow survey and a cavity tree survey
9 will be re-conducted within the development footprint.

10 And the proposed project is consistent with the
11 environmental portions of the conditions, which include
12 Number 3, open space, indigenous open space,
13 preservation, and the storage. Those were the numbers,
14 the a) through e) that I went over earlier. I didn't
15 mention e), but that's in the plan.

16 And then the wetland creation, which Ken kind of
17 mentioned, will be created to -- for that storage to
18 compensate.

19 And then indigenous habitat management plan prior
20 to issue of the DO, we'll do the species management
21 plan and the indigenous management plan. We
22 actually -- we have those completed already so we do
23 have those.

24 And in my expert opinion, this project meets or
25 exceeds the environmental and resource protection goals

1 and objectives of the Lee Plan and LDC.

2 HEARING EXAMINER RIVERA: You made reference to a
3 conservation easement. Has that been provided, or is
4 that required by the Water Management District?

5 MS. PALMER: Not required by the Water Management
6 District but --

7 HEARING EXAMINER RIVERA: I didn't see a condition
8 in this, or a reference made to it, so is that already
9 existing in place, or is that going to be --

10 MS. HEWITT: This is Stacy Hewitt, for the record.
11 But, no, it's not in place yet. It's being proposed as
12 part of the development order.

13 HEARING EXAMINER RIVERA: Okay. But it's not a
14 condition of the zoning that's been discussed?

15 MS. WORKMAN: No.

16 HEARING EXAMINER RIVERA: Okay, thank you.

17 MS. PALMER: Thank you.

18 MR. HARTSELL: Next, Yury Bykau.

19 HEARING EXAMINER RIVERA: Thank you.

20 Good morning.

21 MR. BYKAU: Good morning. For the record, Yury
22 Bykau with TR Transportation Consultants.

23 We prepared a traffic study consistent with the
24 traffic study guidelines for rezoning projects in Lee
25 County. As previously mentioned, the rezoning request

1 is to permit up to 30,000 square feet of commercial and
2 300 multi-family units.

3 As part of our traffic study, we first prepared a
4 trip generation analysis consistent with the latest ITE
5 practices. We then took those trips and added them to
6 the surrounding roadway network and conducted what's
7 called a link level of service analysis. The links
8 that we included in our analysis were US 41 and San
9 Carlos Boulevard with the subject site, and the results
10 of our link level of service analysis indicated both
11 roadways will operate at acceptable level of service in
12 the future with the project traffic added to these
13 roadways.

14 FDOT is also constructing a traffic signal at that
15 U.S. 41/San Carlos Boulevard intersection. They are
16 constructing it as part of their US 41 resurfacing
17 project which is scheduled to begin this year.

18 We also in our traffic study analyzed the
19 intersection of US 41 with San Carlos Boulevard under
20 the future signalized conditions, and that intersection
21 was shown to operate at an acceptable Level of Service
22 D with the project traffic added to that intersection.

23 And just an FYI, our analysis did include the
24 project trips from the Estero Vista project, which is
25 to our south, that will be sharing this access to

1 US 41.

2 So in my professional opinion, this project is
3 consistent with the transportation element of the Lee
4 Plan and the Land Development Code. If you have any
5 questions, I'll be more than happy to answer them.

6 HEARING EXAMINER RIVERA: Do you have any idea how
7 that will align, the intersection improvement with the
8 development of this site? It sounds like they might
9 dovetail this year; is that what you just said?

10 MR. BYKAU: Yes, they're -- so the surfacing
11 project is starting this year, and a signal is going to
12 be constructed as part of that resurfacing project, but
13 I'm not sure at what point the signal will be
14 constructed, but it will be --

15 HEARING EXAMINER RIVERA: Is there like a duration
16 for that project of the resurfacing so that there would
17 be some indication if it would take one or two years?
18 I mean, do we have any idea?

19 MR. BYKAU: I don't have any idea, no, on how long
20 it will take. All I know is it will start this year.
21 That's what's on FDOT's website.

22 HEARING EXAMINER RIVERA: Thank you.

23 MR. BYKAU: Thank you.

24 MS. HEWITT: Stacy Hewitt, for the record.

25 The request does meet the minimum requirements for

1 bonus density found in Land Development Code, Section
2 2-146(b) and (e).

3 The traffic will not travel through residential
4 before reaching US 41, which is an arterial roadway.

5 There is adequate water and sewer capacity
6 available.

7 And it will not have an adverse impact on the
8 surrounding road network.

9 Appropriate mitigation, pursuant to the Land
10 Development Code, will be demonstrated as part of the
11 development order for development within the coastal
12 high hazard area.

13 And the resulting development is compatible with
14 the existing and planned uses.

15 Urban community allows up to 96 feet in height,
16 and we're requesting a maximum of 56 feet in height
17 with staggered building heights.

18 Buildings 1 and 2 are set back approximately 95
19 feet from the property line; and Building 3, again, is
20 oriented with the narrow portion to the north with a
21 minimum 29-foot setback.

22 We are enhancing the buffer to the north, as well.

23 And the drainage improvements proposed for the
24 public health, safety, and welfare.

25 No transfer of development units are proposed

1 within the coastal high hazard area.

2 It also complies with the findings for zoning
3 matters in Land Development Code, Section
4 34-145(d)(4)a.1.

5 It does comply with the Lee Plan:

6 Policy 1.1.4, the proposed density and uses are
7 consistent with that category.

8 Policy 1.4.1, we are removing the potential 21
9 dwelling units from rural.

10 And also with Policy 1.5.1, the wetlands are
11 preserved on-site with only minimal impacts, and the
12 density calculated are at the
13 one-dwelling-unit-per-20-acre.

