LEE COUNTY, FLORIDA
DEPARTMENT OF COMMUNITY DEVELOPMENT
ZONING SECTION

IN RE: Bayshore Village CPD

CASE NO. DC12022-00032

TYPE OF CASE: Planned Development

TRANSCRIPT OF PROCEEDINGS
(Day 1 of 2)

Before DONNA MARIE COLLINS, Hearing Examiner, at a hearing held in the above-entitled matter at the Lee County Hearing Examiner's Office, Fort Myers, Florida, on December 13, 2023.

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I N D E X

E X H I B I T S

EXHIBIT	DESCRIPTION	PAGE
Applicant Exhibit 1	PowerPoint	12
Applicant Exhibit 2	Letter	13
Staff Exhibit 1	Staff report	113
Staff Exhibit 2	Staff PowerPoint	113
Staff Exhibit 3	Revised case maps	114
Staff Exhibit 4	Compilation of public comments and petition	114
Brodkin Exhibit 1	Summary of testimony	169
Swift Exhibit 1	PowerPoint	222
Poole Exhibit 1	Poole resume	225
Poole Exhibit 2	Opinion letter	225
Lombardo Exhibit 1	PowerPoint	254
Lombardo Exhibit 2	Opinion letter	254

(Thereupon, commencing at 9:02 a.m. the following proceedings were had:)

THE HEARING EXAMINER: Good morning. Thank you for coming. My name is Donna Marie Collins. I will be the hearing examiner presiding over today's hearing. I would like to make a few remarks for the people who are in attendance that may not be familiar with the way we conduct these hearings.

The date is December 13th, 2023. The purpose of today's hearing is to consider an application to amend the commercial planned development known as Bayshore Village. This -- this project is in the Bayshore Planning Community.

The details of the request will be explained during the Applicant's presentation. My task as hearing examiner is to accept testimony and evidence from the Applicant and County staff, and then later, members of the public, and prepare a final recommendation to the Board of County Commissioners. I will evaluate this case using the review criteria adopted in the Land Development Code.

The Board of County Commissioners will be the final decision makers in this case, but in order to address them at that hearing, you must participate

by coming to the podium and putting some remarks on the record at this stage because this is where we create all the testimony and evidence. So if you'd like to preserve your opportunity to address the board, please come to the podium today.

All those who testify will have to testify under oath. I will administer the oath to everyone in the room at once, once I conclude my introductory remarks.

The hearing will proceed as follows: We'll begin with the Applicant. They're representing the property owner or the contract purchaser. They will explain the request, and as part of their presentation, they will explain how their request meets the review criteria in the Land Development Code and is consistent with the Lee Plan. They will explain how the site design and conditions of approval will address all anticipated impacts. Their presentation may include numerous witnesses, some of which may be experts.

Following their presentation, I will turn to County staff. The planner in this case is Adam Mendez. He prepared the staff report, which is a public record, and available to you online. His recommendation was of approval, although he did

make some modifications to the request in his recommendation. He prepared the staff report on behalf of the Department of Community Development.

So in addition to him speaking, we may also hear from other experts in various fields that are part of Lee County Community Development.

At the conclusion of those presentations, I will open up the floor to the public. At that time, I'll go through all the papers I have here, the public participation forms, and I'll call each of you up one at a time. When you come up, you may speak as long as you'd like. Please remain on topic and ask any questions you may have regarding the application. It's your opportunity to share any concerns you may have, and then by doing so, you give us an opportunity to clarify something you did not understand or to craft conditions that might ameliorate your concerns with regard to compatibility or something else.

I urge you to organize your thoughts before you come to the podium because you will only have one opportunity to speak. Okay. I can't allow people to keep jumping up and down, calling out, or anything like that. So, please, I urge you, during a presentation, you may hear something that you may

not understand or you want more information on or you want to share your concerns about, make a note, and when you come up there, follow your notes.

All questions asked by the public will be tracked by the parties, staff, and the Applicant, and at the conclusion of all public testimony, we will close public, and we will go back to the parties, and they will need to address the issues raised by the public.

The reason why we don't have questions answered in real time is what we find is a lot of people ask the same questions, and they may not have been listening to the answer that an earlier person received; so we collect them all at once, and then we respond to them all at once

This is a quasi-judicial hearing that's administrative in nature. So in these hearings, Florida law and the Land Development Code distinguish between parties and participants. Parties are defined as the Applicant and County staff. Parties are afforded the right to cross-examination of all witnesses; although, I want to take a moment to say to the parties: Please use this sparingly. If you disagree with what a witness says, please address that during

either your main presentation or rebuttal. This keeps the record more concise for me when I'm reading through it, and I'm trying to sort out these issues. I'm not saying you can't use it, I'm just saying, use it sparingly.

Neither the Land Development Code or Florida case law recognizes a right on behalf of the public to cross-examination; so to recognize such a right on behalf of all interested parties would be too unwieldy. So we have found that collecting questions during public input and then responding to them at the close of public input are the most effective.

Okay. Following the answering of the questions, the parties will have an opportunity to offer additional information, flesh out their presentation, or make concluding remarks.

If you completed a public participation form and provided your email address, you will receive a copy of my recommendation in this case via email, and you will also receive notice of the final board hearing via email, the same way. If you haven't had a chance to fill out a form, you can do it during the break.

And on the subject of breaks, I want to say

after every hour and a half, I'll probably take a ten-minute break to allow the court reporter to rest, stretch, and all of us to kind of get some air, and then we'll resume. I'll continue this matter until we get close to the noon or 1:00 hour, and then I will break for lunch if we're still going on, and then I'll resume in the same way. Every hour and a half, I'll probably take a ten-minute break to give us all a chance to move around. I think that's everything.

I'm going to administer the oath at this time. If you plan to speak on the record or submit any kind of documentation into the record, I ask that you raise your right hand.

Do you swear or affirm the testimony and evidence you place into evidence today will be the truth?

PARTICIPANTS: Yes.

THE HEARING EXAMINER: If you can't hear, please raise your hand, and I'll make -- I'll have my staff make adjustments so that you can hear better.

Okay. I'm ready to begin.

MS. MONTGOMERY: Our first witness is Mr. Ron Inge. We have on your desk two copies of the

PowerPoint. I know sometimes, when they're longer cases, you like an extra one so you can write on it and keep one clean; so those were already provided.

THE HEARING EXAMINER: Thank you.

MR. INGE: Good morning, Madam Hearing Examiner and members of the audience. My name is Ron Inge with Inge & Associates. I'm here representing the Applicant with respect to the application for the Bayshore Village project. I'd like to go through some items in regards to that.

However, before I do, Madam Hearing Examiner, my resume is on file with your office. I've been previously recognized as an expert in development and development-related matters, including mining, and I would ask to be so recognized for purposes of today's hearing.

THE HEARING EXAMINER: Yes, please proceed.

MR. INGE: Thank you very much.

As mentioned, I'm representing Bayshore Village. I have a team accompanying me today that will allow us to address the various issues raised by staff, to point out some issues that we believe that members of the public will be interested in, and try to point you to some of the rationale for why some of the requests that we made were made,

and what the basis of those requests are, and here those folks are that you're going to hear from them in just a little bit.

First off, this particular area was designated by Lee County in 1989 for general interchange, the area in which our particular parcel of property is located. That happened, what is that, 30-some years ago? So the intent for this property to be used for general interchange purposes to serve the traveling public and the surrounding neighborhoods was laid out in 1989.

That preceded the Bayshore Community Plan, which happened a few years after that. This parcel was originally zoned in 2006 for a variety of commercial and retail uses, and that zoning stands today. As mentioned earlier, this is a modification of that or an alteration of that to the proposal that we have before the hearing examiner today.

One thing that I'm going to point out that all of you all know: The area has changed substantially since 1989, and certainly since 2006. The advent of Babcock Ranch. There are other relatively large residential subdivisions in the area that have changed the complexion of this

particular area, and this particular neighborhood.

Our parcel hasn't really developed because the uses that were put in 2006 didn't fit what we believe the traveling public may need and what the neighborhood may need as well, and so that's why we're proposing modification of those, to try to fit with something that we think folks need.

Madam Hearing Examiner, we agree with the staff recommendations with the exception of three items, and I'll touch on those, but then our team will talk about a couple of those in more detail later.

The first is the location of drive-throughs relative to the frontage parcel. On page 2 of Exhibit 2 of the memorandum -- I'll pass something to you.

If I may approach the hearing examiner?

THE HEARING EXAMINER: Sure.

MR. INGE: This will be Applicant's Exhibit 2, and I'll point out what that is.

THE HEARING EXAMINER: Okay. Hang on a second here. I'm behind on my duties here. The PowerPoint, Applicant's PowerPoint is Applicant Exhibit 1.

(Applicant Exhibit 1 marked for

identification.)

THE HEARING EXAMINER: And Exhibit 2 is a page from the amended staff report?

MR. INGE: It's the letter to -- from Mr. Mendez to the hearing examiner, dated December 4th. It's page 2 of Exhibit 2.

(Applicant Exhibit 2 marked for identification.)

THE HEARING EXAMINER: And that's Applicant Hearing Exhibit 2.

UNIDENTIFIED SPEAKER: Where's this piece of property?

THE HEARING EXAMINER: Okay. We're getting there. Please be patient.

MR. INGE: To answer that question, perhaps, it's I-75 -- if I may approach the screen?

I-75, Bayshore Road, subject property.

Madam Hearing Examiner, going back to Exhibit 2, one of the items that we still disagree with staff on is the notation made in the December 4th summary from Mr. Mendez to the hearing examiner about drive-throughs in the southern portion of the property be located only on the east side of the building.

From a site design standpoint, we're not

really sure what folks may want or what may fit their model; so I simply took that exhibit, page 2 of Exhibit 2, and just cross through "Limit to east side of the building"; so that's our only -- actually, that's our only disagreement with staff on the suggested and recommended uses for the property. That's the only change; so that is to allow flexibility and site design is primarily the reason for requesting that that be stricken.

THE HEARING EXAMINER: So that's the Applicant's only disagreement on staff's recommended revisions to the list of permitted uses?

MR. INGE: That's correct.

And in light of that, I would like to take the opportunity to thank staff for all their effort in this regard in working with all the various items we submitted and going through that and providing us with their thoughts so we could review those adequately.

So thank you all very much.

I'll continue when you're ready, ma'am.

THE HEARING EXAMINER: I'm ready.

MR. INGE: So, as mentioned, there are only three items we disagree with on the staff

recommendation. One is the drive-through locations being limited to the east side of the building so as to allow us design flexibility into the future.

The team today is going to speak about a number of items, and I'm briefly going to talk about those, and then I'll touch on the other two items that we have concerns with.

Jennifer Sapen will touch on Lee Plan compliance and Land Development Code compliance. She'll talk about the surrounding uses and how the Bayshore area has changed east of I-75. She'll touch on the plans that probably many of y'all are aware of, and that is what FDOT is planning for Bayshore Road. Ted Treesh will talk in much more detail about that, but Jennifer will touch on that as part of her presentation.

She'll also go over our master concept plans and outline the various aspects of those to show kind of what our vision is of what may happen on this particular parcel.

Next she'll talk about buffering for the project. That's the Bayshore Road, but then certainly on the north line, and we believe that a wall that has been recommended by staff is unnecessary because of the vegetation and the

setbacks on the north line. So that's the second item that we disagree with staff on, and that is the necessity for, I believe it's Condition 8, relative to a wall. We don't believe one's necessary because of the vegetation and the setbacks in the staff recommendation.

Next, Jennifer will discuss and provide analysis on the requested deviations from the Land Development Code to address certain things such as cross-access, the buffering, and things of that nature. She'll go through those in detail.

And she'll also point out that, even though we're not required to under the plan, we have held a community meeting, and we had meetings with some of the neighbors, and we made some changes as a result of those meetings, and she'll touch on those as part of her presentation.

Next, we'll have Mr. Nelson Taylor present an analysis of the general interchange area. He's a market research expert. He'll talk about what should occur in that area, what has occurred, and the pressures that are there. First off, there's been a number of developments that Mr. Taylor will talk about that have converted the general interchange use from the possibility for being used

as a commercial and retail to residential. He'll touch on those.

For the remaining lands, there's a significant amount of wetlands on site, on those parcels, which further decreases the ability to use that acreage to meet the needs.

And then he'll talk about the net remaining acres that are available to meet the needs of the traveling public and the community and how limited that really is when you take into consideration all those other things, and it's for that reason that we have requested the square footage allocation of 125,000 square feet for our particular project. It's based on market research. It's based on the fact that we want to make sure we can put things there that can serve the traveling public and serve the community as well. So that's the third item that we have disagreement with staff on.

There's really just three. The drive-through location, the necessity for a wall on the north portion of the property, and the square footage. Other than that, we support the staff recommendation.

Next, we'll have Mr. Barrett Stejskal talk about his analysis of the property, the protected

species, the land cover that's there. The only species that were noted on site, by the way, were gopher tortoises. Nothing else was found. And then he'll talk about the land cover and the density of the vegetation in the north that supports why we don't believe the wall will accomplish anything and is not necessary.

Next, Curt Martin will discuss welfare-related issues. There's a Lee County potable water well southwest of our particular parcel, and we're within the wellfield designated areas. He'll discuss how those protection zones were created and what they really mean. He'll outline that the staff-proposed conditions, specifically Condition 7, which is -- it's very extensive, and the review process that will be undertaken by staff in connection with possible development of the site will address any concerns related to that well that's nearby.

There are certain things that are not permissible in certain areas. There are restrictions on how development will take place. There's a lot of monitoring and other safety precautions that will be built into anything that happens there, pursuant to the wellfield protection

ordinance and the operating rules that the County uses to review these types of applications. And then he'll show where that wellfield protection area is that they have concerns about.

Carl Barraco will talk about utility availability, stormwater management and drainage, those engineering-related type of issues.

Ted Treesh will discuss the level of service on Bayshore Road. More importantly, he'll talk about what FDOT has underway for Bayshore Road and how substantially that area is going to change and how substantially Bayshore Road is going to change. He'll touch base on that.

Neale Montgomery will discuss any legal or procedural issues that may come up, if necessary; and in this end I'll summarize with some points of what we believe our team has pointed and then reserve the right to discuss and present anything to the hearing examiner or the public, pursuant to comments made by staff or comments made by the public.

And at this time that concludes my initial opening remarks. I'd be happy to entertain any questions if the hearing examiner has those.

THE HEARING EXAMINER: (Indicating.)

MR. INGE: So we'll move forward. Thank you very much.

MS. SAPEN: Good morning. For the record, my name is Jennifer Sapen. I am an AICP certified land planner, and I've been accepted as an expert witness in land planning and Land Development Code. I have a resume with me, but I do believe that was given to you with the 48-hour letter.

So the -- the subject site is located off an interchange of I-75, northeast corner generally of I-75 and Bayshore Road, slightly more to the east at the northeast corner of Wells Road and Bayshore Road.

It's an 8.75-acre property, and it's currently zoned CPD. So, it's currently commercially zoned, and it was approved in 2006 through Z-06, Z-046. Our request today is to allow 125,000-square foot of commercial uses on the property.

Before we get into much about the project, I want to dive in right away in the Bayshore Community Plan. The very first policy in the Bayshore Community Plan outlines this specific area within the Community Plan. So it's on the far end of the Bayshore community, and it specifically talks about where retail development will occur

within the Bayshore community. The first area listed is at the interchange of I-75 and Bayshore Road. So this is the subject property and land within the general interchange future land use category, which this property resides within.

Looking at the future land use map, as I said, the property is within the general interchange future land use. When we look at that policy, 1.3.2, you see two general uses that are expected there. The first one is for the traveling public. So this is majorily (sic) for I-75 but also the arterial road of Bayshore Road which intersects with I-75.

Policy 1.3.2 submits that there will be expected a broad range of uses due to the location and the market attractions. I also want to point out that due to its future land use category, it is defined as a future urban area by the comprehensive plan with that definition provided here of general interchange.

Looking back in time, in 1989, you can see that the general interchange policy was established back then in 1.3.2, and it is unchanged today. The orange text in this slide is text -- it should say a duplicate of what existed in 1989.

And the maps on the right, you can see -- it's kind of hard to see. The upper map is all of Lee County with the cover sheet, and under the video there, it shows the subject site. The PowerPoint presentation you have, there's a little yellow/orange circle there, and that shows that the subject site was in the general interchange in 1989 with the exact same uses historically as what is allowed today.

Stepping back and looking at the I-75 corridor, I'm looking here between the Punta Gorda Airport and the Southwest Regional Airport. The thing that stands out is the 17-and-a-half mile stretch of road where there are no gas stations. Looking south of the river and south of the subject site, there's several gas stations at every interchange of I-75 for 21 total gas stations in five exits. And then going north at Punta Gorda on Jones Loop, there's five gas stations at Jones Loop Road.

Today there are only the two gas stations at Bayshore Road, Love's on the west side and Lawhon's on the east side. So I do want to point out, because I have somewhat of a personal story with this. You know, I-75 serves as a major hurricane

evacuation corridor, but for residents of Lee County who want to use the Punta Gorda Airport to leave, there are very few gas stations near the airport. I know after Irma, I was trying to get my daughter out of the area, and I had a really hard time leaving north Cape Coral, finding a gas station; so the traveling public would be served by another gas station at this location.

Looking at the traveling public along Bayshore Road now, an arterial road, the land within the existing general interchange, future land use is very limited only at the interchange area. It's shown in kind of a salmon pink color here.

Looking at that area, I've grouped them in three black polylines and then the subject site. South of Bayshore Road, there's a creek that bisects that, as well as north of Bayshore Road. So there are a lot of wetlands and the creek; so a lot of that property within the general interchange is not expected to be developed as commercial and serving this commercial need for the public and the residents of the Bayshore community.

There are residentially zoned properties north of the subject site, currently developed as residential within the general interchange. So you

would not expect commercial development to occur any time soon in those locations.

Looking at the future land use going east on Bayshore Road, north of Bayshore Road is predominantly rural. South of Bayshore Road is sub-outlying suburban; so you would not expect a lot of commercial development along Bayshore Road, making this property even more unique and more of a need to provide that commercial service.

The area around Bayshore and the Bayshore community has changed a great deal with approval of residential units and some very large properties. You see them here shown in red. Of course, the largest is Babcock Ranch on State Road 31, shown on the far east side of the slide. Owl Creek, the Greenwell MPD, and Bayshore Ranch, Stonehill Manor, and then there are developments on the west side of I-75. North of the site is Brightwater and Leetana.

But when you look at the units that we are -- are proposed here, Brightwater you'll see, we've got 1,275 units. That is development order anticipated. The zoning was actually approved for 1,500; so there are a great number of rooftops that are being built right now and expected to come

within the next five years. So this commercial development will provide localized commercial for all of those new rooftops coming in, as well as existing residents, and provide that commercial service for the traveling public on Bayshore Road.

What I would also like to really point out is how Bayshore Road connects all of these projects. You can -- you can see that that Bayshore Road feeds these projects from the west, Babcock Ranch, Owl Creek, Bayshore Ranch, all of those will feed to the interstate and go by the subject property.

Looking a little closer at the future land use map. Again, it's the two uses you would expect to see by Police 1.3.2, and this looks a little closer at this land that is available within the general interchange.

So all of this pink area east of I-75 is a total of 97 acres here. Excluding the subject site, we're wanting to look at what other commercial potential is available beyond this project. 11 acres are developed as residential. We've got some public roadway in there, the wetlands and creek, which we wouldn't expect to be commercially developed, and then there's 15 acres that have access north on Triplet Road. So, you

would have to go down two local roads to get to that property; so I wouldn't expect commercial development to go in there either.

So this leaves us with only 16 acres of commercial development beyond on the subject site to serve, again, all of these residents coming and going from work.

Looking at the zoning map, we do have several different types of zoning categories around the property. AG-2 is northwest and to the northeast.

East side of our property we have a commercial planned development approved, and then the AG-2 property that's noted on this map here, there is a CG zoning that is currently under review. There is another CG-zoned property just a couple of parcels down at the intersection of Bayshore Road and Nalle Road you've got Lawhon's Gas Station. It's pretty well known, but both of those properties would be CG.

Looking at the surrounding area that's -- the bottom right side of the slide is cut off, but this is the Baypointe Yacht & Racquet Club. This is an older project; so what we're looking at is -- is the rural nature of this area. So it's kind of been a hodgepodge of development. There are some

rural areas for sure, but there have been established developments that are not rural in nature.

This development's right on the river. You see the location with the yellow star on the map, and this is three to five-story multifamily building. It was constructed prior '98, I believe in '83, but the Lee County aerials only go back to '98, and it was constructed at that time.

Brightwater, which is north of the project, Pritchett Road, you see here that's 1,275 units anticipated by development order; 1,500 approved by zoning. Their bubble plan -- color plan is on the right. On the left you can see where the lots have been platted in the southwest corner. Some of those smaller 40-foot type of single-family lots. So this is not a rural development. It has changed the nature of this community; and this project, Brightwater is definitely not rural in nature.

Two other projects on Bayshore Road, the north side of Bayshore Road, Bayshore Ranch is 110 acres, 130 units were approved on that. That exceeds the rural future land use, which therefore makes it not rural. The reason that it was able to exceed the future land use density of rural is due to its

location on an arterial road and being within the utility service area. So there was a policy enacted that would allow that development to exceed the one unit per acre required by rural.

Stonehill Manor on the south side of Bayshore Road. It's 71 units on 40 acres. This is over the rural density, but you would expect that within the sub-outlying suburban future land use. So, again, neither of these developments are within the rural densities.

Looking in the -- some of the uses in the surrounding area. This is the neighboring commercial use at Lawhon's. They have a grocery, convenience, self-service pumps.

The reason I bring this up, which I'll go through some more details on this in another slide, but the Land Development Code now has features for certain types of uses, certain types of lighting and buffering; so this type of development that you see here, this occurred before those protections were in place. So future gas stations built on the subject site, you would not expect to look the same as this gas station.

For example, I want you to keep your eye on the mechanical equipment above and behind the

building, the buffering around the use, the building, and the parking, the access to the site, the lack of a single channelized access to get into the property. The canopy, the fuel canopy, the coloring -- yes, and the loading areas in the back of the project.

As Ron mentioned, Bayshore Road is going through review with FDOT. The plans shown here of Bayshore Road in the upper right is one of two options that they are proposing. You'll see it's a very large area used for this intersection. That, again, is important because that eats into some of that developable acreage within the general interchange future land use. You can see there's a roundabout on Bayshore Road proposed. And then cross-sections, I show one here at the bridge, and another -- just a standard cross-section, but you can see these are urban sections, they're not rural. They have closed drainage with curtain gutter system. So the arterial road cutting through this community is no longer rural -- will no longer be rural.

THE HEARING EXAMINER: Okay. Can we go back to that slide? Explain to me what this diagram is showing.

MS. SAPEN: The -- Ted Treesh will talk a little bit more about this. What I wanted to touch on here is the aesthetics, the feel of this, and also the land that is used within the general interchange; but the aesthetics and look and the feel of it is an urban cross-section. The roundabout in the bottom left, that's -- that's not near the subject site, that is east of the subject site, it's just to show the feel of what this road will be once it is developed.

THE HEARING EXAMINER: So the diagram on the upper right is what the area is going to look like in contrast to the diagram on the lower left? Is that what you're trying to show?

MS. SAPEN: No. The diagram on the upper right is near the interchange, the diagram in the lower left is further down Bayshore Road. It's just to show what the stretch of Bayshore Road is going to look like from I-75 to State Road 31. The only -- in these graphics the only area where the subject site is shown is in the upper right, and you can see they have a couple of alignments that they're looking at that has not been locked in yet, exactly what that will be. But either alignment, you can see there's multiple lanes, multiple lefts,

ins, outs, enclosed drainage, and very large --

THE HEARING EXAMINER: So where's the property on the diagram in the upper right?

MS. SAPEN: Right here?

THE HEARING EXAMINER: No. And the inset?

MS. MONTGOMERY: Here, or --

THE HEARING EXAMINER: No, the little inset.

MS. SAPEN: Right here. So here this is Wells Road in both of these. Subject site.

THE HEARING EXAMINER: So the larger depiction is one option, and the smaller depiction is a zoom-in?

MS. SAPEN: It's -- it's another option -- it's another alternative. You can see it's slightly different here and here.

THE HEARING EXAMINER: Okay. And is it your testimony that both these things are under consideration by FDOT at this time?

MS. SAPEN: They are. Ted can speak a lot more about FDOT. He's had conversations with them. My point is that this is not a rural road.

THE HEARING EXAMINER: Okay. Thank you.

MS. SAPEN: And it will change the dynamics of the community.

The site does have water and sewer available

to it, and the site is on major arterial, right next to I-75; so it is compliant with Policy 2.2.1, and Standards 4.1.1 and 4.1.2.

This is the approved master concept plan. It did allow a mix of residential uses. It divided the site between Area A and B.

THE HEARING EXAMINER: Okay. Hang on. It allows mixed commercial uses?

MS. SAPEN: Correct.

THE HEARING EXAMINER: Okay. She said residential, didn't she?

MS. MONTGOMERY: Yeah. You said, "residential."

MS. SAPEN: Oh, I'm sorry. Yeah, no, definitely commercial uses. Sorry. It's definitely commercial uses.

So split into two areas, Area A along Bayshore Road, and Area B north and abutting the preserve and adjacent single-family property. The uses within Area A are more intense types of uses, similar to the proposal that we have today.

There are two access points on Wells Road, and you can see the northernmost one is dimensioned to 200 feet from the existing single-family driveway to the north, and there is an access point on

Bayshore Road.

We are proposing two master concept plans. They're very similar to the exterior features, but interior, the design is slightly different. Both have only one access on Wells Road, both have a natural preserve buffer on the north boundary, same size, same width, and it -- by Land Development Code, lighting, trash, will be in accordance with those criteria.

Looking at Master Concept Plan A, this is anticipated to be a multi-use tenant with -- with two or more outparcels along Bayshore Road, and then a third or fourth acre in the back.

This may or may not need platted. The bottom left of this master concept plan shows how it could be platted with a right-of-way and lot lines, or it may just be developed as a single owner.

The lot size and building placements, specifically, of course, that is regulated by the property development regulations, but some uses have unique setbacks, buffers, or other conditions, which I'll get into, and Master Concept Plan B, again, all the access in and preserves are the same, but this is contemplating a single-use tenant, where it would not be multiple property

owners or developments.

Access to the property. There is one access on Wells Road. We have shifted that quite a bit to the south. A previous master concept plan had it only 200 feet from the residential driveway, and we've over doubled that to 415 feet. It provides internal connectivity between the different parcels, and there is an eastern connection. And we do agree with staff. They have a condition for Deviation 2 that relates to the eastern access, which I will get into. And the Bayshore access is unchanged.

You will note on this master concept plan you can see here where the 400-foot setback line is. I will get into that, but there are certain uses that are restricted to only that 400-foot setback.

THE HEARING EXAMINER: Where is the 400-foot setback?

MS. SAPEN: It goes to right here.

So basically the 400-foot setback goes a little bit north of the access road onto Wells Road; so it would be basically everything from Wells Road access south would allow these uses that have other restrictions on them.

So when we spoke about -- we were looking at

the photos of Lawhon's, it did not use the Land Development Code criteria during its development that new projects would be required to adhere to. So currently -- and we have not asked for any deviations from this criteria. This is what the residents would expect in this area: Loading docks, outdoor storage, trash collection, and heating and air and mechanical equipment, all of those would be fully shielded from adjacent properties and street right-of-way when viewed from ground view.

The shielding material designed for those equipment areas must be consistent with design and treatment of the primary facade of the commercial development and the landscape area, and the rooftop mechanical equipment must be shielded.

Regarding lighting, it may not exceed 0.5 footcandle at the property line or 0.2 ten feet from the property line; and fixtures used to accent architectural features must be aimed and shielded so that light is directed only onto those features and not on to off-site property.

And nonessential exterior commercial lighting must be turned off after business hours.

THE HEARING EXAMINER: And these are code

requirements?

MS. SAPEN: Correct. Correct.

Looking at the buffers for the project, these are buffers for just most standard uses. Some uses have additional buffers. The north buffer, the proposed buffer is an indigenous buffer, 75 feet wide. Between the north property line and the indigenous buffer is an eight-foot LCEC easement. Because it is within an easement, we are not able to claim any indigenous credit for that. The Applicant has no intentions on clearing that, that eight-foot strip of land.

And within that buffer area we do have an indigenous management plan that is included with the application, and we are committed to providing supplement plantings should any of that vegetation become sparse once exotic materials are cleared out of there.

However, I do want to point out that in the graphic up here, you can see that it's 411E1 and 420E2; so both of those flux codes are expected to have lower exotic infestation.

Type A buffer, which would be on the east border; so that would be abutting the existing CPD and the AG property that is going through the CG

rezone. That buffer would be five feet wide with four trees, and the buffer along Wells Road and Bayshore Road would be 15 feet wide with five trees in a double staggered row.

However, there are certain uses that have additional buffers and additional setback criteria. The Land Development Code 34-1353 requires special criteria for a convenience food and beverage store, automotive service stations, fast-food restaurants and car washes. If you propose any of these uses, the buffers increase to 25 feet wide for both Wells Road and Bayshore Road, and there will be a 15-foot buffer within the internal access way.

The buffer trees are also increased in number of trees and size, increased to five trees per 100 linear feet, and 14 feet height installed, with a six foot -- that should be "spread." And palms may be used but at a tradeoff. Three palms equals one tree. And again, this is the Land Development Code. This is just to let the folks here know what type of buffers you'd expect to see; however, the entire buffer can't be all palm trees. Only half of that can be palm trees.

The shrubs for these particular uses would be 24 inches installed and maintained at 36 inches at

one year after planning and planted three feet on center.

UNIDENTIFIED SPEAKER: Traffic lights?

MS. SAPEN: The canopies, so the fuel canopy going over the gas station, the lighting would be, at least required by Land Development Code, so recesses and direct, and prohibits top-mounted lighting, and the color must be consistent with the principal structure.

The graphic on the bottom here, it's hard to see, but what I wanted to point out is that, when you're thinking about these types of uses, specifically to the residential property that abuts to the north, this would not be the only buffer, not just the 25-foot buffer. You have the indigenous buffer, you have the use of whatever would be in that northern parcel, and then you would have a 15-foot buffer on the access easement, and then the use.

So there are duplicate buffers. And the use that would be in between a convenience store or a car wash in that residential to the north, that use in between would have parking lot, trees, building perimeter plantings; so it's a great deal of plantings that would be between the residential

property to the north and any of these four uses; so more than the buffering that is shown here.

We have put special conditions on certain uses. The Applicant and staff are in agreement with that. We have a list here of uses that are restricted to only the southern 400 feet of the property; so again, these uses are essentially south of that access road off of Wells, and these include some of the uses that have those special buffers, car washes, fast-food, convenience stores.

There are also some uses which require a special exception. So there are four uses listed here: Bar or cocktail lounge. These would require special exceptions. So that means another public hearing; so again, the residents would have an opportunity to speak on -- if any of those uses were proposed.

Looking at the Comprehensive Plan Policy 5 -- or Objective 5.1, Policy 5.1.1, and 6.1.4. These are the policies that look into protection of existing and abutting residential -- the character of the existing residential community.

So the previous slides I walked through the three bullets on the left, how we have increased setbacks and buffers for certain uses to ensure

protection of residential abutting to the north, we have an indigenous preserve buffer and a preserve management plan to protect the residential use to the north and other residential uses beyond that to the north, and the Land Development Code provides commercial design criteria and lighting criteria that's standard in the County to protect abutting properties from offsite light spillage.

Next I want to go into how the uses are consistent with the area. First, many of the uses that we're proposing are already approved in the CPD. Many of the uses are allowed in CG zoning, which, again, is allowed a couple properties down and is proposed in the abutting property, and --

THE HEARING EXAMINER: So the property in between this site and the already zoned CG site is a pending zoning case for CG? Is that what you're saying?

MS. SAPEN: Correct. Well -- so starting at Nalle you have Lawhon's, which is a CG's owned property; and then heading west in pink there, that is a CPD, W&W Service Park CPD. There is another CPD, and then in the light yellow, that is where this AG-2 with CG zoning pending.

THE HEARING EXAMINER: And what about that

piece in between those and the road?

MS. SAPEN: That is Bayshore right-of-way.

THE HEARING EXAMINER: Oh, it is? Okay. Thank you.

Wait. So the business on the corner is in the Bayshore right-of-way?

MS. SAPEN: That right-of-way has not been expanded in that area.

THE HEARING EXAMINER: Okay. Thank you.

MS. SAPEN: So looking at the uses that are allowed in the neighboring CPDs; so that would be the properties colored blue, purple, pink, and orange. Looking at some of those uses, they're very similar to what we are proposing. They have convenience/food and beverage store, drive-through facility for any permitted use, repair shop, self-service fuel pumps with no restrictions on the number of fuel pumps, vehicle and equipment dealers, processing and warehousing, restaurant, building material sales, and transient hotel/motel. So many of the uses we are proposing exist as allowed uses in the area today.

This is a broad large list. I just wanted to show -- just kind of quickly show there is a large number of uses that we are proposing today that are

already approved in the current CPD.

And then the CG properties, looking at the uses within that general zoning district, these are some of the uses that are allowed in that zoning district, and all of these uses are allowed; so they would be allowed on the property pending to our east, and allowed on Lawhon's's property, but none of these uses are being proposed by the subject property.

So some of these are considered more intense and would be allowed on those properties, but are not proposed on this property.

I want to point out vehicle and equipment dealers, I have a typo on here. It says, "IV." It's supposed to be V. We have eliminated V. And Vehicle Equipment Dealer V, those are large trucks, bulldozers, construction equipment. It's hauling equipment; so we are not proposing those, but those would be allowed in other commercial properties in the area.

Public input, we did have a community meeting on October 26th of '22. It was at the New Hope Church, which is right near the site on the south side of Bayshore Road. Now, this is not required by the Land Development Code for the Bayshore

community. This was a voluntary meeting. We -- it was pretty well attended; so I think word got out pretty good about the meeting.

We also met with residential property owners who are directly to the north. After meeting with both of those groups, we made the changes that are on this slide. We submitted the application, met with both of these groups, and then made revisions and resubmitted.

So one of the things we changed was the buffer on the north line. We increased it by couple of -- well, it's over an acre now. The Wells Road entrance, we did have it further to the north, closer to where the previous approval had it, but we moved that to the south.

Our first submittal, all of the uses we had proposed would have been anywhere on the site; so after meeting with them and hearing some of their concerns of uses, we restricted those, that they would only be on the southern 300 feet of the property. Now, since that time, we have changed that restriction from 300 feet to 400 feet, but that was due to the squeeze that the wellfield zone had late into the application process. The wellfield zones became apparent; so that was

revised to 400 feet.

So the uses of concern that we eliminated. The uses that the residents had concern with. We eliminated the animal kennel, but we did keep the veterinary office. The bar/cocktail lounge, restricted it to the southern boundary. If the bar/cocktail is a standalone, but if it's part of a hotel, it would be within the hotel. Nightclub is completely eliminated. Package store, it remains, but no consumption on premises as use related to that store. Recycling facility was eliminated. Mass transit and maintenance depot was eliminated, and any consumption on premises will be restricted to -- meaning, if it's a standalone bar, it would need to be in that southern boundary.

Blasting, we clarified that that is not a requested use.

And we at that time reduced our intensity. The original application had 150,000-square foot; so we reduced that to 125,000-square foot as requested today.

So next, I want -- this is the neighboring CPD. It abuts -- if I can go up here. This is where our property abuts. I point that out because Deviation 1 is only in that location to that CPD.

So Deviation 1 one would require an excavation setback of 50 feet. We're requesting to allow only 30 feet in that area. Now, there is a buffer there, a Type A buffer, four trees; so that will provide some separation. Both projects are providing a Type A buffer.

When you look at their approved master concept plan, a detention area abuts our water management lake. So the reduced excavation for our water management lake will allow just a little bit more earthwork material to be produced on site where you just have water management facilities abutting one another with a Type A buffer; so we don't see any detriment to public safety and health and welfare by reducing that excavation setback.

Deviation 2 requires parking lot interconnections. The deviation that we were requesting applies to that same CPD we were just talking about, and because of the water management facilities being next to one another, no access is really available in that location; however, we are proposing an access to the south, but that property is currently zoned AG. Because of the deviation request and the liquidity of that zoning application, staff has come up with three

conditions of approval for Deviation 2.

The master concept plan has kind of simplified the language of this a little bit. So I will read from there. So the easterly connection to the abutting property at time of development order, one, if it is zoned and developed as commercial, then you just have to provide a connection; but if it's zoned commercial but not developed, you have to stub out a parking lot. If it is not zoned commercial -- so it's still AG at the time of the subject site's development order -- then a 24-foot cross-access easement will be provided. So this provides the interconnection between the commercial parcels. That is the intent of the Land Development Code without trying to meander a connection where both properties have water management systems abutting one another.

Deviations 4 and 5 apply to lot size. This is specifically for fast-food restaurants and car washes only. They have a minimum lot width, and minimum lot size. The request is to reduce those. This will allow for some of the smaller models -- some of the franchises. I know I've seen car lots -- or car washes and fast foods that are pretty small; so this is to allow some of those

uses if that parcel were to be subdivided and platted. And again, the property development regulations will dictate the placement and setback of the building on that lot.

Deviation 6, the Land Development Code would require a Type C or an F buffer along the north property line. So that is when a commercial development abuts a residential property, a C or an F buffer would be required. That table is shown here. So the Land Development Code would deem either of these buffers an appropriate buffer to provide between a commercial development and a residential development.

As I described, the proposed buffer is 75 feet wide plus an additional 8-feet LCEC easement of open space; and that open space -- and even if those trees are cleared in that LCEC easement, that additional open break will allow the tree canopies to expand and grow to their full potential.

