

THE OFFICE OF THE LEE COUNTY
HEARING EXAMINER

CASE NO.: DC12021-00016

IN RE: CRANE LANDING

_____/

PROCEEDINGS: PUBLIC HEARING

BEFORE: Amanda Rivera
Chief Hearing Examiner

DATE: November 10, 2021

TIME: 9:00 to 11:32 a.m.

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

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

2 THE HEARING EXAMINER: Good morning. We
3 have a full house today and a lot of familiar
4 faces. Okay. Good morning. My name is Amanda
5 Rivera, I'm the Hearing Examiner presiding over
6 today's hearing.

7 Today is November 10th, 2021, and this is
8 Case DCI2021-00016, an Amendment to the Crane's
9 Landing RPD.

10 Because this is a quasi-judicial hearing,
11 all evidence and testimony must be taken under
12 oath, so if you intend to speak, if you could
13 please raise your hand.

14 Do you swear or affirm the testimony you
15 will provide is the truth?

16 (All speaking parties affirmed their oath at this
17 time.)

18 THE HEARING EXAMINER: And all the
19 familiar faces, I don't see any members of the
20 public; is that correct? Okay. Then I will
21 dispense with those instructions and we can
22 begin with the Applicant. Good morning.

23 MS. EKBLAD: Good morning. For the
24 record, Tina Eckblad, President of Morris-Depew
25 Associates. I do have some exhibits for you --

1 THE HEARING EXAMINER: Yes.

2 MS. EKBLAD: -- a copy of the PowerPoint
3 and then an 11 x 17 copy of the Master Concept
4 Plan.

5 THE HEARING EXAMINER: Okay, excellent.
6 Thank you. Has the Master Concept Plan been
7 updated since the Staff Report or it's just
8 starting?

9 MS. EKBLAD: No.

10 THE HEARING EXAMINER: Okay, thank you.
11 So I will mark the PowerPoint presentation as
12 Applicant's Exhibit 1, and the Master Concept
13 Plan as Applicant's Exhibit 2. Thank you.

14 (Applicant's Exhibit Numbers 1 & 2 were marked for
15 identification at this time.)

16 MS. EKBLAD: Here is the exhibit.

17 THE HEARING EXAMINER: Perfect, great.

18 MS. EKBLAD: Good morning. As I
19 mentioned, I am Tina Eckblad, President with
20 Morris-Depew Associates.

21 I have been previously qualified as an
22 expert in land planning, and in the Lee County
23 Land Development Code and Lee Plan, I would
24 like to be qualified again as an expert today.

25 THE HEARING EXAMINER: Yes. Thank you.

1 MS. EKBLAD: So we are here today to
2 discuss the Crane's Landing case. With me is
3 Barry Ernst, from Lennar, as well as Neale
4 Montgomery with Pavese Law Firm.

5 And then, we have our full project team,
6 Shane Johnson is our Project Ecologist, he will
7 not be speaking during the Case in Chief, it's
8 our understanding all parties are in agreement
9 regarding environmental issues.

10 Dave Underhill is the Project Engineer
11 with Banks Engineering. David Brown is the
12 Project Geologist with Progressive Water
13 Resources, he will be providing testimony
14 regarding the water quality project background
15 later in the presentation.

16 And we also have Steve Leung with David
17 Plummer & Associates, who will be providing
18 testimony regarding the transportation network.

19 The property is, approximately, 385 acres
20 and it is currently Zoned Residential Plan
21 Development, that's a Resolution #Z-04-019. As
22 a result of that zoning approval, a Development
23 Order was issued in 2005, and the property was
24 platted initially in 2021.

25 You can see on the aerial here, the

1 property is located fronting on Del Prado
2 Boulevard and, generally, surrounded in an area
3 of residential development in North Fort Myers.

4 THE HEARING EXAMINER: And when you say
5 that it was platted, was the entire property
6 platted or only the portion for Phase I?

7 MS. EKBLAD: Yeah. So, it's a little bit
8 clearer on this graphic from the Property
9 Appraiser website, we only have Phase I that is
10 currently platted.

11 The conservation easements have been
12 recorded and there is a plat in final review
13 for Phase Two, which is in the western portion,
14 northwest corner, of the property.

15 We are expecting that Phase Three will
16 come in for Development Order and preliminary
17 plat shortly, possibly before the BOCC hearing.

18 So moving back one slide, you can also see
19 that there's active construction and clearing
20 occurring on the property, utilizing that
21 existing 2005 Development Order.

22 The property is in the Suburban and
23 Wetlands Future Land Use categories. There is
24 an active Environmental Resources Permit on the
25 site before, under construction.

1 Utilizing the Suburban Future Land Use and
2 the Wetlands, the maximum density permitted
3 on-site is 2,314 dwelling units. The current
4 Zoning Resolution limits that to 1,229, we are
5 not asking for an increase, we're maintaining
6 that unit count.

7 And, as I mentioned, there is an approved
8 ERP and the conservation easements have been
9 recorded.

10 Again, the property is in an area with
11 existing residential development and some
12 supporting commercial. The property has access
13 along Del Prado, we're currently using that
14 main access point for construction.

15 As part of this proposal, we have
16 withdrawn the previously approved deviation to
17 have a single access point, so we are proposing
18 secondary access through the transportation
19 network south; I'll talk a little bit more
20 about the specifics of that later in the
21 presentation.

22 The units that are currently under
23 construction have access to Lee County
24 Utilities for potable water and Florida
25 Government Utility Authority for sanitary

1 sewer.

2 Since we are not increasing the number of
3 units, there's no issues with capacity, we're
4 expecting that to continue through the
5 development of the project.

6 Full slate of emergency services are
7 available in proximity to the subject property.
8 We're in the Lee County School District West
9 Zone; again, without an increase in residential
10 units, there's capacity for the existing
11 students.

12 And we're using the Solid Waste Franchise
13 Agreement to bring solid waste to Lee County
14 Resource Recovery facility.

15 Based on the location of the property and
16 the existing availability of these Urban
17 Services, we are consistent with Lee Plan
18 Standards 4.1.1 and 4.1.2, regarding central
19 utility service, and also the findings that
20 need to be made by the Hearing Examiner to
21 recommend approval that the property will be
22 served by Urban Services, and those services
23 are adequate to meet the capacity -- excuse me,
24 or to meet the density of the project.

25 So getting a little bit further into the

1 surrounding uses, you can see that on all
2 sides, the property is surrounded by existing
3 and future expected residential; along the
4 western boundary and, generally, to the west of
5 the property, we have a number of Master Plan
6 communities that promote a cluster development
7 pattern.

8 And then, to the west, we have more of a
9 standard platted subdivision in Suncoast
10 Estates. There is existing commercial to the
11 west, in this quadrant, and also along -- I
12 believe, this is US 41, along this area that
13 provides service to all of these residential
14 communities (indicating.)

15 As I mentioned, there's a service from the
16 Florida Government Utility Authority, they have
17 an existing facility to the northeast of the
18 property.

19 There's an existing Lee County Public
20 School to the southeast and then Prairie Pines
21 Preserve is in the general vicinity as well.

22 So today, the specific request is to amend
23 the existing Zoning Resolution of Z-04-019,
24 specifically, we are seeking to eliminate the
25 golf course and redesign the Master Concept

1 Plan.

2 Again, we will be maintaining the
3 previously-approved 1,229 dwelling units.
4 We've reorganized the schedule of uses to
5 promote clarity with the Land Development Code
6 and existing definitions, and also, to be more
7 specific about where the different uses are
8 expected to be located on the property.

9 We're amending the Property Development
10 Regulations for the various unit types to
11 reflect current market conditions.

12 We've also added additional deviations to
13 promote consistency with the current Land
14 Development Code and memorialize some of the
15 existing conditions on-site.

16 As a result of that, we have new
17 conditions. We've asked for some clarification
18 on existing conditions.

19 We will be maintaining these existing
20 conservation easements, there's no change to
21 the total acreage -- excuse me, there's no
22 change to the minimum requirement of open
23 space, there's no change to the conservation
24 easements, and we have been actively filing
25 various Environmental Reports through the

1 Development Order process.

2 So I just want to briefly walk you through
3 the Master Concept Plan, please, keep in mind
4 that north is rotated to your left, that is
5 solely so I could have a larger image to walk
6 you through here.

7 If you were to compare this to the
8 existing Master Concept Plan, obviously, we've
9 gotten rid of the golf course. We're promoting
10 a cluster and centralized development pattern
11 for the residential units.

12 If you were to compare with the
13 administrative amendments that have been filed,
14 you would be able to note that the generally
15 northern portion of the development is
16 consistent with those existing administrative
17 amendments to the Master Concept Plan here;
18 collectively, those are known as Phase One and
19 Phase Two.

20 And then, we're maintaining the existing
21 lakes located central to the property here and
22 here (indicating.)

23 As I mentioned, we have withdrawn the
24 deviation to have a single access point, so we
25 have a secondary access located to the south,

1 that access will serve as ingress and egress
2 for emergency services, and ingress only for
3 residents, so there's no longer an issue with
4 public safety there.

5 Where there were buffering requirements or
6 separation distances necessary from the
7 previous approval related to, for example, the
8 townhomes located here or the central amenity
9 location, we've continued to provide the
10 separation and buffering distances.

11 THE HEARING EXAMINER: So you eliminated
12 the golf course but you're not adding units or
13 unit types, so you're just expanding lot size,
14 fill in?

15 MS. EKBLAD: Yes.

16 THE HEARING EXAMINER: Okay. Thank you.

17 MS. EKBLAD: Which leads to the next
18 piece, which is our Property Development
19 Regulations. We have made some adjustments so
20 we can have smaller lot types but, as you know,
21 that's because standard platform is to mix and
22 the match different lot widths and dimensions
23 for varying layout types and then sized per the
24 marketplace.

25 We've included lake-slope typicals to

1 address the deviations, which I'll get to later
2 on in the presentation as well. And, again,
3 memorialize the existing conditions, you may
4 recall that the Land Development Code was
5 amended to increase lake bank-slope.

6 So specific to the Property Development
7 Regulations, I did include some changes in the
8 conditions in the 48-hour letter, in the notes
9 here, that was solely to maintain consistency
10 with the Land Development Code.

11 It's my understanding that Staff doesn't
12 have an objection to these clarifications.
13 With that, I'd like to turn it over to
14 Mr. Leung to discuss the Transportation Network
15 and the Traffic Impact Statement.

16 THE HEARING EXAMINER: Thank you. Good
17 morning.

18 (Next speaker.)

19 MR. LEUNG: Good morning. For the record,
20 Steve Leung, with David Plummer & Associates,
21 I'm a Transportation Consultant for the
22 Applicant.

23 And I'd like to ask to be qualified
24 today -- I've previously been qualified to
25 provide expert testimony in the area of

1 Transportation Planning and Second (phonetic)
2 Impact Analysis. My resumé is on file with the
3 Hearing Examiner's Office, I'd like to ask to
4 be qualified today?

5 THE HEARING EXAMINER: Yes, thank you.

6 MR. LEUNG: Before I begin, I'd like to
7 just do some housecleaning regarding the -- the
8 Staff Report.

9 The traffic study that was included as
10 part of Attachment P, as in Peter, that -- that
11 was a traffic study that was in the original
12 submittal.

13 There was a Revised Traffic Study as part
14 of the sufficiency response from June 18th, so
15 I'd like to put that Revised Traffic Study on
16 record. Just to be clear, that the Staff
17 Analysis, as well as my presentation, is all
18 reflective of this Revised Traffic Study.

19 THE HEARING EXAMINER: Okay. Thank you.

20 MR. LEUNG: So may I approach?

21 THE HEARING EXAMINER: Yes, thank you.
22 That will be Applicant's Exhibit 3, but what
23 you've provided me is what Staff is --

24 MR. LEUNG: Correct.

25 THE HEARING EXAMINER: -- referencing,

1 they just attached the document. Thank you.

2 (Applicant's Exhibit Number 3 was marked for
3 identification at this time.)

4 MR. LEUNG: The Traffic Study would
5 concentrate on two items -- whoops. We looked
6 at the key intersection at the US 41 and Del
7 Prado Boulevard N, which is right here, shown
8 in this circle, and we also looked at the
9 roadway segment immediately adjacent to the
10 project, which is the Del Prado Boulevard N,
11 from US 41 to the -- to the east.

12 What we found was that, under the current
13 zoning, that this key intersection will operate
14 at an acceptable level of service, and compare
15 that with the proposed zoning and the traffic
16 impact associated with the proposed zoning also
17 maintained that acceptable level of service.

18 Looking at the roadway, again, the -- with
19 the current zoning, the -- based on the -- the
20 analysis and the requirements from the
21 Concurrency Monitor Report, that it was
22 forecasted to operate at LOS "F," and I'll get
23 to the -- to the remedy of that.

24 Again, when we compare that with the
25 impacts of the proposed zoning, it's also at

1 LOS "F." Now, that seemed like that would be
2 an issue, but we now default to what's really
3 happening with the area and what are the
4 planned improvements.

5 So since it was anticipated two -- two --
6 two may be deficient and would assume that the
7 goal of the project, the current LOS -- sorry.
8 The current LOS is operating at LOS "C," with
9 the existence of two lanes.

10 Recognizing that there may be a need for
11 future improvements, we looked at the MPO
12 Long-Range Transportation Plan. In that case,
13 there -- there is a plan to widen Del Prado
14 Boulevard from two lanes to four lanes in the
15 future.

16 Currently, the ranking, in terms of the
17 prioritization of making this improvement is
18 sitting at Number 71.

19 So, essentially, it's saying that, yes,
20 the -- it's certain the facility is expected
21 to -- to fail and require widening, but it's
22 not a priority because it's currently at LOS
23 "C," and it may take maybe ten years before we
24 are at the level where the County and the MPO
25 will decide that they're going to do something

1 with the -- the road.