14 It's consistent with Objective 2.1, Policy 2.1.1,
15 on development location as it is a contiguous and
16 compact development pattern and conserves land and
17 natural resources.

18 It's consistent with Objective 2.2, Policy 2.2.1,
19 on development timing. Adequate public facilities
20 exist in the area.

21 It's consistent with Policy 4.1.4. Just as an
22 aside, the site development regulations would only
23 require 4.63 acres of indigenous preserve, and we're
24 providing 16.98 acres of indigenous upland and 10.59
25 acres of the restored wetlands.

1 It's consistent with Policy 5.1.3, 5.1.5, and
2 5.1.6, placing high density near employment, shopping,
3 parks, schools, mass transit, bicycle facilities; and
4 we are providing extra measures for compatibility, as
5 well.

6 It's consistent with Policy 5.1.10 once the Comp
7 Plan amendment is approved.

8 And it's also consistent with Policy 6.1.6 and
9 6.1.7, as the proposed commercial areas are already
10 zoned CG.

11 It's consistent with Policy -- or Objective 11.1,
12 Policy 11.1.1, as mixed-use development with sufficient
13 infrastructure and connectivity is encouraged.

14 Consistent with Policy 11.2.2, as it accommodates
15 connection to adjacent uses.

16 Consistent with Policy 11.2.6, as it utilizes
17 bonus density to encourage the compact and functional
18 development pattern.

19 Policy 11.2.7, as it provides infill development
20 using nonresidential uses in the density calculations.

21 It does meet the criteria for 11.2.1, which has
22 been demonstrated with the concurrent Comprehensive
23 Plan amendments.

24 It's consistent with Objective 59.1, Policies
25 59.1.4, 59.1.9; Policy 60.4.3; Objective 61.3, Policies

1 61.3.2, and 61.3.3, as it enhances and preserves the
2 flow-way and uplands adjacent to the Estero Bay Buffer
3 Preserve, removes exotics, and also replaces the
4 culverts identified by Lee County as needing
5 replacement.

6 It's consistent with Goal 101, Objective 101.1,
7 Policy 101.1.1, as it does improve the function of the
8 natural system as a defense against flooding, and it's
9 compatible with wildlife habitat.

10 It's consistent with Policy 101.1.2, as it
11 preserves a majority of the wetlands, and they are
12 outside of this site's water management system.

13 Policy 101.3.2, we are providing the .04 acres
14 of -- there's .04 acres of isolated poor-quality
15 wetland impact within the coastal high hazard, which,
16 through the South Florida Water Management District ERP
17 approval, those would be deemed as uplands; and the
18 associated public facilities that we're providing with
19 the access to Mullock Creek flow-way; and the
20 compensating storage provided.

21 It's consistent with Policies 101.3.6 and 101.3.7,
22 as only Site-Built Affordable Housing is utilized in
23 the coastal high hazard.

24 It's also consistent with Policies 125.1.2,
25 125.1.3, and 125.1.4, as we are having the water

1 quality monitoring condition, and the drainage design
2 minimizes nutrient loading and pollution.

3 It also complies with the Land Development Code
4 and the bonus density criteria, and it also meets Land
5 Development Code, Section 34-940(a), as it meets at
6 least two of the thresholds required for a mixed-use
7 planned development of at least 50 dwelling units and
8 at least 30,000 square feet of commercial; and,
9 additionally, we have the community facilities of the
10 proposed perpetual stormwater drainage and access
11 easement.

12 And it does qualify for the three proposed
13 deviations.

14 The request is compatible with existing and
15 planned uses, and it also -- the access is sufficient.
16 The interconnect to the north and south will not
17 adversely -- will not adversely affect or impact the
18 surrounding road network.

19 The request will not have any adverse impact on
20 the road network, and it will be further evaluated at
21 the time of development order. The request does not
22 adversely affect any environmentally critical or
23 sensitive areas.

24 And, again, it's providing the 30.63-acre
25 preserve.

1 It is located in a future urban area where
2 adequate urban services exist.

3 The proposed uses are appropriate at the subject
4 location, and it's appropriate for infill development
5 at the signalized intersection across from a major
6 collector.

7 And the multi-family development is clustered and
8 removes that potential for well and septic over -- in
9 the coastal high hazard area.

10 And it's within the allowable density range, and
11 the commercial area is already zoned CG.

12 The Applicant and the Staff do agree on the
13 proposed conditions, and each of the requested
14 deviations do enhance the achievement of the objectives
15 of the planned development and protect the public
16 health, safety, and welfare.

17 Based upon my experience and review of the
18 request, it's my professional opinion that the request
19 is consistent with the intent of the Lee Plan, the Land
20 Development Code, and other applicable codes and
21 regulations; it's appropriate at the subject location;
22 compatible with surrounding uses; and we believe the
23 Applicant is entitled to approval of the request,
24 rezoning to a mixed-use planned development.

25 And that concludes our presentation. If you have

1 any questions, we'd be happy to answer.

2 HEARING EXAMINER RIVERA: I had a question about
3 the height, going back to that for a second. The
4 outparcels for the commercial and multi-family
5 component is lower than Building 1. It's at 53 feet
6 instead of 56. Was that intentional?