So understanding that both a C and an F buffer provide appropriate buffering between commercial and residential -- and when you look at a C and F buffer, the difference between them is whether there is or is not a wall, how many trees, and how wide they are; so if you compare those two, you can

then correlate and extract from there what width and how many trees equals the presence of a wall.

So additional width and additional trees provides just as much and appropriate enough buffer, C or F. So from this, you can extract that 15 additional feet onto a buffer -- because you're comparing the width, 15 feet to 30 feet of a C and an F; so 15 additional feet is the equivalent of a wall. Five extra trees is the equivalent of a wall.

The proposed buffer is 75 feet wide; whereas, the Type F is only 30 feet; so there's 45 feet additional, the equivalent of two Type F buffers in width plus another half Type F buffer. And as I mentioned, the existing vegetation is flux codes E-1 and E-2, which this indicates low exotic infestation.

And I would also want to point out that this -- shown in here on these photos, this existing buffer on the north side -- using existing trees to buffer is also helpful for neighbors because during construction, that vegetation is always already in place, as opposed to a C or an F buffer, would be newly planted vegetation, it wouldn't have the same height, it wouldn't be

filled in the same, and of course, wouldn't be as deep.

So once the exotics are removed from this -- this is -- on the bottom right, this is on Bayshore Road. This is a Google Earth. I dropped the guide on the right side would be where the indigenous is, and on the top I turned that guide and looked to the right.

Now, I didn't take photos of the north buffer when I was there, but it survived the hurricane pretty well. I have been out there, and you can see the height of those trees by looking at the power lines. You can see those trees are as tall or, if not taller, than those power lines; so the existing vegetation will provide a really good buffering between the proposed uses, and a better buffer than a brand-new newly-planted buffer, especially during construction.

Deviation 7, this applies to the dead end shown on this subdivision detail here. What we wanted to do is, if this is platted with a road right-of-way in there, the Land Development Code requires a vehicular turnaround at the end of the right-of-way. What we wanted to be able to do was subdivide it, but then use the parking maneuvering

area within that last easterly lot to provide that vehicular turnaround, rather than providing an entirely separate cul-de-sac for that purpose.

I did speak with the fire chief about this. He said, from what he sees, he has no objection to this, but he does not have enough information to be able to say whether he has an objection to this or not at this time. He needs to see where the fire hydrants are, what the radius is of the -- basically he needs to see the design of that easterly parcel. So we worked with staff, and we agree on a condition that a letter of no objection would be acquired from the fire department prior to development order approval should this cul-de-sac deviation be utilized.

That concludes mine. Do you have any questions?

MS. MONTGOMERY: I have some. Do you want to go first?

THE HEARING EXAMINER: I don't have any questions.

Okay. Members of the public, your questions will occur during public input time. All the Applicant's experts will be present and will respond an the conclusion of public input.

MS. MONTGOMERY: Okay. Ms. Sapen, on page 11, you went through Police 1.3.2, and briefly touched on the fact that residential is permitted in the general interchange. I just want to ask you what kind of residential is permitted in the general interchange?

MS. SAPEN: Multi-family.

MS. MONTGOMERY: So if any of the single-family parcels are redeveloped, it couldn't be redeveloped for single family, could they?

MS. SAPEN: That's correct. New single family would not be allowed on the general interchange.

MS. MONTGOMERY: And then on page 23, you were talking about the original master concept plan, and you indicated that the access was 200 feet south of the north property line.

MS. SAPEN: 200 feet south of the abutting residential driveway; so it is closer to the property line. You can see the dimension here. That 200 feet is to the existing residential driveway.

MS. MONTGOMERY: In the proposed master concept plan were you able to shift that access further south away from the residential?

MS. SAPEN: Yeah, we have it now as a minimum

of 415, 425 feet to the residential driveway.

MS. MONTGOMERY: With the -- in your expert opinion, when that access and that activity is moved another 200 feet south, does that reduce the impact on the property to the north?

MS. SAPEN: It definitely reduces that impact. As vehicles turn and exit the site, lights will be much further away, and just generally leaving your home, they will be able to drive down the road for a small period by the preserve before immediately entering the other master concept plan where the accession would have been right at the preserve.

MS. MONTGOMERY: And you did have a graphic where there are parcels that have significant right-of-way for Bayshore Road that aren't developed, and the hearing examiner asked about the parcel known as -- you've referred to as Lawhon's. It appears that there's been a taking on the east side of Nalle Road as well. If FDOT takes the same amount of right-of-way from the parcel you referred to with Lawhon's, can that be redeveloped with fairly intense uses based on the CG zoning?

MS. SAPEN: Yes, when we -- what slide was it? The CG uses -- but they did have more intense uses than what is proposed by this project.

I think I'm going the wrong way.

These are the uses that would be allowed at the redevelopment of that CG parcel, which Lawhon's is in now; and of course, the most intense is the Vehicle and Equipment Dealers Group V, which is heavy construction equipment, but many of these uses would have some intense uses and high traffic.

MS. MONTGOMERY: And in your opinion, are CG uses rural in nature?

MS. SAPEN: No, they are not inherently rural in nature. You do see CG uses at nodes in rural areas at major intersections, kind of the neighborhood/commercial, but in general, when you look at the uses of CG, no, they are not rural.

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

THE HEARING EXAMINER: Thank you.

MS. SAPEN: And with that, Nelson.

MR. TAYLOR: Good morning. I'm Nelson Taylor, the vice-president of market research for LSI Companies. I've previously been recognized in other venues as an expert witness regarding market analysis. I think my C.V. was submitted with Jennifer's within the 48-hour window. So I'm requesting to be recognized as an expert witness

for market analysis for this project.

THE HEARING EXAMINER: Yes. You may proceed.

MR. TAYLOR: Thank you.

Some of my slides may be covered up here by the video; so I do apologize for that.

The current 2022 population for Lee County has just about under 800,000 people, with the current 2022 population for the Bayshore Planning Community at about 5,566. Lee County Community Development relies upon the 2045 forecast from the Business of Economic and Bureau Research from the University of Florida for their 2045 population estimates, which Lee County is projected to have about 1,056,600 by 2045 with an allocation of 8,653 towards the Bayshore Planning Community.

The reason I point this out is because the recent report released from the UF BEBR forecasts Lee County as an additional 21,800 for that same time period; so it just highlights the difficulty in establishing what the 2045 population is going to look like for this area.

So what I want to show is -- it's kind of covered up here, but there's four approved communities that are under development: Leetana, Brightwater, Stonehill, and Bayshore Ranch.

Stonehill Manor and Bayshore Ranch, both being developed by Lennar. D.R. Horton and Lennar are both doing Brightwater. Leetana is being shopped by a homebuilder now.

THE HEARING EXAMINER: Pardon me? What about Leetana?

MR. TAYLOR: That's being shopped by a homebuilder right now; so it's heading toward future contract potentially by 2045.

So by 2045, it would be expected that all four of these would be completely built out. So if you take the 1,677 units times the average household size of 2.5, indicates an additional population by 2045 of 41,093.

If you take the 2022 population, you can see, adding those two up, is over and above by about 1,100 future residents over what is projected by 2045 from Lee County Community Development, and this doesn't anticipate any other vacant parcel in the planning community to be developed. So it just kind of shows how much growth is expected to come here over the next 21 years.

This slide here shows the potential commercial locations within the Bayshore Planning Community of about 122 acres. However, per the Bayshore

Community Plan, retail commercial activity shall be limited to the general interchange future land use only. So with that, this is where retail is limited to per the Bayshore Community Plan; so, as you can see, these parcels are under fragmented and segmented ownership, which doesn't allow unification currently for large-scale retail development.

So if you take the overall acreage here of 81.71, which is what is the general interchange, which is the only area retail is allowed to be developed within the Bayshore Community Plan, less what is already residentially improved, which is in the blue over here of 11.21 acres, and then the large bright yellow is what is considered the wetlands from the U.S. Fish and Wildlife Service wetland inventory. You can see how much wetlands are scattered through the general interchange future land use, which leaves about 41.9 acres of net developable land.

And what you can't see there is the Seminole RV park, which is just to the north. Two weeks ago they applied for a rezoning for 29 acres within the general interchange here for projected 287 RV pads; so that will further reduce what is going to be

allocated or allowed for retail development within this location.

So currently, in the Bayshore Planning Community, there is only about 39,000 square feet of retail floor area. In Lee County, there's about 38.9 million. This is all coming from the CoStar Real Estate Analytics, a leader in real estate analytics for the country.

So based on the current population, you can see Bayshore has about seven feet of retail space per resident, where Lee County has about 61.8. So if you take the future forecasted population by 2045 of 9,750 residents, times 60 square feet, it would indicate about 585,000 square feet of retail floor area would be needed to accommodate, not only the residents of the community, but as well as the traveling public.

So back to the previous slide. If you only have 41.9 net developable acres, which doesn't account for the two-weeks-ago application which is going to further reduce this land area, each acre would have to be developed to about almost 14,000 square feet of commercial floor area to accommodate the future needs of this community.

So, if you have 8.75 acres for Bayshore

Village site, times that 13,962, we come out to our 122,167 square feet of approximately the 125,000 square feet as the request is.

So in summary, the Bayshore community is growing, as evidenced by the residential planned communities. The recent report from the Lee County economic overview highlights the need for commercial activity surrounding the Bayshore Planning Community.

The allocated commercial land is fragmented by residential and wetlands within the general interchange, leaving two parcels capable of supporting future retail needs.

The site will meet the needs of the traveling public to and from Babcock Ranch along I-75, as well as the forecasted population increase within the Bayshore Plan.

And with that, if there's any questions, I'm happy to answer them.

THE HEARING EXAMINER: Thank you. I don't have questions at this time.

MS. MONTGOMERY: I have a question.

I believe the total number of units in Babcock Ranch is 19,000-plus.

MR. TAYLOR: Correct.

MS. MONTGOMERY: Do you have any idea how many units are being -- I keep hearing it's one of the faster growing communities along with Ave Maria; so what have you seen in terms of number of new houses per year?

MR. TAYLOR: Currently, there's about 3,000 total residential units built. For 2023, I believe they're on pace to eclipse 800 residential units, total permitted. Just the last month in November, there was 178 new homes permitted. Their forecast is that they will be able to sell 1,200 units and become the top master plan community in all of Florida in the next couple years.

So they've opened up development to all national home builders; so that area is only going to become more developed within the next five years with up to 6,000 new residential units.

MS. MONTGOMERY: Thank you.

THE HEARING EXAMINER: I'm going to take a ten-minute break after Mr. Stejskal's testimony.

MS. STEJSKAL: Good morning, Madam. Barrett Stejskal, BearPaws Environmental. I have previously been tendered as an expert witness in wetland and wildlife ecology, and I'd like to proceed.

THE HEARING EXAMINER: Please proceed.

MS. STEJSKAL: I'll be brief. There's -- the project contains all uplands. There's no wetlands. As Ms. Sapen said, there were some gopher tortoises observed on the adjacent property. There were no protected species or burrows identified on the subject site itself.

As Jenn also discussed earlier, with regards to the buffer up north, it is pretty forested in there. It's an upland pine flat woods, as well as a mixed upland forest, very limited exotics, quite dense canopy in oaks/pine, thick sub canopy with a native ground cover dominated by soft palmetto.

And that's really all I have to say environmentally with the project.

THE HEARING EXAMINER: Okay. Clarification on the tortoises.

MR. STEJSKAL: Yes, ma'am.

THE HEARING EXAMINER: You didn't observe any tortoises on the site?

MR. STEJSKAL: They were observed on the adjacent property to the east, but none were observed on the site itself.

THE HEARING EXAMINER: No burrows, no nothing?

MR. STEJSKAL: No burrows, no cavities, no

stick nests, no trees, nothing like that on the subject parcel itself.

THE HEARING EXAMINER: Okay. Thank you.

MR. STEJSKAL: Yes, ma'am.

All right. I'm going to take a ten-minute break now, and then we will resume with Kirk Martin.

(Recess held from 10:18 a.m. to 10:32 a.m.)

THE HEARING EXAMINER: We're back on the record. We'll begin with Kirk Martin.

MS. MONTGOMERY: Madam Hearing Examiner, if we could, Ms. Sapen has something she'd like to correct or adjust if she could.

THE HEARING EXAMINER: Okay.

MS. SAPEN: Hi there.

So if you look at Slide 35 of my presentation, Business Services Group II, that is a use that is proposed with this CPD, and with that, the staff report, page 2 of 13 has business services listed twice; so the instance where it lists both I and II is the correct one. Where it lists only Group I, that can be stricken through.

THE HEARING EXAMINER: Okay. We can have you submit something before the close of the record that's correct.

MS. MONTGOMERY: Mr. Martin is the next witness.

THE HEARING EXAMINER: Mr. Martin, were you here when I administered the oath?

MR. MARTIN: I was not.

THE HEARING EXAMINER: Okay. Raise your right hand.

Do you swear or affirm the testimony and evidence you give today will be the truth?

MR. MARTIN: Yes, ma'am.

THE HEARING EXAMINER: Thank you.

MR. MARTIN: Thank you for this opportunity. I have been tendered and accepted as an expert in this forum and others in the past, and would --

THE HEARING EXAMINER: Please proceed.

MS. MONTGOMERY: Mr. Martin, if you would, just for folks who may not know what you do, can you just give us a little bit for the record?

MR. MARTIN: Okay. Yeah, I'm a groundwater hydrologist, a geologist by training, and -- but worked in water resources over the last four years for a municipal, private development, agriculture, mining, and so forth. So generally my expertise is in groundwater movement.

So I'm going to talk about the wellhead

protection, which is a zonation that Lee County has in their ordinance for protecting public and private wellfields. I'm going to talk about the origin of the concept, the mechanics of the Lee County Wellhead Protection Ordinance, and then what this project has done to make sure that we're not going to be out of the lines of that ordinance.

Just an overview. The map on the right is just a generalized map of the Wellhead Protection Ordinance zones in Lee County. There are four of them. You can see there's a number of wellfields -- eight or ten or more wellfields in Lee County. All these tap different aquifers and use different zonations, different modeling approaches that took place to create these zones.

But in general the purpose of the Wellhead Protection Ordinance is to protect the public supply -- water supply wellfield from potential groundwater contamination.

The concept for well protection was developed in the 1980s to address a number of contaminated public water supply wellfields that are around the country, and mostly predominantly shallow aquifers, and that's where groundwater contamination typically occurs, shallow aquifers. It rarely gets

into deeper aquifers, and that's going to be important as I talk further.

In Lee County in particular, the zones are based on what's called model-derived estimates of groundwater movements. They create a groundwater model for the different aquifers that are beneath Lee County, and they run it backwards. They basically pump water into the ground and see how far that travel time occurs and establish zones for six months, one year, five year, and ten years of --

THE HEARING EXAMINER: Okay. Slow down, please.

MR. MARTIN: Sorry.

And I want to make sure and get across -- this will be important later on as well -- that the wellhead protection zones are based on models of shallow aquifers and apply to deep aquifers, and the deep aquifer is the one that's being used on the wellfield.

The purpose of the Wellhead Protection Ordinance is not to stop any of these changes but to manage the potential for impacts and more importantly to provide time to address impacts should they occur. That's really the purpose of

travel times, to make sure we have time to address anything that could occur.

The Lee County Wellhead Protection Ordinance establishes groundwater times for six months, one year, five years, and ten years, corresponding to Zones I, II, III, and IV of the Wellhead Protection Ordinance.

In Zone I, the six-month travel time, there's strict prohibitions on certain land uses, mainly waste disposal and storage of large volumes of potentially contaminated substances.

In Zone II, the one-year travel time, there's also pro -- not prohibitions but there's restrictions, but administrative exemptions are provided within the Zone II travel time, as far as the one-year travel time for Zone II.

And then there are Zones III and IV, there's operating permits. Again, it's just a registration of any potential contaminants you may have on your site. It's not a prohibition, it's not a restriction, it's just a certification and registration that you have these chemicals on your site.

I'm going to talk about the hydrogeology underlying this area. There's a lot in this slide,

but mainly just look at the green and blue coloration. The green and confining beds. These are mostly clays. Water does not travel through clays.

The blues are aquifers, and there's four of them that we're going to talk about: The water table, the sandstone, Mid Hawthorn, and the Lower Hawthorn.

The Lower Hawthorn is the aquifer that is being tapped by the Lee County wellfield at this location. That's why it's important to realize how deep this aquifer is.

The water table is -- at the top is essentially what you find when you dig a hole in your backyard and there's water in it. That's the water table aquifer.

Sandstone and Mid Hawthorn are what's called intermediate aquifers. They're confined. They're separated from all the other aquifers by a clay confinement. And you can see, in between the Lower Hawthorn and the water table there's probably something on the order of 3 or 400 feet of clay confinement in addition to these intermediate aquifers.

In the middle there, sort of the right hand of

the left-hand graphic, I've got some colored bars. The purpose there is to show what the natural water level are in those aquifers, and you can see in the water table, colored essentially to land surface. So as I said, you dig a hole in your backyard, there's water, that's the water table aquifer, and the water table surface -- and of course, they're typically very near land surface, anywhere from zero to five feet below land service.

In the sandstone, which would be the second bar over, the water level is typically 10 to 30 feet below land surface, and same thing with Mid Hawthorn. It's 10 to 30 feet below land surface.

The reason I bring this up is because I want you to look particularly at the Lower Hawthorn. I've got it drawn above land surface because the natural water level in that aquifer is 20 to 30 feet above land surface.

The point of this is to point out that water doesn't flow downhill -- or doesn't flow uphill, I should say. In other words, you can't get water table -- you can't get contaminants in the water table to enter the Lower Hawthorn, not only because of the 3 to 400 feet of clay in the intermediate

aquifers, but because the water level or the head or potentiometric surface in that aquifer is 30 feet higher than the water table. Water can't get in that aquifer.

And finally, I'm showing a typical drawing of a Lee County production well in that wellfield in the North Lee Wellfield. Just to point out, again, it's cased with 16-inch casing down 500 feet. It's -- that casing is grouted in place with cement grout to seal it from the land surface; but more importantly, the process of drilling starts at the top whereby a hole is drilled. Typically it's going to be a 32-inch hole. That 24-inch diameter casing is put in that hole, and it's cement grouted. So you've sealed it off down into that first confining bed. Again, the purpose of this is to seal off the water table from any further potential movement down the hole. And again, that first casing is cemented into that first clay confinement bed.

Then a hole is drilled down into the top of the aquifer, the Lower Hawthorn, that 16-inch casing is put into the ground, and then that's grouted in place. Again, to seal it up into the confining bed as well.

So the purpose here is to show that the aquifer is being tapped by Lee County's Lower Hawthorn, our concern is contamination of the water table. The well construction in the North Lee County Wellfield is such -- is created in a way to protect it from any contamination; but in addition to that, we have the natural protections of the 3 to 400 feet of clay confinement, and the fact that the aquifer head is higher than the water table.

THE HEARING EXAMINER: The what -- what was that last?

MR. MARTIN: The water level -- or the head in the aquifer is higher than the water table.

THE HEARING EXAMINER: What does that mean?

MR. MARTIN: Head is a term used to describe a potentiometric surface. I know that's even worse. Bear with me a second.

The reason it's called a potentiometric surface is because it's the height in which the water level will rise in a well if you retained it that high. So, for example, the wells that are tapping the Lower Hawthorn Aquifer, if you were to open them up, they flow. Some of them flow at a thousand, 2,000-gallons per minute because of that

head, that potentiometric surface, water wanting to get out of the well. If you were to raise that casing up, say 35 feet above that surface, you would be able to see that water level at that height.

But again, we don't raise our casings up 35 feet. We have them somewhere under our land surface, and those aquifers flow or they have a pressure or head on them that's above land surface. That's what's meant by the term.

Is that clearer?

THE HEARING EXAMINER: And that protects it how?

MR. MARTIN: The fact that you can't put water -- you can't make water --

THE HEARING EXAMINER: Go down.

MR. MARTIN: -- from this level go into water that's at this level.

THE HEARING EXAMINER: Go -- right. Okay.

MR. MARTIN: So getting into the Bayshore Village site and this specific wellhead protection area that's potentially impacted. None of the project lies with the Zone I or the six-month travel time. A small area in the southern portion of the property lies within the Zone II or the

one-year travel time. The remainder of the project lies with the Zone III or the five-year travel time zone; so -- is this first button the light?

This is the one-year travel time. All of this is the five-year travel time.

As I mentioned before, the wellhead protection zones are based on the largest travel times modeled of the three shallow aquifers. The ones I showed you, the water table, the Sandstone, and the Mid Hawthorn. The model doesn't even include the Lower Hawthorn Aquifer; but whatever the largest area that's expressed in those three layers is how these lines were generated.

So again, the wellhead protection zone is based on a model of travel times in the shallowest aquifers, but the aquifer and the wellhead that's being protected taps that Lower Hawthorn Aquifer 500 feet below the ground with a head or water level above land surface.

So despite the fact that, in my professional opinion, the chances of any contamination getting into this wellfield is nil to none, there's been a number of provisions placed into this project to make sure that we are in compliance and make sure there's no potential for contamination to the

groundwater system.

Some of these include that all fuel storage will be located outside of the Wellhead Protection Zone II. There will be double containment on all fuel storage and transmission lines. There will be leak detection on any contaminant within that double containment. In addition, there will be a groundwater monitoring program in perpetuity on the project to make sure, if there's anything -- anything that comes up will be found either in the leak detection system or, if ever it's to escape, which I can't imagine it would, the groundwater monitoring program.

And that's all I have. If you have any questions --

MS. MONTGOMERY: I have some questions.

THE WITNESS: Yes, ma'am.

MS. MONTGOMERY: Can we go back to Slide 61?

MR. MARTIN: Which one is 61?

MS. MONTGOMERY: I'm not a scientist; so I need a little help on this. I know from when we work on water management lakes and things and you can go 20 feet or however many feet, they always talk about, but you can't go through the confining layer. So are -- the confinement, are those the

confining layers that are identified on that graphic?

MR. MARTIN: Yes. The ones colored in green are confining layers.

MS. MONTGOMERY: And you indicated the Wellfield Protection Ordinance and the modeling only impacts the surficial and -- and the other two --

MR. MARTIN: The Wellfield Protection Ordinance zones were created by a groundwater model that models the water table, sandstone, and Mid Hawthorn Aquifers.

MS. MONTGOMERY: Okay. So when we talk about travel times, are we talking about travel times horizontally? So if something falls here, and that's how long it takes to travel horizontally?

MR. MARTIN: That's a great question.

So, yes, the model only looks at -- or the model assumes that the -- any -- any particular contaminant has entered the aquifer -- so it doesn't -- let's say we're looking at the Mid Hawthorn Aquifer, the model doesn't take into play the fact that it has to travel through the water table and through this environment, through the sandstone, into Mid Hawthorn. It assumes the

contaminant is at land surface immediately; so it's a horizontal travel time. It doesn't take into --

MS. MONTGOMERY: So it's super conservative, almost impossible?

MR. MARTIN: It's extremely conservative. It's meant to be. It's obviously protection of a public facility, but again, in this case, as I said, potential is really nil to none, but there is an ordinance, and we want to be in compliance with it; so we --

MS. MONTGOMERY: I just want to understand whether there's a real threat to water supply or -- or not, and if I understand what you're saying, there isn't because a contaminant, saying it could be released, would have to go through all those confining layers, which would be challenging, if not impossible; and that's, you know, a vertical, but it's really measuring horizontal from Point A to Point B?

MR. MARTIN: If you were to actually look at travel time to, say, the Lower Hawthorn, it wouldn't be in order of years, it would be maybe in centuries. It takes a long, long, long time. So, no, I don't think there's any chance there's going to be contaminated water.

MS. MONTGOMERY: Okay. The --
THE HEARING EXAMINER: So the --
MS. MONTGOMERY: I'm sorry.
THE HEARING EXAMINER: Go ahead.
MS. MONTGOMERY: The Lower Hawthorn, I thought, was a more saline aquifer?
MR. MARTIN: It's a brackish aquifer.
MS. MONTGOMERY: So that would suggest to me that some kind of improvement or treatment has to occur in order to drink it.
MR. MARTIN: It's treated by reverse osmosis in order to desalinate it and make it suitable for drinking.
MS. MONTGOMERY: So reverse osmosis, does it take other contaminants out of the water?
MR. MARTIN: Reverse osmosis is typically the technology used to take out almost anything. It's sort of a Cadillac of treatment.
MS. MONTGOMERY: Okay. And earlier you were talking about -- I can't say the word, potentiometric.
MR. MARTIN: Potentiometric?
MS. MONTGOMERY: That word.
In laymen's terms, is that really just pressure?

MR. MARTIN: It's pressure.

MS. MONTGOMERY: Okay. So because there's so much upper pressure then in the Lower Hawthorn pushing this way, contaminants, even if it could get there, would be pushed up and out?

MR. MARTIN: Yes. And maybe a way to illustrate some of the impacts of this confinement zones in which you can't have a pressurized aquifer unless it's sealed. Those clays seal it really well.

So as I said, you can't push water against that pressure, but more importantly, you probably can't get to the clay because that's what holding it in place anyway.

MS. MONTGOMERY: Okay. So due to the vertical distance, the pressure, the clay layer, it's a theoretical problem, not a real problem, in terms of impacting water supply; is that true?

MR. MARTIN: I would say that's true. I'll add one more to that. And the contaminant we're really talking about here is fuel. Fuel is a floating substance. It typically doesn't go down into the water. It just tends to stay on top; so not only can you not get water table water to the Lower Hawthorn, you can't get the stuff at the

surface in the water table very well; so, again, nil to none.

MS. MONTGOMERY: Okay. So we're going to comply with the ordinance, but there's not a real threat?

MR. MARTIN: I don't think there's a real threat here at all.

MS. MONTGOMERY: Okay. Thank you.

THE HEARING EXAMINER: I have a question.

The groundwater monitoring requirements, what groundwater is going to be monitored?

MR. MARTIN: It's probably just the water table aquifer because that's where the contamination would occur.

Now, keep in mind, if you're going to where the Lower Hawthorn is, the County, you know, they test that water regularly anyway as part of their treatment.

THE HEARING EXAMINER: But for the purposes of approval on this project, the groundwater monitoring is going to test the water table?

MR. MARTIN: Yes, ma'am.

THE HEARING EXAMINER: Okay. And then if a substance is defected, then remediation protocol then gets activated?

MR. MARTIN: Correct.

THE HEARING EXAMINER: Okay. Thank you.

MR. BARRACO: Good morning, Madam Hearing Examiner. I'm Carl Barraco. I'm a professional engineer with Barraco & Associates. My resume is on file. I have been accepted as a civil engineer in the past in this venue. With that, may I proceed?

THE HEARING EXAMINER: Yes, please proceed.

MR. BARRACO: This morning I'm going to talk about utilities and drainage, but before I do that, I have to apologize. In preparing last night, I found some typographical errors. I'll point out those as I go through the two slides.

First, with regard to utilities, potable water will be provided by Lee County Utilities. Letter of availability is on file.

Sanitary sewer will be provided by Florida Government Utility Authority. And I want to point out that "Gulf" is an error. That's one of the typographical errors, and that letter of availability is also on file.

Now, we're looking at a quad map. The subject property is located where I'm pointing. This is Bayshore Road, this is I-75. The first thing I

want to do is point out in the first bullet, Chapel Creek is west of here. Last night I realized I was looking at a different project information sheet. This project is in -- discharges to Popash creek; so I want to make sure I point that difference in the first bullet point.

MS. MONTGOMERY: Mr. Barraco, before you do that, can you just let us know what a quad map is.

MR. BARRACO: It's a quad sheet with geographical information provided by the government.

THE HEARING EXAMINER: So the illustration is correct, the descriptor was erroneous?

MR. BARRACO: Correct. The reference to Chapel Branch should be a reference to Popash Creek, and that water system is directly south of the subject property.

So this project will be designed in accordance with South Florida Water Management District requirements. That includes analyzing a 5-year storm, a 25-year storm, and a 100-year-storm event. It also includes preparing a nutrient loading analysis to ensure that nutrients leaving the site are no greater than those leaving the site today.

In addition to the water management review,

the project, before construction, will be reviewed for drainage by Lee County, and we will also go through a very significant review by the Florida Department of Transportation, which is required to issue a drainage permit, and that permit is based upon an analysis of over 30 storms -- generally 36 storm events; so the entire analysis is based upon many different storm events.

The project is located in a FEMA Zone AE. It's not in an X zone as I have here, it's in an AE zone.

And the last change is that is a hundred-year flood elevation. This area is elevation 10.0, not 7.0, as I had on the last bullet point.

That concludes what I have to present. If you have any questions, I'd be happy to answer them.

THE HEARING EXAMINER: All right. So the building -- the buildings, when constructed, will have to be elevated one foot above this ten-foot NAVD?

MR. BARRACO: Based upon the current building code, yes, the buildings would be one foot above the FEMA elevation, which would be elevation 11, minimum ten-foot.

THE HEARING EXAMINER: All right. And that

will be accomplished either through fill or stem wall courses or --

MR. BARRACO: Yes.

THE HEARING EXAMINER: Thank you.

I'm ready for Ted Treesh.

MR. TREESH: Good morning. Ted Treesh from TR Transportation Consultants. My resume is on file. I have been sworn in, and have been accepted as an expert in transportation related matters and ask to be accepted this morning.

THE HEARING EXAMINER: Please proceed.

MR. TREESH: We prepared the transportation analysis that's part of the application that's in your package.

This aerial, again, just shows the location of the subject site along Bayshore Road at the interchange of I-75 at the intersection of Wells Road. Wells Road is a local road. Bayshore Road is an FDOT controlled roadway.

The traffic study was done based on the 125,000-square feet of commercial retail shopping center. The access, based on the master concept plan was considered to -- with an access to State Route 78 as well as access to Wells Road.

We did have a pre-application meeting with

FDOT, as we do with all projects that have a frontage and shows proposed access to a state road. We did have that meeting early on in the process. As with any access to state road, that determination isn't made from a final standpoint until you actually apply for an access permit with FDOT, but we did have a permit meeting with FDOT early on in this process; so they are aware of this project, and we have had discussions with them, and I'll get into that a little bit further in my presentation here in a moment.

The traffic study that we completed was reviewed by staff, it was conducted pursuant to the administrative codes and the County requirements.

In our analysis, we looked at a build-out year of 2028 in terms of a future build-out year. As with most zoning traffic studies, we look at a potential future build-out year. As with all traffic studies in Lee County, under requirements of the County, we looked at all the analysis that's done based on peak season traffic conditions; so the traffic volumes are adjusted to peak season conditions.

You've heard about improvements to State Route 78 that's being considered. Those improvements are

not funded for construction yet; so those improvements are not accounted for in our analysis yet at this point because they're not funded and adopted CIP. We cannot consider those capacity improvements in our analysis at that time; so all of our level service analysis is based on the current roadway capacity in the current condition of the roadways as they currently exist.

In our analysis, the only segment that was shown to operate below the recommended level service conditions was the segment of Bayshore between Pritchett Parkway and Wells Road, and going back to the aerial, that's this segment right here. West of Pritchett, Bayshore Road is a four-lane divided roadway, as you go through the interchange and go to the west all the way to -- through and even to U.S. 41.

As you go just past Pritchett, Bayshore Road tapers back down, and it's two-lane undivided road to where it terminates at State Road 31 out by the Civic Center.

So, again, the only segment that -- in 2028 that was shown to operate at a poor level of service -- and again, that is shown to operate at a poor level of service prior to our project trips

being added to the network -- was this two-lane segment -- actually, transitioning two-lane segment between Pritchett and Wells Road. And again, that's in 2028, prior to our project trips being added to the intersection.

All the other run segments are shown to be at a Level Service C. The two-lane segment of Bayshore to our east, and the four-lane segment of Bayshore to our west are shown to operate at an acceptable level of service, as well as Pritchett Parkway north of 78 is showing a Level Service C.

We didn't evaluate Wells Road because Wells Road is a local road. Lee County doesn't require, nor do we have traffic data on Wells Road.

THE HEARING EXAMINER: So when you were evaluating available capacity on Bayshore Road, based on its constructed features and its speed, it has a capacity, and that's a fixed number?

MR. TREESH: Correct.

THE HEARING EXAMINER: So when you determine what the current peak hour traffic is on the road, where is that number derived?

MR. TREESH: Our numbers were taken from the Lee County Concurrency Report that they publish on a yearly basis. We use that as a base number, and

then we grow that based on historical growth rates from sources that are provided by either FDOT or Lee County, and then based on that, the 2028 volumes, and then add the project traffic on top of that.

THE HEARING EXAMINER: So how often is the County's concurrency manual updated?

MR. TREESH: Yearly.

THE HEARING EXAMINER: All right. So when you conducted this analysis, whenever you did it, the data you relied on was, at worst case, one year old?

MR. TREESH: Yes.

THE HEARING EXAMINER: And how does the County get that data to determine what the current trips are on the road?

MR. TREESH: They get it from traffic counts that are conducted on roads.

THE HEARING EXAMINER: And what does that mean, a traffic count conducted on the road?

MR. TREESH: They either conduct counts, Lee County conducts counts, or they take it from date conducted by FDOT.

THE HEARING EXAMINER: All right. And what counts? Is it a person on the side of the road?

Is it a device?

MR. TREESH: Yeah. They hire consultants, or they use FDOT counts that will actually conduct counts on the roads. They'll put road tubes or utilize machine traffic counts to conduct daily traffic counts on the roads.

THE HEARING EXAMINER: And that calculates trips going both directions on the road during whatever they determine peak hour to be?

MR. TREESH: Correct. Some count stations are permanent count stations, meaning they're counting traffic 24 hours a day, 365 days a year. Other count stations are what we call just temporary count stations that they put out once a year, and they'll count traffic for just several days a year. They utilize that count station.

THE HEARING EXAMINER: What kind of count station is on Bayshore, do you know?

MR. TREESH: I know there's a permanent count station to the east -- I'm sorry, to the west of I-75. I believe to the east of I-75 is a temporary count station.

THE HEARING EXAMINER: And who determines when the tubes get put down?

MR. TREESH: Either the State or the County.

THE HEARING EXAMINER: So it's sometime during peak season?

MR. TREESH: It may be or it may not be, but again, they adjust their traffic counts to peak season. It's all adjusted to peak season.

THE HEARING EXAMINER: And how do they adjust it to peak season, say, they do it in July?

MR. TREESH: They utilize the permanent count station data that's counted by 365 days a year. Those stations are all over the County.

THE HEARING EXAMINER: On the west side, and then they --

MR. TREESH: And those stations are all over the County.

THE HEARING EXAMINER: And then they extrapolate?

MEMBER OF THE AUDIENCE: That doesn't tell what a dump truck --

THE HEARING EXAMINER: Okay. Please don't call out. You'll have an opportunity to speak during public input.

MR. TREESH: So, again, just reminding the hearing examiner: Lee County -- the State statutes were revised in 2011 to remove transportation concurrency. It's no longer a requirement in the

Lee County Land Development Regulations and the comprehensive plan. It's just a recommended requirement so transportation concurrency is no longer a required a portion of the comprehensive plan. So the level service is just a recommendation in terms of the roadway level service.

So the recommended level service on Bayshore is a Level Service E, and again, the only segment that's shown below Level Service E is that one short segment between Wells and Pritchett.

And, again, just for the audience's information, as this project proceeds, whether this zoning is adopted or not, there's still CPD zoning on the project. When this project proceeds to the development order stage, there will have to be another traffic study done at the development order stage to evaluate the trip generation, the level of service on the road, the access points. There will have to be permitting done with Lee County for the access to Wells, for the access onto Bayshore with FDOT.

In terms of permitting, one of the points with FDOT that was made in our pre-app meeting was the cross-access with the property to the east. That

was an important aspect with FDOT in terms of our connection to Bayshore Road and any access connection to Bayshore Road in our pre-app discussions with them.

Going back to this diagram that was part of the FDOT PD&E process. This process has been going on for a number of years with the FDOT and the State Route 78 PD&E process. This is a picture of the -- what's called the diverging diamond interchange at Bayshore Road. Right now this -- the PD&E process is entering the final stages with FDOT. We've had a number of discussions with FDOT with this project because it directly impacts this property. This -- the diverging diamond is what's under construction right now at Colonial Boulevard and I-75. If you're familiar with that, it's the interchange that's at University Parkway and I-75. If you're familiar with that interchange up by University Town Center, this interchange is what FDOT is proceeding with and looking at this interchange to help address the congestion at this interchange, particularly traffic coming from the west. If you've been up here in the morning, traffic coming from the west backs up quite a distance in the morning getting onto I-75, and this

will help address a lot of the congestion at that interchange.

They have several different options you'll see at the Wells Road intersection, and they've got the inset, and they've looked at a couple different options, which is what the PD&E process does. They evaluate different options. They've informed us that they've selected the northern widening option, and that's what this diagram shows, which means they're going to widen Bayshore to the north as you proceed to the corridor out to 31. So they're going to widen Bayshore Road to a four-lane divided roadway from I-75 to State Route 31 to a four-lane divided cross-section.

Now, that will include a total of four roundabouts between I-75 and State Road 31. Right now, as I indicated before, they don't have timing yet for the funding for the right-of-way acquisition and construction in their work program, but they are proceeding, in our discussions recently with them, in getting that worked out because this project is being fast tracked because of the development of Babcock.

You may be aware that Babcock Ranch and the Babcock Improvement District is responsible for

widening State Route 31 from Babcock Ranch to Bayshore Road as a design build project. That project should be starting construction here very soon to a four-lane roadway.

FDOT is also proceeding with widening State Route 31 then from State Route 78 south to State Route 80 over the Caloosahatchee River. That process -- the PD&E process on that has been wrapped up. They're proceeding with that as a design build project. And they want to do these two projects, State Route 78 widening and the State Route 31 project in conjunction, and get those two projects moved forward as design build projects and get those moved forward and up front because of the Babcock Ranch project and the speed at which that project is moving, to help accommodate the growth that's happening in this area.