2 So, it's -- it's already in the Long-Range
3 Plan and we're just waiting for that
4 prioritization to take place to grant this
5 project so that the road will, eventually, be
6 rewidened.

7 So in anticipating -- sorry, in
8 anticipation of that widening, the project, the
9 Paved (phonetic) Road Impact Fees mitigate
10 their impacts.

11 Currently, the -- the impact-fee schedule,
12 this project, we're expected to pay,
13 approximately, \$11.7 million in Road Impact
14 Fees. And we'd like to see that, you know,
15 obviously, to put towards future widening but
16 it's not going to be needed until, probably,
17 after we're built up.

18 So the key here is that the proposed
19 zoning did not require additional
20 improvement -- improvements beyond those
21 already planned in the LRTP.

22 And, we find out that the project is going
23 to meet all the Lee Plan and LDC requirements,
24 in terms of maintaining adequate Level Of
25 Service for transportation facilities.

1 And, again, shown on the exhibit,
2 intersection improvements, nothing is needed.
3 And then, the roadway needs, they don't exceed
4 what's already planned and we're just waiting
5 for the -- for the right time for the County
6 and the MPO to -- and the MPO to, actually,
7 make the improvements.

8 THE HEARING EXAMINER: When you evaluated
9 the project impacts, the County's Traffic
10 Engineer had recommended limiting the single
11 family to 965, is that what you looked at in
12 this revised TIS?

13 I didn't see that condition carried
14 forward anywhere else but there was a mention
15 of it in their memo. And so, I -- what unit
16 count did you look at in this revised TIS?

17 MR. LEUNG: The -- the unit count is, I
18 think the one from the same plat had -- had put
19 on the -- a slide regarding the Property
20 Development Regulations.

21 THE HEARING EXAMINER: It limits overall
22 units to 1229, but I didn't see a specific
23 reference in the first condition or in any of
24 the conditions that carried forward.

25 It looks like, on this table, from the

1 revised TIS you just gave me, it does show
2 965 --

3 MR. LEUNG: Yes.

4 THE HEARING EXAMINER: -- as a single
5 family. So it looks like the County was just
6 wanting to lock that in, since that would,
7 obviously, adjust the numbers of their
8 impact -- is that what was looked at in the
9 original 2004?

10 MR. LEUNG: It was.

11 THE HEARING EXAMINER: Okay.

12 MR. LEUNG: It was.

13 THE HEARING EXAMINER: So there's been no
14 change to that number?

15 MR. LEUNG: Yeah, the -- the proposed has
16 not. 965 single-family homes --

17 THE WITNESS: Single families.

18 MR. LEUNG: -- yes.

19 THE HEARING EXAMINER: Okay.

20 MR. LEUNG: And the total units have not
21 changed from their 1229.

22 THE HEARING EXAMINER: Okay. Thank you.
23 That was only question that I had, did Staff
24 have any questions?

25 MR. BADAMTCHIGN: No, ma'am.

1 THE HEARING EXAMINER: Okay. Thank you.

2 MR. LEUNG: Thank you.

3 (Next speaker.)

4 THE HEARING EXAMINER: Good morning.

5 MR. BROWN: Good morning. I'm David
6 Brown, and I'm here to talk about water quality
7 in regards to the subject prop -- project.

8 I've been qualified as an expert before in
9 front of Lee County, not in front of you, as a
10 Hearing Officer, so I've provided you with my
11 educational background.

12 I have a Bachelor of Science Degree from
13 the University of Florida. I also have taken
14 Graduate Level Stratigraphic Analysis courses
15 at the University of Florida.

16 Also, Groundwater Hydrology and Aquifer
17 Analysis, and also Graduate Level Engineering
18 and Groundwater Hydrology courses at the
19 University of Central Florida.

20 I have over 38 years of professional
21 experience; including, approximately, ten years
22 at the Southwest Florida Water Management
23 District. And I'm currently a Managing Partner
24 at Progressive Water Resources, which is a
25 division of RESPEC, LLC.

1 I belong to several professional
2 organizations, the American Institute of
3 Professional Geologists, the Florida
4 Association of Water Quality Control, and the
5 Southeastern Geological Society, and I'm a
6 Certified Professional Geologist in the State
7 of Florida.

8 So I'm going to provide some background in
9 regards to water quality. This slide, or the
10 picture to the left, you can see this is the
11 watershed in which the property is located in,
12 the property is highlighted about the center of
13 the watershed, which is outlined in green.

14 Water flows from north to south, towards
15 the Caloosahatchee, and the watershed has been
16 identified as WBID, W-B-I-D, Number 3240L.
17 This particular watershed is, approximately,
18 7,445 acres in size, and the project area is,
19 approximately, five percent of the watershed.

20 Now a Water Body ID, or WBID, is defined
21 by The Florida Department of Environmental
22 Protection as, "An Assessment Unit that is
23 intended to represent Florida's waterbodies at
24 a watershed or sub-watershed scale."

25 If you have a large river system, it may

1 have multiple WBIDs that comprise -- you know,
2 that compose that -- that waterbody but, in
3 this case, the watershed is defined by a single
4 WBID, so --

5 WBIDs have unique identification numbers.
6 In this case, again, it's 3240L, and they're
7 used for DEP's annual impaired water
8 assessments, and also their implementation of
9 Total Maximum Daily Loads, or TMDLs, Basin
10 Management Action Plans, as well as other
11 applications that DEP looks at in regards to
12 water quality.

13 Now, WBID 3240L, Powell Creek, is
14 currently impaired for fecal coliform, so it's
15 been determined to be impaired. "From DEP:
16 Nonpoint sources of fecal coliform bacteria
17 generally, but not always, involve accumulation
18 of fecal coliform bacteria on land surfaces and
19 then they wash off as a result of storm
20 events," so through run off.

21 "Typical nonpoint sources of fecal
22 coliform include wildlife," so it can be
23 completely natural, "Agricultural animals and
24 on-site sewer treatment and disposal systems,"
25 otherwise known as, "Septic tanks."

1 So there -- there are two modes of
2 transport for nonpoint source fecal coliform.
3 So, just to define a point source, would be
4 like a pipe that is discharging directly into a
5 waterbody, we don't have that here.

6 So, nonpoint source of fecal coliform
7 loading into streams, you know, one type of
8 loading is from septic systems and animals that
9 are directly, either seep into or, in this
10 case, with the cows that are sitting in the
11 stream, and, obviously, fecal coliform comes
12 from fecal matter.

13 So -- so that's kind of a direct source
14 that's independent of precipitation and runoff.
15 The second mode involves what I talked about
16 before where fecal coliform accumulations on --
17 accumulates on a land surface, and then is
18 transported into the stream during storm
19 events.

20 So let's look more closely at this
21 watershed, looking through some of the records
22 from South Florida Water Management District,
23 there is a large ranch in the upper reaches of
24 the watershed that currently allows up to 500
25 head of cattle with on that -- with on that

1 ranch.

2 And then, in addition, we have a lot of
3 ranchettes. This watershed, this WBID, is
4 particularly rule in nature in most aspects of
5 it, and there are a lot of ranchettes.

6 And a lot of these ranchettes,
7 particularly those that are located north and
8 west of the subject property, also have horses
9 and chickens and cows and other aspects.

10 This picture to the lower right is from
11 one of those ranchettes, this is directly on
12 Powell Creek, and you can see a lot of debris
13 and other area -- other aspects of this
14 particular property. So we have a lot of
15 different use types in this rural environment
16 that could contribute to fecal coliform.

17 We also have a lot of septic tanks. I
18 went back and looked at the Florida Department
19 of Health data, and the most recent data that I
20 could get is shaped while (phonetic) -- it was
21 from 2012.

22 And that indicates there was over 400
23 septic tanks that are in operation within this
24 WBID. And those are shown -- their locations
25 are shown as black dots and you can see that

1 there are clusters of high-density areas of
2 septic tanks.

3 The ranchette that I talked about before,
4 that's in those clusters of black dots that are
5 to the upper left, or to the northwest of the
6 subject property.

7 We have a very large cluster of septic
8 tanks directly to the east, across from Powell
9 Creek, and that is Suncoast Estates.

10 And, if you look at the slide, it's a
11 little hard that this light, to the lower
12 right, this is a picture from Suncoast Estates
13 and -- if I may approach the screen -- there's
14 a -- a mound of earth right next to this
15 trailer, that is where the septic tank is
16 located.

17 So, due to high water tables within this
18 area, the septic tank and the installation,
19 they, actually, had to elevate it so that it
20 would properly function.

21 So you have very old residences with, kind
22 of, this primitive form of -- of septic
23 treatment that are mounded up. And there's a
24 number of canals and waterbodies that can
25 facilitate water moving out of Suncoast

1 Estates, towards Powell Creek.

2 So I think when we understand that Powell
3 Creek in this WBID is impaired, I think we get
4 a pretty clear picture of what is causing that
5 impairment. Now, we are not impaired for
6 nutrients in this watershed, only for -- for
7 fecal coliform.

8 So let's look at the -- the development
9 itself, the project itself, and how is it going
10 to address water quality. Well, first off, as
11 mentioned earlier, the project has an
12 Environmental Resource Permit or ERP.

13 So let's look back at a little bit of
14 history, in 1990, DEP developed and implemented
15 the State Water Resource Implementation Rule,
16 Chapter 62-40, Florida Statutes.

17 And it stated in that Rule, "The primary
18 goals of the state's stormwater management
19 program are to maintain, to the maximum extent
20 practical, during and after construction and
21 development, the pre-development stormwater
22 characteristics of the site -- "Of the site,"
23 which include reducing, "Stream channel
24 erosion, pollution, siltation, sedimentation
25 and flooding."

1 They, "Reduce stormwater pollutant
2 loadings that are discharged to waters in the
3 state, and they preserve and restore designated
4 uses of those watersheds."

5 So -- and the criteria that's set forth in
6 Chapter 62-40 is applied through, in this case,
7 the South Florida Water Management District,
8 through their Environmental Resource Permit
9 Program or ERP, which provides the reasonable
10 assurances that surface water resources will be
11 protected and maintained.

12 This is a picture of the Applicant's
13 Handbook, Volume I, and you can see it's got
14 all of the -- it's applicable to all five of
15 the Water Management Districts, as well as to
16 the Florida Department of Environment
17 Protection, as well, uses the same criteria.

18 So the issuance of the ERP constitutes
19 certification of compliance with state water
20 quality standards, and in accordance with Rule
21 62 -- also it was 62-330.062.

22 And the ERP's require you go through that
23 permit process, require very site-specific
24 pollutant loading analysis and final Surface
25 Water Management Program, all regarding

1 nutrients; so they're looking very carefully at
2 nutrients.

3 This is a stormwater pond in this picture
4 and this is a typical stormwater pond that may
5 be used in the development. And the ERP also
6 constitutes certification of compliance of
7 state water quality standards under Section 401
8 of the Federal Clean Water Act.

9 So, there's -- there's a lot of rules and
10 regulations when you go through the ERP
11 process; specifically, in regards to nutrients.

12 And now recall, this was testified
13 earlier, this development was going to have a
14 golf course, that has been eliminated, so now
15 it's entirely residential. So now it is
16 subject, in its entirety, to Lee County's
17 Fertilizer Ordinance.

18 So when the stormwater management system
19 is, basically, in operation during the rainy
20 season, the Ordinance disallows the use of
21 fertilizers during the months of June through
22 September.

23 So there will be no application of
24 fertilizers during that time, and plus, we have
25 all of these assurance in the ERP Rule that we

1 will not have an issue with nutrients as part
2 of this -- this project.

3 And so, as a result of that, my conclusion
4 is -- and my work, both in Lee County and other
5 counties, that requirement to monitor nutrients
6 based on all of these aspects really should not
7 be required.

8 We're not in an impaired watershed for
9 nutrients. We have all of these assurances as
10 we go through the ERP Rule, but the Applicant
11 has agreed to offer, kind of a targeted water
12 quality plan, okay, to provide an additional
13 level of assurance.

14 And that targeted, kind of, streamlined
15 plan would include, A "single baseline
16 monitoring event," okay, that's going to be
17 completed prior to the commencement of
18 construction.

19 So we're, basically, talking down in that
20 lower section of the property, that would
21 include a number of nutrient criteria: "Total
22 Kjeldahl Nitrogen, Chlorophyll a, Ammonia,
23 Nitrate, Total Phosphorus."

24 And, in addition to field parameters, such
25 as, "Turbidity," the depth of the water,

1 "Specific Conductance, pH, and Dissolved
2 Oxygen," so you'll get this kind of
3 pre-development snapshot, okay, that you're
4 going to take.

5 And then, after that, we're proposing to
6 take an annual sample during the rainy season,
7 okay, for up to five years, at the same
8 location, with the same parameters.

9 So looking at that, after the Development
10 Order, after construction commences to go
11 through, and to verify that we're adhering to
12 water quality criteria as envisioned under the
13 ERP.

14 Okay, that data would all be supplied to
15 Lee County, to Lee County Staff to review. In
16 addition, this plan will have a contingency
17 plan embedded within it, that if we go through
18 these parameters and we're monitoring them and
19 if we have an issue, and that issue is if we
20 exceed state water quality standards in regards
21 to nutrients, okay, other events will occur.

22 What will those other events include? The
23 plan would include increased sampling,
24 increased duration of sampling, other best
25 management practices that maybe have to be

1 employed within a development.

2 So there's -- so there's a feedback loop
3 that would, basically, provide, again, another
4 level of assurance that we will not have any
5 issues in regards to -- to nutrients.