7 MS. HEWITT: That -- the original request was for
8 53 feet, and during the process there was -- we
9 realized that there was -- it did go slightly higher
10 on -- we did stagger the residential buildings, but we
11 left -- the only reason that one stayed at 53 feet is
12 because that was the original request, and we didn't --
13 those have no development proposed on them as of yet.
14 It's unknown so we just left it at the original
15 request.

16 HEARING EXAMINER RIVERA: Okay. And then on the
17 bonus density calculations, or just the density
18 calculations in general, you talked about the
19 right-of-way calculation that runs along the southern
20 portion?

21 MS. HEWITT: Yes.

22 HEARING EXAMINER RIVERA: Is that the same one
23 that's shown that's going to be extinguished, or is
24 that a separate easement?

25 MS. HEWITT: It is. There is a portion that isn't

1 being extinguished where existing Santa Maria is, but
2 it's an adjacent private right-of-way.

3 HEARING EXAMINER RIVERA: Would that impact after
4 extinguishment? Does that affect the density at all?
5 Does it increase or decrease what the calculation would
6 be?

7 MS. HEWITT: No, we incorporated them in the
8 density calculations.

9 HEARING EXAMINER RIVERA: Okay. So that had
10 already been provided for or anticipated?

11 MS. HEWITT: Yes.

12 HEARING EXAMINER RIVERA: Thank you, that was all
13 my questions.

14 MS. HEWITT: Thank you.

15 HEARING EXAMINER RIVERA: Thank you.

16 Whenever Staff is ready.

17 Good morning.

18 MS. WORKMAN: Good morning. For the record, Beth
19 Workman with the Zoning section.

20 Before I get started, I just have a PowerPoint
21 presentation that I'd like to submit for the record.

22 HEARING EXAMINER RIVERA: Thank you.

23 (Staff Exhibit 2 submitted.)

24 HEARING EXAMINER RIVERA: I will label that Staff
25 Exhibit 2 because Staff Exhibit 1 is the Staff Report.

1 Thank you.

2 MS. WORKMAN: Okay. Well, the Applicant did an
3 excellent job covering all the points of this -- kind
4 of complicated with the bonus density flying all over
5 the place. So I'm not going to belabor some of these
6 topics, but I am going to go over what was in the Staff
7 Report with a couple things.

8 So this is DCI2022-00018; it's Grand Bay Minor
9 Mixed-Use Planned Development.

10 As Ms. Hewitt explained, it's 46.33 acres. It's
11 currently in MH-1, mobile home; and general commercial,
12 CG. It's going to the mixed-use planned development,
13 MPD.

14 The request is to permit the 300 dwelling units,
15 of which 114 are bonus density units. There's 30,000
16 square feet of commercial, retail, or office uses
17 proposed that are adjacent to US 41 on the master
18 concept plan. It's not to exceed 56 feet in height.
19 And Staff did recommend approval with the conditions.

20 Ms. Hewitt, like I said, went over the adjacent
21 properties and the uses abutting the property to
22 support the future land use category for urban
23 community, as well as the Comprehensive Plan changes
24 that are coming for the mixed-use overlay to be added
25 to a portion of this property, which kind of gives the

1 feel for the surrounding uses and what can support
2 these residential units, as well as the commercial uses
3 that are being proposed.

4 The history on the property, the CG portion, which
5 is against US 41, that was originally rezoned,
6 Z-AB-84-241, for automobile and boat sales, and then
7 the remainder of the property was MH-1 for mobile home
8 in 1968.

9 Comprehensive Plan amendments. There is a text
10 amendment to align the current County practices with
11 how you calculate for one owner owning different land
12 use categories, and the Applicant is consistent with
13 how the bonus density is rolling out, as well as the
14 regular density, I'll call it, for this site.

15 Again, the map amendment is coming in for a
16 portion of the property. Of that 46.33 acres, 15.64
17 acres is being requested to be added to the mixed-use
18 overlay. On the aerial that you see here, the
19 mixed-use overlay exists across US 41 in that pink
20 color, and the red portion is the portion that's
21 going -- that's being requested to be added to the
22 mixed-use overlay map.

23 Surrounding land uses. I'm not going to belabor
24 this, but it is noted that Sheltering Pines is directly
25 to the north, and the Applicant is providing an

1 enhanced buffer. It's important to note that if this
2 gets approved to be in the mixed-use overlay, a portion
3 of the property will have reduced requirements for
4 buffers and indigenous and open space. The Applicant
5 is proposing an enhanced buffer between the north
6 property line and Sheltering Pines, that is, a
7 10-foot-wide buffer that does have the 5 trees per 100
8 linear feet and a double-staggered hedge, as well as an
9 opaque fence that's going along there. And they have
10 the drainage going through there, as well, as
11 Mr. Kellum explained.

12 To the south it gets -- you know, you have the RPD
13 with Estero Vista that was previously approved; and
14 then as you work further south, you have the MH-1, the
15 MH-2, and you have an RV-3 that's down around that
16 area. Again, the conservation easement or the
17 conservation area and the preserve will provide the
18 buffering. Nothing will change there. Even with the
19 improvements that Staff is requiring for the drainage,
20 the RPD will be buffered, as well, with the mixed-use
21 overlay buffer requirements.

22 This is the master concept plan with basically
23 over -- over half the project is within a preserve area
24 that's a mix of truly indigenous. The basket weave is
25 the indigenous area, as well as the areas that are

1 nonindigenous but being preserved and restored, as
2 Ms. Palmer explained.