In our discussions and meetings with them, they hope to have this project funded to begin right-of-way acquisition, hopefully, in the fiscal year '24/'25 and begin the design build project in fiscal year '25/'26; but again, right now they don't have that funded in the work program, but, again, that's what they're working towards; but, again, they don't have that completely funded yet

in the work program. But because of the development of Babcock Ranch and the speed at which that project is moving, the traffic volume is increasing, and I'll show you a graphic on that in a minute. This project is picking up speed, and the district is moving forward with trying to get this project moving and getting advanced towards that design and construction phase.

So if you have any questions on this -- how this works or what it's going to look like, I can certainly -- this just shows that, as you go a little further east of our project, the project will include a traffic signal. Going back to the Pritchett intersection, they're going to relocate Pritchett Parkway to Wells Road. That's a given, and they're going to put a traffic signal at the Wells Road intersection. That has been determined by FDOT.

Now, how Pritchett gets over to Wells Road, that's where we're still having a lot of discussions with FDOT. These two options show Wells Road coming down and being realigned with Pritchett Parkway and then Pritchett Parkway being realigned as a free-flow movement over to Wells Road, and then a traffic signal being constructed

at Wells Road. These two options just have different -- this box inset at the top is just what they call a continuous green "T" option. They have a one lane on Bayshore is a free-flow movement eastbound. It's kind of hard to see on this -- on this diagram, but this -- the outside lane on Bayshore is a free-flow lane on Bayshore, and the signal controls basically the inside lane, the inside eastbound lane, and the left-turn lane; so the traffic light would allow traffic on Pritchett and Wells Road to turn onto Bayshore to signal left with the one lane on Bayshore eastbound continuously having a green light. So that's the difference in this intersection, versus down here, this is just a standard T-intersection traffic light where both lanes on -- both eastbound lanes and westbound lanes stop at the traffic light on Bayshore Road.

And this is what the PD&E process does. It looks at options, and then during the design process, they'll select which option they'll want to go with; so they haven't determined which of those two options.

What we're in discussions with FDOT is how this exactly is going to look like, you know, with

Pritchett and Wells and servicing our property and our access, that's all still got to be looked at and working out access to our property in the frontage along Wells Road, that's still in the preliminary stages. Obviously, Pritchett Parkway is a Lee County road, Wells Road is a Lee County road; so we're still working very closely with FDOT, the PD&E consultants, their engineers in Bartow, and their consultants on the design -- on the PD&E team. So that process is ongoing, we've been working very closely with them, and will continue to work closely with them as the property owners of the site, and working with them through this process. Again, it's -- because we don't anticipate construction to start until even at best case, '24/'25, we still have some time to work with that on this issue.

THE HEARING EXAMINER: Well, it looks inconsistent with the proposed site plan because the proposed site plan is showing an access onto Wells; so that traffic's either going to have to turn north to get on the realignment -- well, that's what it will have to do, right, because there will be no going south?

MR. TREESH: Right. Yup. No, we're very

aware of it, that's -- that's why we've had --

THE HEARING EXAMINER: And the insert -- the insert option is even more problematic, it looks like.

MR. TREESH: Well, the insert just changes what happens down here.

THE HEARING EXAMINER: Oh, okay.

MR. TREESH: The insert is the same up here. That doesn't change anything up here.

THE HEARING EXAMINER: I see. That -- the one is with the continuous right-hand lane --

MR. TREESH: The only change in the insert is what happens down at the traffic light.

THE HEARING EXAMINER: I get it. Thank you.

So essentially, since 2011, transportation concurrency is no longer regulatory?

MR. TREESH: Right.

THE HEARING EXAMINER: Which means that, because the segment of roadway that you describe between Pritchett and Wells is in a failing condition, regardless of whether this project's traffic is put on it, it's not a bar to approving this project, it's intended as, what, a planning tool?

MR. TREESH: Correct.

THE HEARING EXAMINER: Okay.

MR. TREESH: And, it's also a state highway; so again, this is why the State is going through this process. They understand that the growth in traffic is causing the need for this project right here that they are addressing.

THE HEARING EXAMINER: Okay. So orient me. Where am I on this --

MR. TREESH: This is just further -- further to the east. This is -- this is Nalle Road, this is Lawhon's, this is our site right here, this is the traffic signal at Nalle Road, this is the first roundabout as you go to the east. Again, there's three more roundabouts before you get to State Route 31. Again, this is just illustrating the point that Jenn was making that this is -- this is not a rural cross-section, this is a cross-section that they're proposing for Bayshore Road. This is an urban cross-section, curb and gutter, two lanes in each direction, a raised median with curb and gutter, shared use path on each side of the roadway. So this will be the cross-section from I-75 out to State Route 31 on Bayshore Road with -- again, with four roundabouts proposed.

THE HEARING EXAMINER: Okay. I'm sorry. I

hear somebody speaking in the audience. You're speaking with your neighbor. Do you mind stepping outside because it's very distracting to me? Thank you.

MR. TREESH: This is kind of a summary from the PD&E report that FDOT has put together. Again, the graphic on the left, it's got a lot of numbers on it, but just a couple boxes I want to point out. The blue box on the top is the current A.D.T. volumes -- or the opening year A.D.T. volumes.

THE HEARING EXAMINER: What does A.D.T. mean?

MR. TREESH: Average annual daily traffic, A.A.D.T.

So this volume right here is Bayshore Road adjacent to our property, just east of I-75; so in 2025, that's what FDOT says that's the opening year of the four-lane roadway; so they project, when they open the four-lane road, there's going to be 23,000 cars a day on it.

THE HEARING EXAMINER: So 10,000 more than there are today?

MR. TREESH: Correct. By 2035, there will be 34,000 cars a day, and by 2045, there will be 44,000 cars a day.

THE HEARING EXAMINER: So what does the number

on the left represent?

MR. TREESH: This?

THE HEARING EXAMINER: Yeah.

MR. TREESH: Well, that's the ramp. This is the node on the ramp.

THE HEARING EXAMINER: I see.

MR. TREESH: So these dots are where the volumes are. So I just want to point to this dot right here. That's Bayshore Road between Wells and I-75. It's 44,000 cars a day by 2045. Just east of Wells, which is this dot, is 42,000 cars a day.

THE HEARING EXAMINER: And what year is that?

MR. TREESH: That's in 2045, which is the bottom. The yellow box is in 2045.

THE HEARING EXAMINER: And this assumes the four-lane improvement is in place in two years?

MR. TREESH: That assumes the four-lane improvement is in place by 2045. So we're assuming -- so FDOT if their PD&E -- this is the projections, to go from 23,000 cars a day to 44,000 cars a day by the year 2045.

THE HEARING EXAMINER: And at what point in this scenario is the road actually four-laned?

MR. TREESH: The blue.

THE HEARING EXAMINER: So in two years --

MR. TREESH: That's opening year.

THE HEARING EXAMINER: So in two years the road is going to be four-laned?

MR. TREESH: That's their projection, yes.

THE HEARING EXAMINER: Then, if that's true, then why couldn't you look at it for --

MR. TREESH: Well, because they don't have it in their funding, in their CIP technically.

THE HEARING EXAMINER: They don't have the money?

MR. TREESH: Well, they haven't put in their CIP yet.

THE HEARING EXAMINER: Okay.

MR. TREESH: And, again, they -- based on our discussions, they want to do it as design build. Design-build projects are typically different than normal CIP projects, where they do right-of-way, design, construction. Design builds are design and construction all in the same contract. That's how they're doing the 31 project with Babcock Ranch.

THE HEARING EXAMINER: And when is that starting, do you know?

MR. TREESH: Which one?

THE HEARING EXAMINER: 31.

MR. TREESH: 31 is two different jobs. North

of 78 is actually being built by the Babcock Improvement District. They're the ones building that, not FDOT.

31 south of 78 is an FDOT project, and again, that's being done as a design build, not funded yet; but, again, FDOT is working to move the funding up to do a design build. Because it's got the bridge, it's a new bridge that's going to be 300 feet east of the current bridge, and it's going to be a high-span bridge. They're getting rid of the bascule; so it's a much more expensive project; so they're trying to find the money right now; so they're hoping to get it done -- they want to have both segments done and opened at the same time, but again, you know how the State works with money. So they're hoping to have it, again, started by 2025, but right now, technically, they do not have the construction -- the design build project in their work program, but that could change --

FDOT's work program beginning July 1. That's when their fiscal year starts; so by July 1 of '24 it could be put in their work program, depending upon the State budget. It could change. You never know.

But, again, the point here of this graphic is

to show that these volumes are quite significant. This retail project is meant to serve these -- this traveling public. This is -- this is a commercial project. This is an interchange. This is going to serve the traveling public, this 23,000 to -- growing traveling public that's going by this project. This is going to have a significant amount of pass-by project that's attracted to this project for those convenience uses, not only the neighborhood uses but also the traveling public that's going by this project.

To reenforce some of the planning arguments that Jim brought up: It's a commercial use, commercial property. The uses that we're asking for not only to serve the neighborhood but also the traveling public that's -- that's driving by this site.

That's all I have. I can answer any questions.

MS. MONTGOMERY: I do have a question.

Mr. Treesh, you used the term PD&E several times, and it's on the slide. Just for the record, what is a PD&E?

MR. TREESH: Oh, man. Planning, design, and environmental study, I believe, is the technical

term.

MS. MONTGOMERY: So does it analyze all aspects of the proposed roadway?

MR. TREESH: Yes. I mean, they analyze everything from drainage to environmental aspects to water management, bugs and bunnies. You name it, they study everything.

MS. MONTGOMERY: Okay. You just used the term "pass-by traffic." What -- from a transportation standpoint, what does that mean? What is pass-by traffic?

MR. TREESH: Pass-by traffic is traffic that's traveling -- already traveling on the roadways that would stop by this use that's -- their destination is not this site, that they would -- it's a home to a -- so let's say you're driving from home to office, but you would stop by here on the way to the office, say, to get gas or to stop at the dry cleaner or to stop at the convenience store to pick up something, or to stop to drop off something at the UPS Store on your way to the office or on the way to the doctor's office. It's not your destination use; so it's a convenience stop on your way to another destination.

MS. MONTGOMERY: So does the County look at a

percentage or number of trips that you suggest or pass-by trips and review and approve or --

MR. TREESH: Yes. Yeah, they consider that -- they don't consider that as new trips to the roadway network; so they don't -- they don't make you count that as new trips to the road, they only make you count the new trips that you would add.

MS. MONTGOMERY: Okay. You indicated that Bayshore is a State road; so let me read you an objective from the comp plan, and then I have a question: Objective 18.2 says, "All road improvements within the Bayshore Community considered by the County will address the community's goal to maintain its rural character, and give preference to alternatives that allow existing roads to function at their current capacity."

MR. TREESH: Which one did you just read?

MS. MONTGOMERY: 18.2.

Is FDOT subject to the County's comp plan about goals that they might have about maintaining existing cross-sections or maintaining rural character?

MR. TREESH: No.

MS. MONTGOMERY: And I believe you said that

the cross-sections proposed by the State are not rural in character, they're urban?

MR. TREESH: Correct.

MS. MONTGOMERY: And I believe you described the State-proposed improvements from Bayshore to State Road 80 as urban as well, did you not?

MR. TREESH: State Road 31.

MS. MONTGOMERY: Because there's going to be fly-overs and things like that.

MR. TREESH: Say that again now. Back up.

MS. MONTGOMERY: The proposed FDOT cross-section from Bayshore to 31, is that an urban or rural cross-section they have proposed?

MR. TREESH: This is an urban cross-section.

MS. MONTGOMERY: But, when I get to 31 and I go south, is that an urban or rural cross-section they have proposed there?

MR. TREESH: That's an urban cross-section as well, and they're doing a fly-over at State Road 31 too and State Route 80.

MS. MONTGOMERY: Again, very urban?

MR. TREESH: Yes.

MS. MONTGOMERY: When you submit your TIS to the County with the initial application, do they always accept what you propose, or do they ask

questions during the sufficiency process?

MR. TREESH: No, they ask questions.

MS. MONTGOMERY: So you make revisions as you go along?

MR. TREESH: Yes.

MS. MONTGOMERY: But Lee County did ultimately accept your methodology and accept your report?

MR. TREESH: Yes.

MS. MONTGOMERY: So the conclusions you had on the slide about the three segments that were Level Service C, that was reviewed and accepted by the County?

MR. TREESH: Correct.

MS. MONTGOMERY: And as the hearing examiner pointed out, if a road fails -- a segment fails with or without you, that's not an impediment to zoning or development order?

MR. TREESH: Correct.

MS. MONTGOMERY: Thank you.

MR. TREESH: Thank you.

THE HEARING EXAMINER: Okay. So I have a question. Back to your site. The configuration of the road, Wells Road, is going to change dramatically according to these preliminary plans?

MR. TREESH: Potentially, yes.

THE HEARING EXAMINER: Okay. So -- but Wells Road is a county road?

MR. TREESH: Correct.

THE HEARING EXAMINER: So if your trips generated indicate there should be a turn lane or something, you would still have to provide that; is that correct?

MR. TREESH: That's correct. We are still responsible for site-related improvements at our access drives.

THE HEARING EXAMINER: Right. Now, talking about Bayshore Road, I'm looking at that. You're saying potentially a signal at Pritchett and potentially a signal at Nalle?

MR. TREESH: Well, there's an existing signal at Nalle today, and it will remain signalized, and we're -- we're asking for a right-in/right-out potentially at this location about here.

THE HEARING EXAMINER: Well, I'm just wondering if they're going to force you to have a joint access with your neighbor there; so maybe you won't have an access there.

MR. TREESH: It will be -- we're asking for an access near our eastern boundary, and it will be shared with -- it will be about in this location.

THE HEARING EXAMINER: So regardless, it's not going to be a full access, it's going to be a right-in --

MR. TREESH: No. It will be a -- well, right now, there's no median on State Route 78, but with this configuration, it will be a right-in/right-out because there's a median. They will not give us a median cut. It will be a right-in/right-out on State Road 78.

THE HEARING EXAMINER: And potentially a reverse frontage road to --

MR. TREESH: Yeah. If these properties develop --

THE HEARING EXAMINER: -- the signal intersection?

MR. TREESH: Yeah. If these properties develop and we have a cross-access to get over to Nalle Road.

THE HEARING EXAMINER: So basically it will be an interchange, function like an interchange would? That's what you see at most interchanges; right?

MR. TREESH: Yes.

THE HEARING EXAMINER: Okay. I don't have any further questions. I'm ready for the next witness.

Thank you, Ted.

MR. INGE: Ron Inge, once again, just to summarize where we are. I would like to address one particular thing relative to this particular slide. This is still in the preliminary planning stages. As Mr. Treesh mentioned, we met with FDOT and talked about some alignment of that that may bring it in and match where our exit point would be.

THE HEARING EXAMINER: I mean, to me, I looked at this, and it looks like a lot of extra pavement for no reason. Why wouldn't they extend it due east, and then --

MR. INGE: That's one of the options that we suggested they consider, and it's still under consideration, but it's not finalized at this point. So that's one of the things that we were strongly in favor of as well.

But as you mentioned, and as Mr. Treesh said, whatever happens here, whether this ever occurs or not, we'll have to address any turn lanes that are needed as part of our development plans.

THE HEARING EXAMINER: But at this point, that's planned to be a signalized intersection; correct?

MR. INGE: Yes. Under the DOT's plans, yes,

and we'll still have to put a turn lane in. If this never happens, we'll still have to address the turn lane issue.

THE HEARING EXAMINER: Thank you.

MR. INGE: Just in summary, and to go over briefly what our team pointed out, this area is in the general interchange. It's been there for several years, well over 30 years. That designation is for use of the traveling public and local residents to provide things that they may need.

The Bayshore area has changed significantly. So some of the information that you've seen, some of the presentations done by some of the folks that have spoken have indicated that.

The property was zoned in 2006, 17 years ago, for a variety of uses. It didn't provide some uses that we're proposing that would assist the traveling public, and that is why we've asked for them.

We're adding those uses to help fulfill those needs.

Bayshore Road will be significantly improved in the near future. FDOT is working on those plans, as Mr. Treesh talked about.

As Mr. Taylor stated, much of the general interchange has been taken for other uses that preclude the needs that the traveling public and the community may have for commercial and retail uses.

The remaining acreage is needed to have the intensity to service those needs. That's why we've asked for 125,000 square feet.

As Kirk Martin mentioned, our uses are sensitive to the Wellfield Protection Ordinance. We're fully committed to complying with those provisions as suggested by Condition 7.

And our proposal is fulfilling plans and strategies adopted and approved by the County long ago to try to meet the needs of the area.

And as I mentioned in my opening remarks, Madam Hearing Examiner, there's only three items that we have concerns with in the staff recommendation. That's the location of the drive-through facilities, which I provide our Exhibit 2 as a possible solution to address that.

The square footage that we're asking, for 125,000 square feet, versus the 87,500 that the staff has proposed.

And Condition 8 dealing with the wall on the

north site south of the preserve area. We just don't think it's necessary, given the magnitude of the preserve.

Other than that, we're in compliance -- or in concurrence with the staff recommendation and would ask that you favorably consider that.

I would like to reserve the opportunity for either me or any member of our team to address any concerns raised by the staff or the public as we go forward. And that concludes our initial presentation.

THE HEARING EXAMINER: Okay. Thank you.

I want to offer Applicant an opportunity to supplement the record with replacement pages of your PowerPoint with the corrections that you had brought to my attention so that the version that goes to the board is accurate in all respects.

Please do not give me the entire PowerPoint because I don't want to go through all the pages. You just provide me the pages that need to be substituted. My staff will make the adjustments and we will make that the official exhibit that then goes to the board.

And, members of the public, all these exhibits will be uploaded into the County website under this

case, and if you have any interest to go take a look at it or refer to it between now and the final board hearing, it will be available to you from your home computers.

Good morning.

MR. MENDEZ: Good morning, Madam Hearing Examiner. For the record, my name is Adam Mendez. I'm a senior planner in the zoning section. I have been previously qualified as an expert witness with respect to the Lee County Comprehensive Plan and Land Development Code and would be seeking to be accepted as such for the purposes of this presentation.

THE HEARING EXAMINER: Yes. Please proceed.

MR. MENDEZ: Thank you.

As a matter of housekeeping, I do have three exhibits I'd like to submit to you. The first of which would be a staff PowerPoint presentation. The second will be a revised set of case maps, and by "case maps," I mean Attachment C of the staff report, which was the aerial future land use and zoning maps. There was an error depicting Pritchett as Leetana Road, and these case maps address that.

And the last exhibit is our compilation of

public comments received by me via email as well as a petition. This petition was mentioned in the staff report, and I'm just going to submit this as an exhibit into the record.

I have provided the Applicant with copies of all of these exhibits.

THE HEARING EXAMINER: Okay. I will label these -- I will note that the staff report is considered Staff Exhibit 1; so the PowerPoint will be Staff Exhibit 2; the revised case maps, substitution for Attachment C of the staff report will be Staff Exhibit 3. Staff Exhibit 4 will be a compilation of public comments you received prior to hearing as well as a petition.

MR. MENDEZ: That's correct. Here's the full page PowerPoint. This is for notes if you have some. Attachment C. Petition.

THE HEARING EXAMINER: So Staff Exhibit 4 is a composite exhibit of the petition as well as emails received prior to hearing?

MR. MENDEZ: That's correct.

THE HEARING EXAMINER: From members of the public.

(Staff Exhibit 1 marked for identification.)

(Staff Exhibit 2 marked for identification.)

(Staff Exhibit 3 marked for identification.)

(Staff Exhibit 4 marked for identification.)

MR. MENDEZ: Okay. We have several staff members that are either in attendance here today or monitoring remotely, and I'd like to introduce them into the record. We do have Nic Deflippo, who is a senior environmental planner in the planning section, who works with Natural Resources as sort of a liaison.

We have Phil -- I always have a hard time pronouncing his last name -- Gillogly, is a professional engineer and the surface water manager with Natural Resources.

And Lee Werst, who is a supervisor with Natural Resources.

Brian Robert, professional engineer, is a planner in the planning section.

Mark Evans, professional engineer as well. He's a senior engineer with Development Services.

Camryn Siverson is an environmental planner in the zoning section.

And Brandon Dunn, planning manager, planning section.

All of these staff members have been previously accepted as experts within their

respective disciplines in this forum.

I'd like to start off by kind of delineating between what's existing, what's proposed, and what's ultimately deemed as appropriate by staff in the recommendation before you.

We touched on this earlier this morning with the Applicant's presentation, but I just want to put this front and center: The existing approval is limited to 61,000 square feet, and the mixture of uses relatively are neighborhood commercial uses.

There were several compatibility measures that were codified with the existing proposal that I'll go over in detail, and I'll also distinguish how some of those are going away and some of those are not recommended to go away. Namely, the wall.

The proposed development before us would amount to 125,000 square feet. Not every square foot is treated equally. The worst-case scenario here -- and this is based off of trip generation by the Applicant's traffic impact analysis for the zoning cases -- 125,000 square feet of retail commercial. So that's the worst-case scenario here, and that's what's proposed in terms of the Applicant's pursuit with this application.

The mixture of uses transitions from what was approved as neighborhood commercial uses to more general interchange commercial uses that are recognized in the comprehensive plan and codified in the Land Development Code in respective districts.

THE HEARING EXAMINER: So no hotel?

MR. MENDEZ: There is a hotel use in it, yes.

THE HEARING EXAMINER: And that's part of the 125-square feet -- thousand square feet?

MR. MENDEZ: The 125,000 square feet, as staff recommends and as staff sees it, is not -- does not detract from the hotel. The hotel is going to be based on rooms, and those rooms have an equivalency to how much retail square footage actually is taken up by that.

THE HEARING EXAMINER: So under "Proposed," if what they build includes a hotel, it will be less than 125,000 square feet?

MR. MENDEZ: Yes.

THE HEARING EXAMINER: Thank you.

MR. MENDEZ: In fact, with the equivalency that was provided, which was 120 square feet of retail is equivalent to one hotel unit, this recommendation, if you were to convert those 44

hotel units, which is a separate allocation, and add it to the retail, you have about 92,000 square feet of retail commercial area.

It works the other way. You can take away from that 87,500-square-foot allocation at the same rate to increase hotel rooms up to 125, which is what's proposed in the staff recommendation. If I did not remember that correctly, it is 120 or 125.

THE HEARING EXAMINER: The staff report says 125.

MR. MENDEZ: 125. Does that sound right to you guys?

THE HEARING EXAMINER: So it's not 125,000 square feet of retail commercial, and 125 hotel rooms?

MR. MENDEZ: No. I believe our worst-case scenario with the hotel would be close to 115,000 square feet of retail commercial and 125-foot room hotel because of that rate -- that rate at 120 square feet per hotel room would shave off 14,000 square feet or so.

THE HEARING EXAMINER: So when you list proposed as 125,000 square feet of commercial, that's worst-case scenario?

MR. MENDEZ: Right.

THE HEARING EXAMINER: The whole project goes retail, no hotel?

MR. MENDEZ: That's correct.

THE HEARING EXAMINER: That would have the greatest impacts in terms of compatibility and traffic and everything else?

MR. MENDEZ: Yeah, and more particularly, those equivalencies were based on trip generation, but I would agree that that's the worst-case scenario that we're going to discuss here.

THE HEARING EXAMINER: And then your recommendation is in between the two here?

MR. MENDEZ: That's correct, yes. It's about 10,000 square feet per acre, which is -- it was evaluated in the staff report. We looked at interchange areas, specifically the general interchange area. As you know, there are several types of interchange areas throughout the County, different categories, but we looked specifically in the general interchange area, looked at similar approvals or similar P.D.s and looked at concentration of intensity that was encompassed in those.

THE HEARING EXAMINER: So you applied an average of that square footage per acre to the

acreage of this site when you arrived at this recommendation?

MR. MENDEZ: That's right. In fact, we went a little higher than the average. Average was around 8,700.

THE HEARING EXAMINER: Right. And you went up to ten?

MR. MENDEZ: 10,000.

THE HEARING EXAMINER: Okay. So under the recommended scenario, it's 87.5 plus 44 hotel units?

MR. MENDEZ: That's correct.

THE HEARING EXAMINER: If they don't do the hotel units, the 87.5 jumps up to --

THE WITNESS: It could go up to 92, I believe. I think it's just shy of 93,000 square feet, but the way that the recommendation is written, we don't have a way to work that way, to exchange those hotel units for additional intensity.

THE HEARING EXAMINER: I see.

MR. MENDEZ: The recommendation does not consider using that as additional retail intensity. You can go the other way, you can build additional hotel units and reduce your retail intensity.

THE HEARING EXAMINER: Okay.

MR. MENDEZ: This presentation outlined is going to focus on the sequential order that we have been in for the past year and a half, roughly, since this case has started. So the case was submitted, I believe, in the summer of 2022. It was found sufficient in 2023, and a staff report was prepared and issued on September 26th of this year.

In that staff report, there were some issues that were taken with the property's location in the wellfield protection zones, namely the one-year and the five-year, which the property lies within, and with that, staff recommended that several uses be stricken from the schedule of uses. Those uses were primarily uses that are contemplated in the interchange land use category: Service stations, convenience store, fuel pumps, things that of nature.

The Applicant elected to utilize their continuance to work with staff. They retained a geologist. They met with Natural Resources in particular, which is the division of Lee County government that oversees these impacts and administers the Wellfield Protection Ordinance, and they were able to come to an agreement with the

condition -- and I'm sure you've seen it. It's rather lengthy -- a condition that works with County staff to establish some of those uses that were stricken. Two of the uses, which remain off the table are truck stop, which would be something like you see directly on the other side of the interchange with the Love's Truck Stop, and laundry and dry cleaning because of the chemicals and because of the substances that those uses might encompass or include in their operations, and the inability to regulate that.

We're in agreement with that condition, and the three points we boil down to, I'll touch on as we progress through this -- this presentation. As you've heard in summary, it's the drive-through, which is a minor issue we can talk about. The location of a drive-through, which is simply just a carry over from the existing resolution.

And then the other two issues are more important to staff in terms of intensity that's appropriate on this site, and whether the wall is a necessary compatibility measure to integrate increased intensity on this site.

So starting with some findings that were made in the staff report, and I started really in a

hierarchy when considering why this commercial development can come in and request additional square footage, and it starts primarily with its future land use category, as we have heard at length.

It's in the general interchange. On the inset here on the right, you can see that's it's really on the easternmost extent of the Bayshore interchange, and that interchange is subject to a very specific policy. I think we've heard it paraphrased here today, and I'll paraphrase it once again: It's for uses that are intended primarily to serve the traveling public, but by virtue of its location, a broad range of other non-residential land uses are permitted, including multi-family dwelling units separate from that range of commercial units.

Another key finding in this case and something that should be expanded on is the Goal 18, the Bayshore Community Plan. We've heard a lot today about how the community is changing and how it's grown since 1989 or since the Community Plan was adopted in 2003, and I'd like to put on the record that, while it's grown, it's grown largely in compliance with the future land use categories and

the rules and regulations that have been in place and contemplated as part of that goal.

We talk about Brightwater, we talk about these RPDs that lay dormant since the recession that are now waking back up, they are being built in compliance with the future land use that was contemplated during this goal. So Bayshore, while there's more dwelling units being added, it really was -- and it is really growing just in compliance with what was envisioned here; and what the vision is, it's here at the top: "To protect the existing rural residents, agricultural and equestrian-oriented character of the community by maintaining low residential densities, minimal commercial activities, and exclude incompatible uses that are destructive to the character of this rural residential environment."

The word "minimum commercial activities" may come up, and "rural," and everyone has a different shade of what that means; and so I'll offer staff's opinion on this matter, and how staff believes that increasing the intensity on this project from approximately 6,700 square feet per acre to 10,000 square feet per acre is warranted, is appropriate, and that's because of minimum commercial uses, and

the goal is expanded on in terms of land use in the objectives that follow, the objective and policy that follow, particularly Policy 18.1.1 and 18.1.2, which really lay out specific areas where minor commercial uses are permitted, which I might add I have a definition here -- we can't see all of it -- but minor commercial uses would also allow retail uses. So it is true that retail uses are allowed outside of the general interchange area, they're just limited to minor commercial, and they're further limited to very specific locations.

I have an illustration here on this next slide, and it actually depicts those areas subjected to Policies 18.1.1 and 18.1.2. I will mention that this area here was just added to show the North Fort Myers side of the general interchange limitations. It is not subject to those policies. It is in its own Community Plan.

But if I work from west to east -- I'm sorry, yeah, west to east, you'll see the interchange area, and then you'll start seeing these nodes where minor commercial activity was recognized and allowed by that policy -- and a minor commercial activity, again, 30,000 square feet or less in gross floor area, and may include retail.

So if we look just at the interchange area on this next slide, we'll recognize that, as the Applicant's testified and as staff has evaluated, there's about 81-gross acres of general interchange. When we think about that land use category and how it plays a role in the Bayshore Community at large, and of that 81 acres, the total land area of Bayshore is approximately 14,750 acres. So if you consider 81 acres out of 14,750 acres, that's about half a percent of the total land area in Bayshore where retail is permitted at levels greater than minor.

So with that being said, intensifying commercial uses within a compatible spectrum on these properties is contemplated by Goal 18 when it says, "minimal commercial uses." Minimal commercial uses ensures that commercial doesn't occur outside of these areas and that anything greater than minor commercial is located to this busy interchange area. So staff finds that the recommended increase in intensity is justified and is still minimal when we look at the context of the community at large.

You may recall this graphic from the Applicant's presentation. They provided staff this

presentation to justify concentrating commercial intensity on the subject property, and while I would say that the Popash Creek watershed and surrounding wetlands certainly hamper the ability to develop these lands, I would note that these lines are likely to be anecdotal and not scientific in nature, and that all this net development area that's categorized here could rely on those environmentally sensitive areas to provide their open space, to provide their indigenous preservation requirements so that they can cluster their development on the -- on land that was environmentally sensitive.

So it's not as if this land is wasted here. It does serve a purpose -- it can serve a purpose for commercial development, should that occur, in accordance with the future land use.

The property's current commercial planned developed was tied to several conditions to promote compatibility in 2006, 2007. One of which we see here is an exhibit, it's an artist's illustration of what the main building should look like, plus or minus some conditions that actually further restrict building height to one story and 25 feet.

The master concept plan for this existing

development is located right here on this slide, and it shows where the main building would be and two or three outparcels here for some minor commercial development over there. I think 8,000 square feet was allocated to each building.

Generally the water retention or surface water management areas and preserve area are largely the same with the existing master concept plans that are subject to this request here.

I will note that, as I say, in sequence, this was requested at 99,000 square feet in 2006 through the hearing examiner hearing, it was reduced to 71,000 square feet, and then at the Board of County Commissioners, it was further reduced to 61,000 square feet at that time.

What I'm saying here is really where we got a really predictable development program, and predictability lends itself to compatibility. What we're aiming for -- and I understand the point -- is we're aiming for some more flexibility. We're aiming to get rid of some conditions that confine this from being able to be marketed in a wide range of ways.

And so we have a couple master concept plans. Master Concept Plan A, which shows a subdivision

detail, where we have what has depicted a hotel four stories tall, what appears to be a convenience/food and beverage store with fuel canopy and car wash; and a mixed-use building or building that would support uses that are -- have been deemed appropriate north of that 400-foot setback line.

Concept Plan B is a major box store brand, large box store brand, some may call it a junior box store brand, but the size and the scale of this is actually pretty significant if you consider that it has a two-story limitation and that the Applicant is requesting 125,000 square feet. So this would be a situation where the entire site was developed with one box store building, and the access points are relatively the same across both sites.

On this next slide, I do have some natural resource testimony I'd like to offer from Nic Diflippo regarding the condition in the staff report that's relative to the ground water monitoring and surface water monitoring that you had some questions on prior to --

THE HEARING EXAMINER: My understanding though is that Condition Number 7, you've reached an

accord on the wording of that?

MR. MENDEZ: We have. That's correct. It's more for the public, and if you have any questions.

THE HEARING EXAMINER: That's fine.

MR. MENDEZ: Thank you.

MR. DIFLIPPO: Good afternoon. For the record, my name is Nic Diflippo. I'm with the Lee County planning section.

So I just wanted to come up here and say that we have worked with the Applicant on this, and we've come to an agreement on Condition 7. Staff believes it's very comprehensive and implementing this condition will ensure compliance with Goal 63 and Goal 125 of the Lee Plan.

If you have any questions, I'm available to answer them, but we do believe that it ensures compliance with the Lee Plan.

THE HEARING EXAMINER: Okay. Thank you.

MR. MENDEZ: The Applicant's environmental consultant did discuss the future land use and covered the classification system that they use to map out this property; and what I have here -- just to orient yourself, we're looking from approximately right here on Wells Road into the property, as from the grade of Wells Road. Here

you can see some telephone pedestals. Those are about three feet high just for context in terms of how high the saw palmetto and some of the exotics are in this understory here.

And you can also see really a dominant -- I wouldn't say a dominant, very little subcanopy. Primarily you have just the -- I'm drawing a blank here, but primarily you're just looking right through, right over the top of this, and this is about three feet high right there, and that's going to play into the next slide where we discuss where the grade of this development will be because of its flood zone, where the parking lot might be in conjunction with this indigenous preserve that we've heard bolstered as this exceptional buffer, this exceptional vegetative matter that's located in this 75-foot-wide preserve, and we'll also discuss what was approved, and kind of how it's different from what is proposed.

So to start off, we did recognize some classification systems and some community legends: Pine flatwoods with anywhere from 0 to 25 percent exotics. Over here close to where the abutting low density residential is, and then over in the mixed upland hardwoods, we have anywhere from 25 percent

to 49 percent exotics. So there's going to be some removal here.

And in that, there was deviation requested for removing a Type C buffer that's required at the property line, separating the preserve from the north property line; so essentially to take those plantings and just supplement in the preserve. So losing a little room, about eight feet from the distance from the north property line, as this indigenous preserve is shifted flush up against the utility easement; and the plantings that were approved between the preserve and the north property line are now going to be supplemented in some sort of equivalency fashion as conditioned in Deviation 6. So there's a change in terms of the total area that's going to separate the north property line from where development potential can occur.

In this detail, which is Exhibit D of Resolution Z-06-046, which is the Bayshore Village approval that is currently in effect, you can see this detail also included a wall. It's an eight-foot wall. It's located approximately right here, and you can see the parking bumper here at that time where they projected the surface of the

parking might be in terms of the location of the indigenous preserve area grade. And if you kind of glean on that, and you look at just really how low a lot of this is and how much of this might be removed, you can kind of see some concern -- at least maybe understand the concern from staff with not only the actual screen that will be accomplished through this buffer that's being reduced ultimately with this indigenous preserve functioning as the buffer, but the location and the circulation of vehicles, which isn't conditioned in any manner other than the master concept plan depicting where buildings and parking lots can be. So there's concerns regarding headlight trespass, there's concerns regarding sound attenuation, and that this wall detail is an enhancement to this particular area where it's expected to protect the rural residential area north on Wells Road. Would recognize that we're not talking rural future land use, we're talking the actual existing use right now at time on the property, and that's actually recognized in Objective 18.1 of the County Comprehensive Plan where it distinguished rural and urban land uses.

THE HEARING EXAMINER: So you're recommending

the construction of an eight-foot wall for the width of the property in this location?

MR. MENDEZ: Yeah. In fact, it's really retaining the existing condition that has that.

THE HEARING EXAMINER: Right. And how many feet of wall is that?

MR. MENDEZ: I'd be throwing out a guess here. Do you have an idea of the --

MS. SAPEN: It's 614 feet from the survey.

MR. MENDEZ: 614 feet from -- across the property.

THE HEARING EXAMINER: And understanding that that's an existing condition of approval, did you consider replace -- another option for that to ensure opacity, like a double hedge row or additional trees at the edge of the developed space, to accomplish that versus a masonry wall for that distance?

MR. MENDEZ: Well, in consideration, it was -- it was an idea of considering that this is currently a compatibility measure. We are looking to vastly increase the intensity on site of this project, but we'd like to decrease compatibility measures. To some extent staff agrees with the removal of the Type C buffer; so we think retaining

that wall will be a sure safeguard to creating a sound transition from what will be a very intense and unparalleled commercial development that has nothing in comparison or approved, and the residential property on the north side of this property and so forth; so --

THE HEARING EXAMINER: Okay.

MR. MENDEZ: -- don't see really an equivalency with vegetation only.

THE HEARING EXAMINER: Okay.

MR. MENDEZ: I believe I have Marcus Evans here with transportation just to talk about the staff memorandum regarding traffic impacts and the purview that the County looks at this -- especially in the zoning context, maybe offer some clarification.

THE HEARING EXAMINER: Thank you.

MR. EVANS: Good morning -- good afternoon, good noon. I really don't know what it is. We're close.

THE HEARING EXAMINER: We're high noon.

MS. MONTGOMERY: Just checking for the record, were you here earlier this morning?

MR. EVANS: I was.

MS. MONTGOMERY: Okay.

MR. EVANS: Marcus Evans. I am an engineer with the Lee County Department of Community Development. I am a licensed professional engineer in the State of Florida. I've been sworn in, and I have been accepted in the past as an expert in this forum in transportation planning and traffic engineering, and wish to be accepted today as well.

THE HEARING EXAMINER: Please proceed.

MR. EVANS: Okay. You've heard that before.

All right. I just wanted to reiterate some points that are already mentioned by Mr. Treesh and summarized in the memo that our staff produced after reviewing the traffic analysis for this project.

The traffic study was reviewed based on current County criteria for zoning traffic analyses. It also -- the traffic analysis considered the most intense use of the property. In addition to that, based on the analysis, we noted that there were to be expected significant impacts on a number of roadways in this area, specifically Bayshore Road, Pritchett Parkway, and Nalle Road, and when we looked at the -- or the Applicant looked at the intersection analyses, noticed that the intersections in that area,

Bayshore Road and Pritchett Parkway, Bayshore Road and Wells Road, as well as the south and west accesses, were going to encounter some delay, in fact, some significant delay, specifically the accesses along -- or the intersections along Bayshore Road. And the primary reason for that is the high volume of traffic on Bayshore Road, the fact that it's a two-lane roadway at its current configuration or current design. So significantly there would be a significant delay for the southbound approach.