6 But, if we don't, if we go through the
7 sampling, we would like this to terminate, once
8 we've proven that, okay, things are working as
9 we originally envisioned, that we've met that
10 criteria and that we can move on.

11 Again, recalling that this watershed is
12 not impaired for nutrients and it is impaired
13 for fecal coliform.

14 And, to me, as a water quality
15 professional, that's where the concentration
16 should occur, is looking on these impairments
17 and trying to, you know, enact and work with
18 those communities that are -- that are,
19 basically, contributing to that impairment.
20 But with that --

21 THE HEARING EXAMINER: So this testing
22 that you're -- this is something that you're
23 already doing under the ERP?

24 MR. BROWN: Have not done it, this is
25 something on top of the ERP.

1 THE HEARING EXAMINER: So the ERP does not
2 require --

3 MR. BROWN: No.

4 THE HEARING EXAMINER: -- this -- I
5 understand you haven't done it yet, but it's
6 not something that the ERP would otherwise
7 require?

8 MR. BROWN: Right.

9 THE HEARING EXAMINER: So this is specific
10 for the County?

11 MR. BROWN: Correct.

12 THE HEARING EXAMINER: And the difference,
13 it looks like in what the County had originally
14 drafted for this condition was a minimum of
15 five years, you're requesting a maximum of five
16 years?

17 MR. BROWN: Correct.

18 THE HEARING EXAMINER: Okay.

19 MR. BROWN: If we meet all those criteria.

20 THE HEARING EXAMINER: Correct. And that
21 would be addressed through the contingency
22 plan, that's what you --

23 MR. BROWN: Correct. Absolutely.

24 THE HEARING EXAMINER: -- were talking
25 about, that (inaudible) --

1 MR. BROWN: Yeah, that's the reason. That
2 gives us another level of assurance.

3 THE HEARING EXAMINER: Okay. And that's
4 something that would be -- the contingency plan
5 would be negotiated at the time of the
6 Development Order between you and Staff?

7 MR. BROWN: Prior to that Development
8 Order coming in and -- prior to that
9 Development Order, correct. We have to get --
10 you know, that gets -- has to be agreed to by
11 Staff, correct.

12 THE HEARING EXAMINER: Okay. That ex --
13 that's my questions. Does Staff have any
14 questions?

15 MR. BADAMTCHIGN: No.

16 MS. MONTGOMERY: I have a question.

17 THE HEARING EXAMINER: Yes.

18 MS. MONTGOMERY: Yeah. On your slide,
19 when you show Suncoast Estates, if you know, do
20 they have an ERP or water quality management
21 system in Suncoast Estates?

22 MR. BROWN: No, they do not.

23 MS. MONTGOMERY: So then, there's no
24 pretreatment that occurs in Suncoast Estates?

25 MR. BROWN: That's correct.

1 MS. MONTGOMERY: So whatever runs off is
2 not treated and just goes directly into Powell
3 Creek or into the WBID?

4 MR. BROWN: That's correct.

5 MS. MONTGOMERY: I think you mentioned the
6 BMAP, just, roughly, what's the BMAP?

7 MR. BROWN: Base and Management Action
8 Plans or, when you have an impairment and you
9 go through and something is -- a development or
10 a project is going to be put into that -- into
11 that environment, there has to be specific
12 actions that have to occur that you don't
13 contribute and, in fact, you may enhance water
14 quality within that WBID.

15 So it's a very specific plan that you have
16 to go through to address impairment.

17 MS. MONTGOMERY: In the Staff memo, which
18 I believe is Exhibit G, it references two comp
19 (phonetic) plan policies, one is 125.1.2, which
20 requires that new development, pending addition
21 to existing development, notch-braised
22 (phonetic) surface or brown water quality.

23 You referenced the Applicant's Handbook,
24 and you referenced the -- the analysis that you
25 had to do for water quality, does that address

1 that policy?

2 MR. BROWN: Yes.

3 MS. MONTGOMERY: Okay. And then, the memo
4 also references 125.1.4, which requires
5 development that has the potential of lowering
6 existing water quality below state and federal
7 quality standards and provide standardized
8 appropriate monitoring data.

9 Is there anything in your analysis of the
10 ERP and the data that was provided in this case
11 that would suggest this project will, actually,
12 lower the water quality?

13 MR. BROWN: None whatsoever.

14 MS. MONTGOMERY: So there's no evidence of
15 that whatsoever?

16 MR. BROWN: No.

17 MS. MONTGOMERY: So, based on that, is
18 there really any basis for a requirement for
19 water quality monitoring in this case?

20 MR. BROWN: As I previously testified, no.

21 MS. MONTGOMERY: Okay. And in the Staff
22 Condition, Condition 3, Agricultural Uses, it
23 indicates that there is no agricultural
24 activity or agricultural tax exemption
25 applicable to the project.

1 You had a great picture of the cows
2 (inaudible,) and the fact that they contribute
3 to fecal coliform. So, in light of the fact
4 that there's no permitted agriculture, can we
5 conclude that there will be no fecal coliform
6 from animals?

7 MR. BROWN: Correct. There's -- there's
8 no septic tanks proposed or any livestock
9 on-site, correct, those sources that I've
10 identified as the most probable reasons that we
11 have fecal coliform issues in this watershed.

12 MS. MONTGOMERY: And you've had a lot of
13 experience, both inside and outside the Water
14 Management District, and over time, has the
15 District continuously increased the requirement
16 to demonstrate that a project meet the State
17 Water Quality Standards?

18 MR. BROWN: Absolutely; that's an evolving
19 process, the ERP process.

20 MS. MONTGOMERY: Yeah, and I don't -- you
21 probably remember, how long ago did they start
22 the Harvey Harper Analysis?

23 MR. BROWN: 20 years ago, 15 years ago,
24 they've been going through this, and that has
25 become more and more intensive through time.

1 MS. MONTGOMERY: And for the benefit, you
2 know, of anybody reading the record, what is
3 the Harvey Harper Analysis and what are they
4 trying to address?

5 MR. BROWN: Basically, you're looking at
6 the type of land use that will occur on a
7 particular project and there are certain
8 nutrient coefficients that are applied to those
9 types of land uses, and then how that will be
10 addressed or attenuated as part of that
11 project.

12 Stormwater Management System, not only
13 regulates the stormwater flows through, it but
14 it attenuates and holds back water and provides
15 water quality treatment, so it is achieved
16 through the Stormwater Management System.

17 MS. MONTGOMERY: So, in light of the fact
18 that this project will have a moderate water
19 management system that meets -- designed to
20 meet the State Water Quality Standard, and
21 despite the fact that they don't have septic
22 tanks and they don't have cattle, is there
23 anything that would suggest, as I inquired
24 earlier, that there's any need for this project
25 to do water quality monitoring, as required in

1 the Staff's Exhibit G?

2 MR. BROWN: No, there's not.

3 MS. MONTGOMERY: Okay. Thank you.

4 THE HEARING EXAMINER: Following up on
5 that, that's interesting. So why, if the ERP
6 doesn't require it, does it require the
7 monitoring that you're proposing to do in any
8 instance and it's just tied to the specific
9 land use is why it's (inaudible)?

10 MR. BROWN: It's tied, specifically, to
11 this application and trying to work
12 cooperatively with Staff.

13 THE HEARING EXAMINER: So, typically, in a
14 300-plus acre residential development, the ERP
15 would never require this --

16 MR. BROWN: No. I do these projects in
17 Sarasota County and Charlotte County, we don't
18 have any quality water monitoring requirements.

19 THE HEARING EXAMINER: And is that because
20 they're expecting the local government to step
21 in or because there's no concern about the --

22 MR. BROWN: No, they assume that the
23 assurance provided under ERP that are providing
24 that, providing that data and that assurance
25 that you're going through, the water quality

1 criteria will be met. So --

2 THE HEARING EXAMINER: Thank you.

3 MS. MONTGOMERY: Let me follow up to that.

4 I have heard it suggested that the reason the
5 County has to do this is because the Water
6 Management District doesn't do their job.

7 And you've indicated, for perhaps, at
8 least 20, years the District has been very
9 focused --

10 MR. BROWN: Yeah.

11 MS. MONTGOMERY: -- on water quality, but
12 as you've demonstrated in this picture, there's
13 no way to go back on a project that existed
14 prior to that and make them meet today's
15 standards?

16 MR. BROWN: That's -- that's correct.
17 They're kind of grandfathered in, since they
18 existed, prior to those ERP regulations.

19 MS. MONTGOMERY: And you indicated that
20 the impairment in this case is fecal coliform,
21 but when I look at the items that you're
22 monitoring for, it doesn't seem like that's
23 what we're monitoring for?

24 MR. BROWN: No, we're -- again, we're not
25 going to have any septic tanks on-site, we're

1 not going to have any livestock, we're not
2 going to be generating fecal coliform
3 discharging from the site.

4 So we're not going to be generating
5 nutrients to be discharged from the site, due
6 to the treatment system.

7 And working with Staff, we've tried to
8 come to, you know, kind of an agreement, in
9 regards to a targeted and limited and
10 streamlined way that provides, again, another
11 level of assurance.

12 MS. MONTGOMERY: And when I look at this
13 list, are they mostly nutrients?

14 MR. BROWN: They all are, yeah. They are.
15 There are Nitrogen compounds and then
16 Phosphorus, so those are the two primary
17 drivers or concerns in regards to nutrient
18 water quality.

19 MS. MONTGOMERY: And so that comes from
20 fertilizer primarily?

21 MR. BROWN: Correct.

22 MS. MONTGOMERY: And if -- if a project
23 has a controlled -- one, the Fertilize
24 Ordinance --

25 MR. BROWN: Right.

1 MS. MONTGOMERY: -- and if the HOA
2 controls fertilizer on the subject property --

3 MR. BROWN: Right.

4 MS. MONTGOMERY: -- does that further
5 address the water quality issues?

6 MR. BROWN: Absolutely.

7 MS. MONTGOMERY: Okay. Thank you.

8 THE HEARING EXAMINER: Thank you.

9 (New Speaker)

10 MS. EKBLAD: Again, for the record, Tina
11 Eckblad with Morris-Depew Associates. I do
12 have copies of our proposed provisions as an
13 exhibit, they were attached to the 48-hour
14 letter.

15 THE HEARING EXAMINER: Okay. Thank you.
16 This is same set of revisions?

17 MS. EKBLAD: Yeah.

18 THE HEARING EXAMINER: Thank you. So the
19 Applicant can go forward.

20 MS. EKBLAD: So I do have a few points of
21 clarification. Mr. Brown, in his presentation,
22 went over this condition, I think his testimony
23 stands, it's, obviously, formatted differently
24 on his slide, so you'll see it different in the
25 document.

1 With regard to the question you asked of
2 Mr. Leung about the multifamily and the TIS, we
3 just wanted to clarify that multifamily, as
4 related to the TIS, is defined as, "An attached
5 unit."

6 And so, when you look at the scheduled
7 uses and consider that 264 limitation, it needs
8 to not just apply to a traditional multifamily
9 unit, but also a two-family attached and a
10 townhome.

11 So if you were to consider that, just be
12 mindful there's, I'd call it, a language gap
13 between ITE and the scheduled uses in the
14 resolution.

15 THE HEARING EXAMINER: Okay. And Staff
16 didn't carry that limitation forward, my
17 question was more of a limitation to know what
18 was evaluated, and the revised TIS, and be sure
19 everything was still congruent with what we had
20 the analysis for, but I will make a note of
21 that. Thank you.

22 MS. EKBLAD: Uh-huh. So I figured, given
23 the conversation regarding the conditions, I
24 would just go through the remainder of the
25 changes. It's my understanding, with regard to

1 the conditions, Staff is in agreement, other
2 than the Condition 4 on the screen.

3 So we proposed minor clarifications to
4 Condition 5 that required buffer plantings
5 would be 100 percent native, we cleaned up some
6 duplicative words.

7 And, while the Staff memo was accurate,
8 the acreage of the adjusted open space didn't
9 get carried through, so we've cleaned that up.

10 Regarding Condition 6, for the model
11 homes, we've addressed the number of model
12 homes within the development. This 18-model
13 homes or units was approved with the last
14 administrative amendment so we're just carrying
15 that through.

16 And with Condition 7, regarding
17 construction adjacent to Sabal Springs, a
18 number of these items have, actually, been
19 taken care of, as a result of the current
20 Development Order.

21 So we just wanted to clarify that they are
22 not new conditions, that any new phase would
23 need to comply with, but the overall
24 development has already addressed these items.
25 Again, it's my understanding that Staff is in

1 agreement on that front.

2 So getting into the deviations that both
3 sides agree on: Deviation 6, we've added a
4 condition, rather than keeping one condition
5 for both Deviation 6 and 7, that's because we
6 do have a slight discrepancy within the number
7 of lakes that the deviations applied to, so we
8 were trying to add some clarification as to
9 which deviation applied in which location.

10 And getting to a point of disagreement
11 between the Staff Report and the Request from
12 the Applicant, we included Deviation 5, which
13 was a request to have a building permit issued
14 prior to the recording of the plat.

15 This is something that the Land
16 Development Code currently allows for model
17 buildings and sales center.

18 We were asking for it to apply to any
19 home, with the acknowledgment that we would
20 continue to have to provide evidence of unified
21 control, and that the Certificate of Occupancy
22 for any home would not be issued until the plat
23 was recorded.

24 I'm -- I'm going to provide some
25 information regarding the conditions on-site,

1 and then Mr. Underhill is going to explain some
2 of the timing issues that are happening.

3 Generally speaking, the plat is,
4 unfortunately, significantly holding up the
5 construction process. And so Lennar is able to
6 go out on-site and start construction, and they
7 are having to demobilize because the plat is
8 not finished in review and that's just holding
9 everything up.