3 An important note about this project is the
4 flow-way restoration because currently, right now, the
5 culvert replacement that's happening is a very
6 important entity because right now there are crushed
7 pipes out there. So the drainage will improve, as
8 Mr. Kellum explained, and it's very important to have
9 that maintenance entity for the County to be able to
10 access in case of a storm event, and we have to get in
11 there and open up anything that's clogged to prevent
12 backup to the north.

13 Ms. Hewitt went through this thoroughly, the Lee
14 Plan compliance. The Applicant is compliant with the
15 future land use designation for the three different
16 future land use categories that are on the property.
17 It does promote compact growth patterns. It's
18 clustering it -- clustering the development footprint
19 towards US 41 with over 50 percent of the site in a
20 preserve.

21 There are adequate facilities, as Ms. Hewitt's
22 slide showed. There's, you know, the bus route, the
23 school system, adjacent commercial, and the utilities
24 to support the project. It does protect
25 environmentally sensitive areas as described by the

1 flow-way restoration, as well as the culvert pipes, and
2 then the preservation next to the Estero Bay Buffer
3 Preserve.

4 It's compatible with the existing and planned
5 residential uses in the area. As I mentioned, to the
6 north, Sheltering Pines, there is an enhanced buffer to
7 protect them, as well as the orientation of the
8 buildings and the building height and how the design of
9 the site is going forward.

10 Designed around existing site limitations. As
11 mentioned, there's a flow-way that runs through it,
12 that there's FEMA requirements. They have designed the
13 site to recognize those -- those limitations.

14 A variety of housing units. They're providing
15 multi-family in this area, as well as surrounding uses
16 for single-family to add a plethora of different
17 housing units in the area.

18 Development in the MUO, the mixed-use overlay.
19 There is a connection to the north that's proposed,
20 from the Outparcel 1 when it's developed, and that
21 meets the -- and satisfies that policy.

22 Encourages properties in MUO to utilize bonus
23 density, which has been gone over thoroughly.

24 I want to touch on the coastal high hazard a
25 little bit. The coastal high hazard is in pink on the

1 map. The Applicant is meeting the coastal high hazard
2 Lee Plan policies. Ms. Hewitt went over how there is a
3 .0 -- there's a total of .17 acres of wetland impacts.
4 Part of the wetland impacts are already mitigated for
5 through an ERP. .04 are being proposed with this
6 development.

7 Compensatory storage is being proposed, as well as
8 getting approval through an ERP for those impacts to
9 meet the policies of the coastal high hazard, as well
10 as the wetland policies in the Lee Plan.

11 As has been thoroughly described about the
12 stormwater management -- and I appreciated Mr. Kellum
13 going through how the water is going to flow through
14 the site. The stormwater management, there are
15 pretreatment areas within the development footprint
16 before it reaches the preservation area, as well as the
17 flow-way. And then to further those protection
18 measures, Staff has provided a condition about water
19 quality for testing and means to -- if anything happens
20 where we do have constituents in the water, the means
21 to correct that.

22 This portion of the master concept plan is the
23 second sheet. I just wanted to add this in here
24 because the orange that you see outlined here is part
25 of that perpetual stormwater drainage and access

1 easement. It's an important portion of this project
2 because it allows for the Applicant to allow the County
3 to access that massive flow-way in the back for the
4 public facilities measure in there.

5 This is from the Staff Report. This kind of --
6 kind of goes through building the foundation for the
7 bonus density because this thing has so many facets to
8 it, and some of those -- the types of units are going
9 to be decided on at time of development order, but we
10 want to make sure that density is being met. So 300
11 dwelling units with 114 bonus being added with the
12 coastal high hazard, the wetlands, the urban community,
13 and the rural all being calculated in there.

14 So this slide right here just represents just
15 straight density for the project, and then the next
16 couple slides represent what the maximum bonus density
17 sliding scale in there could be depending on -- but the
18 conditions of this rezone are 300 dwelling units of
19 which 114 are bonus so they're kind of locked into
20 that. But this kind of goes over the various -- and
21 this is for the subject property, and then I have the
22 other slide, which was for the right-of-way, as well,
23 which is this one right here. And that's straight out
24 of the Staff Report.

25 And then Ms. Hewitt went through this thoroughly

1 with the criteria in LDC 2-147. I'm not going to
2 belabor this. They are meeting these criteria to get
3 the ticket in for the bonus density so I'm not going to
4 belabor that.

5 And then the LDC compliance, they are compliant
6 with the height in this area for their future land use
7 category.

8 Going over the environmental, it's in the mixed --
9 it will be in the mixed-use overlay with the Comp Plan
10 amendment. 20 percent open space on the site, they
11 would be required to provide 9.27 acres. They are
12 providing 31.42 of general open space. Of that, the
13 indigenous is half of the required open space in the
14 Code for mixed-use overlay. They would be required to
15 provide 3.02. The 16.98 acres of indigenous is the
16 total amount they're providing. And then there is the
17 breakdown of it, and the condition in the zoning to
18 make sure at time of DO the breakdowns are there
19 because of the definition of indigenous.

20 And the restoration of the nonindigenous (sic) is
21 basically just removal of exotics and let the seed
22 source for the indigenous section to propagate.

23 Again, the right-of-way buffer along 41 will be
24 five feet wide. It will be made up of trees only, no
25 shrubs. And then I kind of talked about that northern

1 buffer to the Sheltering Pines.