So it's difficult when you have a local road intersecting a major arterial road and trying to make a left turn out, and if there's not enough turn lane segment or not enough gaps for that traffic to enter the higher volume road that is going to add to the delay at that intersection; so that can be expected with the current design, but there is hope, and we look forward to, when FDOT completes their design of Bayshore Road, that they'll make some excellent safety and operational improvements to that roadway and to these intersections that are in close proximity to the site.

It's also good to note, and it was mentioned

prior, that the final project will be evaluated at the time of local development order and any required site-related improvements will be -- will be incorporated into that design as well.

So that concludes my testimony. If you have any questions --

THE HEARING EXAMINER: Well, my concern was, when I read the attachment in the staff report with staff's analysis of the intersections, which, as I recall, were going to fail with the project and not without the project, the companion TIS did not seem to mention that, and I'm wondering what type of improvements would be required if they came in for a development order with that landscape, but prior to the improvements -- funding of improvements to Bayshore.

MR. EVANS: Right. We would evaluate the design and the estimated trips, based on your current traffic study guidelines, the turn lane policy, and they would be required to -- well, comply with those directives and build turn lanes at the site accesses.

In particular, Bayshore Road is a State maintained road; so it would be up to the State's discretion as to what improvements are required on

Bayshore Road, but as far as the access on Wells Road, then that would be under our purview, and we would examine and determine whether turn lanes would be needed at that access point.

As far as the intersection is concerned, there is some assumption, again, that the State's project's going to make some improvements at the intersection there of Wells Road, but depending on the level of traffic that the site would produce, we may or may not require improvements on Wells Road on the southbound -- or the north leg, you might say, of where Wells Road and Bayshore Road intersect.

THE HEARING EXAMINER: Right. But two of the intersections were not adjacent to the site.

MR. EVANS: The -- say that again.

THE HEARING EXAMINER: In the staff report, there was analysis of impacted intersections by virtue of the planned intensity, and there were three failing intersections.

MR. EVANS: Right. Correct.

THE HEARING EXAMINER: So my question to you is, they come in for a development order, and the trip showed three failing intersections, only one of which is adjacent to this site, what's their

mitigation? Is there a conclusion that the road impact fees that they pay adequately mitigates the impacts to those intersections? Are they going to be expected to do more? What happens there?

MR. EVANS: If our current criteria require those improvements to be made, they would be required to make those; however, if -- there are other intersections in close proximity that are affected by the development that are -- they're not required to make improvements or the road impact fees, you're correct, to be assumed to potentially be able to make improvements.

Road impact fees specifically are intended to make capacity improvements, not so much intersection improvements, but they could free up funds for Lee County DOT to make improvements at that intersection.

THE HEARING EXAMINER: Well, I'm going back to the fact that the County study showed three failing intersections by virtue of this project's traffic; so the -- and they did not fail out the project.

MR. EVANS: Correct.

THE HEARING EXAMINER: So at the development order stage, something has to be done, and my question is, what would have to be done for this

project to move forward?

MR. EVANS: We would look at those intersections, based on our current criteria and the traffic study guidelines. Basically, as I recall, we would look at the intersections if they are -- if the site would generate more than 300 new trips, we would look at nearby intersections or specifically the nearest intersection, and if they contribute more than 25 percent of the traffic to that intersection, then we could require them to make some improvements to that. The challenge here is that you have such high volumes on Bayshore Road, that the contributing traffic, the entering traffic at that intersection as compared to the existing traffic and the traffic we're going to see at time of buildout very well is going to be higher than -- much, much higher than the traffic generated by the site, such that they won't reach that threshold of being 25 percent or more of the entering traffic at that intersection.

THE HEARING EXAMINER: Okay. Well, it's very confusing in the staff report. I don't know what to do with that information.

MS. MONTGOMERY: Marcus, let me ask you a question, if I could.

It's my understanding, which may not be correct, that Wells Road doesn't meet the current County standards?

MR. EVANS: That -- I have not evaluated that, but I believe you're correct.

MS. MONTGOMERY: And based on your understanding of the Land Development Code, if it doesn't meet today's standards, would they be required to improve the road from their northernmost access to Bayshore?

MR. EVANS: Correct, yeah. If it's not wide enough or the pavement depth or the pavement structure is not adequate, then would they would be required to make those.

MS. MONTGOMERY: Okay. Thank you.

THE HEARING EXAMINER: Okay. So I guess what you're saying is it's going to be looked at at the development order stage, and if there has to be mitigation, there will be mitigation? That's your response?

MR. EVANS: That's the bottom line.

THE HEARING EXAMINER: Okay. Thank you.

MR. MENDEZ: We'll move onto the second point I have regarding the disagreement between the staff recommendation, what the Applicant's proposing.

So first we'll define intensity as defined in the Lee Plan, as well in the Land Development Code, and intensity is a measurement of the degree of non-residential uses of land, based on use, size, impact, bulk, shape, height, coverage, sewage generation, water demand, traveling generation, and floor area ratios. So there's a lot of different ways to measure intensity. It's not just vehicular. It would be the bulk of the structure; so there's a very dynamic definition to contemplate what intensity means when considering development.

When we look at these master concept plans, they are to scale, as they're required to be, and I'll start with A, which is on the right-hand side here. We don't really see a scenario in A where 125,000 square feet is ever built, at least with this master concept plan. We have to consider that this four-story hotel building won't detract from the 125-square-foot allocation but at a one-square-foot to one-square-foot rate. It's based on rooms, and that equivalency, again, doesn't really make a large dig into the entitlements that they're seeking.

So with -- what we're looking at right here, we're far below what 125,000 square feet of retail

would look like on this site.

On B, however, we have a scenario where we could actually envision 125,000 square feet of retail, and that's with the footprint of this building being about 82,000 square feet; so we need more than 50 percent of this building to have a second story of retail floor area in order for us to reach about 125,000 square feet of retail.

So the question is what does that look like, and so I have some tangible examples for to you consider, and some of the things I hope that you pay attention to or I want you to pay attention to is where they are contextually, how much land they were built on, and what their entitlements were, and so our first example is going to be Bass Pro Shop. Bass Pro Shop is in Gulf Coast Town Center, and it's approximately -- and this is out of the frame, unfortunately, but it's approximately 125,000 square feet if you exclude the restaurant. The restaurant's only about 5,000 square feet.

So if you're looking at Bass Pro Shop, which is a multi-level retail establishment, that's functionally what we're proposing here on this site. One of the key differences is that Gulf Coast is built in part with a D.R.I. that

establishes pretty wide retail gross floor area of over 1.5 million, but there's a condition in the D.R.I. -- and this is in Resolution Z-20-022 -- that limits the maximum cumulative of 10,000 square feet of non-residential building per non-residential acre in the D.R.I.

So we can assume that this 130,000-square-foot floor area was built on at least 13 acres, and probably more to support the parking and other facilities necessary.

Example 2 is going to be the Brookshire CPD, which is located at the intersection of Six Mile and Daniels, I believe. Now, this was approved on 16.5 acres for 140,000 square feet; so almost double the land, close to 125,000 square feet at a ratio of about 8,484 square feet per acre, in lieu of the comparison we're making here at 14,200 square feet was proposed.

Now, this was amended administratively to decrease open space and increase intensity with greater Pine Island Transfer Density Unit minimally, 5,000 square feet of additional intensity and, I believe, 2,500-square-foot reduction in open space. That would just nominally increase this to about 8,700 square feet per acre,

but what's actually been built -- and I'm sure many of us have patronized this establishment and know how busy it is -- what's actually built right now is only about 108,000 square feet, and this is, again, on 16 acres. And you see where there's additional land here to build additional restaurant or retail or whatever is permitted in the schedule of uses.

And if you can envision essentially what's developed here on 16 acres to date, crammed on 8.75 acres, almost half the land area, you can see some of the concern that staff begins to have with this type of intensity on this property in Bayshore, in a community that values preserving its rural character but also promotes commercial, maybe in excess of minor commercial, at its interchange areas.

So in summary, we're going back to what was approved, what's proposed, and what staff's recommending, and staff finds that of the three disagreement points, the wall and the intensity, we would not recommend anything higher than 10,000 square feet per acre. We would not recommend increasing intensity on the site and reducing a compatibility measure that could have a

long-lasting effect on property to the north.

We would concede to the condition regarding the drive-through as that was simply a carryover from the previous resolution. You'll see it in the schedule of uses. Drive-throughs were limited to the east side of the building adjacent to commercial instead of Wells Road. That was at a time where convenience food and beverage stores were not regulated in the manner they are today with additional buffers, additional lot sizes, setbacks; in addition, the conditions that are contained and recommended before you, which the Applicant doesn't have any disagreement with, would prohibit any deviations administratively. So we have no concerns with limiting -- or eliminating the restriction of the drive-through on the east side of the building.

And so, with that, I am available for any questions. We do have staff monitoring if you have any follow-up questions.

THE HEARING EXAMINER: I don't have any questions.

MS. MONTGOMERY: I have a couple questions. Do you want me to ask them now?

THE HEARING EXAMINER: Yeah. Ask them now.

MS. MONTGOMERY: Okay. Page 16, that's your picture, your photograph.

MR. MENDEZ: I can't see the page numbers.

THE HEARING EXAMINER: It's the vegetative picture. That's it.

MS. MONTGOMERY: That's it. Okay.

Can you tell us where you were when you took that picture?

MR. MENDEZ: This is a photo from August of 2023, and it's from a Google street view, and it's right about right here. In fact, this is the landmark you'd use to find it. So if you're looking into the property -- it's actually closer to where this preserve area would be.

MS. MONTGOMERY: Okay. Does the comp plan in the Bayshore area have any FAR ratio or square foot per acre?

MR. MENDEZ: They do not. The comp plan does not have that at all.

MS. MONTGOMERY: I beg to differ. If you look in the University Community, that particular category does have a limit of 10,000 square feet per acre. It was based on the (unintelligible). I worked on that; so that 10,000 square feet per acre was based on environmental considerations because

it came out of the D.R.G.R.

So do we have any 10,000 square feet per acre in the general interchange?

MR. MENDEZ: It's not listed in the policy.

Just to follow up on that. You said that was in the University Community interchange, or the University Community -- the --

MS. MONTGOMERY: Yes.

MR. MENDEZ: So not the interchange?

MS. MONTGOMERY: Yeah. And we tried to pull the interchange down, and they wouldn't let us.

MR. MENDEZ: Because the interchange isn't a portion of the property that I'm bringing up. There's the interchange, and then the transition to the future land use --

MS. MONTGOMERY: We were required to have a 10,000 square foot per acre in the comp plan; so that's why it was 10,000 square feet per acre in that particular project.

Do you agree with Ms. Sapen that single family uses are not permitted uses in the general interchange?

MR. MENDEZ: That's correct.

MS. MONTGOMERY: So that any redevelopment within that interchange, the only development would

be a multi-family?

MR. MENDEZ: That's correct, without a comprehensive plan --

MS. MONTGOMERY: With a base density of eight units per acre, I believe, off the 14, and then you would have bonus?

MR. MENDEZ: Yes.

MS. MONTGOMERY: Is there an FAR ratio anywhere in the County's regulations where there's an FAR ratio requirement or limit?

MR. MENDEZ: Are you talking in the context of Land Development Code or County regulations at all?

MS. MONTGOMERY: Yes, land development.

MR. MENDEZ: Land Development Code? I don't -- I'm not aware of any --

MS. MONTGOMERY: I wasn't either. That's why I was asking.

MR. MENDEZ: Yeah.

MS. MONTGOMERY: So, okay.

Well, during your testimony you made a comment about your concern of headlights. In the original -- and you were doing that in context of the preserve -- yes, that's where we were. Do you agree with Ms. Sapen that the access point into the project under the current proposed master concept

plan is further south, further away from the single family to the north?

MR. MENDEZ: Yeah, that's correct. I'm sorry. I'm going to go back. So are we talking about this access as opposed to it being closer to where the indigenous preserve is.

MS. MONTGOMERY: Yeah, but it was further away so there would be less.

MR. MENDEZ: Yeah, I think that's a good compatibility measure.

MS. MONTGOMERY: Okay. Thank you.

I don't have any other questions.

THE HEARING EXAMINER: Okay. Thank you.

If that concludes staff's presentation, I'm going to break now for lunch. We will return at 1:30, and we will commence with public input.

I will start with this packet. If you haven't filled one out yet, please, I urge you to do so, and just place it in this bin here. If I get through all the names, I still will invite people who may not have not filled this out to come forward, but please, I urge you to please fill this out because you give us a way to send you a copy of my recommendation and to provide you with notice of the final board hearing.

Thank you. I'll see everyone at 1:30.

(Recess held from 12:24 p.m. to 1:31 p.m.

THE HEARING EXAMINER: We're back on the record. We're after the lunch break. We concluded the parties cases in chief. We're ready to start with public input. As I said, I'm going to start with the sheets that we've got here. In the event you didn't fill one out, I'll do a last call.

Craig Allenbaugh.

Steve Brodkin.

Good afternoon. Thank you for coming.

MR. BRODKIN: Yes. Thank you. My name is Steven Brodkin. I'm here representing the concerned citizens of Bayshore Community. The current zoning for Bayshore Village, as approved in 2006, represents a compromise that allows more than sufficient development rights for the property, and should not be changed in our view. Therefore, we oppose the current rezoning request.

Please note the following issues: The Bayshore Plan was written with the help of a hired planner by the Bayshore Steering Committee and approved unanimously by the Board of County Commissioners in 2003. The Bayshore Plan goal has not changed and states, "Protect existing rural,

residential, agricultural, and equestrian-oriented character of the community by maintaining low residential densities and minimum commercial activities, and excluding compatible uses that are destructive to the character of this rural residential environment."

So in the staff report under -- in the original Bayshore Plan under bases of recommending findings of fact in the staff report for the original Bayshore Plan when it was passed, the staff report says, "The Bayshore planning effort originated as a grassroots effort by citizens of the Bayshore area who took an active interest in the County current policies regarding land use issues in their community. The proposed amendments have been driven by the interest of this community."

The News-Press reported at the time that the Bayshore Steering Committee held a public meeting at the Civic Center to review the proposed Bayshore Plan. The News-Press reported, "Your proposal met with nearly unanimous agreement from the crowd, numbering more than 400 people."

So I was at that meeting, as were others who are still in the area. The only dissent at that

time was from a few people who felt like the plan just wasn't strong enough to protect the rural character of the area, and the rural lifestyle.

The point just being that there's been overwhelming support for the community to try to keep the area as rural as possible, and this was some of the background to that.

So we feel like the higher intensity commercial development proposed is inconsistent with the Bayshore Plan goal, and that was Goal 18 in the Lee Plan.

When the current zoning was considered in 2006, the applicant had requested 99,999 square feet of commercial space and two-story, 35-foot-high buildings. The zoning request was reduced to 61,000 square feet of commercial space, and one story, 25-foot buildings because the County determined that that was the most intensive use for the site consistent with the Bayshore Plan. As already stated, the Bayshore Plan goal has not changed.

The analysis section of the 9-26-2023 staff report for this application, staff provided a table showing the intensity of the other developments in the general interchange land use category within

Lee County. And so they show a chart showing the average square foot, 8,579 square feet per acre.

So what we notice is -- of course, in that same chart, they show that this development, if improved as requested, would be, way, way more than that.

With the original 61,000 square foot that exists now, that's permitted now, that results in 6,971 square feet per acre, almost 7,000 per acre; and in their chart, that is greater than three of the eight developments that they show as examples in the general interchange table in the current chart.

So this square footage is slightly under average, a little under average, which we feel is appropriate, considering consistency with the Bayshore Plan.

The applicant also requests hotel rooms at a density almost triple the average as compared with the others on that table.

So the applicant is requesting the most intense use of general interchange in the County by far. It will be more than 50 percent more intense than the most intense general interchange development in this County. And by intensity, I'm

just talking about square footage per acre. I know there was some additional definitions given earlier, but I'm basing on square footage per acre.

So we feel the current zoning provides ample development rights to the applicant, it was considered the maximum intensity in 2006 by the County staff to be consistent with the Bayshore Plan; so we feel like the current zoning request should be denied, and that's also considering the Bayshore Plan goal which talks about minimal commercial activities.

Next, in the 2005 zoning application, the Applicant's traffic analysis at that time showed a section of Bayshore Road from Wells Road to I-75 going from a Level of Service C to a Level of Service D by 2010, which was considered to be after completion of the development at that time. Of course, that didn't happen. So this analysis was done more than 18 years ago, and the NPO defines LOSD as traffic congestion, reduced travel speeds, and severely restricted maneuverability, two-lane roads have an unstable flow, and passing is difficult. Turning lane -- turning vehicles and distractions cause shockwaves in the traffic stream, but anyone in the area that can tell you

that the -- how much worse the traffic conditions are now, just getting really worse over the past two years, just backing up everywhere.

Babcock, of course, is developing hundreds of homes. They're under construction. There's also Bayshore Ranch, Stonehill Manor, Brightwater. So the traffic we feel is underestimated. The background traffic is underestimated, and of course, it's already been discussed here a little bit now, their level of service is or will be failing in the near future for a few spots in that area.

And I can tell you just from personal experience, I drive about a mile on Bayshore Road to get to I-75 to go to work, and it's not uncommon for it to be backed up to Durrance Road on my street; so it's a mile of sitting traffic, waiting to get to I-75, at least this time of year on a busy day.

So residents can tell you that the roads along there are already failing; and specifically at Wells Road at certain times of the day, it's difficult for people to get out of Wells Road, either turning right, and almost impossible to make a left turn across traffic on Bayshore Road. And

we know that the study for State Road 75 (sic) -- it's in the PD&E phase. It's not funded -- it's not yet funded, and the final alignment has not been approved yet. They have proposals, but it's not been finalized.

So any -- by the time there's an approved alignment, the funding, the right-of-way acquisition, the design and construction is complete, it's going to be way past the 2028 projections being considered by the Applicant's traffic study. Of course we heard somebody here today talking about being based on being done by 2025, which we know is not going to happen.

So there are Lee Plan policies -- Policy 2.2.1, "Rezoning and DRI proposals will be evaluated as to availability and proximity of the road network, essentially sewer and water lines, community facilities services such as schools, E.M.S., fire, police protection, other public facilities, compatibility with surrounding land uses, and any other relevant facts affecting the public health, safety, and welfare."

So I guess one thing we're going to figure out is how roads that are already approaching failing or are failing and have the impacts of greatly

increased high intensity commercial area serves the public health, safety, and welfare? If these roadways are failing, we're going to add all this, and we don't really seem to have a solution as to where all this traffic is going to go. I mean, the question was asked, and I think somebody said "mitigation," but I mean, nobody's really proposed a solution, at least in the near term.

Policy 2.2.3, "When an area within the County is approaching the capacity of the necessary facilities as described above, requested rezoning of acreage densities and intensities may be deferred or denied to give preference to existing vacant lots and other valid development approvals provided that a constitutionally mandated reasonable use of the land would still be permitted."

And in your view they have that. They have their 61,000 square feet. They still have a permit to reasonably use the land.

So we feel that rezoning to a greater commercial intensity will have a significant neglect impact to the health, safety, and welfare of the community. There's also concerns about -- with the failing roads. Our fire chief, when we

met with him, expressed concerns regarding fire and E.M.S. services, which are hampered by the increasing excess traffic. So our question is how's the community's health, safety, and welfare served by increasing overburdened roads and the greater danger that that creates?

The Applicant had told us, in the public meeting that they had, that they were hoping to be building within two years. And of course, that's been set back, but it just seems like they would be hoping to be building before any improvements were made.

Objective 1.3 states in part -- this is interstate highway interchange areas, "Special areas adjacent to the interchange of I-75 that maximize critical access points will be designated on the future land use map. Development in these areas must minimize adverse traffic impacts and provide appropriate buffers, visual amenities, and safety measures." So we don't see how this would minimize adverse traffic impacts.

So the rezoning will significantly increase these impacts. And the current zoning, as I already said, constitutionally mandated reasonable use of the land would still be permitted.

The Applicant claims their proposed site plan will provide buffers comparable to the currently approved MCP, but when you make a comparison, there's really no equivalence in what they want to do. They're asking to more than double the intensity, increase the building height from 25 foot to 48 foot, and then they're also wanting to eliminate the wall; so we don't see the comparison there to be similar.

And with regard to the wall. I think there was a question asked earlier about different ways that that could be done. Apparently, they'd have a choice between either an eight-foot wall or -- or a wall and berm, we noticed in there; so theoretically, I don't know what would be most beneficial to the Applicant, but they could potentially put, like, a four-foot berm and a four-foot wall on top of it to make the eight feet; so they would have some different possibilities there.

Lee Plan Policy 5.1.5, "Protect existing and future residential areas from any encroachment of uses that are potentially destructive to the character and integrity of the residential environment. If such uses are proposed in the form

of a planned development or special exception and generally applicable development regulations are deemed to be inadequate, conditions will be attached to minimize or eliminate the potential impacts, or where no adequate conditions can be advised, the application will be denied all together. The Land Development Code will continue to require appropriate buffers for new developments."

So this is -- this Policy 5.1.5 to us is a reason why that wall is necessary because we feel that the -- some of the applicable Land Development Codes are inadequate to cover that problem.

Policy 5.9.5, "New development adjacent to areas of established residential neighborhoods must be compatible with or improve the area's existing character."

And so one question we would ask is why are these policies in the Lee Plan? If they don't apply now, then when would they apply? We feel they apply now. When the current zoning was approved in 2016, in a staff report they said, "Commercial developments, including this one, will have a significant impact on this rural community, especially to the north on Wells Road. For this

reason the Applicant has proposed" -- and this was after their original proposal. They revised it, but they proposed a reasonable schedule of uses, limited height buffers, and separation requirements. Special care was taken to protect the property to the north, utilizing enhanced separation, requiring buffering preserve areas, berms, and walls. Staff recommended at the time that any wall buffering the northern property line extend across the entire property line to provide better visual barrier, and will help buffer any noise or nuisance from the property to the north.

So we feel that conditions such as the eight-foot wall, the 75-foot preserve, the building setbacks from the northern property line, the building height and schedule of uses, as they were all conditions in 2006, should be maintained to be consistent with the Bayshore Plan goal and these policies -- other policies that we've cited.

The Applicant claims in their application that the proposed 125,000 square feet of commercial space will help alleviate the current stressed Bayshore Corridor by removing some of the traffic that must travel further west on Bayshore Road beyond I-75 to reach specific commercial uses at

further distances, which they said in their original application; and then at a later time they said, "Site will meet the needs of the traveling public to and from Babcock Ranch along with I-75, as well as a forecast population increase with the Bayshore Planning Community."

One thing we noticed with regard to need was that, one, Babcock from the beginning, was designed to be self-sufficient. They've claimed that they're going to have everything in there that they need for the residents who live there, commercially, and it would also be serving some of the surrounding area nearby.

The general interchange zone is meant primarily to serve the traveling public. We feel there's ample commercial space, both developed and not developed, to serve that need.

In Bayshore we currently have 30 public super -- 30, I'm sorry -- three public supermarkets within five miles of Bayshore along with the associated stores that go with Publixes. You know that Greenwell's property on State Road 31 had already been allowed up to 400,000-square foot of commercial space.

There's the -- on the Applicant's maps, they

just talk -- show the commercial space on the east side of I-75 and Bayshore Road, but of course, there's commercial space on the west side.

And then west from there nearby, there's -- it's the land use is suburban, which along Bayshore Road potentially could allow a lot of commercial space there.

And of course, also over there by Lawhon's store, and on either side of Lawhon's store, there's other properties there with commercial space.

So residents in a rural community like Bayshore, we recognize that we may have to travel a little further for services in order to maintain the rural lifestyle and the nature of our community, but there's more than sufficient commercial space located nearby to serve the community.

So the expanded table of uses, lack of specificity in the master concept plan concerns residents with regard to what might ultimately end up there. Neighbors have concerns about increasing traffic, access onto Bayshore Road, noise, overflow lighting, odors from dumpsters, transient travelers who commit crimes and get back on the interstate.

Increasing the commercial intensity will exacerbate these problems.

In the staff report for the 2006 rezoning, staff reduced the schedule of uses from what was originally proposed to eliminate uses deleterious to the rural residential uses on Wells Road. So we feel the schedule of uses should not now be expanded.

Also, know -- I don't know if they removed this yet, but Policy 18.1.3 in the Bayshore Plan, no new industrial or industrial rezonings are permitted after February 3rd, 2003. I don't know if it's still there, but at one time they had some light industrial uses planned on their schedule of uses, but that would be inconsistent if it's still there with 18.1.3.

We have about -- there's a petition which Adam gave you. I brought a copy, but he gave you a copy, signed by about 250 local residents who oppose this zoning change.

So in summary, in 2006 zoning, the County reduced square footage from the Applicant initial request, having conditions in order to help reduce impacts to the community and be consistent with the Lee Plan and the Bayshore Plan.

The current application we feel erodes the compromised measures that were made at that time meant to reduce the impacts and would be detrimental to the health, safety, and welfare of the community. It would result -- if approved the way the Applicant wants, would result in the commercial floor space being more than doubled, the required buffer wall being removed, the building setback severely reduced for the northern property line.

In 2006, there was a 150-foot setback from the northern property line to any building in that zoning; so that's been shrunk, I think we figured to about a hundred -- a little over a hundred feet.

They're asking for double the building height from 25-foot, which was originally in 2006, now, to 48 feet. They've expanded the schedule of uses.

And then with regard to gas stations, we heard about the depth of the aquifers for the County well being sufficient in order to be safe from a gas station. I didn't hear any discussion about the neighborhood wells in the area, which are usually in the sandstone area, and some of them are shallower, and what potential contamination there could be to neighborhood wells, which are at a much

shallower level that are near this site.

They've added light industrial uses, which are prohibited in the Lee Plan, and increased the commercial space which will negatively impact the overly congested traffic problems on Bayshore Road, considering the failing roadway conditions.

The section of Bayshore Road by Wells Road is predicted to fail in the near future, even without the development, which poses a safety issue for the community.

The Applicant added a provision in the maximum intensity table, "An increase of up to ten percent may be allowed due to administrative amendment." We feel this excludes the public from participating in the process and is designed to sneak in additional density. And, of course, the Bayshore Plan goal states, "Minimal commercial intensity" -- "minimal commercial activities," I should say.

The Applicant's plan represents the maximum commercial activity and would be by far, according to the staff's chart, if approved as applied for, would be the most intense general interchange zone development within the County.

Many of the residents of the Bayshore Community did not approve of the original rezoning

in 2006, but it was seen as a compromise to allow commercial development in the interchange zone with a preserve and buffer wall to reduce impacts to the residential neighbors to the north.

Considering all of the factors, including the 2006 determination by the County that 61,000 square feet of commercial space and max 25-foot building height was the maximum intensity consistent with the Bayshore Plan, we ask that you recommend denial of the current application. The application is inconsistent with Goal 18, Objective 1.3, and Policies 2.2.1, 2.2.3, 5.1.5, 6.1.5, 18.1.3, and 135.9.5 of the Lee Plan. We feel the property owner has more than sufficient commercial entitlement approved for this site.

We ask that our comments be included in the record, and that's all we have to stay. Thanks.

THE HEARING EXAMINER: Thank you.

MS. MONTGOMERY: Can I ask?

MR. BRODKIN: Sure.

MS. MONTGOMERY: How far are you from this site?

MR. BRODKIN: I'm about a mile. I live on Durrance Road, and you know maybe where ECHO is.

MS. MONTGOMERY: Yes, I know where that is.

MR. BRODKIN: I'm right near ECHO.

MS. MONTGOMERY: Okay. Did you take the petition to other communities like Alva and solicit signatures?

MR. BRODKIN: We talked to people in Alva. There are a few people from Alva who signed our petition; so those are people who, especially on the north side of the river where the people I talked to were, would travel Bayshore Road to I-75, and so whatever impacts there are on Bayshore Road would affect them as it would affect us.

MS. MONTGOMERY: Okay.

MR. BRODKIN: Something else?

MS. MONTGOMERY: That's it.

MR. BRODKIN: Can I leave you a copy of our statement?

THE HEARING EXAMINER: Yes, please. This will be Brodkin Exhibit 1. This is a summary of your testimony?

MR. BRODKIN: Yes.

THE HEARING EXAMINER: Thank you.

(Brodkin Exhibit 1 marked for identification.)

Okay. Robert John Beeson.

All right. I know some people came back late. Is Craig Allenbaugh here? No.

Terry Boehm.

Calvin and Margaret Buckmaster.

MR. BUCKMASTER: I'm here. She went home. I'm not going to speak, but I'd like to see it.

THE HEARING EXAMINER: Okay. If you're going to speak, you have to come to the podium, and I encourage you to do it because, otherwise, you won't be able to speak to the commissioner. You know, I can't have you seesawing. You're either in or you're out.

MR. BUCKMASTER: All right. Calvin Buckmaster. I'm a resident. Thank you for inviting me to the podium. I'd like to stay rural, and I agree with everything Stephen said. That's all I have to say.

Any questions?

THE HEARING EXAMINER: Thank you, Calvin.

MS. MONTGOMERY: Calvin, I just have one question. How far are you from this site?

MR. BUCKMASTER: About -- I live on -- right at the dead end of East Lake; so probably at the very most a quarter of a mile. I come right onto it every day. I can't get on the road. It's a nightmare, especially with all them trucks and building going on the road. Houses, developments,

it's terrible. It's only going to get worse.

THE HEARING EXAMINER: George Camargo? Is George Camargo here?

Cheryl and Joseph Daly.

Randy Eck.

Lizette Harney.

Benjamin Hofland.

Good afternoon. Thank you for coming, sir.

MR. HOFLAND: Good afternoon. My name is Benjamin Hofland, resident of the Bayshore Community, for the record.

Madam Hearing Examiner, I assume, as you have demonstrated, that you are very familiar with the Lee Plan as I also am. I've read through it several times in preparation of the rezoning application; however, it appears that our Applicant has not taken it to heart.

Throughout the application, little more than lip service has been given to its goals and objectives. This is seen poignantly in the market analysis included as Exhibit 4 of the memorandum from counsel staff to your office, dated December 4th, 2023, which was provided by the Applicant as another attempted justification for the requested gross overreach in development

intensity. As Mr. Mendez noted, "unprecedented" was the word he used.

For the record, and for everyone's benefit, I would like to reread a few excerpts from the Lee Plan, starting in Part B, Goal 17, Community Planning, Objective 17.1, Community Plans: "To create community plans that address specific condition unique to a defined area of the County.

And I quote further in that same section Objective 17.3, which says, "Public input: To provide opportunities for public input as part of the Comprehensive Plan."

As you are aware, this public input process resulted in an overwhelming and definitive stance that is captured in the subsequent Goal 18, which I quote Goal 18: "Bayshore Community Plan: To protect the existing rural, residential, agricultural, and equestrian-oriented character of the community by maintaining low residential densities and minimal commercial activities and exclude incompatible uses that are destructive to the character of this rural residential environment."

Madam Hearing Examiner, I am the first to admit that the Lee Plan can be ambiguous. This is

not one of those parts. This is clear and definitive language. I would like to point out that this language is proactive, not reactive. It does not say, "to minimize or do less harm," it says, "to maintain minimal commercial activities." That is to say, do no harm to the character of this community.

This intent is clarified immediately thereafter in the words by excluding uses destructive to the character of this community.

This language is very clear, all proposed development within the bounds of the community must, according to the Lee Plan, be substantially rural, agricultural, or equestrian in character or the character of this community will not be maintained.

With all due respect to the very qualified team that has prepared this application, the proposed development is entirely inconsistent with both the meaning and the intent of Goal 18. There is nothing about this application that is rural or agricultural or equestrian.

As such, Madam Hearing Examiner, I beseech you to stand up to the law of the land, as laid out in the Lee Plan, for the people of this community and

to deny this application for its gross incompatibility with the character of the community for which it is proposed.

I have some technical things, as well, to address the presentations that have happened. Three short things: One regarding the wells. We had a very great presentation about those aquifers, and I know there's been correspondence with staff to alleviate some of their concerns.

One of the items for the record that was not addressed, is unrecorded and improperly abandoned wells on adjacent sites. If there were to be a spill and there was a well that was puncturing those impermeable barriers, that would travel directly to the various aquifers and would shorten the travel time for any toxins that would be getting into our drinking water, and that is part of why those provisions are in place in the code. They are conservative, and that's one of the reasons why.

Regarding intersections, you noticed and brought up that three intersections are going to fail, and as provided in the testimony, they may or may not be mitigated in the development order and in all likelihood they will not be because we will

likely not meet that 25-percent threshold because of the volume of Bayshore Road, which means the residents of the community will bear the burden of the failure of those intersections unless you stipulate and require mitigation for the developer.

And then I would like to clarify -- there's been a lot of talk about need on the behalf of the Applicant, and I would like to clarify that the proper word should be "want," not "need." This community is rural and sufficient in its own right. We do not need any more development. There is a want for development by some parties.

That is all I have to say. Thank you very much for your time.

THE HEARING EXAMINER: Thank you.

MR. HOFLAND: Any questions?

THE HEARING EXAMINER: I don't have any questions.

Neale?

MS. MONTGOMERY: No.

MR. HOFLAND: Thank you.

THE HEARING EXAMINER: Barry Lewis.

Zachary Lombard.

MS. MONTGOMERY: I think it's Lombardo.

THE HEARING EXAMINER: Lombardo. You need to

close your "O."

MR. LOMBARDO: There's a lot of things I could do. I appreciate it. We have a group presentation. Would it be possible for me to go afterwards because we're sharing a PowerPoint?

THE HEARING EXAMINER: Okay.

MR. LOMBARDO: Would it be possible to move Michael Musho in front of me, and then I will --

THE HEARING EXAMINER: So you're with -- who are you with?

MR. LOMBARDO: Lisa Musho, Michael Musho, Susan Swift, Nathan Poole, me.

THE HEARING EXAMINER: Hang on.

MR. LOMBARDO: I appreciate that.

THE HEARING EXAMINER: Nathan?

MR. LOMBARDO: Yes, ma'am.

THE HEARING EXAMINER: And then what -- who was it?

MR. LOMBARDO: It was Michael Musho.

THE HEARING EXAMINER: I have that.

MR. LOMBARDO: Susan Swift. Probably written in my terrible penmanship.

THE HEARING EXAMINER: My secretary put it in alphabetical order; so I have to pull. Who else?

MR. LOMBARDO: Lisa, Michael, Susan, Nathan, me.

THE HEARING EXAMINER: Okay. I'll move that to the end, and then you can follow your choreographed presentation.

MR. LOMBARDO: And there will be dancing. So I appreciate that.

THE HEARING EXAMINER: Okay.

Cathy Queen. Welcome.

MS. QUEEN: Hi. I'm Kathy Queen. My husband Richard and I, we live on Sandy Pines Circle, which is the community at the end of Wells Road; so the development, we have to pass every day, coming and going, no matter where we go. There's only one way out for us. I did not plan to speak today, but I think it's important to listen to just a person that I don't have any statistics, I don't have any County plan, anything. I don't have anything prepared except the fact this development is too big for where they're going to put it. We already have massive traffic problems with Wells Road. We have massive traffic problems with Bayshore Road. My husband and I are retired; so we're not forced to go out in the morning at a certain time to have to experience all that joy. We do get to pick and

choose when we go, but it's a terrible situation for people, and one of these days, there's going to be a lot of accidents right there at this Wells Road, and people are going to die, and we do not need that development at that size there. Something smaller, but not that.

THE HEARING EXAMINER: Thank you.

MS. QUEEN: Any questions?

MS. MONTGOMERY: No.

THE HEARING EXAMINER: Stephanie Sikora.

Carol Smith.

Linda Stanford.

Mark Sullivan.

David Vieths.

Frankie Vieths.

Okay. Zachary Lombardo, you're going to orchestrate?

MR. LOMBARDO: Yeah. If we could have --

THE HEARING EXAMINER: So this is Lisa Musho?

MS. MUSHO: Yes.

THE HEARING EXAMINER: Good afternoon. Thank you for coming. Lisa Musho.

MS. MUSHO: Good afternoon, Madam Hearing Examiner.

THE HEARING EXAMINER: And this is your

PowerPoint?

MR. LOMBARDO: The first two are going to speak, and then --

MS. MUSHO: Good afternoon, everybody. So we have been in our home for over 30 years now --

MS. MONTGOMERY: Can you get your office to crank that up a little bit? You're very soft spoken. It's hard to hear.

MS. MUSHO: I'll try to lean in here. Okay. So we have been in our home for over 30 years now, and we share over 600 feet of property line with the subject property; so as a result, we feel that we will be the most affected by this development and that our home and property will be changed forever, and that change will occur through the foot traffic, the noise, the heavy overhead lighting, truck and semi traffic as they come and go to replenish inventory, dumpster truck noise, loss of natural environment in the community, and other negative impacts that will affect the quiet enjoyment of our home and property forever.

Both the preserve area and the eight-foot-high wall extending the full length of the property are critical components that are currently required for this property and were determined to be critical by

the prior staff and approvers that approved this existing zoning back in 2006. Both are critical, we feel, to try to buffer our home from the negative effects of the development, and both should remain in place along with the existing 150-foot setbacks.

So even at 61,000 square feet, the County staff and the approvers back at that time in 2006 saw that these were necessary, and the neighborhood conditions are now the same as back then and the Bayshore Community Plan is in place with its extra protections, and it is part of the Lee Plan.

So the community environment is still rural with no other equal comparison anywhere around that would match the intensity of the proposed rezoning. So as such, we feel that it is vastly incompatible with the surrounding area, and so now for this proposed intensity to increase massively and for it to be proposed that the wall be removed, the building setback to be removed for certain uses, and the buffer spacing be removed just does not make any sense to us.