10 And so, the goal here is not to
11 necessarily skirt the system, but to treat
12 residences like the model buildings, as is
13 allowed by Chapter 10, and provide the official
14 documentation prior to sale, that the home
15 under construction meets the setbacks and lot
16 requirements, et cetera.

17 The Staff Report indicates that the
18 deviation should be denied because a building
19 permit requires a site plan with lot corners,
20 lines and dimensions, as well as the location
21 of names, streets, driveways, setbacks and
22 easements, and that we would be establishing
23 lots prior to drainage, utility, right-of-way
24 or conservation easements.

25 It is my professional opinion that this

1 denial does not accurately represent what is
2 occurring on the property and the existing
3 approvals that we already have.

4 So, as you mentioned at the beginning of
5 the presentation, Madame Hearing Examiner, we
6 do have a plat for Phase One. Our Phase Two
7 plat is currently under review for final
8 approval and Phase Three will with coming in
9 shortly.

10 And so, it is not that we are trying to
11 establish this prior to easements being
12 recorded, I've mentioned already that we have
13 our conservation easements in place, in the
14 central west location of the property, as well
15 as the southeast corner.

16 There are other easements, that if you
17 were to look at this plat, you would see are
18 properly recorded and in place to ensure that
19 we don't have issues with what's being
20 constructed versus what's on the Master Concept
21 Plan.

22 That is a direct result of the fact that
23 this property has an existing Development Order
24 and is undergoing, as I mentioned, that permit
25 review.

1 As a result of the three phases that are
2 currently in design and will be under review by
3 County Staff, almost 50 percent of the approved
4 units have the potential to be evaluated by
5 Staff prior to the approval of this Zoning
6 Resolution.

7 And so, it would seem that this is a
8 unique condition to this property whereby we
9 could memorialize that through conditions and
10 enable the Chapter 10 process for model homes
11 to take place for future development.

12 One of the reasons for that, as I
13 mentioned, is the timing and some of the
14 extended time frames that we're seeing in the
15 review process, and I'd like to ask
16 Mr. Underhill to provide some testimony on that
17 front, he's involved in that process daily,
18 more so than I am.

19 (Next speaker.)

20 MR. UNDERHILL: Hi. Dave Underhill, with
21 Banks Engineering. And I just wanted to
22 clarify, one thing to start is -- is that the
23 entire project was platted. These future areas
24 are just a future development tract.

25 And then, also, the conservation

1 easements, there's already a recorded
2 conservation easement that was recorded prior
3 to the plat, so then the plat has a tract that,
4 you know, follows that conservation easement
5 that also has platted conservation dedications
6 as well.

7 So, as far as what -- what we're trying to
8 accomplish is that, just the way that the
9 platting process works is the final plat -- the
10 preliminary plat has to be submitted, along
11 with the Development Order, and the Development
12 Order can't be issued until the preliminary
13 plat is submitted, and that gives Staff the
14 opportunity to check the dimensions and make
15 sure that there is a consistency with the
16 zoning.

17 The final plat can't get submitted until
18 the -- until the DO is approved. So what
19 happens, from a process standpoint, is that in
20 order to submit the final plat, you have to
21 have all the bonds and everything in place to
22 go in with the complete package.

23 So once the Development Order is issued,
24 Staff then reviews the cost estimate to set the
25 value of the subdivision bond. So that,

1 typically, takes about 30 days to get the
2 approval of the -- the cost estimate.

3 Then, once that's issued and you prepare
4 the bond, then you can submit for final plat.
5 Typical review to recording of the final plat
6 is 60 to 90 days.

7 With the workload of staff now, everything
8 is, you know, busy. And so we're, typically,
9 looking in that 90 days time frame.

10 So, after the -- after the plat is
11 recorded, then the STRAP Numbers and the
12 addresses are issued. That process, typically,
13 takes another 30 days.

14 So then, once the -- the STRAP Numbers are
15 issued, only then can you submit the building
16 permits. So we're already 150 days after the
17 Development Order is issued to be able to
18 submit the building permit.

19 Now, the building permit takes another 60
20 to 90 days to review, so we're well, you know,
21 six, seven months after the Development Order
22 is issued, to be able to get the building
23 permit to start the home construction.

24 Ideally, what they like to do is to start
25 the home construction once the project is

1 halfway built so that the homes are completed
2 at the same time as the subdivision
3 improvements are completed so that, you know,
4 you're going to pick up a significant amount of
5 time there, that's what they're trying to
6 accomplish.

7 THE HEARING EXAMINER: How much change do
8 you, typically, see between the preliminary
9 plat and the final plat?

10 MR. UNDERHILL: There -- there's usually
11 not a lot, as long as the project is
12 well-defined and established. So, typically,
13 the preliminary plat is, you know, 100 percent
14 dimensioned and -- and done, it's just a matter
15 of some clean-up work where, typically, you
16 have techs (phonetic) that overlaps and a few
17 different things like that.

18 THE HEARING EXAMINER: And that -- the
19 controlling DO is still this 2005 DO that
20 you're just doing phases underneath of it or is
21 there a new DO that's coming in?

22 MR. UNDERHILL: It would be for any DO.

23 THE HEARING EXAMINER: Okay. The way that
24 the condition reads. And then, what happens
25 if -- if it's approved and there's

1 construction, the homes are there, and then
2 there's some modification that needs to be made
3 to the lot?

4 MR. UNDERHILL: Well, the developer would
5 be, obviously, at risk if there's change to the
6 lots that -- you know, there's a significant
7 risk that the developer would take by starting
8 the construction ahead.

9 MS. EKBLAD: If I may, they would have to
10 go back through, potentially, the
11 administrative amendment process to address
12 property development regulations. So the risk
13 that David is talking about is they're losing
14 all the time they just gained.

15 THE HEARING EXAMINER: Right.

16 MR. UNDERHILL: I mean, the risk is if
17 they built something wrong, that's really the
18 only -- the issue. The lots are established,
19 the -- the lots lines are set.

20 The whole -- you know, when you have the
21 Development Order, you've set all the lot
22 lines, the plat just matches the Development
23 Order. So unless there's an error or a
24 mistake, there's really no significant change
25 or risk of change.

1 MS. MONTGOMERY: So, Mr. Underhill, as the
2 engineer, project engineer, you would have to
3 certify the project as being consistent with
4 the Development Order; correct?

5 MR. UNDERHILL: Yes.

6 THE HEARING EXAMINER: At the preliminary
7 plat -- plat stage?

8 MR. UNDERHILL: At the time that the --
9 the project is completed and the time -- and
10 all this would occur before the homes could be
11 occupied, you wouldn't be able to get a CO
12 until everything is completed, you wouldn't be
13 able to sell the unit until the plats are
14 recorded. So it's just really a matter of --

15 THE HEARING EXAMINER: Moving all the
16 pieces.

17 MR. UNDERHILL: -- being able to begin.

18 THE HEARING EXAMINER: Right. But -- and
19 to that point, I mean, if it's large -- if
20 you're doing one house or the models, you're
21 dealing with a very small number, if there's
22 tweaks that need to be made, that's not a huge
23 deal.

24 But, if you're going to do mass
25 construction of a thousand homes and you've got

1 to do a thousand deviations, administrative
2 deviations or public hearing deviations, that's
3 a whole other thing, and I'm -- I mean, I'm
4 assuming, that's why the process is as it is,
5 so that all of those pieces are in place before
6 the construction happens.

7 And, I would also imagine, this isn't the
8 only project in this position, right, because
9 your hardship is, essentially, that permitting
10 is backed up and so everybody is suffering
11 these same delays?

12 MS. EKBLAD: So I think -- I think there's
13 two sides to that. This project, as
14 Mr. Underhill mentioned, has a platted boundary
15 in its entirety.

16 And so, I think that the way that we can
17 construct this is such that there are things
18 that have occurred on this property that are
19 unique, that should others want to follow suit,
20 need to demonstrate consistency with.

21 I have a suspicion that there would be
22 hurdles for those other developers to come
23 through.

24 Additionally, David mentioned the recorded
25 document for the conservation easements. There

1 are things in place in the record that function
2 like the plat so that, as you mentioned, we
3 shouldn't be in a position where we're creating
4 havoc for all these other subdivisions, we're
5 trying to craft this in a way where it
6 addresses this subdivision.

7 THE HEARING EXAMINER: Okay.

8 MS. MONTGOMERY: And I think, too, to add
9 to that, if you want to have a condition,
10 something where the developer signs a price doc
11 (phonetic,) that they understand there's a risk
12 and it's their risk, we're certainly willing to
13 do that, but I would ask both Dave and Tina, I
14 don't think you expect to have a plethora of
15 administrative amendments?

16 MS. EKBLAD: I mean, that's really for
17 Mr. Underhill, but my understanding of the DO
18 process and -- and the way the preliminary plat
19 works is you're significantly reducing that
20 risk.

21 MR. UNDERHILL: Yes. I'm not planning on
22 having any of them that don't fit.

23 THE HEARING EXAMINER: Right. Okay.

24 MR. UNDERHILL: You know, the other
25 thing -- I think, one of the other issues

1 brought up was the drainage, is that -- is that
2 true, that Staff brought up?

3 MS. MONTGOMERY: Yeah, it --

4 MS. EKBLAD: Oh.

5 MS. MONTGOMERY: -- that was the concern
6 additional --

7 MR. UNDERHILL: So the --

8 MS. MONTGOMERY: -- to drain the utilities
9 right-of-way --

10 MR. UNDERHILL: In the -- in this case
11 though, the water management system, the
12 backbone water management system, is in place
13 and there are other agreements with the CDD
14 that, again, help cover some of those concerns.

15 THE HEARING EXAMINER: And is the
16 deviation targeted for these specific three
17 phases, for the half of the project, since
18 we're having these delays now, because
19 subsequent phases, what's the timing that
20 you're expecting on the subsequent phases? I
21 thought I saw the build out was 2028 somewhere
22 in the materials.

23 MR. UNDERHILL: Yes. I think they'd like
24 the -- the ability to get moving with it.
25 Again, just the way that the projects develop

1 and the speed of development that's occurring
2 now, typically, we can't get caught up with the
3 design and permitting process until this
4 project is almost completed.

5 MS. MONTGOMERY: Mr. Underhill, you
6 mentioned the CDD, can you tell us what that is
7 and what they do in this case.

8 MR. UNDERHILL: Sure. The CDD is a
9 Community Development District that's a
10 governmental entity that's established to
11 manage the public infrastructure within the
12 project.

13 In this case, it's set up to,
14 specifically, handle the stormwater management
15 system and the utilities and irrigation and the
16 other public infrastructure components.

17 MS. MONTGOMERY: So is that another layer
18 of review that helps protect from any mistakes?

19 MR. UNDERHILL: Yes. It, certainly,
20 establishes some other measures of control for
21 the streets and the water management system and
22 the other infrastructure.

23 MS. MONTGOMERY: So the comp -- I've tried
24 to keep track of the numbers, but it's about
25 240 days then of delay when you add up all the

1 30's and the 60's and the 90's that you went
2 through?

3 MR. UNDERHILL: Yes. It's -- it's a good
4 amount of time when you consider that to
5 construct a typical phase like the -- you know,
6 each -- each half of the project, Phase One or
7 what we're calling Phase Two, is about 100
8 lots, and it takes six or seven months to
9 construct the subdivision improvements.

10 So you can construct the subdivision
11 improvements much quicker than you can even get
12 to where you can begin home construction.

13 THE HEARING EXAMINER: Does Staff have any
14 questions?

15 MR. BADAMTCHIGN: Just one quick one. You
16 kept talking about preliminary plat, final
17 plat, what's a preliminary plat?

18 MR. UNDERHILL: Preliminary plat, the way
19 the Development Order, or the way that LDC's
20 set up, the preliminary plat is the submittal
21 where you submit the plat document, it's
22 reviewed by Staff, but you don't have to
23 require -- you don't have to submit the surety,
24 the bond for the subdivision.

25 And there are other -- you know, you may

1 not have your -- your -- all your utility
2 approval letters and some of the components
3 that are needed before the plat can get
4 recorded but, otherwise, the requirements for
5 the plat itself, are -- are the same.

6 MR. BADAMTCHIGN: Can you put surety bond
7 and record that?

8 MR. UNDERHILL: Well, the problem is that
9 you can't -- you can't start the process with
10 the final plat to get it recorded until the
11 Development Order is approved. So the --

12 MR. BADAMTCHIGN: Do you want --

13 MR. UNDERHILL: -- final plat can't get --

14 MR. BADAMTCHIGN: -- do you want
15 (inaudible) before the Development Order, is
16 that true? Before roads are set, before
17 anything else; I'm going to draw a piece of
18 land and you want to start building homes?

19 MR. UNDERHILL: No. We -- we absolutely
20 don't want to start the process of that until
21 the Development Order is approved. But, the
22 problem is, or the issue is that, to get to the
23 final plat and, specifically, just to even be
24 able to submit the building permits, the plat
25 has to be recorded and the STRAP Numbers

1 issued, so that's where it takes the time.

2 MR. BADAMTCHIGN: When you apply for a
3 plat, you have 30 days to amend it --

4 MR. UNDERHILL: Yes.

5 MR. BADAMTCHIGN: -- correct? And we send
6 you our comments and you have a -- whatever
7 time it takes for you to do it, you send it
8 back to us and it takes us another 30 days to
9 read it. And most off the plats are approved
10 at the second (inaudible.)