2 Going through the deviations -- again, Ms. Hewitt
3 went through these thoroughly. This just kind of
4 showed you the area. Staff is in agreement with the
5 deviations across the board, as well as the withdrawal
6 of the one, and the conditions that were put in the
7 Staff Report, as well. These just kind of go over the
8 various deviations and the conditions.

9 I did, with these slides, change the condition
10 citation, the Condition 9 to what the 48-hour letter
11 was stating to correct that, as well.

12 The development is compatible with traffic. Yury
13 went over this thoroughly. With FDOT proposing a
14 signalized intersection, which is online, will help the
15 development in that area. The trips in the Staff
16 Report, our infrastructure planning group approved --
17 determined that there would be no detrimental impact on
18 the surrounding roadway system. And then at time of
19 development order, they would look at the ins and outs
20 of any further improvements with what currently is
21 going on in the area.

22 We are in agreement with the 48-hour letter, and
23 Staff finds that the findings and conclusions are being
24 met with the proposal.

25 And I'm here for any questions.

1 HEARING EXAMINER RIVERA: I did not have any
2 questions, thank you.

3 MS. WORKMAN: Okay, thank you.

4 HEARING EXAMINER RIVERA: It's a very thorough
5 Staff Report and presentation.

6 Did Applicant have any questions?

7 MR. HARTSELL: No, ma'am.

8 HEARING EXAMINER RIVERA: Okay, thank you.

9 MR. HARTSELL: Thank you.

10 HEARING EXAMINER RIVERA: Okay. With that, we'll
11 go ahead and open up the public comment portion. So I
12 will call the cards that I have. The first one I have
13 is for David Dickey.

14 Good after -- or good morning still, excuse me.
15 Good morning, sir.

16 MR. DICKEY: Good morning.

17 (Ms. Workman changes slide on PowerPoint.)

18 MR. DICKEY: Thank you, that's a perfect graphic.

19 My name is David Dickey. I reside at 401 Padica
20 Road NE in St. Petersburg, Florida 33702.

21 I happen to have the good fortune of owning a
22 piece of property that's actually contiguous to this
23 particular development. My partner, Raymond Garcia, is
24 also present. He may or may not make comments. I
25 don't believe he's officially been added to the record.

1 We just simply wanted to say that we're here not
2 to object or necessarily support the project. We think
3 it's wonderful. As an aside, the Applicant, his
4 project at 1701 Central Avenue in St. Petersburg --
5 which is my home city. I saw it come out of the
6 ground. It's beautiful.

7 MR. KEHOE: Thank you.

8 MR. DICKEY: It's fantastic. So every day when I
9 bring my child -- my children to school, back and
10 forth, and now it's -- it's made the skyline that much
11 more beautiful.

12 MR. KEHOE: Thank you.

13 MR. DICKEY: So we appreciate that.

14 I'm here really just for a couple of questions.

15 There was a comment about the concurrent DO. I
16 believe the attorney for the Applicant said that you
17 folks want to go ahead and do the concurrent
18 development order, which I refer to as site plan review
19 and approval. Is that correct? We weren't notified
20 that that's being done concurrently. Is that
21 particular development order -- has it been assigned a
22 case number already, and could I get that from some
23 folks? That would be awesome.

24 We're here primarily to discuss Policy 11.2.2,
25 which is the interconnectivity between the proposed

1 project and our small parcel. And, again, forgive
2 me -- and we don't like to think that we're the tail
3 wagging the dog. This is our .52-acre parcel here
4 which currently has access to a private road, Unique
5 Circle, which is owned by the folks that own and live
6 in Sheltering Pines. We had reached out on occasion
7 multiple times, actually, to the previous owner -- I
8 believe he's passed since -- Mr. George Freeland, and
9 we were trying to work cooperatively with him -- I'd
10 like to just enter, if that's okay, just a couple of
11 documents into the record that clearly identifies our
12 parcel.

13 HEARING EXAMINER RIVERA: Certainly.

14 MR. DICKEY: And we just used not the most recent
15 master concept plan but -- I don't know if you want to
16 view these before I hand them to whoever it's necessary
17 to do that.

18 MR. HARTSELL: If I might look at them first --

19 MR. DICKEY: Yeah, that would be great --

20 MR. HARTSELL: -- I'd appreciate that.

21 MR. DICKEY: Would you like to come up, and I can
22 explain, or do you want to...

23 MR. HARTSELL: Well, just let me see what you're
24 explaining and then --

25 MR. DICKEY: Sure, sure. So this is just a master

1 site plan. It's not the current one. We were just
2 clearly identifying the Garcia-Dickey commercial parcel
3 and the address and the date that we're just putting
4 into the record. So there's three -- three documents
5 altogether.

6 MR. HARTSELL: Okay. Yeah, thank you.

7 MR. DICKEY: That's okay?

8 MR. HARTSELL: Appreciate it, yes.

9 You'll probably want to give that to the Hearing
10 Examiner.

11 MR. DICKEY: Thank you.

12 Could I do that all at one time?

13 HEARING EXAMINER RIVERA: Yes. If you've got
14 additional, and you want to do it concurrently, that's
15 fine, too.

16 MR. DICKEY: And please forgive us. The public
17 notice went out just two weeks ago. Of course with
18 public mailing, there was some limited time. Of course
19 I had to travel.

20 A quick question about an email that I sent to
21 Ms. Workman. Is an email that I sent to her admissible
22 into the public record, or can she actually bring up an
23 email attachment as a visual aid? Since I didn't see
24 an overhead projector, is that something she could do
25 for us now, or is that not possible?