So, therefore, we respectfully request that you keep the preserve and wall in place, which is also a recommendation by the current staff. We

also request that the building setback remain and the buffer spacing remain as well.

Next, according to the staff report filed on 9-28-23, "compatibility" means, and I quote -- I'm sure you've heard this -- "Compatible means, in describing the relationship between two land uses, buildings, or structures or zoning districts, the state wherein those two things exhibit either a positive relationship based on fit, similar or reciprocity of the characters, or a neutral relationship, based on relative lack of conflict, actual, or potential, or on a failure to communicate negative or harmful influences one to another," end quote.

A simple reading of this definition makes it clear that placing this proposed intense development with a 48-foot-high hotel, along with very intense business uses next to a residential home, does not match the definition of "compatible."

The staff report went on to say, quote, "The request poses an incompatible development program that will result in a relationship characterized by a stark transition between the low density residential land uses and unparalleled commercial

intensity in the Bayshore Community," end quote.

So as explained, this proposal -- proposed development does not match with the Bayshore Community Plan, and is massively over-intensive to what's stated, what exists, and it's not compatible with the community or the neighborhood.

So the Applicant has stated that this development is necessary to accommodate the residents in Babcock Ranch. However, Babcock Ranch is located primarily in another county, and it was designed to be a self-supporting community whereby the residents and developers of Babcock can determine what services they want and then go ahead and build those services in their own community. So we feel that the residents in the Bayshore Community should not be made to sacrifice the rural character of the area to develop shopping for the Babcock Ranch community.

Next, the Bayshore Community residents have spoken on this proposed development through several community meetings and through their signed petition with over 200 signatures, which that's been submitted into the record.

Early on in this process, there was a community meeting whereby the residents unanimously

stated loudly and clearly that they did not want this intense development in their community, and they have repeatedly and consistently stated this over time whenever this development topic comes up.

So we ask, will you please consider the petition in opposition to this rezoning in your evaluation?

Next, I've heard it said that the average commercial square footage in interchange areas that is be approved is 10,000 square feet per acre. However, the subject property and interchange area, whole interchange area is contained -- well, the interchange area that we're referring to is contained within the geographical parameters of this Bayshore Community, which affords it additional special protections under the Bayshore Community Plan and the Lee Plan. Therefore, this development should not be at an average intensity compared to the rest of the county because of these additional protections. So as a result, the square footage allowed here should be far less than the average for the rest of the county, and we would request that it remain at 61,000 square feet, which is already more than sufficient.

I'm also troubled by the broad and varied

schedule of uses that's being applied for on this property. Many of these uses seem invasive to our property, and they're very broad, and I feel like I can't possibly know all the types of businesses that would be allowed under these categories and how they could adversely affect our home.

There's only 37 uses listed in the current resolution, Z-06-046, and they're primarily office, medical office, and retail uses, which are compatible with the surrounding area.

I'm also concerned about living next to a business that's opened 24 hours a day with noise all night long, bright lights, traffic moving in and out all hours of the day and night.

And another concern that goes with that is very high, bright signage, and two monument signs being proposed on the property, presumably with heavy lighting and looking like a towering eyesore in our residential neighborhood, which could also affect our property values.

In addition, I noticed another use is for a funeral home and crematory; so please, we do not want to live next to a funeral home and crematory for obvious reasons, and in my opinion, this could affect our property values.

So we would respectfully ask to please use your expertise in knowing what businesses each use category contain, and please we ask to eliminate that use if it's not compatible because invasive, obnoxious, and intense business uses are not compatible with a quiet residential neighborhood.

Next, this rezoning is being proposed to exclude the wall, which is currently approved and required by the existing resolution, Z-06-046, and it's to extend the full length of the property. According to the staff report filed on 9-28 -- 9-26, it talked about the research on the best sound attenuation practices, saying, quote, "Vegetative matter is often an impractical way to effectively mitigate noise as compared to the sound attenuation of a masonry wall," end quote.

And according to the Center for Environmental Excellence by the American Association of State Highway and Transportation Officials, it states that it would take at least a hundred feet of dense vegetation to provide the same benefit as the wall, and quote, "Because of this, the FHWA administration has not approved using vegetation for noise abatement," end quote. Therefore, the staff is recommending that the currently approved

wall should remain in place, and we please ask that you keep the wall in place.

I have a copy of this if you would like it.

THE HEARING EXAMINER: Sure. If you would like me to have it, I will take it.

MS. MUSHO: Okay.

THE HEARING EXAMINER: So this is Lisa Musho.

MS. MUSHO: Right. So in closing what I wanted to just say is Bayshore is a unique community, and many of the homes are situated on large lots or large farming parcels; thus, the lower -- you know, the lower population. These are large farming parcels; so it's unique, largely due to the undisturbed beauty with the natural enjoyment of the environment that we live in; and once it's gone, it's gone forever.

So the proposed rezoning does not match what's described in the Bayshore Community Plan, Goal 18, and in the Lee Plan. It's not compatible with our community, and as we know, Goal 18 is to protect the existing rural, residential, agricultural, and equestrian-oriented character of the community by maintaining low residential densities and minimal commercial activities and exclude incompatible uses that are destructive to the character of this rural

residential environment.

So we ask, if Goal 18 is not applied and honored at this time for this rezoning, then at what other time would the use of this policy be applied? And we feel that it's now. So for all these reasons and that it does not match the components in the Community Plan, it's not compatible, we respectfully request that this rezoning be denied and we thank you for your consideration and time.

THE HEARING EXAMINER: Thank you. Mr. Lombardo, who should speak next?

MR. LOMBARDO: Michael Musho.

THE HEARING EXAMINER: Good afternoon. Thank you for coming.

MR. MUSHO: Good afternoon, Madam Examiner. My name is Michael Musho. I live at 17350 Wells Road. Before I begin, I'd like to sincerely thank the staff, the County staff, Mr. Adam Mendez, they've been very cooperative, accessible, and very professional with us, kind of going through this process we're not used to. We may not know certain aspects of the case, but I understand that they have a difficult job and difficult task to do, but I appreciate their helping throughout the process.

Our home is over 615 lineal feet of our property. The line is adjacent to the north property line of this proposed development. Our family home of over 30-years-plus and my family will probably experience the most effect from this development. Our fears are numerous and gives us great concern that at the recommended 87,500-commercial-square-footage densities is still too large, the business uses are too broad, and it is short on compatibility with the surrounding rural neighborhoods that we have our homes and lifetime investments in.

One of the concerns has always been sufficient separation and buffering between this commercial site and the adjacent Wells Road neighborhood. These separations required by the staff. They are fundamental needs of the community and irreplaceable. It was irreplaceable when a 61,000-square-foot commercial development was to be abutted against our rural residential homes and our neighborhood, and it is irreplaceable now. This was known to the applicant when they purchased their entitlement to the property, and this separation should remain.

I would like to briefly speak to the

preservation and the future of the preserve that's being proposed. The vegetation on there that is being portrayed, I don't see that as very accurate by the Applicant. Some of the things that were fogged over is the amount of exotics that will be removed, which is essentially it's separated into halves, the east half and the west half of the property. The west half, the exotics that will be removed anywhere from 1 to 24 percent; and on the east side, it will be from, I believe, 25 or 24 to 48 percent. Those vegetations will be gone forever. That's going to leave a very sparse view for us. I don't think there's been enough talk about that.

Actually, the staff's presentation showed a more true view of what things will look like. Palmettos are not high, pine trees are high, and all you see is tree trunks. It doesn't buffer sound as well, it doesn't buffer lights or trucks and noise, and vehicles pulling into the commercial site, flashing through that whole area with our home being right on top of that -- that house that is on top of that parcel is where we live.

75 feet is not a lot. I understand that for the applicants it is, but when that 75 feet is

being barraged by noise, lighting, disruptions, traffic, it's not a lot. That wall needs to be there. There's just no way that you can replace it. At least it will help the lighting, cars pulling in there. You got a commercial site where you have delivery trucks delivering all time of the night, early afternoon or early mornings.

We have friends that live behind Publix on Bayshore. They're totally frustrated by delivery trucks bringing in deliveries at 2:00, 3:00 in the morning into Publix, blasting their radios, and they have to be subjected to that. We're afraid of the same thing; so these are just really some of the concerns.

A little bit regarding the preservation of that preserve. That the site plan shows two dirt trails on it, one closer to Bayshore and the other one further back. Those dirt trails were really originally bridal trails that were used by people that have horses that they would ride their horses to Lawhon's or also by ATVs, four by fours.

We have -- we're an ATV community, okay. People have properties, they use their ATVs to do work on their properties, and also for recreation, and it's not unusual for people to go to Lawhon's

and pick up supplies or just, you know, even the teenagers that they are not -- they can't drive on the road because they're not old enough; so they take their ATVs and they go backroading, and they go wherever they're going to go. We draw ATV traffic from Pritchett and beyond that come just maybe to maybe go have a pop at Lawhon's store, which is kind of the hub of the neighborhood, grab a sandwich or, whatever they're going to be doing or just to meet up. And when they come, they cut through -- right through this parcel. That's what those trails are used for that. Even four-by-four trucks are using it. So my concern in preserving the preserve or the preservation of the preserve is that, once the commercial building is built, they're going to find their own trail to wherever they're going, and that preserve is going to be a dirt trail again. They'll find their own trail, and if there's any kind of protection we can do from the sides of the preserve, whether it's a four-foot fence, signage, I mean, just any kind of ideas that perhaps you can recommend or you can address.

The size. The size of this development, when I see the Bass Pro Shop that is being proposed,

it's daunting. It really is. I have to say it is -- it's like trying to fit a square into a round hole. It is totally not comparable, not comparable. It cannot fit in on this lot, it is not compatible, clearly.

Also, we have one big concern, and it's a very unpleasant topic for everyone, especially in the community, is the wellfield runs almost under the entire area of the applicant's property, whether it's in Zone I or Zone V.

Fuel tanks on top of a water supply, not only harms our wells because most people have wells in the whole area. They have it for their livestock, they have it for irrigation, they're drawing water from that, and the presentation about how -- it's interesting, it really is, how the county wells are depth and protected and how it's built is very interesting, but it's probably not going to apply to a lot of these wells that are around that may be or may not be affected by the water supply if it's contaminated; and having fuel tanks up to, I believe, 42 pumps that would require the amount of tanks, on top of exactly where we're possibly drawing our water from.

Now, I understand there are safeguards against

it. I understand there are ways to mitigate some of those things by additional linings, by monitoring equipment, but the concern with that is that it's not fail-proof. There's human error involved, there's complacency involved. Over the years, a number of years down the road, maybe we won't have a good steward of that site. Maybe they won't have the monitoring, maybe the monitoring equipment can fail, and maybe they can contaminate our water. Why take that risk? That risk is unnecessary. There are other areas within the Bayshore that -- where you can go for a gas station, if you need a gas station, which we don't.

We have a gas station, of course, on the west side, which is Love's, the truck stop; we have a Marathon, which is next to Lawhon's, all within close distance. A RaceTrac right next to Love's is already zoned for that, they had one there before, and I'm -- from my understanding, they're planning to have another one.

Also, in addition, if we're talking about a traveling public, then literally seconds away from this exit, Palm Beach Boulevard has numerous gas stations, they have hotels, they have Cracker Barrel, they have food. You know, all

these things that are feeling like, oh, everything has to be in this exchange, it doesn't, not if you're going to serve the public. If anything, this is a rural environment, a good country store. Let them get a nice taste of what country hospitality is, and the feel of country. This is South Florida, Florida. This is old Florida. Lawhon's is essentially almost a historical site. If anything, it should be a destination.

So these are just some of the concerns that we're having. And again, with all respect to the hydrologist and all the conditions that have been put on the wellfield, we must argue against placing fuel tanks anywhere into a wellfield, whether it's a wellfield Zone I, V, or X. It is an unnecessary risk to county water supply, and it would be -- I have to say that unnecessary risk is -- would be irresponsible governance for being a good steward of our environment. Especially, there are nearby alternatives. It's unnecessary, 100 percent unnecessary.

The Applicant will still have more than an adequate entitlement to be able to purchase their entitlement. When they bought the property, they knew all these things. There was not a gas station

approved on the previous zoning, and if there would have been, the wellfield zones were not even known about at that time. This occurrence is -- was kind of discovered with this application where we found out about it; so it's -- it's an unnecessary risk that is not necessary.

The only hundred percent safe and judicial solution to the wellfield topic is to exclude gas station fuel tanks and other contaminant risk business uses completely from this parcel in all wellfield zones.

Now, in the interest of time, I'm going to go ahead and just close, and the other serious issues will be, I'm sure, better articulated by our legal representative, Mr. Zach Lombardo and related witnesses.

So I thank you, Madam Examiner. I appreciate your time, it is -- I have the utmost respect for what you guys do -- even, you know -- it's just -- it's a very interesting and detailed kind of line of work, and I can see that it's not an exact science. Everybody does their best, but ultimately, we have to keep the citizens of this county in mind. We have to think, the purpose and the spirit, not only what you see on paper, but the

spirit and the intent of the Lee Plan. I think it was done in good conscience to preserve things, to help grow. We're not against growth. To help grow Lee County in a responsible way.

Some of the things that are being proposed, they're not responsible, they're wanted, not needed. I had -- I had this old guy once said numerous times to me that it's one thing to want something, and it's another thing to need something. Another thing he had was that just because -- just because you can do something, doesn't mean you have to do it. Well, my father's passed away, but those words ring loud and clear forever, and should be for everyone. Thank you.

THE HEARING EXAMINER: Thank you.

MR. LOMBARDO: Susan Swift, and if we could start the PowerPoint, I'd appreciate that very much. Thank you.

THE HEARING EXAMINER: Susan Swift. Good afternoon. Thank you for coming.

MS. SWIFT: Good afternoon.

THE HEARING EXAMINER: No. We're making good progress, I think.

MS. SWIFT: Good afternoon. My name is Susan Swift. I'm an AICP certified planner. I work for

Boggs Engineering in Plant City, Florida, and I do -- I have been previously accepted here as an expert for land planning and for the County's plan and planned development code, and I also have for you a resume and copies of my resume and report.

THE HEARING EXAMINER: Okay. Do you mind just giving us an overview of your education and work experience because, I apologize, I'm sure you've been before me before, but I've done hundreds of cases, and I think it would be helpful if you just give us that summary.

MS. SWIFT: Sure. I have -- as I said, I'm AICP certified. I have a master's in planning from the Florida State University. I have more than 40 years of experience, almost, most of which is in Florida, the west -- all of which is on the West Coast of Florida, with the exception of my experience in Virginia and Maryland.

I have been the planning director for the City of Tampa and two other city jurisdictions, and in between I have worked for regional and local and national architectural and engineering firms.

THE HEARING EXAMINER: Okay. So it sounds like you have a lot of experience in planning, and I can accept you as an expert in your planning.

What is your familiarity with the Lee Plan and the Lee Land Development Code in particular? If you could just give little --

MS. SWIFT: Yes. I have been in this room representing at least one other client previously and have two other cases in this -- in the county right now.

THE HEARING EXAMINER: And did you review the Lee Plan in preparation for your testimony today?

MS. SWIFT: Yes, absolutely, and the code.

THE HEARING EXAMINER: All right.

MS. MONTGOMERY: Can I ask you what case you represented here?

MS. SWIFT: It was a -- it was a storage facility on Palm Beach Boulevard.

MS. MONTGOMERY: How long ago was that?

MS. SWIFT: Two years ago.

MS. MONTGOMERY: And that's the only case you've done in Lee County, testified?

MS. SWIFT: That is the only case I have testified for in Lee County.

MS. MONTGOMERY: Okay. Thank you.

THE HEARING EXAMINER: Okay. Proceed.

MS. SWIFT: Thank you. When I did my initial research for my report, I felt pretty strongly that

this proposed project was not compatible with the Musho's residence and the other surrounding properties, and I was also very confident that it did not comply with many sections of the Land Development Code. And then I did my site visit, and the first word that came to mind was "premature." Premature because this entire area is still very rural, very rural and residential, and this huge expansion would be quite detrimental to the surrounding property owners.

And the good news is the current plan, Bayshore Plan -- I'm sorry, the current application and the 2006 zoning that was approved on this site has 61,000 square feet authorized, and it could be built tomorrow. So I'm going to show you a comparison of the current and the proposed, but first, I wanted to make a few comments on what I've heard so far today, and in the presentations that I've heard from the Applicant and actually a few items from the staff that really give me more pause or more ammunition toward my conclusion that, before any more square footage or these much more intense uses are approved for this location, that the minor commercial is not what you see before you. A future land use map amendment is necessary

if this kind of development is what the County really desires, and the community should be able to engage in that planned amendment process.

THE HEARING EXAMINER: I'm going to break at 3:00 just so that everyone knows, or at the conclusion of your testimony. Don't feel like you have to wrap up by 3:00, but one or the other.

MS. SWIFT: I won't, but I should be done by then.

As I said, not only is it not minor commercial what you see before you, which I'll get to again later, but it's premature. You've seen testimony about Florida DOT's PD&E and cross-sections and how they could change the character, despite the fact that there is a policy that says the character should not be changed. Policy 18.2 specifically says that that -- any improvements to that road must maintain the rural character. Hence, maybe the whole area needs to be looked at.

The market analysis, really this is being used to justify additional square footage, but there's really nothing that I've heard that says this is justified and it's rural residential, or it's compatible with rural residential.

So it is much more of an ask than a PD

amendment. It is really changing -- if approved, would change the entire character of this area, and that is not the intent of the overarching Bayshore Community Plan.

Again, if that's what's really needed and desired, then a land use plan amendment is really in order, not just a PD

The proposed uses really are egregious. They're not minor commercial activity, as called for, they far exceed the neighborhood uses that were approved on the existing CPD that isn't in effect. The uses you see now are more akin to the general commercial zoning district, which I could be out on a limb here, but I don't think that would ever be approved in a location like this or in the Bayshore Community Plan.

THE HEARING EXAMINER: Well, what do you make of the over nearly 25-year or 20-year designation of this area as a general interchange on the future land use map? And I'm curious as to what map amendment you think would be necessary to accommodate commercial development because general interchange is one of the more intense land use categories, and it predates the adoption of the Bayshore Plan. Now, I'm not saying that there

shouldn't be balance, but some of your testimony is confusing to me, and I want to allow you to clarify.

MS. SWIFT: I will clarify, and to your point, the Bayshore Plan was put in effect after the interchange general land use category was put in place; so it doesn't mean that the County or the Applicant gets to ignore the Bayshore Community Plan just because there was --

THE HEARING EXAMINER: Right. I agree balance is necessary, but I'm puzzled by what map amendment you think would occur -- be necessary.

MS. SWIFT: Well, to me, this is not a simple PD amendment, as I think it's trying to be processed and characterized by the Applicant. It's -- the magnitude of the uses -- and again, I have a lot of explanation of why -- the magnitude of the uses, the intensity of the uses, the number of uses --

THE HEARING EXAMINER: Right. I understand that you find it's incompatible with the area. I just wanted clarification on a couple of your statements.

MS. SWIFT: Sure. I think those uses are inconsistent with the plan; so if the County wants

to approve this project, then, first, a plan amendment --

THE HEARING EXAMINER: To what though?

MS. SWIFT: To the Bayshore Community Plan or the Lee Plan. Just something because --

THE HEARING EXAMINER: Okay. So you're saying a text amendment, you don't mean a map amendment?

MS. SWIFT: Sorry.

THE HEARING EXAMINER: That's where you had me --

MS. SWIFT: Yes. There needs to be a comprehensive look at this area if this -- if this level of development is what is now appropriate, it does not align with the plans that we're speaking to.

THE HEARING EXAMINER: I'm not trying to put you on the spot, I'm just trying to understand your position.

MS. SWIFT: It's fine. No problem.

So as I said, I'm going to start by -- this is the property that you've seen a few times, and as I said, I'm representing the Mushos, and this is just -- I'm not good at graphics. This shows the middle column is the amount of square footage allowed and all of the kind of high level

components of the plan that's in effect at the time, and on the right is what is -- and this was based on the July submission. There's certainly a lot of things going on and things changing even with yesterday's letter, but I was trying to find a baseline; so there is a lot of -- certainly way more square footage, the out parcels are smaller, the setbacks are actually bigger in some places, the -- just the building setbacks, and then, of course, the height, as we've talked about was -- is now double what it was, and the uses are at the bottom, and I just selected a few, but this -- I think this shows how different.

There are 150 uses in the list here, there were only 37, and those 37 were more like a neighborhood commercial, like, the CN-2 or the CN-3 kinds of uses. When you read the intense statement for those, they kind of fit near -- near residential, and they're lower intensity uses.

When you look at the list of uses provided by the Applicant, they are not. They are clearly general commercial uses, and I'll show you later why even the code says those kinds of uses are not compatible with the area that we're speaking to.

When the plan was -- you've seen this before

too, but I'll get to the thought of -- theme of predictability and reliability, but there was an idea here. The -- going back -- you actually can't see on the bottom. There were design guidelines and standards and a picture that essentially had to be -- consist of -- the final product had to be consistent with -- with that and certainly wasn't going to look exactly like it. There were also design guidelines that this project was -- is supposed to comply with. I have not seen -- I could have missed it. I have not seen those design guidelines or anything like it mentioned in anything that we've seen so far, and I haven't picked that up as a condition from --

THE HEARING EXAMINER: Well, they're baked into the Land Development Code; so I frown on them incorporating conditions that are already covered by the code.

MS. SWIFT: Well, in the current plan it mentions that code section, but it also adds two other design-related conditions that I haven't seen.

So this is why the plan -- why we think this is so much different than the plan, that it requires either a map amendment or text amendment

to either the Bayshore Plan or -- and it's not something we're advocating for, we're just trying to make the point that what you see before you is so different from those plans and so different from what's there now, and what is there now was deemed to be consistent with the plan and consistent with the Bayshore Plan. No changes have been made to those plans since. No changes have been made to the surrounding uses. There is nothing that triggers the amount of uses, the amount of intensity, and the heaviness of the uses that are being proposed.

So some of the themes that you'll hear me mention is this undermines the intent of the Planned Development District, which is supposed to give some certainty, yes; flexibility; creativity; but we don't think there's any creativity here, and we think there's too much flexibility, and I'll get to that.

It's not predictable. The Mushos and the other surrounding property owners cannot predict not only what it's going to look like and what it's going to be like and what the uses are going to be, but then they can't predict or have a good feel for what those impacts are going to be, and I think you

heard that from Mr. and Mrs. Musho themselves.

And then there are things that the code talks about, minimums. That's what the code is all about. There are places in the Comprehensive Plan that talk -- speak to adequate, and in some cases, appropriate; and in the number of deviations that you're seeing, these are not even meeting the minimum, they're not offering anything in trade-over, making a better this in order to compensate for that. It's really -- the PD is really kind of being used to minimize the requirements instead of minimizing the impacts.

So this is just some of the more detailed -- the next level of those themes. It's much more intense than other projects that have been approved. The increase is -- in height is two stories to four stories; and then frankly, there's really a fifth story, and I can talk about that later -- or a fifth level, not a fifth story.

And I think one of the other things that I will mention is, if a project needs this many conditions and this many really specific conditions: If this happens, you don't have to do this; if that happens, you do have to do this; and you only have to do part of it. To me the number

of conditions and the specificity of them almost speaks to the use isn't really compatible because you shouldn't need that many conditions for buffers and landscaping and where the drive-through's going to be or not going to be. There's just too much proposed for this new version of this PD.

I think I've mentioned several of those. All the adjacent properties except for two sites are zoned AG-2. That is, you know -- they do have -- on the west side and the north side, they do have interchange, but to the east, they have a lower intensity land use plan designation, and then almost every single property has an AG-2 zoning district; so they're not there yet to the level of intensity and use that is proposed in this project. And then the other thing is that there are a lot of kind of moving targets, and it is hard with the different concepts. I'm experienced with concept plans, multiple concept plans and trade-offs, but I think, when you add all the variables within those, and the variables within the staff conditions or the proposed conditions, it's really not something that the stakeholders can really rely on.

So to my general planning -- my planning stuff. I believe this PD amendment really violates

the three basic premises of land use planning, and that is consistency with the plan, compatibility with the uses around it, and even the zoning districts around it, and compliance with the code.

The intensity and uses, there are multiple goals, objectives, policies in the Lee Plan itself, in the Bayshore Plan, and even the interchange land use category isn't exactly on point with what's being proposed.

Toward that end on the bottom, it says, "Uses should be intended primarily for low-intensity commercial, and they provide appropriate buffers for visual amenities." Yes, it's all in the eye of the beholder when you're talking about visual amenities and buffers, but this isn't saying, "minimal," it's saying, "appropriate," and I think you've heard a lot of testimony and the staff's opinion. For the level -- the number of uses, the kind of, you don't know what uses are going to be where, and the intense CG kind of uses, the buffers, I don't think, as a planner, are appropriate for the uses, the types of uses proposed when they're next to single family.

These are just examples. I won't read them to you, but these are examples of policies in the Lee

Plan, in the Community Plan, and in the land use category itself that this project or this application is not consistent with, and you've heard many times, minimal commercial activities.

The -- the application in terms of compatibility, I do want to clarify. I was a little confused because today in the earlier versions there was a ten-percent bump up. Today I heard 125,000 square feet, but in the application materials and subsequent materials, there was the ability to get more square footage through an administrative approval. I didn't hear that mentioned today; so I wasn't sure if it was off the table, but that's where I got the --

THE HEARING EXAMINER: I would like clarification on that as well.

MS. SWIFT: Repeating the -- beating the dead horse, it's not minor commercial activities, and again, I think it's premature for this area -- this entire area, in addition to being next to the Musho's single-family home.

The height is -- it says 48 feet or four stories for the hotel. I -- I talked to our architect. 48 -- four stories is kind of hard to get. It's possible, but it's hard to get into

48 feet for certain brands of hotel that I assume would be at this location.

And then something that I think the conditions don't address is there are a lot of hotels, including the one I'm in, that now have rooftop uses, and so there's really a potential here that it's really five stories, and it was only two stories -- you know, the uses here on this whole site were only one or two stories before, 35 feet.

There's also something in the materials that say -- and it might be in the conditions from the staff version, that says, "Accessory buildings for the hotel could be up to 35 feet." I don't know how many accessory buildings a hotel like that would have or what they would be used for, but 35 feet seems like a lot.

So there's some other compatibility issues there. Again, we don't think this height is -- is appropriate or compatible next to single-family or the AG-2 properties, even though they might be vacant right now.

And then, again, the uses, I probably lost count, but there were 37 uses that were fairly specific in the existing entitlements. They did not have gas pumps, outdoor storage. They were

more neighborhood, what your code calls low intensity or neighborhood commercial uses, that by design would be retail, office. They don't have, in most cases, 24/7 operations, they don't have -- they might have deliveries in the back, but they don't have semi-tractor-trailers at 2:00 a.m., delivering things, they don't have multiple deliveries, they don't have multiple truck deliveries, they don't have large dumpsters that -- large multiple dumpsters that slam down in the middle of the night. There are a lot of things in this list of uses that are not compatible with this area or with single family in particular, and they have a lot of negative impacts on residential.

So even when we talk about CG uses -- and I believe the staff report even states that these are more CG uses on this list. And when you look at the code, it says right there that -- "which are not suited for and do not generally seek locations in neighborhood, community, or regional shopping centers." And then further down, "and are relatively sensitive to the impacts of adjacent" -- you can't see -- "land uses," I think it says, "generating substantial impacts on their neighbors."

So these are the uses. If you compare these to the CG uses, you will see that they are not an identical match, but they are pretty darn close.

And then, again, this is the definition of "compatible," which you have also heard, but I think it's important to see the specific criteria within that definition and how these uses -- they talk about the similarity in uses. There is no similarity in uses when you're comparing open storage, park-and-ride lots, car washes, these things that have a lot of noise, lighting, and other impacts. It's not just the height, it's really the operational and logistical components of these heavier uses that are kind of piling onto the neighbors that live next door to this.

The major heavier uses do not provide reciprocity to the Bayshore's rural residential character. There are -- in the italics are words right from the definition. There are actual or potential conflicts and negative impacts from outdoor storage, mechanical equipment, security lights that are going to protect the mechanical equipment that's stored outside. There's just a whole litany of negative impacts.

Even 75 feet away, that result from this list

of uses, as opposed to the uses that are there now that have been deemed compatible and that are perfectly fine retail and office uses for a location like this.

And then lastly, there are no predictable or reliable limitations on size or intensity, and these result in significant harmful and negative influences, and -- on the surrounding properties; so they're not compatible, and I think some of the things that I mean when I talk about uses is the current PD was deemed to have minor commercial activities that were similar to these neighborhood districts, low intensity retail office, medical office. Those have more minor negative impacts, less noise -- yes, you can buffer the back of a building, a small shopping center or a shopping center, but they're not going to have the level of deliveries, the lighting that a car dealership might have, deliveries that grocery stores or big box or any of those. They're two completely different perspectives from a planning standpoint from what's approved now for this site and what's being asked for.

I think buffers can be used to mitigate the impacts of neighborhood kinds of uses, small retail

uses, specialty retail offices, but I don't think that the types of uses that we're seeing on this list, most of them, that are heavier, that have these operational and logistical things can be mitigated -- their negative impacts can't be mitigated by -- even though we're asking for the wall -- by a wall or landscaping. There is a compatibility issue before you get to that. And I say it's like lipstick on a pig. You know, if these uses aren't compatible, then a wall isn't going to make them compatible.

So I think what we're asking of you is to look at, first, are these uses compatible, and therefore consistent with the plan because we don't think that they are. We think that the list of uses that's approved now are consistent and are compatible, but these -- this application takes things to a whole other level.

And then we go to compliance with the Land Development Code. Again, I certainly won't read all of these, but this is -- these are just examples of the things that we think make this not only not compliant with the Land Development Code, but lean to, okay, it makes it -- it's still not compatible or it's certainly not compatible.

And as I mentioned, there was a lot of discussion. There's minimum standards. There's a lot of terms in the code and the plan that say, "adequate" or "applicable," and with all the deviations that are being requested, they're not even meeting the minimum standards. So they're substandard, and in those cases, they're not adequate or acceptable or appropriate. So those words are used a lot throughout the plan and the code, mostly throughout the plan, minimum is the code; but the plan policies use "acceptable" and "appropriate" in many of these things -- these policies that speak to protecting residences.

And I think, as I've probably gone on and on, about the heavier commercial uses, truck terminals, car dealerships, crematorium, those are really not meant for being next to residential, and in my planning opinion, no amount of buffer mitigates those impacts.

The location of uses aren't specified. There's a lot of things that are at play and not very predictable. I mentioned Condition 11, the height issues. I already discussed those. I think the 35-foot height for accessory uses -- accessory structures for the hotel, I'm not sure what that

would be for.

The deviations, Deviation 1. They actually -- by approving them, some of them are recommended for approval, but the deviations actually increase the intensity even further, and in some cases increase the -- decrease the compatibility at the same time, but by lowering the lot widths and lowering the lot sizes, which have gotten staff approval, that allows more on this site; so there are just a -- when you add them all up, it really does not seem compliant with the code, for sure, and those all added to that makes them not compatible with those uses. And the plan says, if it's not compatible, then it's not consistent with the plan; so it all flows uphill, as they say.

I won't get into this because I think everybody's talked about it a lot, but, again, it's kind of my -- for the buffers -- buffers are good for uses that are appropriate, and they just need a little shielding or a little minimization of where you put the dumpster, but these uses, I feel, just are elevated to a completely different heaviness and not appropriate for this location.

So I think in a lot of these newer uses that have been added, the buffer is not really going to

mitigate the lighting and the dumpster noise and the semi-tractor-trailers and all of those things.

And then the -- as I mentioned before, the Lee Plan calls for PDs in a lot of situations. You can't get this kind of use anymore unless you do a PD We want to make sure this -- this -- we know what this is going to be; so you need to do a PD. There's a lot of requirements for PD by virtue of the plan policies, and we think that -- I think that this undermines the way -- all the flexibility -- flexibility is good, development is good, but there's too much development here, it does too much flexibility, and you can't really get a handle on what's going to be there and where it's going to be located.

There's nothing creative about either of the site plans and the trade-offs or conversion mechanisms are fine, but there's four pages of things that they can swap around in terms of their list of uses, and that's just too much. There's not -- there needs to be a narrower list like what is in the approved CPD right now.

And again, the flexibility in PDs across the country is intended to minimize impacts, if you can come up with a creative way of doing something

that's not by the book, not to minimize compliance; and in this case with all those deviations, this minimizes compliance, and actually makes things less compatible.

Cannot be relied upon. That is actually in Subsection 2h of the PD code section, and it specifically says that users of -- stakeholders, users -- I don't remember the exact word -- but need to be able to rely upon the process and the product of the PD, and we think that there's too many unknowns and deviations.

So, as I mentioned, there are a lot of issues that really make this bigger than a regular old PD amendment. The uses are far greater in number, far heavier, the height is far greater, the amount of uses. It really surpasses the plan itself, what the Bayshore Plan and the Lee Plan call for, and surpasses even the interchange -- general interchange definition for that category.

We don't really -- we don't believe that the staff's compromise mitigates the inconsistency issue or the incompatibility issue. Yes, there are -- they have reduced some of the uses in the list, but there are still, I don't know, 50 uses that should not be located here, and they've

certainly added some conditions, but they don't go far enough in the height. They don't -- they've approved deviations that we believe make the compatibility issue worse, not -- less compatible -- not less compatible -- they don't fix the compatibility issue, and we really think that the compatibility and the inconsistency issue are overriding, and as a result, we believe that you -- we hope that you will recommend denial of this for these reasons.

Its surrounding uses and zoning have not changed since 2000, despite the fact that the interchange land use category was placed on here in 1989. The Bayshore Plan came after that. Perhaps the Bayshore Plan was specifically intended to kind of calm those interchange uses or intensities down; but nevertheless, the Bayshore Plan exists, even if the interchange general land use category existed beforehand, they have to meet both.

So it's not consistent with the plans, it's not compatible with the existing uses or the zonings that surround it. The intensity really exceeds other projects approved in this area, and the height -- the placement of the location -- the lack of location for these things -- there was one

thing that was mentioned in the staff's presentation that said the condition about the drive-through being on the -- one side of the building, and that was too restrictive, and I think the response was, "That's the way it was before." Well, there were -- there were no fast-food drive-throughs in the current approval for this, there were drive-throughs for permitted uses, but then the resolution in place now says, "No fast-food. No fast-food." So I guess that's a drugstore drive-through, but that is definitely not the same -- the approval of this would not be the same condition for drive-throughs as it is in the present CPD that's in effect at the time.

So we really think that the deviations make it less compatible, less consistent. We're disappointed that several of them were approved that do make it more intense. They're allowing smaller lot sizes for the out parcels, and they also further reduce the compatibility. And so for those reasons, we respectfully -- I respectfully request that you recommend denial on this, and I'm happy to answer any questions that you have.

THE HEARING EXAMINER: Okay. Do you have a copy of your PowerPoint for me as an exhibit?

MS. SWIFT: Yes, I do. I can give you this one, or should -- should I give you this one or email it?

THE HEARING EXAMINER: No. I'd prefer if you give it to me.

MS. MONTGOMERY: And if we could, could we get two copies of that?

THE HEARING EXAMINER: Yeah, we can do that. This will be Swift Exhibit 1. Thank you. Did you get one?

MS. SAPEN: Yes.

(Swift Exhibit 1 marked for identification.)

THE HEARING EXAMINER: Okay.

MS. SAPEN: Thank you.

THE HEARING EXAMINER: I don't have any questions. I know that you have the right to cross-examine. I know you disagree with just about everything she said. I'm going to urge you to allow Jenn Sapen to explain how and why you disagree during your rebuttal time, but if you want to cross-examine her, you can. I'm just -- in terms of what's going to be effective because you're not going to flip her; right? I haven't seen it yet in 13 years. I haven't seen it yet.

MS. MONTGOMERY: Well, I thought we were going

to take a break at 3:00; so if you could take a break at 3:24, that would assist us in having some communications.

THE HEARING EXAMINER: Okay. I'm going to take only a five-minute break because I'd really like to wrap up public input by 4:30 if that's at all possible. We have two more witnesses, I believe, and then we will -- I understand there's been two days reserved for this hearing, and we can just flow over to tomorrow for you addressing questions and making some rebuttal and final remarks in connection with the application.

So five minutes, and we'll come back.

(Recess held from 3:25 p.m. to 3:35 p.m.)

THE HEARING EXAMINER: Okay. We're back on the record. The we just concluded the testimony of the planner that's representing the Mushos, and she is available for questions.

MS. MONTGOMERY: Well, I have to say everybody was persuaded by the hearing examiner's recognitions that I have a lot of questions, and that perhaps in the interest of time and clarity, it would be best if I have Jennifer do it; so I'm going to forego my Perry Mason moment and --

THE HEARING EXAMINER: I haven't seen it be

successful; so I think you're making a wise decision.

MS. MONTGOMERY: It only entertains me, apparently.

MR. LOMBARDO: For the record, I would also be very entertained by that, and I'm a little bummed.

THE HEARING EXAMINER: Okay. So then may she take her seat?

MS. MONTGOMERY: Yup.

THE HEARING EXAMINER: Okay. And, Mr. Lombardo, who is next?

MR. LOMBARDO: Nathan Poole, and then me, and then we can get on with it.

THE HEARING EXAMINER: And how do I pronounce your last name?

MR. POOLE: Poole.

THE HEARING EXAMINER: Nathan Poole?

MR. POOLE: Yes, ma'am.

THE HEARING EXAMINER: Thank you for coming.

MR. POOLE: Of course.

THE HEARING EXAMINER: Mr. Poole is an engineer?

MR. POOLE: Yes, ma'am. I've got my resume here if I can provide as a hope of being an expert witness in transportation planning and traffic

engineering.

THE HEARING EXAMINER: Okay. Thank you. I appreciate this. This will be Poole Exhibit 1.

(Poole Exhibit 1 marked for identification.)