11 MR. UNDERHILL: Absolutely. I agree with
12 you.

13 MR. BADAMTCHIGN: And after it's approved,
14 there's a coordinate (inaudible) list that --

15 MR. UNDERHILL: I agree.

16 MR. BADAMTCHIGN: So nine months, I don't
17 know where it turns into nine months, but it's
18 not -- I don't think nine months is the right
19 numbers you came up with.

20 MR. UNDERHILL: Well, again, the -- the --
21 and I totally agree with the timing that you
22 said for the plat recording, that, you know, 30
23 days, and then a week or two resubmit, another
24 30 days, and then another week, that puts you
25 somewhere between --

1 MR. BADAMTCHIGN: Two months.

2 MR. UNDERHILL: -- six -- three months,
3 max, absolutely.

4 MR. BADAMTCHIGN: Uh-huh.

5 MR. UNDERHILL: But then, it goes to the
6 addressing department or the -- and they have
7 to issue those STRAP Numbers. That, you know,
8 takes some time.

9 So only once that's recorded, once those
10 addresses are issued, can you then submit the
11 building permit.

12 So then, that -- there's another process
13 of record -- you know, submitting the building
14 permit. So all those are held up until, you
15 know, the plat's recorded.

16 MR. BADAMTCHIGN: You cannot apply for a
17 plat and the Development Order simultaneously.

18 MR. UNDERHILL: You cannot submit the
19 final plat. The -- they won't accept the final
20 plat until they are assured that the
21 Development Order is approved and that there's
22 not going to be any changes through the
23 Development Order.

24 MR. BADAMTCHIGN: You -- you cannot apply
25 simultaneously. They can be reviewed

1 simultaneously. It's not like one after the
2 other, they can go together.

3 All we are trying to do here is, we used
4 about four model homes before platting, and we
5 went through several ADD's every year because
6 they couldn't get it right.

7 You haven't drawn a piece of land, you
8 don't have it surveyed, you don't have the four
9 property corners, you are building a house.
10 And --

11 MS. MONTGOMERY: I'm going to object at
12 this point in time. Chahram, you're going to
13 have an opportunity to testify but this is
14 Cross-Examination. I would like for you to ask
15 the question and not make speeches to
16 Mr. Underhill.

17 MR. BADAMTCHIGN: Okay. Then, basically,
18 what you are trying to do is speed it up.

19 MR. UNDERHILL: Yes.

20 MR. BADAMTCHIGN: And for me, the best way
21 of speeding it up is when you apply for a plat
22 and then reapply for the Development Order is
23 to provide better quality plans.

24 And I really don't see any time savings,
25 what you are proposing, you're just creating

1 future headaches; that's all I have to say.

2 THE HEARING EXAMINER: Was there -- I
3 didn't see any Applicant's narrative that was
4 provided in the Staff Report, a specific
5 evaluation of how this deviation met the
6 required -- like the deviation standards, like,
7 how does it enhance the objective? Is it in
8 here and I just didn't see it?

9 MS. EKBLAD: I did include some language
10 in the schedule of deviations, I don't know if
11 that was attached to this stuff.

12 MR. BADAMTCHIGN: I don't know if it's in
13 here or not.

14 MS. EKBLAD: It's not.

15 THE HEARING EXAMINER: It is not. So I --
16 I might --

17 MR. BADAMTCHIGN: Box full of documents,
18 I --

19 THE HEARING EXAMINER: I'm sure a project
20 of this size has -- I don't want the full box
21 so -- but that's something that would be
22 helpful because it was something I was
23 (inaudible) --

24 MR. BADAMTCHIGN: I -- I will provide that
25 to you.

1 THE HEARING EXAMINER: Okay. We'll
2 address that later then. But, okay, did
3 Applicant have any other witnesses they wanted
4 to call?

5 MS. EKBLAD: For the record, Tina Eckblad.
6 So with regard to the requirements of the
7 deviation and the Land Development Code, I
8 think -- I would like to summarize what I heard
9 from Mr. Underhill and address the criteria by
10 which a deviation can be approved.

11 So it is my professional opinion that what
12 we have here are circumstances that are unique
13 to this project.

14 We do have an established property
15 boundary, with lot corners, with general
16 overall easements, and with a portion of the
17 stormwater management system in play on the
18 plat.

19 And so you heard Mr. Underhill talk about
20 well-defined and established development plan,
21 we -- we have that from the perspective of the
22 approved DO in 2005, but also from the
23 perspective of the approved Environmental
24 Resources Permit.

25 And so that will lay out the general

1 pattern with which development is expected to
2 occur in. And so, it is my professional
3 opinion that, in the terms of enhancing the
4 plan development, what we are doing is, yes, we
5 are accelerating the process by which a home
6 can be constructed.

7 And, to kind of expand on that, we have
8 this spine road already in play, let's take
9 Phase Two as the example, this entry portion of
10 the roadway is already in play under
11 construction.

12 And then the infrastructure portion would
13 establish this roadway, in this location,
14 construction staking is going to occur in this
15 location for the roadway, and also for this
16 cul-de-sac (indicating.)

17 What we are asking is that, as that
18 occurs, we be able to -- we are able to address
19 the lot locations and the construction
20 activities that need to go along with these
21 lots.

22 Without this deviation, the roadways will
23 go in, any adjustment to the water management
24 system will occur, and then construction will
25 stop, in terms of the lots.

1 And they will need to come back to this
2 location, you heard Mr. Underhill testify, I
3 believe it was six to seven months later.

4 I think there's a reasonable compromise
5 that can be met in the sense that we agree that
6 a Development Order needs to be approved. We
7 agree that County Staff should have the
8 opportunity to review and comment and go
9 through that process.

10 You heard the testimony that the
11 preliminary plat works simultaneously to that,
12 we are not suggesting we are not going to
13 address those comments, we agree that that is
14 appropriate.

15 We think that that is a reasonable break
16 point by which both parties on either side can
17 say, yes, this works or, no, it doesn't, and
18 this deviation can come into play.

19 We think that that will reduce the risk on
20 both sides and that there's a potential for
21 agreement in -- or -- or compromise in that --
22 that vein.

23 So in terms of enhancing the Plan
24 Development, we're making sure that
25 construction moves forward in a reasonable time

1 frame, we're not having to demobilize for six
2 to seven months and then come back, which is
3 very costly, from the perspective of economic
4 development, and we would be ensuring that
5 public health, safety and welfare is met
6 because those reviews have occurred.

7 So we believe that this deviation, with
8 appropriate conditions, can be approved.

9 MS. MONTGOMERY: Before she moves on, can
10 I inquire about this topic?

11 THE HEARING EXAMINER: (Nodded head
12 affirmatively.)

13 MS. MONTGOMERY: I mean, just a snippet in
14 time of what I heard is, it takes at least 30
15 days to get a street name, it takes at least 30
16 days to get a STRAP Number, but take 90-plus
17 days for the Building Permit Review to occur.

18 So things that don't change anything on
19 the ground, like names and numbers, you could
20 be undergoing the Building Permit Review and
21 not doing any damage to anyone by that overlap.

22 And conversely, let me ask you, if I have
23 a site that's cleared and it's graded but I --
24 that site sits without sod, which you wouldn't
25 do until the end for five or six months, do you

1 have to redo work because of the delay?

2 MS. EKBLAD: That is my understanding of
3 what is happening on these sites, yes.

4 MS. MONTGOMERY: So this, actually, helped
5 protect the public health, safety and welfare
6 by being able to move from a graded site to the
7 construction work to prevent that from
8 happening?

9 MS. EKBLAD: Correct. Your construction
10 site is not active for as long, you're wrapping
11 up faster.

12 MS. MONTGOMERY: And are there other
13 jurisdictions that allow you to submit the
14 preliminary final plat at the same time?

15 MS. EKBLAD: I don't know the answer to
16 that.

17 MR. BADAMTCHIGN: You have preliminary
18 final plat; that's the thing.

19 MS. EKBLAD: You do in the Administrative
20 Code, it is outlined in the Administrative
21 Code. I can get that --

22 MR. BADAMTCHIGN: The lawyer --

23 MS. EKBLAD: -- number, if you --

24 MR. BADAMTCHIGN: -- review it --

25 MS. EKBLAD: -- need it.

1 MR. BADAMTCHIGN: -- because we usually
2 review it, it's approved and recorded in a
3 week.

4 MS. EKBLAD: Okay. So --

5 MR. BADAMTCHIGN: It's not like some
6 places that have Master -- Subdivision Master
7 Plan that review --

8 MS. MONTGOMERY: Chahram? Chahram? This
9 is not for you to argue with Tina. If you have
10 a question, please ask her, but please don't --

11 MR. BADAMTCHIGN: When --

12 MS. MONTGOMERY: -- argue with her.

13 MR. BADAMTCHIGN: -- when your (inaudible)
14 are --

15 MS. MONTGOMERY: Please -- please don't
16 testify during Cross-Examination. If you have
17 a question, please ask it.

18 MR. BADAMTCHIGN: Okay. But please be
19 accurate to what are code of laws.

20 MS. MONTGOMERY: Please ask questions.

21 THE HEARING EXAMINER: Yes, we will get to
22 that at Staff presentation. Is there more on
23 this item, Tina?

24 MS. EKBLAD: Just -- I will get you the
25 number but just that I'm using terminology

1 that's outlined in the Administrative Code,
2 there's clearly a discrepancy there.

3 So I will move on to Lee Plan consistency,
4 I mentioned earlier the property is in the
5 suburban future land use and wetlands.

6 We have memorialized the existing
7 conservation easements through the Environment
8 Resource Permit that is approved on site. And
9 so, we are calculating for the preserved
10 wetlands, the wetland density, and so that gets
11 us to a maximum of 2,314 dwelling units.

12 The project is maintaining the 1,229 units
13 approved by the 2004 Resolution. And so,
14 therefore, we are consistent with the density
15 permitted by Future Land Use categories.

16 The suburban category does -- is suggested
17 to be predominantly residential, I talked
18 generally about the adjacent uses, in terms of
19 the Master Plan Communities, and the
20 traditionally-platted communities surrounding
21 the subject property, and so we are consistent
22 with the residential located in the area.

23 I do want to take a minute and just put on
24 the record, there is some language regarding
25 the Sabal Springs community in the conditions,

1 that community is immediately adjacent to the
2 northern half of our boundary, the proposal is
3 for the Sabal Springs portion of the 2004
4 Resolution to remain in effect.

5 We are just, basically, extracting, I
6 guess, separating our portion of the property,
7 which was item A in the existing Resolution.

8 So, it is my professional opinion that the
9 proposed amendment is consistent with the
10 suburban and wetland future land use
11 categories.

12 Moving on to the type of development
13 pattern and Goal 5 of the Residential. Again,
14 we are promoting a continued -- contiguous,
15 excuse me, and compact development pattern.

16 You saw the Master Concept Plan where we
17 are clustering units around open space and
18 stormwater management, and that is contiguous
19 to existing residential development in the
20 general proximity of the subject property;
21 specifically, those Master Plan Communities to
22 the west, and the general conventionally
23 platted community to the east.

24 So it is my professional opinion that we
25 are consistent with Goal 2, which is Growth

1 Management, and also Goal 5, and Policy 5.1.5,
2 again, we're in the existing residential
3 communities surround by residential.

4 As I have mentioned, the site design has
5 already considered the on-site natural
6 resources, and the easements have been
7 recorded, consistent with Policy 5.1.2.

8 We are consistent with the existing
9 Environmental Resources Permit. And, as I
10 testified earlier, when we were walking through
11 the Master Concept Plan, the project amenities
12 have been centrally located.

13 Chapter 10 of the Land Development Code
14 will ensure the internal roadways provide
15 appropriate pedestrian access to those
16 amenities, demonstrating consistency with
17 Policy 5.1.7.

18 So it is my professional opinion that you
19 can make a finding that the proposed amendment
20 is consistent with Goal 5 and its supporting
21 objectives and policies.

22 The subject property is within the North
23 Fort Myers community planned area. Our -- the
24 general schedule of uses and the site
25 development regulations propose a variety of

1 housing types, which is consistent with Policy
2 30.1.3 for the North Fort Myers community.

3 As required, we did hold a community
4 meeting on July 6th, there were no members of
5 the public in attendance. And the Master
6 Concept Plan is consistent with the design
7 requirements outlined in Chapter 33 for the
8 North Fort Myers community, so we are
9 consistent with a North Fort Myers Community
10 Plan.

11 And last, but, certainly, not least, the
12 findings that need to be made in order for the
13 Hearing Examiner to make a recommendation of
14 approval, are that the amendment complies with
15 the Lee Plan.

16 I believe my previous testimony
17 demonstrates that we are compliant, we have met
18 the code and other regulations, or we have
19 requested deviations with appropriate
20 conditioning to effectuate those deviations.

21 We are compatible and consistent with the
22 existing residential and supporting commercial
23 in the surrounding area.

24 I previously testified regarding the
25 access and the improvement that is being made

1 to the property, as a result of this amendment,
2 and the elimination of the previous deviation;
3 therefore, it's my professional opinion that
4 the access is sufficient to support the
5 existing intensity and the revised development
6 pattern.

7 You heard from Mr. Leung, regarding the
8 impacts to the transportation facilities and
9 how that will be addressed via impact fees and
10 other mechanisms by the County.

11 And we've talked about the existing ERP,
12 the recording of the existing easements
13 on-site, the previous deviation regarding the
14 indigenous habitat will be carried forward and,
15 therefore, the requested amendment will not
16 adversely affect environmentally critical or
17 sensitive areas.

18 And, as I previously testified, we are in
19 an area of urban services and there is capacity
20 to meet the existing 1,229 residential units.

21 And then, continuing on with the findings,
22 the use and the -- the proposed use and the mix
23 of uses are appropriate. We have not changed
24 the numbers of units or the type of units, we
25 have altered the, I would call it "title," to

1 reflect the current Land Development Code, and
2 so the mix is still appropriate at this
3 location.