1 HEARING EXAMINER RIVERA: Would it just be the
2 text of the email that you're referring --

3 MR. DICKEY: No, it's an actual attachment that
4 shows a visual aid. Is that acceptable at the public
5 hearing?

6 HEARING EXAMINER RIVERA: I'm not sure if she has
7 access to it. If it's an email --

8 MR. DICKEY: It is an email to Ms. Workman, and
9 then there's an attachment. We just wanted to visually
10 show the --

11 MS. WORKMAN: It's going to take a bit. Just a
12 minute.

13 MR. HARTSELL: Can we ask what the attachment is?

14 MR. DICKEY: Yeah. What it is, it's originally --
15 a proposed site development plan that was compiled back
16 in 2016 by Banks Engineering. And what the document
17 shows is it contemplates exactly what's being done now,
18 when we had originally worked informally with Banks
19 Engineering and -- and the owner, Mr. Freeland.

20 HEARING EXAMINER RIVERA: So --

21 MR. DICKEY: And we just wanted to show that Banks
22 Engineering and we had contemplated the cross easement
23 access between the commercial parcels and our
24 commercial parcel.

25 HEARING EXAMINER RIVERA: So it would be something

1 that you obtained from public records that's --

2 MR. DICKEY: No, no, it was something we prepared.

3 HEARING EXAMINER RIVERA: For your own property?

4 MR. DICKEY: For our parcel --

5 HEARING EXAMINER RIVERA: Okay.

6 MR. DICKEY: -- and it was for -- it was
7 contemplating a joint development with Mr. Freeland,
8 who has passed since, and we were working in a
9 cooperative manner at that time.

10 But whatever you folks think is appropriate.

11 MR. HARTSELL: I would just object to the
12 relevance of it. I understand that it's -- I'm happy
13 to have Mr. Dickey explain what it is. I just don't
14 know that it's --

15 MR. DICKEY: Yeah, it's a --

16 MR. HARTSELL: -- particularly material --

17 MR. DICKEY: -- proposed site plan --

18 HEARING EXAMINER RIVERA: I guess the question
19 though is, is the nature -- are you objecting to the --

20 MR. DICKEY: No, no, no, no, no. We are
21 supporting Policy 11.2.2, and we just want to ensure
22 that -- our position is that we want to be involved in
23 the development order process with the Applicant
24 jointly and cooperatively to make sure that the cross
25 easement access is put in an optimal place for health

1 and safety, traffic flow and traffic patterns.

2 HEARING EXAMINER RIVERA: Okay. So at this stage
3 for the zoning, what you see on the master concept plan
4 is kind of the proposed interconnection. The actual
5 location of that would be handled at the DO level,
6 which is outside the scope of what we could consider
7 today.

8 MR. DICKEY: Understood.

9 HEARING EXAMINER RIVERA: So your testimony about
10 that is certainly relevant to the information that we
11 have today, but I don't think that we necessarily need
12 the attachment.

13 MR. DICKEY: That's fine.

14 HEARING EXAMINER RIVERA: Thank you.

15 MR. DICKEY: Thank you for evaluating that.

16 And again, just to reiterate, we were unaware that
17 the development order was being requested concurrently
18 with the rezoning application and future land use
19 amendment. So we would just like to have, perhaps, the
20 Applicant or the Applicant's representatives keep us
21 involved in -- in that process because we think there
22 might be some beneficial co-development activities that
23 we and the Applicant could benefit from.

24 HEARING EXAMINER RIVERA: Thank you.

25 MR. DICKEY: And thank you very much, and I'll

1 just hand you these documents.

2 HEARING EXAMINER RIVERA: Oh, yes, thank you. And
3 I'm going to accept that as Dickey Exhibit 1.

4 MR. DICKEY: And I'm going to part with my
5 beautiful baby blue paperclip.

6 (Dickey Exhibit 1 submitted.)

7 HEARING EXAMINER RIVERA: Thank you very much.

8 MR. DICKEY: Appreciate it.

9 HEARING EXAMINER RIVERA: Thank you.

10 MR. HARTSELL: Could I ask just one kind of real
11 quick question?

12 HEARING EXAMINER RIVERA: Certainly.

13 MR. HARTSELL: Mr. Dickey, are you aware that the
14 master concept plan provides for an interconnect
15 between your commercial parcel and the northern
16 commercial parcel on this site?

17 MR. DICKEY: Yeah. We weren't made aware of that
18 until we had a telephone conversation with Ms. Workman
19 on Tuesday. The master site plan -- master concept
20 site plan did not include that language originally.
21 She was kind enough to forward me the most recent
22 master plan that showed a comment about the
23 interconnectivity.

24 MR. HARTSELL: Well, when you mentioned a comment,
25 it's a requirement of the master concept plan that --

1 MR. DICKEY: Understood.

2 MR. HARTSELL: The Land Development Code
3 regulation that says that the two parcels must be
4 interconnected at the time of development order is part
5 of the master concept plan. So you are aware of that
6 then?

7 MR. DICKEY: Correct.

8 HEARING EXAMINER RIVERA: Okay, thank you.

9 MR. HARTSELL: I'm sorry, one last quick question.
10 At this point in time, your parcel doesn't have a
11 development order; is that right?