MR. POOLE: Awesome. And also, if I may, I did provide an opinion letter. If I may provide that as well?

MS. MONTGOMERY: Thank you.

MR. POOLE: I believe it may have already been entered in the record.

THE HEARING EXAMINER: And we'll call it Poole Exhibit 2.

(Poole Exhibit 2 marked for identification.)

MR. POOLE: I work for the transportation firm VIBE. I've been with them since the inception. I've been with the owners ever since in my professional career. I will make this somewhat a short speech. Everybody can hear me okay?

THE HEARING EXAMINER: I can hear you fine. If people can't hear, please raise your hand.

MR. POOLE: All right. That's resume, opinion letter. That's me, licensed in the state of Florida.

Traffic objections. So we just had a couple general concerns here. Obviously, we're looking at

operational and safety concerns with 78, related to the projected capacity failure that's been brought to light. From an operation and safety concern, we're talking congested-related crashes. That typically consists of rear-end crashes, Good Samaritan crashes, which would be left-turn and angle crashes, typically if a person --

THE HEARING EXAMINER REPORTER: Will you please, please, please --

THE HEARING EXAMINER: Slow down.

THE HEARING EXAMINER REPORTER: A lot. Thank you.

MS. MONTGOMERY: Can I ask a question? In light of the fact that we're missing some of your words, do you have an extra copy of this?

MR. LOMBARDO: Yeah. I handed you a full -- all the slides. Oh, that's in the other one.

THE HEARING EXAMINER: Do we have that? Did I get that?

MR. LOMBARDO: Yes, you have the full PowerPoint.

THE HEARING EXAMINER: Oh, I see. It's in the PowerPoint that they gave us.

MS. MONTGOMERY: Thank you.

MR. POOLE: And I will try to highlight it as

well.

THE HEARING EXAMINER: Okay. Speak slowly.

MR. POOLE: Yes.

THE HEARING EXAMINER: Because she's got to take down every word, and we rely on that.

MR. POOLE: It's impressive. I can't do it.

So as we were saying -- so we're talking congested-related crashes. These are typically rear-end crashes, Good Samaritan crashes. These are folks who stop short. There's congestion there. Some person is waving, you're free to go, person pulls out because they believe it is clear, Good Samaritan instructed them to go, and the person that really wasn't clear ended up hitting them in the opposing lanes. So, again, those are the kind of concerns we look at from an operational and safety concern related to congestion.

And then second of all, here we're talking about potential concerns with getting approval from FDOT for access, particularly the driveway being requested on State Road 78.

So that road itself has an access management classification of Number 4. That has a driveway spacing requirement of 660 feet. Currently, as they had proposed in the plans, we were looking at

the nearest driveway to the west being 550 feet away, and the nearest one to the east being 500 away. So not only does that not fall within the standards, it doesn't fall within the ten-percent deviation that's typically taken into consideration when trying to approve a driveway access.

In addition, because they are requesting access off Wells Road, which would be considered adequate and sufficient, the department, unless there's other justifications as to why, it seems unlikely that they would approve it that way on 78.

In addition, the study also did mention the potential for a traffic signal being needed at Wells Road. Back to spacing requirements. This would not meet the spacing requirements today -- we'll get to the 78 project, the PD&E study on that later -- but would not meet the requirements today of 2640, as the nearest to the east is Nalle Road at 1330, and the nearest to the west is the northbound 75 ramp at 1630.

So again, when you're looking at putting a signal in there, you've got a congested roadway, you're looking at potential operational and safety concerns, (unintelligible), and that could potentially spill into the I-75 interchange

influence areas. These are hesitations that could be felt by the department to approving such measures.

And then go to the next one here. I will definitely summarize this. On the left we're talking about State Route 78 failure. Again, I think we all agree that it's been shown to be caused but in the background; however, if you take out of background, and as we note here the existing volumes that were used in the study from the 2020, if you had taken the projects -- the development project's trips and added them directly to 2023, it also would have resulted in a failure. So it's not that, because it fails in the background, this should be taken lightly because it's a background problem. I mean, it's a background problem, but it's not -- this is not a light development, this is not a light intensity in terms of trip generation.

So when we're talking background growth, I did peek -- because it was 2020, we've got a little bit more data these days. I did peek at the Florida traffic online that FDOT has that post up all the AADTs throughout the state, and they have a portable traffic monitoring site, P.T.M.S., located

on the east side of Nalle Road. When looking at the 2020 A.A.D.T., the average annual daily traffic -- so what you see on an average day -- in 2020 it pulled up 14,300; in 2022, 17,300. That's a 21 percent increase with ten-and-a-half percent annually. That's a lot.

That ties into here because in the background growth the study -- the study used 3.85 percent, and when I looked at it using the same source but different data, 2012 to 2021, I was at 5.75; so again, you're seeing that that percentage is actually higher than what you really should be anticipating or what the study was anticipating, so again, you've got a background concern. Throwing more mud at it isn't going to help.

Also, I did want to note though there was one part in the study that didn't quite make sense compared to the previously submitted document. In the November 17th submittal, it did indicate Pritchett would have a background growth of 12 percent, but when we looked at the project traffic volume worksheets in the December 6th, 2020 submittal, they only applied a two percent growth. So there could have been a little inconsistency there, but again, it just could affect the

background growth. We want to make sure we're -- you know, we're talking some big stuff here. We want to make sure we are capturing it.

So, as Nelson mentioned earlier that, because of the pass-by, the 20 percent pass-by rate, we're looking at, well, this development could turn around and actually alleviate some of the currently stressed Bayshore Corridor by removing some of the traffic that must travel further west. So the kind of kicker to that is, while the trips coming in -- that's 20 percent less coming into the corridor, per se, because 20 percent coming out -- or 20 percent that's already there that's turning in and not turning out. Even with that, we're still seeing this projected failure. It's 20 percent, one-fifth, less than a quarter. It's not a significant amount; so it's just something that you should also take into consideration. It's nice, it helps, but it's not that big of a difference maker.

Go to the fourth one. It's been brought up about 18.2; so I won't babble too much about that one, but I will talk about 2.2.3. So we are talking there about, you know -- it's been noted that 78 will be over capacity in the future. We all understand the department is in the planning

stages for the widening project there on 78. As of May 2023, the design, right-of-way, and construction phases are not funded.

When you're looking forward now to 2028, which is the anticipated build-out for this development, it's not in the current five-year work program that goes through 2028. It's highly unlikely to be brought in, at least in my opinion; so that -- while it's great to have the discussions, it's about, you know, how would this fit in with the improvements. If this is allowed to come in earlier, it's not going to be there. And even as that's been noted, you know, it's not in the five-year work program; so they couldn't account for it anyways. So it's great for a discussion to have for another day.

That kind of leads into -- actually, so in terms of trying to bring the project forward in terms of funding, there is the Moving Florida Forward program, which is part of the governor's program to alleviate congestion. There's 20 projects that were identified, and this was not one of them; so again, just the likelihood of it being pulled forward prior to 2028 into this five-year work program is --

Kind of talking just about some of the elements that they did bring up during the presentation. While the proposed typical section may include urban elements such as curb and gutter, this doesn't automatically change the area to be urban. A great example is actually the State Road 52 interchange in Pasco County. They did widen it. I believe it was when they widened 75, which would have been about eight years ago when it was done.

They put in curb and gutter as a part of widening the interchange, and as part of that, everything else, even today, is still agricultural. It's farmland. It's rural. Just because you put curb and gutter doesn't make it urban in terms of changing the overall context of the entire area.

In addition, there's other considerations that could have been made by the department to choose curb and gutter over a flush shoulder option. Going with the flush shoulder and open drainage does require additional right-of-way. That's money. There could have been -- I was not in the public meetings. I can't speak towards what it was that made the decision, but it could have been public opposition as well. "You're taking more of my property."

By allowing the closed drainage system and putting the curb and gutter, allows for a tighter typical -- of uses, right-of-way, and impacts -- public property impacts, the right-of-way takings, and cost.

The only other thing I would say is just, you know, short segment or not, it still would be considered a bottleneck when we're talking about this segment that's failing on 78, tying that back to the capacity problems associated with 2.2.3, where it says in there, you know, if you have -- if the capacity isn't there for certain facilities, transportation, a prime -- or excuse me -- you may be able to defer or deny the request and provide -- not safe harbor, but priority to the already pre-developments, which this one has, and so in our case, because it is unfunded -- again, as of May 2023, it was an unfunded project for design, construction, right-of-way. This seems like a prime example of at least pushing this down the road.

Let's reconsider. Let's find out the timeline from the department once it comes on, and then let's start figuring out what's reasonable, and what's not.

With that, call it good.

THE HEARING EXAMINER: Thank you very much.

MS. MONTGOMERY: I just have a couple --

You're located in Tampa; is that correct?

MR. POOLE: That is correct.

MS. MONTGOMERY: Apparently you used to work for FDOT?

MR. POOLE: I am part-time consultant staff currently. I've been a consult staff part time. I do inhouse support for the FDOT District 1 traffic systems management and operations group; and I've been with them since 2017, '16.

MS. MONTGOMERY: And so are you allowed to do private work that conflicts with your FDOT work?

MR. POOLE: It doesn't conflict. So when I -- if anything I do on the consultant side in terms of my work for VIBE, if it conflicts with anything associated with the department side of things and my duties there, someone else handles it. This could be an example -- another wonderful example of what happens, because it does happen multiple times. As my work with VIBE, I still do traffic design. I still design signals, markings, ITS, and all that fun.

When I do that, I can't review my own work.

My constituent there at the department can't review my work because that's a conflict of interest. They have other staff that reviews it.

MS. MONTGOMERY: Okay. So when Mr. Inge or Mr. Treesh coordinate with FDOT on the permitting access, you can't be involved in that; correct?

MR. POOLE: In this one? That is correct.

MS. MONTGOMERY: And so you don't know what occurred in those conversations?

MR. POOLE: I was not involved.

MS. MONTGOMERY: So in your letter you talk about whether they can or can't get access, but that's speculative because --

MR. POOLE: That's my opinion. That's not the department opinion, that's my opinion. There was no coordination with the department in terms of providing their opinion and that being reflected in my letter or in this.

MS. MONTGOMERY: So FDOT's opinions that they provided to us are controlling and not --

MR. POOLE: Have nothing to do with me.

MS. MONTGOMERY: Okay. Thank you.

MR. POOLE: Anything else?

THE HEARING EXAMINER: No, I don't have any questions.

I'm ready for Mr. Lombardo.

MR. LOMBARDO: Thank you very much. My name is Zach Lombardo. I'm here on behalf of Lisa and Michael Musho, the property owners to the north. You have also heard from Susan and Nathan, who introduced themselves; so we'll move along. I want to focus this and try to keep my presentation very simple.

We have a principal objection, and it is this: It is that the proposed increase in commercial intensity, that's all of the things that go into that, and the decrease, at the same time, of compatibility measures is far in excess of what's permitted under the Lee Plan, and as requested, is inconsistent and should be denied.

The Mushos completely understand that their neighbor to the south is a commercial development. They understand that there's no floor-area ratio, as was discussed earlier, but that doesn't mean there are no guardrails anywhere in the plan to guide what should happen from a development perspective here.

And to show the magnitude of the request, I think there are two tables that are really helpful, and one of them is from the staff report. The

staff used this table to figure out how to get to its recommendation, and it went and found all of the general interchanges in the county and figured out what their square foot per acre was; and from here seems to arrive at a baseline of 10,000 square foot per acre as the average.

But what is not in the staff report is this much more pixilated table from my letter, which I'll provide you a copy of. This is an analysis of the square foot per acre of the CPDs in the Bayshore Community, and here we have the -- on the right, what is being asked for in the staff approval. We can ignore the middle line, I believe, subject to clarification. We're not talking about a ten percent increase anymore, but 14,000 square foot per acre is the ask, 10,000 is the recommendation, and if we go back to the interchange table, what we will see is there's -- and you can't see the bottom corner here, but there's no 14,000 square foot per acre in any interchange anywhere in Lee County. And the other interchanges, like Daniels interchange or the Gateway/Airport interchange are not in a rural overlay that provides additional protections.

And so at the end of the day, what our

objection is, and with our -- without various experience, with just the testimony that you've heard today, it's a consistency objection. Consistency is required by the LEC, 34-411, but much more importantly, it's required by Florida Statutes. Chapter 163 is extremely clear that consistency is required. And I want to make a point because we are in Lee County or in formally the Second District Court of Appeal. What a consistency challenge can be includes intensity. There's a circuit split or a district split in the legal realm about what you can challenge, but intensity is absolutely a challengeable point, and who can challenge this point would be those that are specially affected, and we would submit and argue -- and I understand this is not the forum to have this argument in full -- but that the Mushos are certainly affected property owners for Chapter 163 purposes and common law in the state of Florida.

The -- as mentioned, the primary objection is that this is too much, and I mentioned guardrails before, and I want to talk about that a little bit. There was a reference to 30,000 square foot as being a defined term for a minimal amount of

development, then the staff has arrived at a 10,000-per-acre calculation to get to an average. Well, the Bayshore Plan has language about this, and it uses the word "minimal," and I want to point out that this -- this code section, this goal, was not anywhere in the Applicant's presentation. I think that's important because what was not in the Applicant's presentation were portions of the Lee Plan to show the hearing examiner and to show the public that this is what should happen, that this is what was planned for in this area. Instead what we're getting is kind of a -- well, it doesn't really mean we can't do it sort of argument, but this is the guidepost that we are talking about. Minimal means it needs to be between the average and the minimum. So we're in that zone. Well, what is in that zone? The current zoning is 61,000 square feet. Perhaps it could have some more. Maybe it's 70; maybe it's 75. I don't think that's a -- I'm not making a judgment call. I'm not a planner, but I don't think it's 125,000 square feet, and I don't think it's in the 80s either because that's an average, that is not minimal.

So what the Applicant did today is they came

in and they asked for what is characterized as an unprecedented amount of commercial activity per acre. Staff is recommending average, but what the plan requires is minimal. And so I think that is the simplest way to understand the objection of the Mushos, of the property owners, and of everyone in this surrounding area. There is a lot of detail in this application. I think it's really easy to get lost in being upset about little uses here and things there, but that's not what's driving the incompatibility here, what's driving it is the sheer volume of the ask.

In fact, it was even discussed in the staff side of this that they don't even think you could get 125 square feet on this site unless you did a Bass Pro Shop style building in the middle, which is an interesting and alarming graphic from the aerials that you've seen today because that, to me, is clearly not compatible, but I'm going to come back to that. And I'm going to now make an argument that Neale is going to hate and bring up in her response, and that is traffic is consistency.

This is a recent appellate decision. I think it's really interesting, and I want to emphasize

this. The Mushos -- and my argument is not that there is a concurrency requirement. There is no concurrency requirement. That does not mean traffic is irrelevant. In the most recent case, "Conservancy of Southwest Florida vs. Collier County," the Conservancy challenged a development order in the eastern county because it did not meet the traffic requirements of the Collier County Growth Management Plan. And on appeal, one of the interesting issues was, well, is this really just a concurrency challenge? And THE HEARING EXAMINER ruled, no, traffic is part -- traffic impact is part of the intensity analysis. THE HEARING EXAMINER specifically considered Hein vs. Lee County, and used that as a reason to rule for the Conservancy in that case.

Here we have testimony from Mr. Poole, not as to concurrency, but as to the impact that the traffic has because there are two -- at least two policy elements that are important here. One is 18.2. This is another policy element that was not anywhere in the Applicant's presentation. Actually, I think it did come up sort of midway through, but this requires there would be preferences given to alternatives that allow

existing roads to function in their current capacity.

And we understand Bayshore is a state road. It's not subject to this plan, but Wells Road is not, and Wells Road was not analyzed for impact, according to the traffic statements that I heard from the Applicant. I'd be open to be corrected on that. But Wells Road is not analyzed, and this is the rural road that the Bayshore Plan is designed to protect. This is the primary road that's going to be impacted by this development. It's a very small road. It is not up to current standards, as was indicated, and this road is going to be severely impacted by this.

So when we ask ourselves, well, what is the preference? How do we get an alternative? The answer is we can stick with the current zoning. 61,000 square feet can be built. Maybe the uses need to be modernized, maybe a little bit more square footage needs to be provided, but that's very different than going to 125,000 square feet and turning this into a general commercial parcel.

The other policy point -- this was referenced by Mr. Poole but not gone into in depth -- is 2.2.3. This allows the County to defer or deny

rezonings when they're approaching capacity issues. So again, I think this needs to be specifically considered in light of the Conservancy ruling because there were questions asked about how many intersections will this cause to fail, and when will it cause what to fail, and the answer seems to be that FDOT at some point is going to come in at some point and fix all this.

To me, this is a great time to use 2.2.3, which is, well, let's wait and see what FDOT does because there's going to be an answer that comes that it's not funded, then that means practically for the people that live on Wells Road, for the people that live in this community, there's going to be a huge amount of time where the capacity issues are completely out of control, and it could have been avoided by this.

And I want to point out there's a -- there's a protection in here. It requires reasonable use of the land for Applicant to be permitted. And there is reasonable use. This is from the current zoning resolution, and I want to point out, when the Applicant purchased this property, they were on notice of the current zoning resolution; and what they were specifically on notice of is that the

prior owner -- or maybe this owner, I don't know who filed the application -- they wanted 99,000 square feet, but they only got 61, and they only got 61 after an extensive hearing that looked a lot like this hearing where members from the public showed up and talked about the rural nature of the community, the staff provided testimony about what it meant to be a rural community, and they only got 61,000 square feet.

So it wasn't just that the current use is commercial, it's reasonable, and it's something that can generate revenue for the owner.

The -- I want to clean up a little bit of the testimony on the future land use amendment. What we're saying here is -- and the opinion that you received is that this is an inconsistent development. It needs a Lee Plan amendment. What would that look like? There are two options. There could be a map amendment where it would be removed from the Bayshore Community Plan, or the Bayshore Community Plan could be amended to address the commercial uses. There was a lot of really interesting testimony today about changing needs, market analyses, and other factors, like wetlands, that cause the development to need to be focused

here, and I feel that all of that testimony is appropriate at a Comprehensive Plan hearing, not at a CP amendment hearing because that is asking fundamental questions about the long-range 2045 view of what's going on here.

In fact, I was really surprised -- and it's interesting that it only came up after the staff review -- that there was any market analysis at all because that's not a required part of the review here. It's an interesting review, it was a very neat presentation, but it's not something that should happen in the CPD phase, and I think the Applicant is missing a step.

Maybe the Bayshore Community needs to be reevaluated, but I don't think that can be done procedurally and legally through this specific process.

On the uses, I don't want to get into the weeds here because I feel that -- and I see that she gave you the entire folder, but there's a report in there for you of the planner's report where we go into a little more detail on the uses and which ones shouldn't be there.

But what I do want to put on the record is a food truck park. As far as I can tell, that is not

a use in the Land Development Code, and I'm unaware or unfamiliar with the process whereby an applicant can have a use put into their zoning that doesn't exist in the Land Development Code. There's no definition as to what it means, and I think it needs to not be included in this application.

THE HEARING EXAMINER: Is it a separate ordinance because I think the County regulates it.

(Multiple people speaking simultaneously.)

MR. MENDEZ: That's regarding temporary uses.

For the record, Adam Mendez.

So it's under temporary uses of land, and that's how I think it ends up permanent -- or are deviations or departures from that code section to make it a more permanent occurrence.

THE HEARING EXAMINER: I'm sorry to interrupt your presentation.

MR. LOMBARDO: No. No. I'm interested to hear.

There's no permanent -- let me rephrase my statement.

There's no permanent food truck use in the LDC; so I don't see how it could be included here in this situation.

I'm going to glaze over this section. You

have the slides, you can look at this, and this is in my letter; but I looked through some of the more egregious uses, and what I note is they're not present in the other CPDs in the Bayshore area, and in many cases they're not present in the general interchange CPDs. These are sample CPDs here, but I don't want to step in the testimony; so I'm going to slide forward past this.

Our planner has also opined that this is an incompatible use. And so this one I just wanted to emphasize the simple point that we are increasing intensity, the Applicant is asking to decrease the buffering, staff is trying to bring the buffering back up, but not to where it was; and I don't think that there is a logical way to explain how you can take a parcel and make it the most commercially intense general interchange district in the entire county and decrease buffering.

And I think this was articulated by our planner, Planner Swift, on the entire CPD concept. The CPD concept in the plan and the Land Development Code is to help deal with strange site features and make things more compatible, but what seems to be happening here is we're using a CPD to increase extreme incompatibility.

Previously you have a resolution, the current resolution, where there's all kinds of protective measures to protect the neighborhood that lives past this development, and now we're saying, let's get rid of, in the Applicant's view, almost all of it; and they're sort of offering as gifts, the preserve, which is a preexisting feature, and also gives them a benefit. They get -- by keeping it in that shape, they actually get to do less open space because they maintained a consistent preserve.

So we're not getting what, I think, the intent of a CPD is, but very simply broad strokes, not compatible.

One of my final points: In 2006, when this was approved, Goal 18 is in place. Goal 18 has not materially changed to be more permissive in the intervening time. The surrounding land uses have not changed materially. I do understand the point about my client's property is in a way a legal non-conformity, and this isn't a residential zoned area, it's an agriculturally zoned area, but Goal 18 addresses that. It's about rural residential, and that AG zoning.

So commercial development can take place, we fully understand that, but we expect there to be

reasonable governing restrictions to make sure that this fits with the neighborhood. We don't think this is a huge ask because I want to emphasize that we are -- and I don't think it is typical. We're not here standing here saying, "Don't build this. Don't build anything. Down zone them." We're not -- which would be not possible -- but we're not saying any of these things. We're here saying, we get it. There's a commercial node here, and there's not a lot of commercial opportunity in Bayshore, and we get that we're near an I-75 exit. We understand all of that, but that is very different than building a Bass Pro Shops on eight acres in a rural area where there is effectively nothing for quite some distance. So today you've heard from, not a ton of neighbors, unfortunately many left, but you read off the names and saw that there were more. On the objecting property owners, I appreciate that some of them may be from the Alva area, but there are still a significant amount from Wells Road. You heard testimony from Mr. and Mrs. Musho about compatibility concerns, Planner Swift regarding inconsistency, and Engineer Poole regarding inconsistency and safety concerns.

I did make a neat map here of some of the

objectors of the petition to show that there are objectors who are close to this property who signed the petition; so it's not just people who are very, very far away. There are people close to this application, who are objecting.

And I want to close by simply confirming that in its current form, the Applicant's form, I think this legally must be denied. It's inconsistent. It can't possibly be consistent with Goal 18. And I guess my question, if I was able to cross-examine or ask any questions, is what are the policies in Goal 18 that make this possible at 125,000 square feet? I think staff has worked through it in some way, and that's why they've gotten to about 80,000-something square feet, but I don't see policies being held out as, "Well, this is why we can do it." The policy that was provided to you was a subsection of 18.1 that says the commercial is going to take place in the general interchange. But what commercial are we talking about -- we go back up to 18 -- the minimal commercial. What you weren't provided is any policy that explains that, if it turns out that there isn't significant amounts of commercial availability, then you can condense it all into one parcel.

That kind of ask, in my opinion, is an ask to amend the Bayshore Plan. It's a comprehensive planned amendment. That's not the proceeding that we're standing here today in.

I put on the screen these things in the case that you just vehemently disagree with me. The -- I want to emphasize that we think the wall is very, very important. My client feels the wall is critically important and the buffering is critically important; so if you don't agree or if this can't happen in this format, we would request that there be some concessions given to make this easier for the neighborhood.

I previously submitted to staff and to the applicants my letter on this point, which you have.

MS. MONTGOMERY: I do have the letter.

THE HEARING EXAMINER: I don't.

MR. LOMBARDO: You have the attachment. It's the transcript from the prior hearing, but I'll get you an electronic copy.

THE HEARING EXAMINER: I don't have the letter.

MR. LOMBARDO: And I'm going to give you the letter.

MS. MONTGOMERY: I have the letter, I just

don't have whatever else --

THE HEARING EXAMINER: Now, this is part of your PowerPoint?

MR. LOMBARDO: That's in the PowerPoint.

THE HEARING EXAMINER: That's toward the end of the PowerPoint.

MR. LOMBARDO: I appreciate everyone's time. I had a wonderful time.

MS. MONTGOMERY: You gave me this, but I didn't see it show up.

MR. LOMBARDO: I kind of scrolled through that. What I was going to say on this was --

MS. MONTGOMERY: I wasn't making you go back, I just wanted to make sure you --

MR. LOMBARDO: No. No. No. I dumped in the 48-hour letter because I wanted to point out that the Applicant sort of comes in with this, "We agree with the recommendations of approval," but I want to emphasize that staff didn't recommend approval in a vacuum, they recommended approval in the 80s when it comes to square footage and with additional buffering. And so at the beginning of this Mr. Inge said that there's really two things here. It's we don't agree with the square footage, and we don't agree with the buffering. Those are the

major things here. That's it. That's intensity. That's compatibility. They need to be seriously considered because, if they're not, I think the suggestion is that the Bayshore Plan doesn't mean anything, it has no meaning to the language.

And so that's what I was going to say on this slide.

THE HEARING EXAMINER: Okay. Just -- a house -- can I -- I need a housekeeping thing regarding exhibits. I made the PowerPoint your exhibit. I made that Lombardo Exhibit 1, okay? And then his letter, summarizing his legal arguments is Lombardo Exhibit 2, and I understand that there is a transcript attached to that, but that's all --

(Lombardo Exhibit 1 marked for identification.)

(Lombardo Exhibit 2 marked for identification.)

MS. MONTGOMERY: Is that the one that's already in the staff report?

MR. MENDEZ: Yes.

THE HEARING EXAMINER: That's already a staff report attachment, but it's still in an exhibit because he submitted it.

MS. MONTGOMERY: Okay.

MR. LOMBARDO: Yeah. And I submitted that before the staff report; so I apologize for the duplicative paper.

THE HEARING EXAMINER: All of these exhibits will be scanned and uploaded for members of the public that -- I know this is a lot of information coming fast, even for me. I'm going to have to take time to go through all this, but you get an opportunity too because it will all be uploaded for you.

Neale.

MS. MONTGOMERY: Okay. Mr. Lombardo, you did indicate in your letter that Section 163.3202 Florida Statutes requires the County to adopt the Land Development Code to implement the comp plan?

MR. LOMBARDO: Yes, I did do that.

MS. MONTGOMERY: Is there anything in the Land Development Code that addresses FAR or square footage or anything of that sort in the Bayshore area because Chapter 33 does deal with specific regulations?

MR. LOMBARDO: Yeah. And in response to this question, I just want to confirm. As I understand the rules of procedure, I'm not giving testimony,

but so -- but I will answer the question.

THE HEARING EXAMINER: Right. You can -- yeah, he's not -- he's not giving testimony. He gave legal argument. So these things are for you to address in your response to questions and your closing.

MS. MONTGOMERY: Okay. That sounds like more than just legal argument.

THE HEARING EXAMINER: No, I think it was pretty legal. It was legal argument.

MS. MONTGOMERY: You just don't want me to ask questions.

MR. LOMBARDO: Well, I will answer that question. We acknowledge there's not floor area requirement, and I acknowledged that at the beginning. What we're saying is there's still guide rails in 18. There are words that provide -- so it's not a precise calculation. I think someone mentioned, it's not science, it's art. There's a way to figure out what is compatible here. It's not, unfortunately a floor area ratio. I think that would be a wonderful thing to consider for all of Lee County.

THE HEARING EXAMINER: Okay. And I don't want to get into a big back and forth here because you

will have an opportunity to make your arguments tomorrow in responding to questions and in your closing remarks, and I think that that's the best time for you to make those points.

MS. MONTGOMERY: Stay tuned.

MR. LOMBARDO: Thank you very much, and I really appreciate all of the Applicant's -- I know this is a lot of material, and I had a ton of fun reading it. Thank you very much.

THE HEARING EXAMINER: Right. And I would -- I would just like to make a few remarks: We are going to conclude for today and pick up -- no more public testimony. We're closing the public input portion. We're going back to the parties, but because of the late hour, I would like to resume tomorrow at 9:00, and we will resume to the parties, staff, and Applicant responding to questions raised so that they can provide additional clarification, and they can supplement their presentations in any way they see fit, based on issues that they've had time to reflect on.

There was something else I wanted to say.

I assume -- we have the whole day reserved tomorrow. I assume we'll probably be finished by noon. Members of the public, even though you're

not going to be able to speak, I encourage you to come so that you can hear what is going to be said.

With regard to the staff report and the parties' presentations, I thank you very much for being very completely, I thought well-prepared for the case. I've already conducted a site check; so I have a general familiarity with that area and the neighborhood that surrounds it, but having heard all the testimony I've heard, at the conclusion of this case, I will go back out there again before I prepare my recommendation to the Board.

And that concludes for today.

MS. MONTGOMERY: Can I ask you one question?

THE HEARING EXAMINER: Yes.

MS. MONTGOMERY: Are there any questions you specifically want us to be mindful of that you have so we can be well prepared as well?

THE HEARING EXAMINER: No. I'm sorry. I'm going to spring them on you.

Oh, I had a question on height. I wasn't clear. Is 48 feet hotel only? Is 48 feet -- you don't have to answer it right now. Hit it tomorrow. I mean, is it 35 feet everywhere else? I need a finer point on that because it's not clear to me.

It's also not clear to me the way this commercial square footage and hotel is going to mesh. I felt very confused. No disrespect to the staff report or anything else that's been submitted in the Applicant's narrative. This was not clear to me. I would appreciate giving you the opportunity to illuminate me so I have a better understanding.

And other than that, thank you to THE HEARING EXAMINER reporter. It's been a long day.

MS. MONTGOMERY: Thank you.

MS. SAPEN: It's been a long day for you.

THE HEARING EXAMINER: Thank you. I'll see everyone tomorrow.

(Proceedings were suspended at 4:16 p.m. and re-opened at 4:20 p.m.)

THE HEARING EXAMINER: Okay. We are back on the record. We are continuing with public input, and do I have Trinda or Gennifer?

MS. TRINDA GRIFFIS: Trinda.

THE HEARING EXAMINER: State your name for the record.

MS. TRINDA GRIFFIS: Hi, my name's Trinda Griffis. I live on Wells, actually, Sandy Pines Circle; so you have to get all the way down to the

end of Wells. It's a lot of impact coming down our street already, you know, that we can't get out to 75, and a long commute to Collier County. You know, thankfully, I only have to do it every third day, but that commute getting out, if I'm going to have more coming onto Wells with a 125 or even the 82,000-square-foot buildings, like, it's going to take me two hours to get to work; and I moved out to the rural area to get away from the traffic, not to bring in even more. If I wanted that kind of growth, I would have moved to Colonial, you know. I moved away from those areas, and now you guys are bringing that to us, and nobody down our road on Wells wants it. Thank you.

THE HEARING EXAMINER: Thank you. Gennifer Griffis.

MS. GENNIFER GRIFFIS: Hello, I'm Gennifer Griffis. I live at the end of Wells Road on Sandy Pines. One of the things that I wanted to address, after listening here today -- reminded me a little bit. I'm a nurse -- was we kept hearing this is not a rural area, this is not a rural area, this is an urban area. Well, if you go 600 feet from Mushos' property, we have multiple horse farms. If you go a little further, we have a pig farm. If

you go a little further, we have cows. We have goats, we have ducks, we have everything out there. At the end of Wells Road, there's two ponds that are back there that are overfill from the river. We have cranes, storks, sand owls -- all types of wildlife that is in that area and that lives in that area. I mean, you can walk down to some of the properties and see them right on their front lawns; so this has a huge impact on the wildlife in that area.

They said, "Oh, the gopher turtles are on the east side of the property." Well, I've lived in Florida since '91. I've seen huge growth in Lee County from '91, extreme growth since COVID of everybody moving into our area. So referring to what Trinda just said was that we moved out to this area to get out of that city life, and now you're trying to bring that city life into this one little area that's going to outpour onto our roads, which we deal with high volume right now. I mean, to get onto the freeway, it literally will take you 15 minutes at the end of the road to just make a right or to make a left in the morning, or in the evening coming to and from traffic, which, if you're going to deviate your 125,000-square-foot building and

the property, and the driveway is going to be 200 yards from Mr. Musho and Ms. Musho's property, we're going to be backed up, and not even be able to get out of our road at the current stance.

So not only is it an intensity factor for the noise, the lights that you're bringing to the area, clearing out all that wetlands and vegetation and growth where these animals live. You're backing up everything that already lives there. We're already backed up as it is, and now you want to add additional driveways that are pouring into our road.

So it's -- it's everything that's impacting our whole little neighborhood. Our neighborhood is a gem. Everybody that comes there, comes into our neighborhood, "We've never seen anything like this in this area." Well, yeah, we've all moved to this area for this specific purpose.

There's not a lot of high turnover. A house goes on the market in this area, it's sold within a couple of days because it's a very vied property that people want to live in there because it's serenity, it's peaceful, it's quiet, and now you want to bring commercial in and back it up into what it looks like on the west of 75.

I heard a lot about Babcock today. Babcock is seven miles away. It's nowhere near as close. "Oh, we only have two gas stations." Well, that's false because we have two within a half a mile of Wells Road. Then we have two more down the street, and then, if you hit 31, we have three more right there. So right there we have seven gas stations within four miles of Wells Road. So do we need another gas station? No, we do not. Do we need a hotel at the end of our road? No.

The traffic and the city where people are going to visit, the beaches, the downtown areas, all of that is there already. As far as bringing in high commercial, you're basically killing all our values in that area, which is basically trying to force us out of our little area, and it's a very small area.

We understand the traffic on the east corridor that they want to widen the roads, and we get that because we've seen the volume; and yeah, maybe it will help, but it's not even funded yet, it's not even in the plan; and all's we're asking you is to keep the plan that's in place, maybe postpone making decisions on this property until this is talked about with the State on what they're going

to do because, like he said, you're going to funnel all this into this, it's already a problem. Now, you're going to double that problem, and then we're going to have to wait for the State to come in to cause more traffic and concerns while it's under construction for three years while they modernize the roads.

Colonial was brought up into this fact. Colonial has been under construction for almost three years now. How does that impact the people that live there? Do we really need another gas station? No, we don't. And that's what I think everybody's here for is we don't want that intensity.

We're not saying that there can't be commercial development, but in their presentation, it upset me very much that the fact that she downed Lawhon's. It's a staple to our community. It's a grocery store. It's a restaurant. It's a gas station. It's a car wash. It's everything all in one. Everybody in our neighborhood that lives in that area goes to Lawhon's because it's a small family local place, and that's what we all moved there for.

So it's really -- we understand the need to

sell their property and to make their money. We get it, but what we're asking is that the plan stays in place, which is already been through the approval process many, many times. To double the request from the original request -- because that's what it is, it's going from 60 to 125. Then I saw an additional ten percent added to 137,500, which is even more, is to me out of this world. How could you -- when's enough enough?

You know, are you going to build it all out, clear everything out, and then it's just a bunch of barren land in the middle of where our horses are and cows are and our goats are and the rural property? I mean, we bought in this area for that specifically, and we don't want it to be changed.

I know that the community, you know, the Wells Community, the Sandy Pines Community, I know that everybody will team together to bring this all the way through because it's just impacting our lives on a daily basis, and this will extremely impact it in not a favorable way whatsoever. We're already impacted; so this is a very scary thing for all of us to have to deal with in this community.

And that's basically all I have to say, but I appreciate your time, Madam Chairman, in giving us

a moment, but thank you. But just please consider rejecting this -- this zoning improvement because it really is going to impact the residents that live there, which is we chose to live there for a reason, and -- to get out of the city for a reason, and this is just bringing the city to an area that is not city. Everybody there is AG, you know, conscious, land lovers, wildlife lovers. It's a serenity place to live, and we don't want it to change in our area, and this is going to drastically change if this gets approved.

So we're asking that you please take our thoughts in consideration and reject it, you know, and keep it as what it's already been planned and approved for. You know, I believe the staff has worked with them tremendously, making adjustments and adding extra and amendments, but I think it should stop there. I don't think it should go past what the staff has already given them because that's already an adjustment to the plan that's already in place.

And that's all I have to say.

THE HEARING EXAMINER: Thank you very much. And I apologize, and I'm glad you got an opportunity to speak today. I'm going to close the

record now for the day, and we will resume tomorrow.

(Thereupon, proceedings were suspended at 4:30 p.m.)

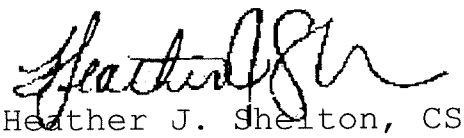
STATE OF FLORIDA)

COUNTY OF LEE)

I, Heather J. Shelton, Registered Professional Reporter, do hereby certify that I was authorized to and did stenographically report and electronically record the foregoing proceedings consisting of pages 1 through 268 inclusive; and that the transcript is a true record of all proceedings had.

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

Dated on December 27, 2023.