4 We believe that the conditions that we
5 have offered address the unique circumstances
6 of the property and do provide sufficient
7 safeguard for the public interest. And I've
8 mentioned, the deviations enhancing the Plan
9 Development and promoting public health, safety
10 and welfare.

11 With this in mind, and the testimony of
12 myself and Mr. Brown and Mr. Leung, I believe
13 you can make a finding to recommend approval
14 for the proposed amendment.

15 I'd be happy to answer any general
16 questions or specifics about the project. That
17 concludes the main portion of the presentation
18 we have at this time.

19 THE HEARING EXAMINER: The only other
20 question that -- the narrative that I did have
21 mentioned an Admin Amendment that was likely to
22 be submitted concurrent with or before this,
23 what's the status of that and what was the
24 proposal?

25 MS. EKBLAD: Yes. So that administrative

1 amendment was to implement this site
2 configuration that has been approved and is
3 enabling an amendment to the Development Order
4 to go forward and what is implementing this
5 proposed plat.

6 THE HEARING EXAMINER: Does that need to
7 be codified in with this as well? Are we
8 trying to -- whatever the -- its a 2021 ADD,
9 I'm assuming, or is that going to stand alone
10 since it wasn't part of the review?

11 MS. EKBLAD: Mr. Underhill is shaking his
12 head that it's okay. I personally did not do
13 that administrative amendment.

14 THE HEARING EXAMINER: Okay. That's
15 something we can get information on at the end,
16 it was just a question that I made a note of
17 because --

18 MS. EKBLAD: Okay.

19 THE HEARING EXAMINER: -- clearly, I don't
20 want to be approving something here that just
21 got --

22 MS. EKBLAD: Correct.

23 THE HEARING EXAMINER: -- changed or
24 wasn't part of this.

25 MS. EKBLAD: No, that's a good point. I

1 will double-check on that.

2 THE HEARING EXAMINER: That was the only
3 question that I had. Chahram, do you have
4 anything further right now?

5 MR. BADAMTCHIGN: None.

6 THE HEARING EXAMINER: Okay. Were there
7 any other witnesses for the Applicant? Okay.
8 I'd like to take a break then, if we could,
9 until 10:30, and then we'll come back and
10 resume with Staff. Thank you.

11 (A short break was had at this time.)

12 THE HEARING EXAMINER: Okay. We are back
13 on the record and we're going to begin with
14 Staff's presentation. Okay.

15 MR. BADAMTCHIGN: Good morning.

16 THE HEARING EXAMINER: Good morning.

17 MR. BADAMTCHIGN: Chahram Badamtchign,
18 from Lee County Zoning. My CV is on file and I
19 was recognized as an expert in land use and
20 zoning issue and I would like to be recognized
21 as such at this time?

22 THE HEARING EXAMINER: Yes. Thank you.

23 MR. BADAMTCHIGN: I'm going to go really
24 briefly through the request, because you
25 already heard that. Basically, the request is

1 to amend an existing zoning, Resolution
2 Z-04-019, this is a 358-acres, more or less,
3 property, and it's approved for 1229 units and,
4 basically, keeping that, they are not
5 increasing the units.

6 They are getting rid of the golf course
7 and revising the Master Concept Plan somewhat.
8 And, thus, cleaning up some of the language
9 like type of units that is not defined in our
10 Land Development Code, like, garden apartments
11 (phonetic) and things like that, we'll get
12 through the (inaudible) like that.

13 And they are asking for five deviations
14 with this, which Staff recommends approval of
15 four out of five, and they are in this Suburban
16 and Wetlands Future Land Use designated area.

17 You are absolutely correct, they are
18 asking for 965 single-family and two-family
19 attached homes, which is about 80 percent, and
20 264, three or more units, which is considered
21 multi-family.

22 And we can add under Condition Number 1,
23 second paragraph, where it says single-family,
24 two-family with (inaudible,) single-family and
25 two-family limit approve 965 units; that would

1 take care of that.

2 MS. MONTGOMERY: So you're reading from
3 Condition A 1; right --

4 MR. BADAMTCHIGN: Correct.

5 MS. MONTGOMERY: -- Chahram? Okay.

6 MR. BADAMTCHIGN: From the second
7 paragraph, where it says, "This planned
8 development will allow a maximum of 1299 --
9 "29."

10 MS. MONTGOMERY: I'm not trying to read
11 over your shoulder, I'm just trying to --
12 (inaudible) --

13 MR. BADAMTCHIGN: Okay. Yeah.

14 THE HEARING EXAMINER: Thank you. So
15 how -- well, can you repeat --

16 MR. BADAMTCHIGN: Single-family and
17 two-family attached --

18 COURT REPORTER: I didn't hear you.

19 MR. BADAMTCHIGN: -- limit it to --

20 COURT REPORTER: I didn't hear what you
21 said.

22 MR. BADAMTCHIGN: -- 965. We don't
23 believe they can exceed that.

24 THE HEARING EXAMINER: For the record --
25 I'm sorry. Can you just start at the very

1 beginning and just read how you want that
2 condition to read so that we have it.

3 MR. BADAMTCHIGN: Okay. Yeah.

4 COURT REPORTER: I understand (inaudible.)

5 MR. BADAMTCHIGN: This planned development
6 would allow a maximum of 1,229 dwelling units,
7 it depends if it's a single-family and
8 two-family attached, limited to 965 units, then
9 townhomes and multi-family and so on.

10 THE HEARING EXAMINER: Okay. Thank you.

11 MR. BADAMTCHIGN: They are in full
12 compliance of the Land Development Code's
13 requirements and Lee Plan requirements, and
14 that's the reason for Staff's recommendation
15 for approval.

16 And this Resolution Z-04-019, he -- that's
17 the first time I have seen this kind of
18 Resolution approved to separate developments,
19 amended one and approved another.

20 So we cannot just rescind the Resolution,
21 we are trying to rescind a portion of it that
22 pertains to Palermo or Crane Landing.

23 And with that said, we are in agreement
24 with all the changes they propose in their
25 48-hour Notice for -- to the conditions, with

1 the exception of Natural Resources Conditions,
2 we have no problem with the Environmental or
3 other conditions, increasing the number of
4 model homes; that's fine.

5 All those -- there were only two
6 outstanding issues of Deviation Number 5,
7 which, along building permits, prior plat and
8 the natural resources condition.

9 For the -- for develop -- for Deviation
10 Number 5, Staff recommends denial. We used to
11 allow this for model homes, but every time we
12 allowed this, we had to do -- rescind
13 amendments for -- because they could never get
14 it right.

15 We cannot take a raw piece of land and
16 build a house, and then draw the lines for the
17 lots, and you will always have problem. And
18 now, multiply that by 1229.

19 Our platting is very straightforward, 30
20 days time -- review time, and sometimes they
21 get it struck the first time, most of the time
22 it takes another review.

23 So two times, four weeks, it takes for us
24 to get it approved. It's not 120 days, it's
25 not 250 days, it's two, 30 days. And, after

1 it's approved, recording it takes less than a
2 week, to four days, it's three quarter
3 (phonetic.)

4 We don't have that Preliminary Subdivision
5 Master Plan and some other communities they
6 have, that Staff has to be approved
7 administratively and then plat prepared, we
8 don't have those. And platting process can be
9 done simultaneously with the Development Order.

10 So if they're going to wait for the
11 Development Order, during that time period,
12 they can get their platting done. It's not
13 going to be recorded because we need the
14 Development Order approval, but it can be done.

15 And this is going to be a nightmare if
16 this condition is approved because there's
17 nothing special about this thing that separates
18 from any other development plan.

19 It's a 285-acre parcel, and they want to
20 build 1200 homes without knowing where the lots
21 are, where the streets are, we don't know
22 anything.

23 They just want to come and pull a building
24 permit and that's not helping anybody, that's
25 not helping themselves either. They may think

1 they are saving time, but they are not.

2 They are just -- they will end up with
3 deviation after deviation and they're going to
4 end up with wrong lots, wrong section; it's
5 never ending.

6 You might as well go through the process
7 and get the plat done, record it and get it
8 approved, and then pull building permits. I
9 guess I've got the source to that, we have Nick
10 here, he's going to talk about --

11 MS. MONTGOMERY: I do have one question.

12 MR. BADAMTCHIGN: Yes.

13 MS. MONTGOMERY: I just want to clarify
14 your testimony. So are you -- you said you can
15 get the DO and the plat at the same time, so is
16 it you're testimony that you can submit for a
17 preliminary and final plat at the same time and
18 have them all issued at the same time as the
19 DO?

20 MR. BADAMTCHIGN: You can apply -- they
21 can be reviewed simultaneously. Plat -- I
22 believe for plat, you have to wait for the
23 Development Order to be issued.

24 MS. MONTGOMERY: Okay. That's different
25 they way you just testified to.

1 MR. BADAMTCHIGN: They can be reviewed
2 simultaneously, and I don't think after the DO
3 is approved, it's going to be long before plat
4 will be approved, because we have enough time
5 to review it and had enough time to correct all
6 the issues.

7 MS. MONTGOMERY: Okay.

8 THE HEARING EXAMINER: Thank you.

9 MR. BADAMTCHIGN: Thank you.

10 (Next speaker.)

11 THE HEARING EXAMINER: Good morning.

12 MR. DEFILIPPO: Good morning. My name is
13 Nic DeFilippo, I'm with DCE Planning Section,
14 I'll be talking about the natural resource
15 conditions today.

16 So first, I want to provide Revised
17 Condition Number 4. I have some copies with
18 some strike-through underline, and then some
19 clean copies, I'd like to share around with
20 everybody.

21 THE HEARING EXAMINER: Yes, thank you.
22 And I'll mark that Staff Exhibit 2 because
23 Number 1 is the Staff Report.

24 (Staff's Exhibit Numbers 1 & 2 were marked for
25 identification at this time.)

1 MS. MONTGOMERY: Is this Exhibit 1 or is
2 the Staff Report Exhibit 1?

3 THE HEARING EXAMINER: The Staff Report is
4 Exhibit 1. This is Staff Exhibit 2, and it
5 will just be the composite exhibit because it
6 looks like the same thing but one is clean and
7 one is striked {sic} through.

8 MR. DEFILIPPO: Here you go. One is going
9 to be clean and one is going to be having --

10 MS. MONTGOMERY: Do you have an extra one
11 for today, by any chance?

12 MR. DEFILIPPO: Yes, I do.

13 MS. MONTGOMERY: Thank you.

14 COURT REPORTER: Do you have an extra one
15 here?

16 MS. EKBLAD: Here, you can have mine.

17 MR. DEFILIPPO: Thank you.

18 COURT REPORTER: If you want to --

19 MR. DEFILIPPO: Okay.

20 COURT REPORTER: If you want to use it to
21 refer to it now? Okay.

22 MR. DEFILIPPO: So, just briefly, I'll
23 talk about this a little bit. So, per the
24 stormwater narrative that the Applicant
25 provided during the review process, the outfall

1 for this will be into the Powell Creek canal,
2 and I'm not sure which one of these -- does
3 this point -- it's like relocated around here
4 (indicating.)

5 So, and then, that water then continues
6 into the Caloosahatchee, which -- and the
7 Caloosahatchee River is impaired for nutrients.
8 So, maybe I can pull up -- I'm not sure which
9 conditions -- yeah, then we can go through this
10 and kind of talk about the differences and see
11 if we can come to some kind of agreement.

12 So Staff looked at the 48-hour letter that
13 was provided and -- and then came up with these
14 revised conditions and tried to come to some
15 type of agreement.

16 So, as you can see, Number A {sic} has
17 been removed, which is same as the Applicant.
18 B, we are in agreement, for the most part,
19 except for the timing of the baseline
20 monitoring, the submittal of that.

21 I mean, we recommended, prior to issuance
22 of the Amended Development Order because, in
23 this process, once they get their zoning,
24 they're going to have to amend the Development
25 Order to implement the zoning.

1 So, then C, C speaks to the actual
2 monitoring. So within this new condition,
3 Staff is asking that water quality monitoring
4 data be -- or hold on. I just -- I skipped
5 one. I meant, B. Sorry. I get a little
6 turned around with all these.

7 So we've talked about the baseline, now
8 we're on to the monitoring, the natural
9 monitoring, okay, so B.

10 Staff is proposing that an outfall
11 monitoring occur during the wet season months
12 of June and September, which is the beginning
13 of the wet season, and also the dry -- or the
14 end of the wet season.

15 And Staff is asking for that because it
16 corresponds with the Fertilizer Ordinance,
17 which the Applicant brought up. So the point
18 of this is to be able to demonstrate that this
19 community is complying with the Fertilizer
20 Ordinance and is not introducing extra
21 nutrients into the waterway, which are getting
22 in the Caloosahatchee River.

23 So, and then we move on to C, which is,
24 basically, the timing of when this all stops.
25 So, Staff is recommending that the water

1 quality monitoring data start being provided
2 upon issuance of the final CC of the
3 development. So -- because we're -- we are
4 concerned that the community will not be
5 abiding by the Fertilizer Ordinance.

6 So, basically, we want to make sure that,
7 once the community is built out, they are not
8 introducing extra nutrients into the waterway,
9 which are getting in the Caloosahatchee.

10 And then, we have that monitoring may
11 cease five years after final CC if there has
12 not been an exceedance of the State Water
13 Quality Standards, with written approval from
14 the Lee County Division of Natural Resources.

15 And the written approval from Lee County
16 Division of Natural Resources not intended to
17 extend the monitoring any further, it's just a
18 recordkeeping component, just so that we have
19 that within our files.