12 MR. DICKEY: No, that's incorrect. There was a
13 development order -- in fact, if we go back to
14 Ms. Workman's PowerPoint presentation, she kind of
15 glossed over there was a CPD development order from
16 1988. I don't know if we can bring her PowerPoint
17 presentation back, and I can give you the specific
18 development order.

19 MR. HARTSELL: I'm sorry, let me make it more
20 clear.

21 The development order I'm talking about is what
22 you referred to as the site plan approval process.

23 MR. DICKEY: Yeah, we're familiar with that.

24 MR. HARTSELL: Okay. And you say that in 19 --
25 there's an active one, or one was done but it's --

1 MR. DICKEY: There was -- there was one that was
2 created I believe in 1988; and if we can go back to the
3 PowerPoint presentation, I think we can illuminate for
4 the -- for the Staff and the hearing master (sic) --
5 item number 2 in the -- it's in the north. It wasn't
6 talked about, a CPD, 4,500-square-foot commercial use
7 Z-88-319, that's the development order that we
8 essentially inherited when we purchased the property
9 from our predecessor owner.

10 MR. HARTSELL: Okay. That would be Resolution
11 Z-88-319?

12 MR. DICKEY: It's a resolution, correct.

13 MR. HARTSELL: Okay. And if I may, just for
14 clarification purposes -- if I might show Mr. Dickey --

15 HEARING EXAMINER RIVERA: Certainly.

16 MR. HARTSELL: -- a copy?

17 Would this be the zoning resolution you're talking
18 about?

19 MR. DICKEY: That's correct.

20 MR. HARTSELL: Okay. And attached to that is a
21 master concept plan?

22 MR. DICKEY: That's correct.

23 MR. HARTSELL: And is this the master concept
24 plan?

25 MR. DICKEY: That is a public record master

1 concept plan that we're aware of.

2 MR. HARTSELL: Okay. And if I may provide this --

3 HEARING EXAMINER RIVERA: Certainly.

4 MR. HARTSELL: -- to the Hearing Examiner?

5 HEARING EXAMINER RIVERA: Yes, I'll take that, and
6 that will be Applicant's Exhibit 3.

7 MR. DICKEY: Thank you.

8 (Applicant Exhibit 3 submitted.)

9 HEARING EXAMINER RIVERA: Thank you.

10 MR. DICKEY: We appreciate that, thank you.

11 MR. HARTSELL: And my question, just for
12 clarification for the Hearing Examiner -- I know you
13 realize this -- that does not show a specific location
14 for an interconnect, does it?

15 MR. DICKEY: I don't recall -- from what you just
16 showed me, I don't recall. Maybe the hearing master
17 can answer your question.

18 MR. HARTSELL: Okay. I'm happy to -- if he needs
19 to look at it --

20 HEARING EXAMINER RIVERA: If you want to show it
21 again, that's fine.

22 (Document handed to Mr. Hartsell.)

23 MR. HARTSELL: This is the master concept plan,
24 which is not very clear.

25 MR. DICKEY: I agree, it's not very clear.

1 MR. HARTSELL: This is the larger one showing
2 Unique Circle, US 41, the north, and there is no
3 interconnect to the south specifically shown on this,
4 is there?

5 MR. DICKEY: I didn't prepare it so I wouldn't
6 know if it was contemplated or not.

7 MR. HARTSELL: Okay.

8 HEARING EXAMINER RIVERA: Thank you. But the
9 testimony that you're providing today is simply that
10 you want there to be a notation on the record --

11 MR. DICKEY: Correct.

12 HEARING EXAMINER RIVERA: -- that you desire an
13 interconnection to your property --

14 MR. DICKEY: Correct.

15 HEARING EXAMINER RIVERA: -- and you wish to be
16 involved in the development order process --

17 MR. DICKEY: That's correct.

18 HEARING EXAMINER RIVERA: -- if the Applicant
19 would be willing to do that?

20 MR. DICKEY: I guess I would pose a question back
21 to the Applicant's counsel, is would the Applicant be
22 opposed to working with us to find the optimal location
23 for the required interconnect between our commercial
24 parcel and their proposed project?

25 MR. HARTSELL: The -- I think the point that's

1 maybe not real clear is that the requirement for the
2 connection to the -- to the commercial outparcel is
3 that at the time of the DO for the commercial
4 outparcel, that interconnection will be determined.
5 Basically, yes, at the time that either your parcel is
6 coming in or that commercial parcel is coming in, that
7 commercial parcel is not presently in for a DO.

8 MR. DICKEY: So is the DO case for just the
9 residential portion, or is it the residential portion
10 and the commercial portion?

11 MR. KEHOE: Just the residential.

12 MR. DICKEY: That's appreciated, okay. So the DO
13 is not being sought right now for the commercial
14 portion of the mixed-use development; is that correct?

15 MR. KEHOE: Correct.

16 MR. DICKEY: Thank you so much. That's what we
17 appreciate the background information on.

18 HEARING EXAMINER RIVERA: Thank you. Thank you
19 for coming today, sir.

20 MR. DICKEY: Thank you so much.

21 MS. WORKMAN: And, Mr. Dickey, just -- Mr. Dickey,
22 just for your record, I have put up the development
23 order number up there that they are currently in for.

24 MR. DICKEY: Oh, thank you.

25 MS. WORKMAN: So it is DOS2022-00145, is what our

1 records are showing on our GIS system.