Heather J. Shelton, CSR, RPR

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0
130:22
0.2
35:18
0.5
35:17

1

1
12:24,25 44:25 45:1 100:20,21 113:9,24 169:18, 22 189:9 217:2 222:9,12 225:3,4 235:10 254:11,16
1,056,600
54:13
1,100
55:17
1,200
59:11
1,275
24:22 27:11
1,500
24:24 27:12
1,677
55:12
1.3
159:13 168:11
1.3.2
21:9,14,23 25:14 51:2
1.5
144:2
10
67:11,13
10,000
97:20 118:14 119:8 123:23 144:4 145:23 147:22,24 148:2, 17,18 183:10 238:5,16
10,000-per-acre
240:2
10.0
80:13
100
37:15 194:20
100-year-storm
79:21
108,000
145:4
10:18
61:8
10:32
61:8
11
25:21 51:1 80:23 216:22
11.21
56:14
110
27:21
115,000
117:18
12
230:21
120
116:23 117:8,20
122
55:25
122,167
58:2
125
117:6,8,10,11,14 129:14 241:15 260:6 265:6
125,000
17:13 58:3 110:8, 23 115:18,22 116:11,19 117:14, 23 128:13 142:16, 25 143:3,8,19 144:15 162:21 210:9 240:22 243:21 251:12
125,000-square
20:17 44:20 81:21
125,000-square-foot
261:25
125-foot
117:19
125-square
116:10
125-square-foot
142:19
12:24
151:2
13
61:19 144:8 222:24
13,962
58:1
130
27:22
130,000-square-foot
144:7
1330
228:19
135.9.5
168:13
137,500
265:7
13th
4:9
14
37:16 149:5
14,000
57:23 117:21 238:16,20
14,200
144:17
14,300
230:4
14,750
125:9,10
140,000
144:14
15
25:24 37:3 48:6,7, 8 261:21
15-foot
37:12 38:18
150
204:14
150,000-square
44:19
150-foot
166:11 180:6
16
26:4 145:5,10 147:1 235:12
16-inch
68:8,22
16.5
144:14
163
239:6,19
163.3202
255:14
1630
228:20
17
109:16 172:5
17,300
230:4
17-and-a-half
22:13
17.1
172:6
17.3
172:10
17350
187:17
178
59:10
17th
230:19
18
122:19 125:15 153:10 155:19 168:11 172:15,16 173:20 186:18,20 187:2 249:15,22 251:9,12,21 256:17
18.1
132:22 251:18
18.1.1
124:3,14
18.1.2
124:3,14
18.1.3
165:10,16 168:12
18.2
103:11,19 200:16 231:21 242:21
19,000-plus
58:24
1980s
63:21
1989
11:5,11,22 21:21, 25 22:7 122:22 220:14
1:00
9:5
1:30
150:16 151:1
1:31
151:2

2

2
12:14,15,19 13:2, 6,7,10,19 14:2,3 34:10 45:16 46:1 61:19 110:21 113:10,25 144:11 225:12,13 254:13, 18
2,000-gallons
69:25
2,500-square-foot
144:23
2.2.1
32:2 157:15 168:12
2.2.3
158:9 168:12 231:22 234:10 243:25 244:9
2.5
55:13
20
67:18 72:23 231:5, 11,12,13,15 232:21
20-year
201:18
200
32:24 34:5 51:15, 17,20 52:4 182:22 262:2
2000
220:12
2003
122:23 151:24 165:12
2005
155:12
2006
11:14,22 12:3 20:16 109:16 126:20 127:11 151:16 153:13

155:6 162:17 165:3,21 166:11, 16 168:1,6 180:2,8 199:13 249:14
2007 126:20
2010 155:16
2011 87:24 95:15
2012 230:10
2016 161:22
2017 235:12
2020 229:10,21 230:2,3, 22
2021 230:10
2022 54:6,8 55:15 120:5 230:4
2023 4:9 59:7 120:6 147:10 171:23 229:12 232:2 234:18
2025 97:16 100:16 157:13
2028 82:16 83:22 84:4 85:3 157:9 232:4, 7,24
2035 97:22
2045 54:10,12,14,20 55:9,10,14,18 57:13 97:23 98:10, 13,14,18,21 246:4
21 22:17 55:22 230:5
21,800 54:18
22 42:22
23 51:13
23,000 97:19 98:20 101:5
24 37:25 86:12 100:21 184:12 189:9,10
24-foot 46:11
24-inch 68:13
24/'25 91:21 94:16
24/7 212:4
25 37:11 126:24 130:22,25 140:9, 19 160:6 189:10
25-foot 38:15 153:17 166:16 168:7
25-percent 175:1
25-year 79:21 201:18
25/'26 91:22
250 165:19
2640 228:18
26th 42:22 120:7
287 56:24
29 56:23
2:00 190:10 212:6
2h 219:6

3

3 66:22 67:25 69:8 113:12 114:1
3,000 59:6
3.85 230:8
30 45:3 48:7,12 67:11,13,18 68:2 80:6 109:8 163:18, 19 179:5,10
30,000 124:24 239:24
30-some 11:7
30-years-plus 188:4
300 43:20,22 100:9 140:6
31 24:14 30:19 83:20 90:11,13,16 91:1, 6,12 96:15,23 99:20,24,25 100:4 104:7,12,15,19 163:22 263:6
32-inch 68:13
33 255:21
34,000 97:23
34-1353 37:7
34-411 239:4
35 61:16 70:3,6 211:9,13,16 258:23
35-foot 216:24
35-foot-high 153:15
36 37:25 80:6
365 86:12 87:9
37 184:7 204:15 211:23
38.9 57:6
39,000 57:4
3:00 190:10 200:5,7 223:1
3:24 223:2
3:25 223:14
3:35 223:14
3rd 165:12

4

4 46:18 113:12,18 114:2 171:21 227:23
4.1.1 32:3
4.1.2 32:3
40 28:6 197:14
40-foot 27:16
400 39:6 43:22 44:1 66:22 67:25 69:8 152:23
400,000-square 163:23
400-foot 34:14,16,17,20 128:6
41 83:17
41,093 55:14
41.9 56:19 57:19
411E1 36:20
415 34:6 52:1
42 192:22
42,000 98:11
420E2 36:21
425 52:1
44 116:25 119:10
44,000 97:24 98:10,20
45 48:12
48 160:7 166:17 189:11 210:22,24 211:1 258:21
48-foot-high 181:17
48-hour 20:8 53:24 253:16
49 131:1
4:16 259:15
4:20 259:16
4:30 223:6 267:3
4th 13:6,21 171:23

5

5 39:19 46:18
5,000 143:20 144:22
5,566 54:9
5-year 79:20
5.1 39:19
5.1.1 39:19
5.1.5 160:21 161:10 168:12
5.75 230:10
5.9.5 161:14
50 45:2 143:6 154:23 219:24

500
68:8 71:18 228:2
52
233:7
550
228:1
585,000
57:14

6

6
47:5 131:15
6,000
59:17
6,700
123:23
6,971
154:9
6.1.4
39:19
6.1.5
168:12
60
57:13 265:6
600
179:11 260:23
61
72:18,19 245:3,4
61,000
115:9 127:15
153:16 154:7
158:19 168:6
180:7 183:23
199:14 240:18
243:18 245:9
61,000-square-foot
188:19
61.8
57:11
614
133:9,10
615
188:1
63
129:13
660
227:24
6th
230:22

7

7
18:15 49:19
110:12 128:25
129:11
7,000
154:9
7.0
80:14
70
240:19
71
28:6
71,000
127:13
75
36:6 47:14 48:11
157:1 189:24,25
213:25 228:20
233:8 240:19
260:3 262:25
75-foot
162:14
75-foot-wide
130:17
78
81:24 82:25 84:11
89:8 91:6,11
100:1,4 107:5,9
226:1 227:21
228:11,16 229:6
231:24 232:1
234:9

8

8
16:3 110:25
8,000
127:5
8,484
144:16
8,579
154:2
8,653
54:14
8,700
119:5 144:25
8-feet
47:15
8.75
57:25 145:10
8.75-acre
20:14
80
91:7 104:6,20
80,000-something
251:15
800
59:8
800,000
54:7
80s
240:23 253:20
81
125:7,9
81-gross
125:4
81.71
56:10
82,000
143:5
82,000-square-foot
260:7
83
27:8
87,500
110:23
87,500-commercial-square-footage
188:8
87,500-square-foot
117:5
87.5
119:10,14

9

9,750
57:13
9-26
185:12
9-26-2023
153:22
9-28
185:11
9-28-23
181:4
91
261:13,14
92
119:15
92,000
117:2
93,000
119:16
97
25:18
98
27:7,9
99,000
127:11 245:2
99,999
153:13
9:00
257:16
9:02
4:1

A

A.A.D.T.
97:13 230:2
A.D.T.
97:9,10,11
a.m.
4:1 61:8 212:6
AADTS
229:24
abandoned
174:11
abatement
185:24
ability
17:5 126:4 210:11
absolutely
198:10 239:13
abuts
38:13 44:23,24
45:8 47:8
abutted
188:20
abutting
32:18 36:24 39:21
40:1,7,14 45:12
46:5,17 51:17
130:23
accent
35:19
accept
4:16 104:25 105:7
197:25
acceptable
84:10 216:8,11
accepted
20:5 62:13 78:6
81:8,10 105:11
112:12 114:25
135:5,7 197:2
access
25:25 29:2,3
32:22,25 33:5,23
34:2,10,11,21,23
37:13 38:18 39:8
45:20,22 51:15,23
52:3 81:22,23,24
82:2,4,6 88:19,21
89:2 94:2,3,20
106:10,21,22,24
107:2 128:16
138:1,4 141:10
149:24 150:5
159:16 164:23
227:20,22 228:6,8
236:6,12
accesses
136:3,5 137:22
accessible
187:20
accession
52:12
accessory
211:12,14 216:24
accidents
178:3
accommodate
57:15,24 91:16
182:8 201:22
accompanying
10:20
accomplish
18:7 133:17
accomplished
81:1 132:8
accord
129:1
accordance
33:8 79:18 126:17
account
57:20 232:14
accounted
83:2

accurate
111:17 189:3
acknowledge
256:14
acknowledged
256:15
acquired
50:13
acquisition
90:19 91:20 157:8
acre
28:4 33:13 43:12 57:21 118:14,25 123:23,24 144:6, 16,25 145:23 147:17,23,24 148:2,17,18 149:5 154:2,9 155:1,3 183:10 238:4,6,10, 16,20 241:3
acreage
17:5 29:13 56:9 110:6 119:1 158:12
acres
17:8 25:18,21,24 26:4 27:21 28:6 55:25 56:14,19,23 57:19,25 125:4,7, 9,10 144:8,14 145:5,10,11 250:14
activated
77:25
active
152:13
activities
123:15,18 152:4 155:11 167:18 172:20 173:5 186:24 210:4,18 214:12
activity
52:3 56:1 58:8 124:22,24 167:20 201:9 241:2
actual
132:7,20 181:12 213:19
Adam
5:22 112:7 165:17 187:19 247:11
add
76:20 85:4 103:7 117:2 124:5 136:17 158:3 208:20 217:10 262:10
added
84:1,5 123:8 124:15 167:2,11 217:12,25 220:1 229:12 265:7
adding
55:16 109:21 266:17
addition
6:4 66:23 69:7 72:7 79:25 135:19 146:11 184:21 193:21 210:20 228:7,12 233:16
additional
8:16 36:5 37:6 47:15,18 48:3,6,8, 13 54:18 55:13 119:19,22,23 122:2 133:16 144:22 145:6 146:10 155:2 167:16 183:16,20 193:2 200:21 233:20 238:24 253:21 257:19 262:11 265:7
address
4:25 5:4,18 7:8,25 8:19 10:21 16:9 18:18 63:21 64:24 65:1 89:21 90:1 103:13 108:2,20 109:2 110:21 111:8 112:24 172:7 174:5 191:23 211:4 245:21 256:5 260:19
addressed
174:11
addresses
249:22 255:19
addressing
96:6 223:10
adds
205:20
adequate
141:13 161:5 194:23 207:5 216:4,8 228:9
adequately
14:20 139:2
adhere
35:3
adjacent
32:19 35:9 60:5,22 97:15 138:15,25 146:6 159:15 161:14 174:12 188:2,15 208:8 212:22
adjust
61:13 87:4,6
adjusted
82:22 87:5
adjustment
266:20
adjustments
9:21 111:21 266:16
administer
5:7 9:11
administered
62:4
administers
120:24
administration
185:23
administrative
7:17 65:14 82:14 167:13 210:12
administratively
144:19 146:14
admit
172:25
adopt
255:15
adopted
4:21 83:4 88:14 110:14 122:23
adoption
201:24
advanced
92:7
advent
11:23
adverse
159:18,21
adversely
184:6
advised
161:6
advocating
206:2
AE
80:9,10
aerial
81:15 83:13 112:21
aerials
27:8 241:18
aesthetics
30:3,5
affect
169:11 179:20 184:6,20,25 230:25
affected
139:9 179:13 192:20 239:15,18
affecting
157:21
affirm
9:15 62:8
afforded
7:21
affords
183:15
afraid
190:12
afternoon
129:6 134:18 151:11 171:8,9 178:21,23 179:4 187:14,16 190:7 196:20,21,24
AG
36:25 45:23 46:10 249:23 266:7
AG-2
26:10,12 40:24 208:9,13 211:20
agree
12:8 34:9 50:12 118:9 148:20 149:24 170:14 202:10 229:7
252:10 253:17,24, 25
agreement
39:4 120:25 121:12 129:11 152:22
agrees
133:24
agricultural
123:12 152:1 172:18 173:14,22 186:21 233:12
agriculturally
249:21
agriculture
62:22
ahead
75:4 182:13 195:13
AICP
20:4 196:25 197:13
aimed
35:20
aiming
127:19,20,21
air
9:4 35:8
airport
22:12 23:2,4
akin
201:12
alarming
241:17
align
203:14
alignment
30:24 108:6 157:3, 7
alignments
30:22
all's
263:22
Allenbaugh
151:9 169:25
alleviate
162:22 174:9 231:7 232:21
allocated
57:1 58:10 127:5

allocation
17:12 54:14 117:1, 5 142:19
allowed
22:9 40:12,13 41:11,22 42:4,5,6, 7,11,19 51:12 53:2 56:11 57:1 124:8, 23 163:23 167:13 183:21 184:5 203:25 232:11 235:13
allowing
221:18 234:1
alphabetical
176:25
alteration
11:17
alternative
31:14 243:16
alternatives
103:15 194:20 242:25
Alva
169:3,5,6 250:19
ambiguous
172:25
ameliorate
6:18
amend
4:11 252:2
amended
13:3 144:19 245:21
amendment
167:13 199:25 200:3 201:1,6,21 202:11,14 203:2,7 205:25 208:25 219:14 245:14,17, 19 246:3 252:3
amendments
152:15 266:17
amenities
159:19 209:13,15
American
185:18
ammunition
199:21
amount
17:4 52:20 101:8 115:18 189:5 192:22 203:24 206:10 216:18 219:15 231:17 239:25 241:2 244:15 250:20
amounts
251:24
ample
155:4 163:16
analyses
135:17,24 245:24
analysis
16:8,19 17:25 53:23 54:1 79:23 80:6,7 81:13 82:15,20 83:2,5,6, 9 85:10 115:21 135:13,17,19 137:9 138:18 153:22 155:13,18 171:21 200:20 238:9 242:13 246:8
analytics
57:7,8
analyze
102:2,4
analyzed
243:5,8
analyzing
79:20
anecdotal
126:6
angle
226:7
animal
44:4
animals
262:8
annual
97:12 230:2
annually
230:6
answering
8:14
anticipate
55:19 94:15
anticipated
5:18 24:23 27:12 33:11 232:5
anticipating
230:13
anymore
218:5 238:15
apologize
54:5 78:12 197:8 255:3 266:24
apparent
43:25
apparently
160:12 224:4 235:6
appeal
239:9 242:9
appears
52:18 128:2 171:16
appellate
241:24
applicable
161:2,12 216:4
applicant
4:17 5:11 7:5,20 10:8 12:23,25 13:7,9 36:11 39:4 111:13 113:5 120:19 128:13 129:10 135:24 146:13 153:13 154:18,21 155:5 159:7 160:1,16 162:1,20 165:22 166:6 167:11 171:16,24 175:8 182:7 188:22 189:4 194:22 199:19 202:8,15 204:21 240:25 243:7 244:20,23 246:13 247:2 248:12 253:17 257:17
applicant's
4:15 12:19,23 14:11 50:24 115:7, 21,25 125:3,25 129:19 141:25 155:13 157:10 163:25 167:19 192:9 240:6,8 242:22 249:5 251:7 257:7 259:5
applicants
189:25 252:15
application
4:10 6:14 10:9 36:15 43:7,24 44:19 45:25 57:20 81:13 104:24 115:25 153:23 155:12 161:6 162:20 163:2 166:1 168:10 171:16,18 173:18, 21 174:1 195:4 199:12 210:3,5,9 215:17 223:12 241:8 245:2 247:6 251:5
applications
19:2
applied
56:23 118:24 167:21 184:1 187:2,5 230:23
applies
45:18 49:19
apply
46:18 64:18 82:6 161:20,21 192:18
approach
12:17 13:16 136:11
approaches
63:15
approaching
157:24 158:10 244:1
approval
5:18,25 24:11 43:14 46:1 50:14 77:20 115:8 131:21 133:13 210:12 217:4,8 221:7,12 227:19 238:13 253:18,19, 20 265:4
approvals
118:21 158:14
approve
103:2 167:25 203:1 228:6,11
approved
20:16 24:23 26:12 27:12,22 32:4 40:11 42:1 45:7 54:23 110:14 116:2 130:18 131:12 134:4 144:13 145:19 151:15,23 157:4,6 160:3 161:22 166:5 167:21 168:15 180:1 183:10 185:8,23, 25 195:1 199:13, 23 201:1,11,15 207:16 214:22 215:16 218:22 220:3,23 221:17 249:15 266:11,15
approvers
180:1,8
approving
95:22 217:3 229:2
approximately
58:2 123:23 125:8 129:24 131:23 143:17,18
aquifer
64:19 66:9,12,16 67:6,18 68:2,4,22 69:2,9,14,23 71:11,16,17 73:20, 22 75:6,7 76:8 77:13
aquifers
63:13,23,25 64:1, 6,18 66:5,18,19,24 67:3 68:1 70:8 71:8,16 73:12 166:19 174:7,15
architect
210:24
architectural
35:20 197:22
area
11:4,6,21,25 12:1 15:11 16:19,21 19:4,11 20:22 21:1,18 23:5,12,14 24:10 25:17 26:20, 24 28:2,12 29:11 30:12,20 32:6,17, 18,20 35:6,15 36:13 40:10 41:8, 22 42:20 45:3,8

50:1 54:21 56:11 57:5,15,21,23 59:15 65:25 70:22, 24 71:12 80:13 91:17 109:6,12 110:15 111:1 117:3 118:17,20 124:9,15,21,25 125:1,8,11,20 126:7 127:7 131:16 132:2,17, 18 135:21,25 142:7 143:7 144:1, 8 145:11 147:14, 16 152:13,25 153:3,6 155:25 156:12 158:1,9 163:13 166:22,23 172:8 179:22 180:17 182:17 183:11,12,13 184:10 189:21 192:9,13 199:7 200:19 201:2,19 202:21 203:12 204:24 210:19,20 212:13 220:23 233:5,15 240:11 241:7 248:4 249:21 250:14,20 255:21 256:14,21 258:7 260:9,22,23 261:6,7,10,15,17, 19 262:6,17,18,20 263:15,16,17 264:22 265:14 266:6,10

area's
161:16

areas
18:11,21 27:1 29:5 32:17 35:13 53:12 118:16,18 124:4, 13 125:18 126:9 127:7 145:17 159:14,15,18 160:22 161:15 162:7 183:9 193:11 229:1 260:12 263:12

argue
194:13 239:16

argument
239:17 240:13 241:21 242:1 256:4,8,10

arguments
101:12 254:13 257:1

arrive
238:5

arrived
119:1 240:1

art
256:19

arterial
21:12 23:10 28:1 29:20 32:1 136:13

articulated
195:14 248:19

artist's
126:21

aspect
89:1

aspects
15:18 102:3,5 187:23

assist
109:18 223:2

Associates
10:7 78:5

Association
185:18

assume
144:7 171:12 211:1 257:23,24

assumed
139:11

assumes
73:19,25 98:15,17

assuming
98:19

assumption
138:6

attached
161:4 254:14

attachment
112:20 113:11,17 137:8 252:18 254:24

attempted
171:24

attendance
4:7 114:4

attended
43:2

attention
111:16 143:12

attenuation
132:15 185:13,16

attracted
101:8

attractions
21:16

ATV
190:22 191:5

ATVS
190:21,23 191:4

audience
10:6 87:17 97:1

audience's
88:12

August
147:9

Authority
78:19

authorized
199:14

automatically
233:5

automotive
37:9

availability
19:6 78:17,22 157:16 251:24

Ave
59:3

average
55:12 97:12 118:25 119:4 154:2,15,19 183:8, 18,22 230:2,3 238:6 240:2,15,23 241:3

avoided
244:17

aware
15:13 82:8 90:24 95:1 149:15 172:13

Awesome
225:5

B

babble
231:21

Babcock
11:23 24:14 25:9 58:15,23 90:23,24, 25 91:1,15 92:2 99:20 100:1 156:4 163:4,8 182:9,12, 18 263:1

back
7:7 13:18 21:21,23 22:10 27:8 29:5,23 33:13 57:18 61:9 72:18 83:13,19 89:5 92:13 104:10 105:22 123:5 139:18 145:18 150:4 151:3 159:10 164:25 169:24 180:2,8,10 190:18 205:3 212:5 214:15 223:13,15 228:14 234:9 238:17 241:20 248:14 251:21 253:13 256:25 257:14 258:10 259:17 261:4 262:24

backed
156:16 262:3,10

background
153:7 156:8 229:8, 9,14,15,16,20 230:7,14,20 231:1

backing
156:3 262:8

backroading
191:4

backs
89:24

backwards
64:7

backyard
66:15 67:5

baked
205:15

balance
202:1,10

bar
39:13 44:14 67:11 95:22

bar/cocktail
44:5,7

Barraco
19:5 78:3,4,5,10 79:7,9,14 80:21 81:3

barraged
190:1

Barrel
193:25

barren
265:12

Barrett
17:24 59:21

barrier
162:11

barriers
174:14

Barry
175:22

bars
67:1

Bartow
94:9

bascule
100:11

base
19:13 84:25 149:4

based
17:14 52:22 57:9 64:4,17 71:7,15 80:5,7,21 81:20,22 82:21 83:6 84:17 85:1,3 99:14 115:20 116:14 118:8 135:15,19 137:18 140:3 141:6 142:4,21 147:23,25 157:12 181:9,11 204:3 257:20

baseline
204:6 238:5

bases
152:8

basic
209:1

basically
34:20,22 50:10 64:8 93:8 107:19 140:4 263:14,15 265:24
basing
155:3
basis
11:1 84:25 265:20
Bass
143:15,16,21 191:25 241:16 250:13
Baypointe
26:22
Bayshore
4:12,13 10:9,19 11:12 13:17 15:11, 14,22 19:9,10,12 20:11,12,20,22,24 21:1,2,12 22:22 23:9,16,17,22 24:4,5,7,10,16 25:5,7,8,10 26:16 27:20,21 28:5 29:7,9,15 30:17,18 32:17 33:1,12 34:11 37:3,12 41:2,6 42:24,25 49:4 52:15 54:8, 15,25 55:1,24,25 56:4,12 57:3,10,25 58:4,8,17 70:20 78:25 81:16,18 83:11,14,18 84:8, 9,16 86:18 88:8,21 89:2,3,10 90:10,12 91:2 93:4,7,11,12, 18 96:18,23 97:14 98:9 103:9,12 104:5,12 106:12 109:12,23 122:8, 20 123:7 125:6,8, 11 131:20 135:22 136:1,6,7,20 137:16,23 138:1, 12 140:12 141:10 145:13 147:16 151:14,15,21,22, 24 152:8,10,11,13, 19,20 153:10,19, 20 154:17 155:7, 10,14 156:6,14,25 162:18,23,24 163:6,18,20 164:2, 5,13,23 165:10,25 167:5,7,16,24 168:9 169:9,10 171:10 172:16 175:2 177:22 180:11 182:1,3,15, 19 183:15,16 186:9,18 190:9,17 193:12 199:12 201:3,16,25 202:5, 8 203:4 206:1,7 209:7 219:17 220:14,15,17 231:8 238:11 240:3 243:3,9 245:20,21 246:14 248:4 250:11 252:2 254:4 255:20
Bayshore's
213:17
Beach
193:23 198:15
beaches
263:12
bear
69:18 175:3
Bearpaws
59:22
beating
210:17
beauty
186:14
BEBR
54:17
bed
68:16,20,25
beds
66:2
Beeson
169:23
beg
147:20
begin
5:11 9:23 61:10 91:19,21 187:18
beginning
100:20 163:8 253:22 256:16
begins
145:12
behalf
6:3 8:7,9 175:7 237:3
beholder
209:14
believes
123:21 129:12
beneath
64:6
beneficial
160:16
benefit
172:3 185:21 249:8
Benjamin
171:7,10
berm
160:14,17
berms
162:8
beseech
173:23
beverage
37:8 41:15 128:3 146:8
big
177:20 192:6 214:19 231:2,19 256:25
bigger
204:8 219:13
bin
150:19
bisects
23:17
bit
11:3 30:2 34:3,21 45:10 46:3 62:18 82:10 156:10 179:7 190:15 229:21 239:23 243:19 245:13 260:21
black
23:15
blank
130:7
blasting
44:16 190:11
blue
41:12 56:14 66:1 97:9 98:24
blues
66:5
board
4:19,23 5:5 8:21 111:17,23 112:3 127:13 150:25 151:23 258:11
Boehm
170:1
Boggs
197:1
boil
121:13
bolstered
130:15
bonus
149:6
book
219:1
border
36:24
bottleneck
234:8
bottom
26:21 30:7 33:14 38:10 49:4 98:14 141:21 204:12 205:4 209:10 238:19
bought
194:24 265:14
Boulevard
89:15 193:23 198:15
boundary
33:6 44:6,15 106:24
bounds
173:12
box
93:2 97:9 98:14 128:8,9,10,15 214:20
boxes
97:8
brackish
75:7
Branch
79:15
brand
128:8,9,10
brand-new
49:17
Brandon
114:22
brands
211:1
break
8:24 9:2,6,9 47:18 59:20 61:6 150:15 151:4 200:4 223:1, 2,5
breaks
8:25
Brian
114:16
bridal
190:19
bridge
29:16 100:8,9,10
briefly
15:5 51:2 109:6 188:25
bright
56:15 184:13,16
Brightwater
24:18,21 27:10,19 54:25 55:3 123:3 156:6
bring
28:15 67:15 108:7 232:18 233:2 241:21 248:13 260:10 261:18 262:24 265:18
bringing
148:13 190:10 260:13 262:6 263:13 266:6
broad
21:15 41:23 122:14 183:25 184:3 188:9 249:12
brodkin
151:10,12,13 168:20,23 169:1,5, 13,15,18,20,22
Brookshire
144:11

brought
101:13 111:16 165:18 174:22 226:2 231:20 232:8 264:8
bubble
27:13
Buckmaster
170:2,3,11,12,20
budget
100:23
buffer
33:6 36:5,6,8,13, 23 37:1,2,13,14,22 38:14,15,16,18 40:2 43:10 45:3,4, 6,13 47:6,9,11,14, 20,23 48:5,6,11, 14,20,21,24 49:9, 17 60:9 130:15 131:4 132:8,10 133:25 162:11 166:8 168:3 180:3, 21 181:2 189:18, 19 214:15 216:18 217:25
buffering
15:21 16:10 28:19 29:1 39:2 47:21 49:16 162:7,9 188:14 248:13,18 252:9 253:22,25
buffers
33:21 36:3,4,5 37:6,11,21 38:20 39:10,25 47:11 48:13 146:10 159:19 160:2 161:8 162:4 208:3 209:12,15,21 214:24 217:18
bugs
102:6
build
91:2,10,13,21 99:15 100:5,7,18 116:18 119:23 137:21 145:6 182:14 250:5,6 265:10
build-out
82:15,16,18 232:5
builders
59:15
building
13:24 14:4 15:2 27:7 29:1,2 33:18 38:23 41:20 47:4 80:18,21 100:2 126:22,24 127:2,5 128:4,5,15 142:18 143:5,6 144:5 146:6,17 159:9,11 160:6 162:14,16 166:8,12,15 168:7 170:25 180:20 181:1 191:15 204:9 214:16 221:4 241:16 250:13 261:25
buildings
80:18,22 132:13 153:15,17 181:7 211:12,14 260:7
buildout
140:16
builds
99:18
built
18:24 24:25 28:21 55:11 59:7 100:1 123:5 142:16 143:14,25 144:8 145:1,3 191:15 192:17 199:15 243:18
bulk
142:5,9
bulldozers
42:17
bullet
79:1,6 80:14
bullets
39:24
bummed
224:6
bump
210:8
bumper
131:24
bunch
265:11
bunnies
102:6
burden
175:3
Bureau
54:11
burrows
60:6,24,25
business
35:24 41:5 54:10 61:17,19 181:18 184:12 185:5 188:9 195:10
businesses
184:4 185:2
busy
125:20 145:3 156:19
button
71:3

C

C.V.
53:23
Cadillac
75:18
calculates
86:7
calculation
240:2 256:18
call
6:10 86:13 87:20 93:3 128:9 151:8 219:17 225:11 235:1 240:20
called
64:4 66:17 69:19 89:9 201:9
calling
6:23
calls
212:1 218:4
calm
220:16
Caloosahatchee
91:7
Calvin
170:2,11,17,18
Camargo
171:2,3
Camryn
114:20
canopies
38:4 47:18
canopy
29:4 38:4 60:12 128:4
capable
58:12
capacity
83:4,7 84:16,18 103:17 139:14 158:10 226:2 231:24 234:10,12 243:2 244:1,15
Cape
23:6
captured
172:15
capturing
231:3
car
37:10 38:22 39:10 46:19,23,24 128:4 213:10 214:18 216:16 264:20
care
162:5
career
225:17
Carl
19:5 78:4
Carol
178:11
carry
121:18
carryover
146:3
cars
97:19,23,24 98:10, 11,20,21 190:4
case
4:20,24 5:22 8:7, 20 40:17 74:7 85:11 94:16 112:1, 19,20,23 113:10 120:4 122:18 187:23 198:12,18, 20 219:2 234:17 242:4,16 252:5 258:6,10
cased
68:8
cases
10:2 115:22 151:5 197:10 198:6 207:5 212:4 216:7 217:5 248:5
casing
68:8,9,14,19,23 70:3
casings
70:6
categories
26:9 118:19 122:25 184:5 201:24
categorized
126:8
category
21:5,17 120:16 122:4 125:6 147:22 153:25 185:3 202:6 209:8 210:2 219:19 220:13,18
Cathy
177:9
caused
229:8
causing
96:5
cavities
60:25
cement
68:9,14
cemented
68:19
center
38:2 81:22 83:21 89:19 115:8 143:16 152:20 185:17 214:16,17
centers
212:21
centuries
74:23
certainty
206:16
certification
65:21
certified
20:4 196:25 197:13

CG
26:14,19 36:25 40:12,16,17,24 42:2 52:22,24 53:3,8,11,14 209:20 212:15,17 213:2
CG's
40:20
CG-ZONED
26:15
Chairman
265:25
challenge
140:11 239:10,12, 14 242:11
challengeable
239:13
challenged
242:6
challenging
74:16
chance
8:23 9:9 74:24
chances
71:21
change
14:7 19:11,12 31:23 80:12 95:9, 12 100:19,23 105:23 131:15 165:20 179:15 200:14 201:2 233:5 266:10,11
changed
11:21,25 15:11 24:11 27:17 43:10, 21 109:12 151:18, 25 153:21 179:14 200:16 220:12 249:16,18 265:15
changing
122:21 201:1 204:4 233:15 245:23
channelized
29:3
Chapel
79:1,15
Chapter
239:6,18 255:21
character
39:21 103:14,23 104:2 123:13,16 145:15 152:2,5 153:3 160:24 161:17 172:18,22 173:6,10,14,15 174:2 182:17 186:22,25 200:14, 15,18 201:2 213:18
characterized
181:23 202:15 241:1
characters
181:10
chart
154:1,4,10,13 167:21
check
258:6
checking
134:22
chemicals
65:22 121:8
Cheryl
171:4
chief
50:4 151:5 158:25
choice
160:13
choose
178:1 233:17
choreographed
177:5
chose
266:4
Church
42:23
CIP
83:4 99:8,12,17
circle
22:6 177:11 259:25
circuit
239:11
circulation
132:11
cited
162:19
citizens
151:14 152:12 195:23
city
197:1,19,20 261:17,18 263:11 266:5,6,7
Civic
83:21 152:20
civil
78:6
claim
36:10
claimed
163:9
claims
160:1 162:20
clarification
60:16 134:16 202:22 210:16 238:14 257:19
clarified
44:16 173:8
clarify
6:16 175:6,8 202:3,4 210:6
clarity
223:22
classification
129:21 130:21 227:23
clay
66:19,22 67:25 68:19 69:8 76:13, 16
clays
66:3,4 76:9
clean
10:3 245:13
cleaner
102:19
cleaning
121:8
clear
173:1,11 181:16 196:13 227:12,14 239:6 258:21,24 259:1,5 265:11
cleared
36:17 47:17
clearer
70:11
clearing
36:11 262:7
client
198:5 252:8
client's
249:19
close
7:7 8:12 9:5 61:24 117:17 130:23 134:20 136:23 139:8 144:15 176:1 193:17 195:13 213:3 251:2,4,6 263:2 266:25
closed
29:19 234:1
closely
94:7,11,12
closer
25:12,14 43:14 51:18 147:13 150:5 190:17
closing
186:8 256:6 257:3, 13
Club
26:22
cluster
126:11
CN-2
204:16
CN-3
204:16
Coast
143:16,25 197:17
cocktail
39:13
code
4:22 5:16 7:18 8:6 15:9 16:9 20:6 28:17 33:8 35:2,25 37:7,20 38:6 40:5 42:25 46:15 47:5, 10 49:22 80:22 112:11 116:5 141:7 142:2 149:12,14 161:7 174:18 197:4 198:2,10 199:5 204:23 205:16,18, 20 207:2,3 209:4 212:1,18 215:20, 23 216:3,10,11 217:11 219:6 240:5 247:1,4,14 248:22 255:16,19
codes
36:21 48:15 82:14 161:13
codified
115:13 116:4
collect
7:14
collecting
8:10
collection
35:7
Collier
242:5,8 260:3
Collins
4:4
Colonial
89:15 260:11 264:8,9
color
23:13 27:13 38:8
coloration
66:2
colored
41:12 67:1,4 73:3
coloring
29:5
column
203:24
commence
150:16
commencing
4:1
comment
149:20
comments
19:20 113:1,13 168:16 199:17
commercial
4:11 11:15 17:1 20:18 23:20,21 24:1,7,9 25:1,2,4, 20 26:2,5,11 28:13 32:8,15,16 35:14, 23 40:6 42:19