20 And then, we're in agreement on the final
21 one, which would be D. I'd like to also say
22 that a lot of this language was, actually,
23 proposed by the Applicant during the review
24 process.

25 Staff did not recommend monitoring for

1 every month of the wet season, that was
2 proposed by the Applicant, so we were a little
3 confused when they came in and wanted to change
4 their own language, but we are working to meet
5 them in the middle and, hopefully, this Revised
6 Condition does that.

7 THE HEARING EXAMINER: So you're proposing
8 June and September, so they would be doing
9 two --

10 MR. DEFILIPPO: Just two.

11 THE HEARING EXAMINER: -- monitoring
12 events a year?

13 MR. DEFILIPPO: Yes.

14 THE HEARING EXAMINER: And then, it would
15 start -- it wouldn't start until construction
16 had ceased and they were starting to get to
17 final CC, and then, you want it to continue for
18 five years after that point?

19 MR. DEFILIPPO: After final CC, yes.

20 THE HEARING EXAMINER: Okay. For the
21 overall development?

22 MR. DEFILIPPO: For the overall
23 development, yes.

24 THE HEARING EXAMINER: Okay. And the
25 reason that Staff wants any of these things

1 monitored for the nutrient monitoring is
2 because -- it ties back to the Fertilizer
3 Ordinance then -- so what we heard from the
4 Applicant about fecal coliform isn't a concern
5 that you have, you're trying to address
6 something separate --

7 MR. DEFILIPPO: -- yes.

8 THE HEARING EXAMINER: -- that's not
9 addressed by the ERP?

10 MR. DEFILIPPO: Yes.

11 THE HEARING EXAMINER: Okay.

12 MR. DEFILIPPO: Yes. And, as you can see,
13 we're not monitoring for fecal coliform, we are
14 concerned that nutrients will be introduced
15 into the system.

16 THE HEARING EXAMINER: Okay. And the
17 Fertilizer Ordinance is not doing its job as
18 it's written, is that something that Staff is
19 seeing and what -- why you're concerned about
20 it in this particular development or is this
21 something that you're proposing on all new,
22 large RPD's?

23 MR. DEFILIPPO: This is something that we
24 propose on developments that outfall directly
25 into creeks, streams, canals, which are

1 impaired waterways, and that lead to impaired
2 waterways.

3 THE HEARING EXAMINER: Okay. And it's --
4 but, again, the Fertilizer Ordinance, because
5 we heard earlier, they talked -- they
6 acknowledged that there was a Fertilizer
7 Ordinance that the HOA would, I guess,
8 presumptively enforce, but what you're saying
9 is that that's not happening?

10 MR. DEFILIPPO: There's no way of knowing
11 unless we're monitoring and we ensure that it
12 is happening. And with this condition, if it
13 is happening for five years, and it can be
14 proved through data, then no more monitoring
15 the beach (phonetic.)

16 THE HEARING EXAMINER: Okay. That was the
17 all the questions that I had, did you have any
18 questions?

19 MS. MONTGOMERY: Yes, I do. Thank you.
20 Let me ask you, do you have a degree in
21 engineering?

22 MR. DEFILIPPO: No, I don't.

23 MS. MONTGOMERY: Do you have any
24 experience in engineering?

25 MR. DEFILIPPO: No, I don't.

1 MS. MONTGOMERY: Do you have a degree in
2 geology or hydrogeology?

3 MR. DEFILIPPO: No, I don't.

4 MS. MONTGOMERY: Do you have any
5 experience in Hydrogeology or geology?

6 MR. DEFILIPPO: No, I don't.

7 MS. MONTGOMERY: Are you a certified
8 planner?

9 MR. DEFILIPPO: I am not.

10 THE HEARING EXAMINER: He didn't ask to be
11 certified as an expert, though, today. I
12 understand, I'm just pointing that out, because
13 if that's the line of questioning, I
14 understand.

15 MS. MONTGOMERY: Well, I just -- it's a
16 natural resource, which is a technical
17 question --

18 THE HEARING EXAMINER: Sure.

19 MS. MONTGOMERY: -- for additional --

20 MR. DEFILIPPO: This -- this all relates
21 back to the Lee Plan though. So this is to
22 demonstrate compliance with Lee Plan Policy
23 135.1.1.

24 MS. MONTGOMERY: Did you draft Exhibit G
25 to the Staff Report --

1 MR. DEFILIPPO: Exhibit G --

2 MS. MONTGOMERY: -- or did you --

3 MR. DEFILIPPO: -- is --

4 MS. MONTGOMERY: It's the --

5 MR. DEFILIPPO: -- which one is that?

6 MS. MONTGOMERY: -- Natural Resource Staff
7 Report Condition?

8 MR. DEFILIPPO: I did not write that Staff
9 Report and I don't have it in front of me. So
10 I can't speak to it.

11 MS. MONTGOMERY: Do you have it in front
12 of you?

13 MR. DEFILIPPO: I don't.

14 MS. MONTGOMERY: Okay. I'm going to --

15 MR. DEFILIPPO: If you gave me a copy?

16 MS. MONTGOMERY: -- read from it and --

17 MR. DEFILIPPO: If I can have a copy of
18 it, that --

19 THE HEARING EXAMINER: Yes, hold on.

20 MR. DEFILIPPO: -- would be helpful too --

21 THE HEARING EXAMINER: We'll get you a
22 copy.

23 MR. DEFILIPPO: -- if I'll be questioned
24 on it.

25 THE HEARING EXAMINER: I'll have Maria

1 make a copy and bring it out to you so I can --

2 MR. DEFILIPPO: Oh, okay.

3 THE HEARING EXAMINER: -- refer to it as
4 well.

5 MR. DEFILIPPO: Okay.

6 (Short pause.)

7 THE HEARING EXAMINER: Yes, sir. He's on
8 that side, it might be easier, Maria. Thank
9 you.

10 MR. DEFILIPPO: Thank you.

11 MS. MONTGOMERY: Do you have a copy of the
12 Gmail?

13 MR. DEFILIPPO: Yeah, I do have a copy of
14 it now.

15 MS. MONTGOMERY: Okay. Thank you. I
16 would refer you to the first paragraph --

17 MR. DEFILIPPO: Okay.

18 MS. MONTGOMERY: -- and does that first
19 paragraph, starting in the middle, say, "The
20 proposed development is within the Powell Creek
21 watershed and it's reported to be impaired for
22 fecal coliform. And this project will outfall
23 into the Powell Creek pike (phonetic) pass
24 canal at the southern end of the property"?

25 MR. DEFILIPPO: Yes, it does say that.

1 MS. MONTGOMERY: So discussion about fecal
2 coliform, I would submit to Madame Hearing
3 Examiner, was prompted by the fact that that's
4 the issue raised in the Staff memo.

5 MR. DEFILIPPO: I would like to also point
6 out though that that is not one of the things
7 that is being monitored by the monitoring
8 schedule.

9 MS. MONTGOMERY: Which I found odd, to
10 tell you the truth. I mean, the premise in
11 this memo is impairment for fecal coliform.

12 MR. DEFILIPPO: And this development is
13 not proposing septic, so that was the
14 reasoning within the review as to not include
15 fecal coliform within the monitoring schedule.

16 MS. MONTGOMERY: Okay. So the second
17 paragraph references a Lee Plan provision that
18 says, New development, in addition to existing
19 development, shall not degrade surface or
20 ground work quality."

21 MR. DEFILIPPO: Yup.

22 MS. MONTGOMERY: Other than the Fertilizer
23 Ordinance, does the County have any other
24 regulation to ensure or evaluate ground water
25 and surface water?

1 MR. DEFILIPPO: Yes. So I believe -- I
2 believe within the LDC Chapter 10, there are
3 requirements for areas providing water quality
4 monitoring if they are like an industrial user
5 or something like that. I can't remember, off
6 the top of my head, and there's also the
7 Welfare Protection Ordinance.

8 MS. MONTGOMERY: I -- I'm not aware of one
9 Chapter 10, can you tell me, specifically, what
10 division you're referencing?

11 MR. DEFILIPPO: It would be Chapter -- off
12 the top of my head, I can't. I'm not claiming
13 to be LDC expert so I --

14 MS. MONTGOMERY: Okay.

15 MR. DEFILIPPO: There is something in
16 there.

17 MS. MONTGOMERY: So do you have any
18 evidence that the ERP approved for this project
19 is not going to maintain or approve water
20 quality?

21 MR. DEFILIPPO: I don't -- I can't speak
22 on the ERP. I don't know what details are in
23 the ERP, so this -- this requirement of water
24 quality monitoring is to maintain consistency
25 with Lee Plan 125.154.

1 MS. MONTGOMERY: And 163.3177 of the
2 Florida Statutes indicates -- and I'm going to
3 paraphrase, but it's in the first paragraph,
4 that goals -- plans of objectives aren't
5 self-implementing, it's a guide to be
6 implemented through regulations for the Land
7 Development Code.

8 So that gets back to my question, what
9 else do you have besides this policy that would
10 require water quality monitoring in this case?

11 MR. DEFILIPPO: I think this Lee pol --
12 Lee Plan policy speaks for itself. It,
13 specifically, states --

14 MS. MONTGOMERY: Okay. But that's not --
15 okay. Does that policy have any guidance or
16 any criteria or require any indication that a
17 project exhibits impairment or you -- you just
18 think that this says you can do whatever?

19 MR. DEFILIPPO: The policy states that --
20 I mean, developments, which have potential for
21 lowering existing water quality below state --
22 state and federal water quality standards will
23 provide standardized appropriate water
24 monitoring data.

25 MS. MONTGOMERY: Okay.

1 MR. DEFILIPPO: And, I think the location
2 of this property, in proximity to the Powell
3 Creek, the outfall into Powell Creek and Powell
4 Creek, its proximity to the Caloosahatchee
5 River, and the known impairments of the
6 Caloosahatchee River, is justification for
7 providing water quality monitoring.

8 MS. MONTGOMERY: Okay. But the policy
9 says the project has to -- the new development
10 or the amendment has to have the potential to
11 cause impairment.

12 In light of the fact that this project had
13 to meet the state water quality standards in
14 order for the ERP to be approved, what evidence
15 do you have, or what information are you
16 relying on, to say this project has the
17 potential to cause impairment?

18 MR. DEFILIPPO: What evidence am I relying
19 on to --

20 MS. MONTGOMERY: Yes. What -- what are
21 you relying on that says this project has the
22 potential to cause impairment?

23 MR. DEFILIPPO: The proximity into Powell
24 Creek, the outfall into Powell Creek, and then
25 the flow way into the Caloosahatchee River,

1 they are impaired waterbodies and this
2 development --

3 MS. MONTGOMERY: So this geography has
4 nothing to do with the design of this project
5 then?

6 MR. DEFILIPPO: I can't speak to the
7 design of the project. I'm not -- I'm not
8 familiar with how the project is designed.

9 MS. MONTGOMERY: Okay. I don't have any
10 other questions.

11 THE HEARING EXAMINER: Okay. Thank you.

12 MR. DEFILIPPO: Thank you.

13 THE HEARING EXAMINER: Did Staff have any
14 other presentation?

15 MR. BADAMTCHIGN: No. May I say
16 something?

17 THE HEARING EXAMINER: Yes, please.

18 MR. BADAMTCHIGN: We were talking about
19 the amendment that was under review, that's
20 already incorporated into this --

21 THE HEARING EXAMINER: Oh, it is?

22 MR. BADAMTCHIGN: -- we don't have to do
23 anything.

24 THE HEARING EXAMINER: Okay. So the 2021
25 ADD --

1 MR. BADAMTCHIGN: Yes.

2 THE HEARING EXAMINER: -- was included in
3 the -- whatever conditions, deviations,
4 whatever it did?

5 MR. BADAMTCHIGN: Yes.

6 THE HEARING EXAMINER: Okay. Thank you.

7 MR. BADAMTCHIGN: Sure.

8 THE HEARING EXAMINER: Do we need to take
9 a break before we get into --

10 MS. EKBLAD: Do you want to take a break
11 or --

12 THE HEARING EXAMINER: Do you want to take
13 a break before we get to --

14 MS. MONTGOMERY: Yes, please.

15 THE HEARING EXAMINER: Okay. Let's --

16 MS. MONTGOMERY: I'm sorry. I was -- I
17 was --

18 THE HEARING EXAMINER: That's okay.
19 We'll --

20 MS. MONTGOMERY: -- I'm trying to read it
21 and I wasn't looking at you.

22 THE HEARING EXAMINER: At the same time --
23 we'll do 15 minutes again, so 11:15 we'll back.

24 MS. MONTGOMERY: Okay.

25 THE HEARING EXAMINER: Thank you.

1 (A short break was had at this time.)

2 THE HEARING EXAMINER: All right. We are
3 back on the record and we are starting with
4 Applicant's rebuttal.

5 MS. EKBLAD: Yes, ma'am.

6 THE HEARING EXAMINER: Thank you.

7 MS. EKBLAD: For the record, Tina Ekblad,
8 again. There are three specific items that I
9 just want to run through in closing.

10 The first, I -- I appreciate the
11 on-the-fly clarification to Condition 1;
12 however, unfortunately, limiting single-family
13 and two-family attached to 965 units would
14 create that discrepancy I was describing with
15 the ITE.

16 And so, we either need an alternative or
17 we would prefer to keep the condition as is.

18 THE HEARING EXAMINER: So -- and I'm --
19 again, I wasn't concerned about the unit count
20 because my understanding is that, at the time
21 of DO, you've got to provide another more
22 specific TIS and so you're going to be held
23 to --

24 MS. EKBLAD: Correct.

25 THE HEARING EXAMINER: -- the trip count

1 no matter what. I just wanted to know, since
2 Staff had recommended that to be carried
3 forward, if that was what the TIS was based
4 upon?