2 MR. DICKEY: Excellent, and it's confined to just
3 the proposed 300-unit --

4 MS. WORKMAN: Yeah, the development order will
5 show you the parameters on it, the legal on there, and
6 then the site development -- it might show the whole
7 thing, including the outparcels, but they would be
8 future DOs. Future development orders would come in on
9 those outparcels.

10 MR. DICKEY: And --

11 MS. WORKMAN: So the infrastructure is being put
12 in for the residential to be supported.

13 MR. DICKEY: Two quick questions, then I will say
14 thank you. Is the Applicant going to be developing the
15 commercial portion of --

16 MR. KEHOE: We don't know yet.

17 MR. DICKEY: Okay, thank you.

18 MR. KEHOE: We have no plans.

19 MR. DICKEY: And what I noticed on the documents
20 is -- we had a survey, which unfortunately it's in your
21 inbox now, that showed a six-foot utility easement on
22 the south portion of our property. It wasn't
23 addressed, and I'm wondering if the Applicant is
24 looking to vacate or extinguish the six feet, which I
25 believe is on their side of the property -- I don't

1 know if Ms. Workman can show us that. And if they are
2 going to extinguish it, we would certainly be in
3 support of doing that concurrently with the Applicant.

4 MS. WORKMAN: This is you right here.

5 MR. DICKEY: And -- yes, there's a -- and I don't
6 know if it shows it on this graphic, but I sent a
7 survey that we had prepared when we purchased the
8 property that shows -- and perhaps it's an oversight on
9 your surveyor's part, but we show a six-foot utility
10 easement on our parcel, and typically it's six foot on
11 our side and six foot on your side, and I don't know if
12 that came up in your analysis.

13 MR. HARTSELL: We're not presently planning to
14 vacate any utility easement on the north side.

15 MR. DICKEY: Okay. And then I'll just follow up
16 with Ms. Workman about what the use and purpose of that
17 six-foot utility easement is, and if it's possible to
18 be vacated at some future date.

19 HEARING EXAMINER RIVERA: Thank you --

20 MR. DICKEY: Thank you all so much.

21 HEARING EXAMINER RIVERA: -- thank you, sir.

22 MR. KEHOE: Mr. Dickey, do you have currently a
23 timeline or plans for development of your parcel?

24 MR. DICKEY: We do, yeah, we do. In fact, I guess
25 we'll make it public record that --

1 HEARING EXAMINER RIVERA: You don't need to. I'm
2 sorry, that's a conversation that can probably be
3 held --

4 MR. KEHOE: I'm sorry.

5 HEARING EXAMINER RIVERA: No, not at all, but to
6 this case's relevance, it's not. So if you could, I'd
7 rather keep it off this record, and you can have that
8 conversation after.

9 MR. DICKEY: Thank you.

10 HEARING EXAMINER RIVERA: The next card I have is
11 for Raymond Garcia. Did you wish to speak, sir?

12 MR. GARCIA: No.

13 HEARING EXAMINER RIVERA: Okay, thank you. Thank
14 you for coming today.

15 We'll go back to the Applicant and the Staff.

16 MR. HARTSELL: Steve Hartsell for the record.

17 Just to wrap it up, because I think it's been very
18 clear between the Applicant's presentation and the
19 Staff's presentation, that we meet all of the
20 requirements of the Land Development Code and the Lee
21 Plan.

22 We are aware, by virtue of numerous conversations
23 with Mr. Dickey and Ms. Hewitt over this period of
24 time, that Mr. Dickey and Mr. Garcia would like to
25 coordinate that interconnect, which really is, I think,

1 part of what led to actually putting on the master
2 concept plan the requirement of the Land Development
3 Code that that interconnect has to take place at the
4 time when the DO for the commercial parcel is
5 submitted. So we're more than happy to do that, and
6 I'm sure that the conversations will continue.

7 We would be happy to answer any questions that you
8 might have with regard to -- some of the density stuff
9 got -- gets to be kind of detailed, but I think that,
10 frankly, between the coordination that Ms. Workman and
11 Ms. Hewitt had, they really did cover those really
12 well. So --

13 HEARING EXAMINER RIVERA: They did, thank you.
14 No, the Staff Report, with the Applicant's narrative,
15 as well, both were very well-detailed, and I do
16 appreciate that, because there were a lot of moving
17 pieces on this one. So I appreciate the walk-through
18 of that.

19 Did Staff have any final comments to put on the
20 record?

21 MS. WORKMAN: No, ma'am.

22 HEARING EXAMINER RIVERA: Okay, thank you.

23 MR. HARTSELL: Thank you very much.

24 HEARING EXAMINER RIVERA: Thank you.

25 So with that, we will conclude the hearing for

1 today. I will be issuing a recommendation in this
2 case; and if you filled out a form, you will receive a
3 copy of that.

4 MS. HEWITT: Thank you.

5 MR. KEHOE: Thank you.

6 MR. HARTSELL: Thank you.

7 HEARING EXAMINER RIVERA: Please stay well.

8 (Proceedings concluded at 10:25 a.m.)
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3 CERTIFICATE OF REPORTER
4

5 STATE OF FLORIDA)

6 COUNTY OF LEE)
78 I, Deborah M. Bruns, Florida Professional
9 Reporter, do hereby certify that I was
10 authorized to and did report the foregoing
11 proceedings, and that the transcript, pages 1
12 through 69, is a true and correct record of my
13 stenographic notes.
1415 Dated this 17th day of February, 2023.
1617 
18 Deborah M. Bruns, FPR
1920
21 (This transcript was electronically signed.)
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23
24
25

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