5 And Staff hadn't proposed to limit it
6 previously so I'm fine leaving it as it is --

7 MS. EKBLAD: Okay.

8 THE HEARING EXAMINER: -- knowing that
9 that's going to get taken care of later.

10 MS. EKBLAD: Okay.

11 THE HEARING EXAMINER: Thank you for the
12 clarification though.

13 MS. EKBLAD: I would like to clarify some
14 items regarding the Deviation 5. There's been
15 a lot of testimony and, again, I don't feel
16 that that testimony is accurately reflecting
17 what is, actually, happening on the ground.

18 So this is not a raw piece of land, this
19 is property that has been through the
20 permitting process for Phase One and is about
21 to have Phase Two released any day now.

22 And so, because of that, it's not 1229
23 units that we're asking for this to be done on,
24 it's about half that based on where we believe
25 we are in the process.

1 And so, given the conditions, I think the
2 existing on-the-ground conditions, I think the
3 deviation can be approved with appropriate
4 conditioning.

5 I want to clarify Administrative Code
6 13-19 and their requirements. We've been using
7 the term "preliminary plat" and I -- I have the
8 Administrative Code up here and Section M just
9 states "plat review."

10 Colloquially, around my office and, my
11 understanding, around Banks Engineering, is
12 that is referred to as "preliminary plat
13 review."

14 The requirements of that review process
15 are a title certification, which would outline
16 any easements on the property, the lot and
17 tract sizes, the easement locations, a complete
18 copy of the property owner association
19 documents, road name approval letters, letters
20 of review from applicable utility service
21 providers, draft consent and joinder documents,
22 proof of payment of all taxes, a map
23 identifying all STRAP Numbers included within
24 the proposed boundary, and then any review
25 fees.

1 The County does issue comments, as
2 outlined by the Administrative Code after
3 review of that, and then you would move into
4 final plat approval.

5 We feel that these requirements, as
6 outlined in the Administrative Code, provide
7 the certainty that everyone is looking for to
8 support this deviation.

9 MS. MONTGOMERY: And does the
10 Administrative Code also provide that the final
11 plat cannot be submitted to the DO as issued?

12 MS. EKBLAD: Correct. Under Item N, one
13 of their requirements says, "Final plat review
14 requires a copy of the approved Development
15 Order associated with the plat, along with any
16 stipulations and a valid Certificate of
17 Concurrency."

18 So we agree that those things must be
19 provided; again, we're looking for some
20 flexibility.

21 The last point that I want to touch on
22 relates to the water quality testimony that
23 we've heard, I'm going to provide some clarity
24 on the Lee Plan, and then David Brown is going
25 to address some of the technical details.

1 So we heard that the condition is to
2 implement Policy 125.1 and 125.14. Generally
3 speaking, 125.12 states that, "New development,
4 in addition to existing development, must not
5 degrade water quality."

6 And 125.14 states that, "Developments that
7 have the potential of lowering existing water
8 quality below standard will provide
9 standardized monitoring data."

10 As it is right now, there is no objective
11 and measurable criteria by which these policies
12 are implemented. The policy itself states that
13 there will be standardized monitoring data.

14 I've been in two hearings over a week-long
15 period where the condition changes based on
16 monitoring, so we don't have that standardized
17 process.

18 Yet, Chapter 163.3177, which outlines what
19 comprehensive plans are supposed to do, states
20 that, "The comprehensive plan and its elements
21 are guidelines and policies for the
22 implementation of the plan and its elements."

23 The idea is that you set a vision and then
24 there are additional criteria which are
25 outlined in the Land Development Code;

1 unfortunately, we don't have that related to
2 these policies, which is leading to this back
3 and forth.

4 We've heard from the Staff Report that the
5 issue is fecal coliform, I believe, David
6 Brown's testimony stands on that, regarding how
7 that is not an issue here.

8 And then, we've also heard that the
9 application of fertilizer is an issue, but
10 we've also acknowledged that there is a
11 Fertilizer Ordinance in Lee County, that is
12 Ordinance 08-08.

13 And that ordinance outlines specific
14 requirements by which commercial application
15 has to be done by a professional that is
16 licensed and approved by Lee County.

17 You've heard the testimony that this
18 subdivision will have an HOA, which does
19 centralized maintenance, which means they're
20 hiring that commercial landscaper to do their
21 application consistent with the ordinance.

22 Now, there's also a provision in the
23 ordinance, which is in Section 7, I think --
24 yes, Section 7, the timing of the application
25 of fertilizer, specifically, states that, "No

1 person shall apply fertilizers containing
2 nitrogen and/or Phosphorus to turf and/or
3 landscape plans during the rainy season, June
4 1st through September 30th of each calendar
5 year."

6 Yet, you've heard that those are the
7 things that we're being asked to monitor. And
8 so, is it really that we need to be monitoring
9 this or is it that this ordinance needs to be
10 updated to reflect a policy issue or a water
11 quality issue? Because, technically, the very
12 thing that we are monitoring for should not be
13 happening on-site.

14 And so, lastly, I would note that, further
15 down in the ordinance, there is a plethora of
16 language and requirements regarding penalty.

17 There are fines that are implemented to
18 the commercial contractors, there is open
19 inspections that are stated can occur by County
20 Staff for enforcement, at any time during
21 regular daylight hours, that lawful action can
22 be taken by the County for refusal to comply
23 with the Fertilizer Ordinance.

24 And, finally, if a violation is {sic} been
25 found to occur, that the cost of prosecution,

1 remedy and other resources legally can be asked
2 for by the County to remedy the situation.

3 And so, what we have proposed, quite
4 frankly, is a condition to meet in the middle
5 for monitoring, for a fertilizer that should
6 not be applied, consistent with the County's
7 ordinance.

8 And so, we would subject (phonetic) to you
9 that this condition is a reasonable compromise
10 for the proposed development, given the
11 existing regulations in place.

12 I would ask David Brown if he feels
13 there's any additional clarification that's
14 needed on this slide.

15 (Next speaker.)

16 MR. BROWN: Again, I'm David Brown, back
17 on the record. First off, I've not only have
18 reviewed this plan, but my firm samples water
19 quality and I've reviewed water quality data
20 for an excess of 30 years.

21 Residential subdivisions are not sources
22 of -- or high sources of nutrients into
23 watersheds, okay? The ERP Rules are,
24 specifically, used to -- to look at and to
25 address concerns in regards to nutrients.

1 So we have all of that criteria through
2 the ERP process we have to go through. On top
3 of that, we have the Fertilizer Ordinance,
4 which precludes the ability of even applying
5 fertilizer during the rainy season when the
6 Stormwater Management System would be,
7 actually, discharging or flowing into the
8 stream system, so you can't even apply the
9 fertilizers.

10 Those individuals have to be licensed
11 through Lee County, and Tina went through some
12 of the requirements and some of the penalties
13 that can occur as a result of that.

14 Looking at Staff's proposed condition,
15 it -- again, my -- my take on it, it presumes
16 noncompliance. The ERP Rule and all the
17 qualifications that I went through don't matter
18 or don't work, which is not the case.

19 But, they're talking about doubling and, I
20 believe you -- you pointed this out, the annual
21 number of samples, the two times per year, but
22 the most specific thing in C is that monitoring
23 may -- may cease five years after final CC,
24 that may occur 10, 15 years down the road,
25 depending on absorption rate.

1 So what we've tried to do is to target and
2 provide specificity on the timing and duration
3 on the water quality monitoring to provide,
4 again, another level of assurance, and not this
5 perpetual or very long-term monitoring, okay,
6 in regards to this presumption of
7 noncompliance.

8 And the Caloosahatchee is not being
9 impaired by this watershed, the issues of the
10 Caloosahatchee go all the way back to Lake
11 Okeechobee and agricultural operations that are
12 in or near Lake Okeechobee.

13 So the issues with Lake Okeechobee are
14 derived from a completely different locality,
15 and they're not originating from residential
16 development.

17 So, again, this development will not add
18 to or cause impairment in regards to nutrients
19 in this watershed. And, again, we thought that
20 we came to a happy medium with Staff in
21 providing, you know, water quality monitoring
22 conditions that -- that we be provided to you
23 today.

24 THE HEARING EXAMINER: With respect to
25 timing, under B, is there a dispute as to that

1 initial single baseline because --

2 MS. MONTGOMERY: No --

3 THE HEARING EXAMINER: -- you had
4 written --

5 MS. MONTGOMERY: -- and I want to ask
6 about that because that is a problem.

7 MR. BROWN: Okay.

8 MS. MONTGOMERY: Mr. Brown, you indicated
9 you've done water quality monitoring, and
10 during the dry season, is there any ability to
11 do a baseline monitoring?

12 THE WITNESS: No. It won't be
13 discharging, it won't be operating. There's no
14 rainfall to -- to charge the system and cause
15 outfall to, actually, flow.

16 MS. MONTGOMERY: So you would have to
17 wait, I presume, then, until we're far enough
18 into the rainy season, whenever that might
19 start, to be able to have sufficient water flow
20 to do the baseline monitoring.

21 MR. BROWN: That's correct. Sometimes
22 that can take July or even sometimes early
23 August before they start to discharge.

24 MS. MONTGOMERY: So, based on this
25 condition, the project would then be held up

1 until the rainy season starts?

2 MR. BROWN: Yeah, it could conceivably to
3 get the baseline. Correct.

4 MS. MONTGOMERY: And you heard testimony
5 earlier that this project has a CDD, does a
6 CDD -- is a form of government; correct?

7 MR. BROWN: That's correct.

8 MS. MONTGOMERY: And so they are the same
9 obligations that the County has relative to the
10 NPDES program (phonetic)?

11 MR. BROWN: Absolutely, they do.

12 MS. MONTGOMERY: So the CDD has their own
13 state obligation relative to water quality
14 that's different from other projects; correct?

15 MR. BROWN: I would -- yes. Yes.

16 MS. MONTGOMERY: Okay.

17 THE HEARING EXAMINER: So the --

18 MS. MONTGOMERY: And in your opinion --
19 actually, in light of the Fertilizer Ordinance
20 and, in light of the ERP and, in light of the
21 fact that there's a CDD, do we even need a
22 water quality monitoring condition?

23 MR. BROWN: As I testified before, no, we
24 do not. Nothing in this project or water
25 quality that is exhibited currently by the

1 watershed would result in the requirement for
2 water quality monitoring nutrients.

3 THE HEARING EXAMINER: Getting back to
4 this issue though about this single baseline,
5 so my question related more to -- you had
6 proposed prior to the commencement of
7 construction, and they want -- the Staff
8 wanted, prior of issuance, an Amended
9 Development Order.

10 So nothing in that paragraph talks about
11 it being the wet season or not. So is there a
12 dispute as between whether this Applicant care,
13 whether you submit that, essentially, now
14 because I would imagine that you're amending
15 your DO now, or prior -- or waiting until the
16 commencement of the construction?

17 MR. BROWN: Well, again, we're -- we're
18 trying to get it to the point that we can grab
19 a sample as early as possible to achieve this
20 baseline result.

21 And so, I would have to talk with the
22 Applicant on the exact timing and how we want
23 to do it but, again, the idea is to get that as
24 early as possible into the process, and so that
25 we have that kind of pre-development value, and

1 that we move forward and compare back to it, as
2 well as to, you know, state water quality
3 standards.

4 THE HEARING EXAMINER: Okay. I think that
5 was the end of my questions, thank you.

6 MR. BROWN: Okay.

7 THE HEARING EXAMINER: Were there any
8 other --

9 MS. MONTGOMERY: No, ma'am --

10 THE HEARING EXAMINER: -- statements
11 you --

12 MS. MONTGOMERY: -- we didn't have
13 anything else.

14 THE HEARING EXAMINER: -- wanted to make?
15 Did Staff have any final comments?

16 MR. BADAMTCHIGN: No, ma'am. We stand by
17 our recommendation and the Natural Resources
18 Condition as the Staff proposed. And also in
19 our Deviation 5, the Staff does not believe
20 that rushing the project through and getting
21 the homes built with strong setbacks is going
22 to enhance the planned development.

23 THE HEARING EXAMINER: The only note that
24 I had made was with respect to getting the
25 Applicant's written -- but do you feel like

1 what you placed in the record is sufficient for
2 me unless there's something in a written form
3 that you'd rather have in the record?

4 MS. EKBLAD: What's in the record is,
5 actually, more detailed than the written
6 document we would provide.

7 THE HEARING EXAMINER: Okay. Thank you.
8 So then, I don't believe I need to leave the
9 record open for anything. Let me check back
10 through my notes.

11 Okay. And Chahram did confirm that this
12 most recent Admin Amendment has already been
13 incorporated, so we've already addressed that.

14 Okay. So that was everything that I had.
15 Thank you everyone for coming today, I
16 appreciate it and, please, stay safe.

17 MS. MONTGOMERY: Thank you.

18 (Proceedings concluded at 11:32 a.m.)
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1 STATE OF FLORIDA)

2 COUNTY OF LEE)

3 I, Patricia M. Harlow, Registered Professional
4 Reporter, Florida Professional Reporter, do hereby certify
5 that the foregoing proceedings were taken before me at the
6 date and place as stated in the caption hereto on Page 1
7 hereof; that the foregoing computer-assisted transcription,
8 consisting of pages numbered 3 through 116 inclusive, is a
9 true record of my stenograph notes taken at said
10 proceedings.

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

16

17 Dated this 6th day of December, 2021.

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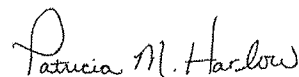
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Patricia M. Harlow
Registered Professional Reporter
Florida Professional Reporter
20th Judicial Circuit