46:6,8,10,13 47:7, 12,21 55:23 56:1 57:23 58:8,10 81:21 101:3,13,14 110:4 115:10,23 116:2,3 117:3,14, 18,23 122:1,17 123:15,18,25 124:5,7,10,22,23 125:14,16,17,19 126:1,16,18 127:4 134:3 145:15,16 146:7 152:3 153:9, 14,16 155:11 158:1,22 161:23 162:21,25 163:16, 24 164:1,3,6,10,17 165:1 166:7 167:4, 17,18,20 168:2,7, 14 172:20 173:5 181:25 183:9 186:24 188:14,19 189:20 190:5 191:15 199:24 200:10 201:9,13, 22 204:16,22 209:12 210:4,18 212:2 214:11 216:15 237:10,17 241:2 243:22 245:11,22 249:24 250:9,10 251:18, 20,21,24 259:2 262:24 263:14 264:16

commercially 20:15 25:24 163:12 248:16

commissioner 170:8

Commissioners 4:20,23 127:14 151:24

commit 164:25

committed 36:15 110:11

Committee 151:22 152:19

common 239:19

communicate 181:13

communications 223:3

communities 54:24 58:6 59:3 169:3

community 4:13 6:3,6 11:12 16:14 17:9,17 20:21,22,23,24 21:1 23:22 24:11 27:18 29:21 31:24 39:22 42:21 43:1 54:8,9,15 55:18, 20,24 56:1,4,12 57:4,16,24 58:4,9 59:12 103:12 110:4 122:20,21, 22 123:13 124:18 125:7,23 130:21 135:2 145:14 147:21 148:6,7 151:14 152:2,15, 17 153:5 157:18 158:24 161:24 163:6 164:12,16, 18 165:24 166:5 167:10,25 171:11 172:5,6,7,16,19 173:7,10,12,15,25 174:2 175:3,10 177:12 179:19 180:11,13 182:1,4, 6,11,14,16,18,19, 21,25 183:2,15,17 186:10,18,20,22 187:7 188:17 190:22 192:8 200:2 201:4,16 202:8 203:4 210:1 212:20 238:11 244:14 245:7,8,20, 21 246:14 264:18 265:16,17,23

community's 103:14 159:4

commute 260:3,5

comp 103:10,20 147:15, 18 148:17 255:16

Companies 53:21

companion 137:11

comparable 160:2 192:3,4

compare 47:25 213:1

compared 140:14 154:19 183:19 185:15 230:18

comparing 48:7 213:9

comparison 134:4 144:17 160:3,8 180:14 199:16

compatibility 6:19 115:12 118:5 121:22 126:20 127:18 133:21,23 145:25 150:10 157:20 181:4 188:10 209:2 210:6 211:17 215:8 217:6 220:4, 6,7 221:20 237:13 250:22 254:2

compatible 125:14 152:4 161:16 181:5,20 182:5 184:10 185:4,6 186:19 187:8 192:5 199:1 200:24 204:24 208:2 211:19 212:12 213:5 214:2,9 215:10,11, 13,17,25 217:12, 13 219:4 220:5,21 221:16 241:19 248:23 249:13 256:20

compensate 207:10

compilation 112:25 113:13

complacency 193:5

complete 157:9

completed 8:18 82:12

completely 44:9 55:11 91:25 195:10 214:20 217:22 237:16 244:16 258:5

completes 136:20

completion 155:17

complexion 11:25

compliance 15:9 71:24 74:9 111:4 122:25 123:6,9 129:13,17 209:4 215:19 219:1,3

compliant 32:2 215:23 217:11

comply 77:4 137:21 199:4 205:10

complying 110:11

components 179:24 187:7 204:1 213:13

composite 113:19

comprehensive 21:18 39:18 88:2,4 112:10 116:4 129:12 132:23 149:3 172:12 203:12 207:4 246:2 252:2

compromise 151:16 168:1 219:21

compromised 166:2

computers 112:4

concede 146:2

concentrating 126:1

concentration 118:22

concept 15:17 32:4 33:2, 10,15,22 34:4,13 45:7 46:2 51:14,23 52:11 63:4,20 81:22 126:25 127:8,24,25 128:8 132:12 142:12,17 149:25 164:20 208:18,19 248:20, 21

concepts 208:18

concern 44:2,3 69:3 132:5, 6 137:7 145:12 149:21 184:15 188:7 191:13 192:6 193:3 226:3 227:17 230:14

concerned 138:5 151:14 184:11

concerns 6:15,18 7:2 15:7 18:18 19:4 43:19 110:18 111:9 132:14,15 146:15 158:24 159:1 164:20,22 174:9 188:13 190:14 194:10 225:25 226:1 227:16,19 228:24 250:22,24 264:5

concessions 252:12

concise 8:2

conclude 5:8 257:12

concluded 151:4 223:16

concludes 19:22 50:16 80:15 111:10 137:5 150:14 258:12

concluding 8:17

conclusion 6:7 7:6 50:25 139:1 199:21 200:6 258:9

conclusions
105:9
concurrence
111:5
concurrency
84:24 85:7 87:25 88:3 95:16 242:2, 3,11,18
condense
251:25
condition
16:3 18:14 34:9 50:12 83:7 95:21 110:12,25 121:1,2, 12 128:20,25 129:11,13 133:4, 13 144:2 146:2 172:8 205:14 216:22 221:2,13
conditioned
131:14 132:11
conditions
5:17 6:17 18:14 33:21 39:3 46:1 82:21,23 83:11 126:19,23 127:21 146:11 156:1 161:3,5 162:13,17 165:23 167:6 180:10 194:12 205:17,21 207:22, 23 208:1,3,21,22 211:3,11 220:1
conduct
4:8 85:21 86:3,5
conducted
82:13 85:10,18,20, 23 258:6
conducts
85:22
confident
199:3
configuration
105:22 107:6 136:9
confine
127:21
confined
66:18
confinement
66:20,23 68:20 69:8 72:25 76:7
confining
66:2 68:16,25 72:24 73:1,4 74:16
confirm
255:24
confirming
251:6
conflict
181:11 235:15 236:2
conflicts
213:20 235:14,17
confused
210:7 259:3
confusing
140:22 202:2
congested
167:5 228:22
congested-related
226:4 227:8
congestion
89:21 90:1 155:20 227:10,17 232:21
conjunction
91:12 130:14
connection
18:17 34:8 46:4,7, 16 89:2,3 223:12
connectivity
34:7
connects
25:7
conscience
196:2
conscious
266:8
Conservancy
242:5,6,16 244:3
conservative
74:3,5 174:19
consideration
17:10 31:18 108:15 133:19 187:10 228:5 231:18 266:13
considerations
147:25 233:16
considered
42:10 56:15 81:23 82:25 103:13 113:9 135:18 153:12 155:6,16 157:10 228:8 234:8 242:14 244:3 254:3
consist
205:6
consistency
154:16 209:2 239:3,4,7,10 241:23
consistent
5:16 35:13 38:8 40:10 153:19 155:7 162:18 165:24 168:8 205:7 206:6 210:3 215:14,16 217:14 220:20 221:16 249:10 251:9
consistently
183:3
consists
226:5
constituent
236:1
constitutionally
158:15 159:24
constructed
27:7,9 80:18 84:17 92:25
construction
42:17 48:22 49:18 53:6 69:4 80:1 83:1 89:15 90:19 91:3 92:8 94:15 99:18,19 100:18 133:1 156:5 157:8 232:3 234:19 264:6,9
consult
235:9
consultant
129:20 235:8,16
consultants
81:7 86:2 94:8,9
consumption
44:10,13
contained
146:12 183:12,14
containment
72:4,7
contaminant
72:6 73:20 74:1,14 76:20 195:9
contaminants
65:19 67:23 75:15 76:4
contaminate
193:9
contaminated
63:21 65:11 74:25 192:21
contamination
63:19,24 69:3,6 71:21,25 77:14 166:24
contemplate
142:10
contemplated
120:15 123:2,7 125:15
contemplating
33:24
context
125:22 130:2 134:15 149:11,22 233:15
contextually
143:13
continuance
120:20
continue
9:4 14:22 94:12 161:7
continuing
259:18
continuous
93:3 95:11
continuously
93:13
contract
5:12 55:9 99:19
contrast
30:13
contribute
140:9
contributing
140:13
control
244:16
controlled
81:19
controlling
236:20
controls
93:8
convenience
28:14 37:8 38:21 39:10 101:9 102:19,23 120:17 146:8
convenience/food
41:15 128:3
conversations
31:20 236:9
conversion
218:17
convert
116:25
converted
16:24
cooperative
187:20
coordinate
236:5
coordination
236:16
copies
9:25 113:5 197:5 222:7
copy
8:20 150:23 165:18,19 169:15 186:3 221:25 226:15 238:9 252:20
Coral
23:6
corner
20:10,12 27:15 41:5 238:19
correct
14:14 32:9 36:2 40:19 51:11 58:25 61:13,21,25 78:1 79:13,14 84:19 86:10 95:25 97:22 104:3 105:13,18 106:3,7,8 108:24 113:15,21 118:3, 13 119:12 129:2 138:21 139:11,22 141:2,5,11 148:23 149:2 150:3 235:4,

5 236:6,7
corrected
243:7
corrections
111:15
correctly
117:8
correlate
48:1
correspondence
174:8
corridor
22:11 23:1 90:11 162:23 231:8,11 263:18
cost
234:5
Costar
57:6
counsel
171:22
count
85:20 86:10,11,13, 14,15,16,17,19,22 87:8 103:6,7 211:23
counted
87:9
counting
86:11
country
57:8 63:23 194:4, 5,6 218:24
counts
85:17,21,22,25 86:3,4,5,6 87:4
county
4:17,19,23 5:22 6:6 7:20 11:5 18:9 19:1 22:3 23:2 27:8 40:7 54:6,9, 13,18 55:18 57:5, 11 58:6 63:1,5,10, 13 64:3,7 65:3 66:10 68:6 69:5 77:16 78:16 80:2 82:14,19,20 84:13, 24 85:3,14,22 86:25 87:10,14,23 88:1,20 94:6 102:25 103:13 104:24 105:6,12 106:2 110:14 111:25 112:10 118:18 120:22 121:3 127:13 129:8 132:22 134:14 135:2,16 139:16,19 141:3 149:12 151:23 152:14 153:17 154:1,22,25 155:7 158:9 165:21 166:19 167:23 168:6 172:8 177:18 180:7 182:10 183:19,22 187:19 192:16 194:16 195:24 196:4 198:6,19,21 200:1 202:7,25 233:7 238:3,21 239:8 242:6,7,8,15 243:25 247:8 248:18 255:15 256:23 260:3 261:14
County's
69:2 85:7 103:20 149:9 197:3
couple
12:11 26:15 30:22 40:13 43:11 59:13 90:5 97:8 127:24 146:23 202:22 225:24 235:3 262:21
courses
81:2
court
9:2 239:9
cover
18:1,4 22:3 60:13 161:13
coverage
142:5
covered
54:4,23 129:21 205:17
COVID
261:14
cows
261:1 265:13
CP
246:3
CPD
20:15 36:24 40:12, 22,23 42:1 44:23, 25 45:18 61:18 88:14 144:11 201:11 218:22 221:14 246:12 248:20,21,24 249:12
CPDS
41:11 238:10 248:4,6
Cracker
193:25
craft
6:17
Craig
151:9 169:25
crammed
145:10
cranes
261:5
crank
179:7
crashes
226:4,5,6,7 227:8, 9
create
5:3 63:15 64:5 172:7
created
18:12 69:5 73:10
creates
159:6
creating
134:1
creative
218:16,25
creativity
206:16,17
credit
36:10
creek
23:16,18 24:15 25:10,23 79:2,4,16 126:3
crematorium
216:16
crematory
184:22,23
crimes
164:25
criteria
4:21 5:15 33:9 35:2,5 37:6,8 40:6 135:16 139:5 140:3 213:6
critical
159:16 179:24,25 180:2
critically
252:9,10
cross
14:3
cross-access
16:10 46:12 88:25 107:17
cross-examination
7:22 8:8
cross-examine
222:17,21 251:10
cross-section
29:17 30:6 90:14 96:17,19,22 104:12,13,14,16, 18
cross-sections
29:16 103:22 104:1 200:13
crowd
152:22
cul-de-sac
50:3,14
cumulative
144:4
curb
96:19,20 233:4,10, 14,18 234:2
curious
201:20
current
42:1 54:6,7 57:9 80:21 83:7 84:21 85:15 97:9 100:9 103:16 126:18 135:16 136:8,9,18 137:19 139:5 140:3 141:2 149:25 151:15,19 152:14 153:12 154:12 155:4,8 159:23 161:21 162:22 166:1 168:10 180:25 184:7 199:11,12, 16 205:19 214:11 221:7 232:6 240:17 243:1,12, 17 244:21,24 245:10 249:1 251:7 262:4
Curt
18:8
curtain
29:19
cut
26:21 107:8 191:10
cutting
29:20

D

D.R.
55:2
D.R.G.R.
148:1
D.R.I.
143:25 144:3,6
daily
86:5 97:12 230:2 265:20
Daly
171:4
dancing
177:6
danger
159:6
Daniels
144:13 238:22
darn
213:3
data
84:14 85:11,15 87:9 229:22 230:10
date
4:9 85:23 145:10
dated
13:5 171:22
daughter
23:5
daunting
192:1

David
178:14
day
86:12 97:19,23,24 98:10,11,20,21 156:19,22 170:23 177:13 184:12,14 230:3 232:16 238:25 257:23 259:10,12 260:5 267:1
days
86:12,15 87:9 178:2 223:9 229:22 262:21
dead
49:19 170:21 210:17
deal
24:11 38:24 248:22 255:21 261:20 265:23
Dealer
42:16
dealers
41:19 42:14 53:5
dealership
214:18
dealerships
216:16
dealing
110:25
December
4:9 13:6,21 171:23 230:22
decision
4:24 224:2 233:23 241:24
decisions
263:24
decrease
133:23 144:20 217:6 237:12 248:12,18
decreases
17:5
deem
47:10
deemed
115:4 128:6 161:3 206:5 214:2,11
deep
49:2 64:18,19 66:12
deeper
64:1
defected
77:24
defer
234:14 243:25
deferred
158:13
define
142:1
defined
7:20 21:18 142:1 172:8 239:25
defines
155:19
definition
21:19 124:6 142:10 181:15,19 213:4,7,19 219:19 247:5
definitions
155:2
definitive
172:14 173:2
Deflippo
114:6
degree
142:3
delay
136:3,4,10,17
deleterious
165:5
delineating
115:2
deliveries
190:10 212:5,8,9 214:18,19
delivering
190:6 212:7
delivery
190:6,9
demand
142:6
demonstrated
171:13
denial
168:9 220:9 221:22
denied
155:9 158:13 161:6 187:9 237:15 251:8
dense
60:12 185:20
densities
28:10 123:14 152:3 158:12 172:20 186:23 188:8
density
18:5 27:25 28:7 130:24 144:21 149:4 154:19 167:16 181:24
deny
174:1 234:14 243:25
department
6:3 50:13 80:4 135:2 228:9 229:2 231:25 233:17 234:23 235:18 236:1,15,16
departures
247:14
depending
100:22 138:8
depicted
128:1
depicting
112:22 132:13
depiction
31:10,11
depicts
124:13
depot
44:12
depth
141:12 166:19 192:17 243:24
derived
84:22
desalinate
75:12
describe
69:16 95:19
describing
181:6
descriptor
79:13
design
5:17 13:25 14:8 15:3 33:4 35:13 40:6 50:10 91:2, 10,13,21 92:8 93:20 94:9 99:15, 18 100:5,7,18 101:24 136:9,18, 20 137:4,18 157:8 205:4,9,11 212:3 232:2 234:18 235:23
Design-build
99:16
design-related
205:21
designated
11:4 18:11 159:16
designation
109:9 201:18 208:12
designed
35:12 79:18 163:8 167:15 182:11 243:9
desired
201:6
desires
200:2
desk
9:25
destination
102:14,23,24 194:9
destructive
123:16 152:5 160:23 172:21 173:10 186:25
detail
12:11 15:15 16:11 49:20 115:14 128:1 131:19,22 132:16 241:7 246:22
detailed
195:20 207:13
details
4:14 28:16
detection
72:6,11
detention
45:8
determination
82:5 168:6
determine
84:20 85:15 86:9 138:3 182:13
determined
92:17 93:22 153:18 179:25
determines
86:23
detract
116:13 142:18
detriment
45:14
detrimental
166:4 199:9
develop
107:13,17 126:5 182:17
developable
29:13 56:20 57:19
developed
12:2 23:20,24 25:21,24 30:10 33:17 46:6,8 52:16 55:2,20 56:12 57:22 59:16 63:20 126:19 128:15 133:16 145:10 163:16,17
developer
175:5
developers
182:12
developing
156:4
development
4:11,21 5:15 6:3,6 7:18 8:6 10:13 15:9 16:9 18:17,22 20:6,25 24:1,7,22 25:2 26:3,5,12,25 27:12,17 28:3,17, 19 33:7,20 35:2,15 37:7,19 38:6 40:5 42:25 46:5,11,15 47:2,5,8,10,12,13 49:22 50:14 54:9, 24 55:18 56:8 57:1 59:14 62:22 88:1,

16,17 90:23 92:2 105:17 108:21 112:11 114:19 115:17 116:5 122:2 126:7,12,16 127:1,4,17 130:12 131:17 134:3 135:3 137:2,14 138:23 139:9,23 141:7,18 142:2,11 148:25 149:12,13, 14 151:17 153:9 154:4,25 155:5,17 158:14 159:17 161:1,2,7,12,14 167:9,23 168:2 171:25 173:12,19 174:24 175:11,12 177:13,19 178:5 179:13 180:4 181:17,22 182:3,8, 20 183:2,4,18 188:3,6,19 191:24 197:4 198:2 199:5 200:1 201:22 203:13 205:16 206:15 215:20,23 218:11,12 229:11, 17 231:6 232:5 237:17,21 240:1 242:6 243:11 245:17,25 247:1,4 248:22 249:4,24 255:16,19 264:16

development's 27:4

development-related 10:14

developments 16:23 24:17 27:2 28:9 34:1 153:24 154:11 161:9,23 170:25

deviate 261:25

deviation 34:10 44:25 45:1, 16,17,23 46:1 47:5 49:19 50:15 131:3, 15 217:2 228:5

deviations 16:8 35:5 46:18 146:14 207:6 216:5 217:2,4 219:2,11 220:3 221:15 247:14

device 86:1

diagram 29:24 30:11,13,15, 16 31:3 89:5 90:9 93:6

diameter 68:13

diamond 89:9,14

dictate 47:3

die 178:4

differ 147:20

difference 47:23 79:5 93:14 231:19

differences 143:24

difficult 136:12 155:23 156:23 187:24

difficulty 54:19

Diflippo 128:20 129:6,7

dig 66:14 67:5 142:22

dimension 51:19

dimensioned 32:23

direct 38:7

directed 35:21

direction 96:20

directions 86:8

directives 137:21

directly 43:5 79:16 89:13 121:6 174:15 229:12

director 197:19

dirt 190:16,18 191:18

disagree 7:24 13:19 14:25 16:2 222:17,20 252:6

disagreement 14:5,11 17:18 141:24 145:21 146:13

disappointed 221:17

discharges 79:4

disciplines 115:1

discovered 195:4

discretion 137:25

discuss 16:7 18:8,12 19:8, 14,18 118:10 129:20 130:11,18

discussed 60:8 156:9 216:23 237:19 241:13

discussion 166:21 216:2 232:15

discussions 82:9 89:4,12 90:20 91:18 92:21 93:24 99:15 232:9

disposal 65:10

disrespect 259:3

disruptions 190:1

dissent 152:25

distance 76:16 89:25 131:9 133:18 193:17 250:15

distances 163:1

distinguish 7:19 115:14

distinguished 132:23

distracting 97:3

distractions 155:24

district 42:3,5 79:19 90:25 92:6 100:2 201:13 206:15 208:14 235:10 239:9,11 248:17

districts 116:6 181:7 209:4 214:13

dive 20:20

diverging 89:9,14

divided 32:5 83:15 90:12, 14

division 120:22

docks 35:7

doctor's 102:22

document 230:18

documentation 9:13

dominant 130:5,6

dominated 60:13

Donna 4:4

door 213:15

dormant 123:4

dot 98:8,11 139:16

DOT's 108:25 200:13

dots 98:7

double 37:4 72:4,7 133:15 144:15 160:5 166:15 204:11 264:3 265:4

doubled 34:6 166:7

downed 264:17

downhill 67:21

downtown 263:12

drainage 19:6 29:19 31:1 78:11 80:2,5 102:5 233:19 234:1

dramatically 105:24

drastically 266:11

draw 191:5

drawing 68:5 130:7 192:14, 24

drawn 67:17

DRI 157:15

drilled 68:12,21

drilling 68:11

drink 75:10

drinking 75:13 174:17

drive 52:9 156:14 191:2

drive-through 15:1 17:19 41:15 110:20 121:15,17 146:3,16 221:3,11

drive-through's 208:4

drive-throughs 12:13 13:22 146:5 221:7,8,13

driven
152:16
drives
106:10
driveway
32:24 34:5 51:18, 21 52:1 227:20,23 228:1,6 262:1
driveways
262:11
driving
101:16 102:16 241:10,11
drop
102:20
dropped
49:5
drugstore
221:11
dry
102:18 121:8
ducks
261:2
due
21:15,17 27:25 43:23 76:15 108:11 167:13 173:17 186:13
dump
87:18
dumped
253:15
dumpster
179:18 217:21 218:1
dumpsters
164:24 212:9,10
Dunn
114:22
duplicate
21:25 38:20
duplicative
255:4
Durrance
156:16 168:24
duties
12:22 235:19
dwelling
122:16 123:8
dynamic
142:10
dynamics
31:23

E

E-1
48:16
E-2
48:16
E.M.S.
157:19 159:2
earlier
7:13 11:16 60:8 75:19 115:6 134:23 155:3 160:11 210:7 231:4 232:12 237:19
early
82:3,8 182:24 190:7
Earth
49:5
earthwork
45:11
easement
36:8,9 38:18 46:12 47:15,17 131:11
easier
252:13
east
13:23 14:3 15:2,11 20:11 22:23 24:3, 15 25:17 26:11 30:8 36:23 42:7 52:18 60:22 84:8 86:20,21 88:25 92:12 96:10,13 97:15 98:10 100:9 108:12 124:19,20 146:6,16 164:1 170:21 189:7,10 208:11 228:2,18 230:1 261:12 263:18
eastbound
93:5,9,12,16
easterly
46:4 50:1,11
eastern
34:8,10 106:24 242:7
easternmost
122:8
easy
241:8
eats
29:12
ECHO
168:24 169:1
Eck
171:5
eclipse
59:8
ecology
59:24
economic
54:11 58:7
edge
133:16
education
197:7
effect
131:21 146:1 188:5 201:12 202:5 204:1 221:14
effective
8:13 222:22
effectively
185:15 250:14
effects
180:4
effort
14:16 152:11,12
egregious
201:8 248:3
eight-foot
36:8,12 131:23 133:1 160:13 162:14
eight-foot-high
179:22
elected
120:19
electronic
252:20
element
242:21
elements
233:2,4 242:20
elevated
80:19 217:22
elevation
80:13,23
eliminate
160:8 161:4 165:5 185:3
eliminated
42:15 44:2,4,9,11, 12
eliminating
146:15
email
8:19,20,22 113:1 222:3
emails
113:19
emphasize
241:25 248:11 250:3 252:7 253:19
enacted
28:3
enclosed
31:1
encompass
121:10
encompassed
118:22
encounter
136:3
encourage
170:7 258:1
encroachment
160:22
end
19:16 20:23 49:19, 23 164:21 170:21 177:4,12 181:14 182:1 185:16,24 209:10 238:25 253:5 260:1,18 261:3,22 263:10
ended
227:14
ends
247:13
engage
200:3
engineer
78:5,6 114:12,16, 18,19 135:1,3 224:22 250:23
engineering
135:7 197:1,22 225:1
engineering-related
19:7
engineers
94:8
enhanced
162:6
enhancement
132:16
enjoyment
179:21 186:15
ensure
39:25 79:23 129:13 133:15
ensures
125:17 129:16
enter
67:24 136:16
entered
73:20 225:10
entering
52:11 89:11 140:13,20
entertain
19:23
entertained
224:6
entertains
224:3
entire
37:22 80:7 111:18 128:14 162:10 192:9 199:7 201:2 210:20 233:15 246:20 248:17,20
entitlement
168:15 188:23 194:23,24
entitlements
142:23 143:14 211:24
entrance
43:13
environment
73:24 123:17 152:6 160:25

172:23 179:19 180:13 186:15 187:1 194:4,19
environmental 59:22 101:25 102:5 114:7,20 129:19 147:25 185:17
environmentally 60:15 126:9,13
envision 143:3 145:9
envisioned 123:10
equal 180:14
equally 115:19
equals 37:18 48:2
equestrian 173:14,22
equestrian-oriented 123:13 152:1 172:18 186:22
equipment 28:25 35:8,13,16 41:18 42:13,16,17, 18 53:5,6 193:3,9 213:21,23
equivalence 160:4
equivalencies 118:8
equivalency 116:14,22 131:14 134:9 142:21
equivalent 48:8,9,13 116:24
erodes 166:1
erroneous 79:13
error 78:20 112:22 193:4
errors 78:13,21
escape 72:11
essentially 39:7 66:14 67:4 95:15 131:6 145:9 157:17 189:6 194:8 205:5
establish 64:9 121:3
established 21:22 27:2 161:15
establishes 65:4 144:1
establishing 54:20
establishment 143:22 145:2
estate 57:7
estimated 137:18
estimates 54:12 64:4
evacuation 23:1
evaluate 4:20 84:12 88:18 90:7 137:17
evaluated 118:15 125:3 137:1 141:4 157:16
evaluating 84:16
evaluation 183:7
Evans 114:18 134:11,18, 24 135:1,9 137:17 138:16,21 139:5, 22 140:2 141:4,11, 21
evening 261:23
event 79:21 151:7
events 80:7,8
everybody's 217:17 264:13
everyone's 172:3 253:7
evidence 4:17 5:3 9:16 62:9
evidenced 58:5
exacerbate 165:1
exact 22:8 195:21 219:8
examine 138:3
examiner 4:3,5,16 9:19 10:4, 6,11,17 11:19 12:8,17,18,21 13:2,5,9,13,18,22 14:10,23 19:19,24, 25 29:23 30:11 31:2,5,7,10,16,22 32:7,10 34:17 35:25 40:15,25 41:3,9 50:20 52:16 53:17 54:2 55:5 58:20 59:19 60:1, 16,19,24 61:3,9, 11,14,23 62:3,6, 11,15 64:12 69:11, 15 70:12,16,19 75:2,4 77:9,19,23 78:2,4,9 79:12 80:17,25 81:4,11 84:15,20 85:6,9, 14,19,24 86:7,17, 23 87:1,6,11,15, 19,23 94:18 95:2, 7,10,14,18 96:1,7, 25 97:11,20,25 98:3,6,12,15,22,25 99:2,5,9,13,21,24 105:14,21 106:1,4, 11,19 107:1,10,14, 19,23 108:9,22 109:4 110:17 111:12 112:7,14 113:7,18,22 116:7, 9,17,21 117:9,13, 22 118:1,4,11,24 119:6,9,13,20,25 127:12 128:24 129:4,18 132:25 133:5,12 134:7,10, 17,21 135:8 137:7 138:14,17,22 139:18,23 140:21 141:16,22 146:21, 25 147:4 150:13 151:3 168:18 169:17,21 170:5, 17 171:2,12 172:24 173:23 175:15,17,22,25 176:6,10,14,16,18, 21,24 177:3,8 178:7,10,19,21,24, 25 186:4,7 187:11, 14,16 195:17 196:15,19,22 197:6,23 198:8,11, 23 200:4 201:17 202:10,20 203:3,6, 9,16 205:15 210:15 221:24 222:4,8,13,15 223:4,15,25 224:7, 10,14,17,19,21 225:2,11,19 226:8, 10,11,18,22 227:2, 4 235:2 236:24 240:9 242:11,14 247:7,16 252:17, 21 253:2,5 254:8, 23 255:5 256:2,9, 24 257:10 258:14, 18 259:10,13,17, 21 260:15 266:23
examiner's 223:20
examples 143:10 154:11 209:24,25 215:22
excavation 45:1,9,15
exceed 27:24 28:3 35:17 201:10
exceeds 27:22 220:23
Excellence 185:18
excellent 136:21
exception 12:9 39:12 161:1 197:17
exceptional 130:15,16
exceptions 39:14
excerpts 172:4
excess 145:16 159:3 237:13
exchange 119:18 194:2
exclude 123:15 143:19 172:21 185:8 186:24 195:8
excludes 167:14
excluding 25:18 152:4 173:9
excuse 234:13
exemptions 65:14
exhibit 12:15,19,24,25 13:2,6,7,10,19 14:2,3 110:21 111:22 112:25 113:4,9,10,12,18, 19,24,25 114:1,2 126:21 131:19 169:18,22 171:21 181:8 221:25 222:9,12 225:3,4, 12,13 254:11,13, 16,18,24
exhibits 111:24 112:17 113:6 254:10 255:5
exist 41:21 83:8 247:4
existed 21:25 220:18
existing 23:11 25:4 32:24 36:24 39:21,22 48:15,20 49:15 51:20 103:16,22 106:15 115:3,8,13 121:18 123:11 126:25 127:8 132:20 133:4,13 140:15 151:25 158:13 160:21 161:16 172:17

180:2,5 185:9 186:21 201:11 211:24 220:21 229:9 243:1
exists 154:8 182:5 220:17
exit 52:7 108:7 193:23 250:11
exits 22:18
exotic 36:17,22 48:16
exotics 49:3 60:11 130:3, 23 131:1 189:5,8
expand 47:19
expanded 41:8 122:19 124:1 164:19 165:8 166:17
expansion 199:9
expect 24:1,6 25:13,23 26:2 28:7,22 35:6 37:21 249:25
expected 21:9,15 23:20 24:25 36:21 55:10, 21 132:17 135:20 136:18 139:4
expensive 100:11
experience 156:14 177:25 188:5 197:8,15,18, 24 239:2
experienced 208:18
expert 10:13 16:20 20:5 52:2 53:22,25 59:23 62:13 81:9 112:9 135:5 197:3, 25 224:24
expertise 62:23 185:2
experts 5:20 6:5 50:24 114:25
explain 5:13,14,17 29:24 222:19 248:15
explained 4:14 182:2
explains 251:22
explanation 202:17
expressed 71:12 159:1
extend 108:11 162:10 185:10
extending 179:23
extensive 18:15 245:4
extent 122:8 133:24
exterior 33:3 35:23
extra 10:2 48:9 108:10 180:11 226:15 266:17
extract 48:1,5
extrapolate 87:16
extreme 248:25 261:14
extremely 74:5 239:6 265:20
eye 28:24 209:13
eyesore 184:18

F

facade 35:14
facilities 45:12,20 110:20 144:10 157:18,20 158:11 234:12
facility 41:16 44:11 74:7 198:15
fact 17:15 51:3 69:9 70:14 71:20 73:23 116:22 119:3 133:3 136:4,8 139:19 147:11 152:9 177:19 200:14 220:12 226:14 241:13 246:6 264:8,17
factor 262:5
factors 168:5 245:24
facts 157:21
fail 137:10 139:21 167:8 174:23 193:9 244:5,6
fail-proof 193:4
failing 95:20 138:20,24 139:19 156:11,21 157:24,25 158:3, 25 167:6 234:9
fails 105:15 229:14
failure 175:4 181:12 226:2 229:6,13 231:15
fairly 52:22 211:23
fall 228:3,4
falls 73:15
false 263:4
familiar 4:8 89:16,18 171:13
familiarity 198:1 258:7
family 51:10,11 148:20 150:2 188:4 209:23 212:13 264:23
farm 260:25
farming 186:11,13
farmland 233:13
farms 260:24
fashion 131:14
fast 46:24 90:22 255:8
fast-food 37:9 39:10 46:19 221:6,10
faster 59:3
father's 196:12
favor 108:17
favorable 265:21
favorably 111:6
FDOT 15:13 19:10 29:8 31:18,20 52:19 81:19 82:1,7 85:2, 23 86:3 88:22,24 89:1,6,7,12,20 91:5 92:18,21 93:24 94:8 97:6,16 98:19 100:3,4,6 103:20 104:11 108:5 109:24 136:19 227:20 229:23 235:7,10, 14 236:5 244:7,10
FDOT's 100:20 236:19
fears 188:6
feature 249:7
features 28:17 33:3 35:20, 21 84:17 248:23
February 165:12
feed 25:10
feeds 25:9
feel 30:3,6,9 153:8 154:15 155:4,8 156:7 158:21 161:11,20 162:13 163:15 165:7 166:1 167:14 168:13 179:12 180:3,16 182:15 184:3 187:5 194:6 200:6 206:24 217:21 246:1,19
feeling 194:1
feels 252:8
fees 139:2,11,13
feet 17:13 32:24 34:5,6 35:18 36:6 37:1,3, 11,16 38:1 39:6 43:20,22 44:1 45:2,3 47:14 48:6, 7,8,11,12 51:15, 17,20 52:1,4 57:4, 10,13,14,23 58:2,3 66:22 67:9,12,13, 19,25 68:3,8 69:8 70:3,7 71:18 72:23 81:21 100:9 110:8, 23 115:9,18,22 116:10,11,19,23 117:3,14,18,20,21, 23 118:14 119:16 123:23,24 124:24 126:24 127:5,11, 13,15 128:13 130:2,10 131:8 133:6,9,10 142:16, 25 143:3,5,8,19,20 144:5,14,15,16,18, 22,25 145:4,23 147:22,24 148:2, 18 153:14,16 154:2,9 158:19 160:18 162:21 166:14,17 168:7 179:11 180:7

183:10,23 185:20 188:1 189:24,25 199:14 210:9,22 211:1,9,13,16 213:25 227:24 228:1 240:18,22 241:15 243:18,21 245:3,9 251:13,15 258:21,23 260:23
felt 153:1 198:25 229:2 259:3
FEMA 80:9,23
fence 191:21
FHWA 185:22
fields 6:5
figure 157:23 238:1 256:20
figured 166:13 238:3
figuring 234:24
file 10:12 78:6,17,22 81:7
filed 181:3 185:11 245:2
fill 8:23 81:1 150:22 151:8
filled 49:1 150:18,21
final 4:19,24 8:21 82:5 89:11 112:2 137:1 150:25 157:3 205:6 223:11 249:14
finalized 108:15 157:5
finally 68:5
find 7:11 66:14 100:12 147:12 191:16,18 202:21 204:5 234:22
finding 23:6 122:18
findings 121:24 152:9
finds 125:20 145:20
fine 129:4 203:19 214:3 218:18 225:19
finer 258:24
finished 257:24
fire 50:4,8,13 157:19 158:25 159:1
firm 225:14
firms 197:22
fiscal 91:20,22 100:21
Fish 56:16
fit 12:3,7 14:1 181:9 192:2,4 204:18 232:10 257:20
fits 250:2
five-minute 223:5
five-story 27:6
five-year 71:2,5 120:12 232:6,14,24
fix 220:5 244:8
fixed 84:18
fixtures 35:19
flashing 189:21
flat 60:10
flatwoods 130:22
flesh 8:16
flexibility 14:8 15:3 127:20 206:16,18 218:11, 13,23
flip 222:23
floating 76:22
flood 80:13 130:13
floor 6:8 57:5,15,23 124:25 142:7 143:7 144:1,8 166:7 256:14,21
floor-area 237:18
Florida 7:18 8:6 54:12 59:13 78:18 79:19 80:3 135:4 194:7 197:1,14,16,17 200:13 225:23 229:22 232:19 239:5,20 242:5 255:15 261:13
flow 67:21 69:24 70:8 155:22 223:10
flows 217:15
flush 131:10 233:18,19
flux 36:21 48:15
fly-over 104:19
fly-overs 104:9
focus 120:2 237:7
focused 245:25
fogged 189:5
folder 246:20
folks 11:2 12:7 14:1 37:20 62:17 109:14 227:10
follow 7:3 124:2,3 148:5 177:4
follow-up 146:20
food 37:8 146:8 193:25 246:25 247:22
foods 46:24
foot 20:17 37:17 44:19, 20 80:19,22 115:19 147:16 148:17 154:2,7 160:7 163:23 179:16 238:4,6,10, 16,20 239:24
footage 17:12,21 110:22 116:15 118:25 122:3 154:14 155:1,3 165:22 183:9,21 199:22 200:21 203:24 204:7 210:11 243:20 253:21,24 255:20 259:2
footcandle 35:18
footprint 143:4
force 106:20 263:16
forced 177:23
forecast 54:10 59:10 163:5
forecasted 57:12 58:16
forecasts 54:17
forego 223:24
forest 60:11
forested 60:9
forever 179:15,21 186:16 189:12 196:14
form 8:18,23 160:25 251:7
formally 239:8
format 252:11
forms 6:10
Fort 124:16
forum 62:14 115:1 135:6 239:16
forward 20:1 91:13,14 92:6 111:10 136:19 140:1 150:22 232:4,18,20,24 248:8
found 8:10 18:3 72:10 78:13 120:6 195:4 238:2
four-by-four 191:12
four-foot 160:17,18 191:21
four-lane 83:14 84:8 90:12, 13 91:4 97:17,18 98:16,17
four-laned 98:23 99:3
four-story 142:18
fours 190:21
fourth 33:13 231:20
fragmented 56:5 58:10
frame 143:18
franchises 46:23

Frankie
178:15
frankly
207:17
free
139:15 227:11
free-flow
92:24 93:4,7
freeway
261:21
friends
190:8
front
91:14 115:8 176:8
261:8
frontage
12:14 82:2 94:4
107:11
frown
205:16
frustrated
190:9
fuel
29:4 38:4 41:17,18
72:2,5 76:21
120:17 128:3
192:11,21 194:14
195:9
fulfill
109:21
fulfilling
110:13
full
47:19 107:2
113:15 179:23
185:10 226:16,20
239:17
fully
35:9 110:11
249:25
fun
235:24 257:8
function
103:16 107:20
243:1
functionally
143:23
functioning
132:10
fundamental
188:17 246:4
funded
83:1,3 91:19,23,25
100:5 157:2,3
232:3 244:12
263:21
funding
90:18 99:8 100:7
137:15 157:7
232:19
funds
139:16
funeral
184:22,23
funnel
264:1
future
15:3 21:4,6,8,17,
18 23:11 24:3
25:12 27:23,25
28:8,21 29:14
55:9,17 56:2,19
57:12,24 58:13
82:16,18 109:24
112:21 122:4,25
123:6 126:17
129:20 132:19
148:15 156:11
159:17 160:22
167:8 189:1
199:25 201:19
231:24 245:14

G

gaps
136:15
gas
22:14,16,17,19,21
23:3,6,8 26:17
28:21,23 38:5
102:18 166:18,20
193:12,13,14,23
194:25 195:8
211:25 263:3,7,9
264:11,19
Gateway/airport
238:23
gave
165:18 226:23
246:20 253:9
256:4
gem
262:15
general
11:5,9 16:19,24
21:4,7,9,19,22
22:7 23:11,19,25
25:15 29:13 30:4
42:3 51:4,5,12
53:13 56:2,10,18,
24 58:11 63:16
109:7 110:1 116:3
118:16,20 122:6
124:9,16 125:4
148:3,21 153:25
154:12,22,24
163:14 167:22
201:13,19,22
202:6 204:22
208:24 219:18
220:18 225:25
238:3 243:22
248:5,17 251:19
258:7
generalized
63:9
generally
20:10 52:8 62:23
80:6 127:6 161:2
212:19
generate
140:6 245:12
generated
71:13 106:5
140:18
generating
212:24
generation
88:18 115:20
118:8 142:6
229:19
Gennifer
259:19 260:15,17
geographical
79:10 183:14
geologist
62:20 120:21
George
171:2,3
get all
259:25
gifts
249:6
Gillogly
114:11
give
6:16 9:9 62:9,18
103:15 107:7
111:18 150:23
158:13 197:11
198:3 199:20
206:16 222:1,2,5
252:23
giving
197:7 255:25
256:3 259:6
265:25
glad
266:24
glaze
247:25
glean
132:3
goal
103:14 122:19
123:2,7 124:1
125:15 129:13,14
151:24 153:10,20
155:10 162:18
167:17 168:11
172:5,15,16
173:20 186:18,20
187:2 240:5
249:15,21 251:9,
12
goals
103:21 171:19
209:6
goats
261:2 265:13
good
4:3 10:5 20:3 43:3
49:15 53:19 59:21
78:3 81:6 112:5,6
129:6 134:18,19
136:25 150:9
151:11 171:8,9
178:21,23 179:4
187:14,16 193:7
194:4,18 196:2,19,
21,22,24 199:11
203:23 206:24
217:18 218:11,12
226:5 227:9,13
235:1
Google
49:5 147:10
gopher
18:3 60:4 261:11
Gorda
22:11,18 23:2
governance
194:18
governing
250:1
government
78:19 79:11
120:23
governor's
232:20
grab
191:8
grade
129:25 130:12
132:2
graphic
36:20 38:10 52:13
67:1 73:2 92:4
97:7 100:25
125:24 241:17
graphics
30:20 203:23
grassroots
152:12
great
24:11,24 38:24
73:17 174:7 188:7
232:9,15 233:6
244:9
greater
79:24 125:12,19
144:21 154:10
158:21 159:6
219:14,15
greatest
118:5
greatly
157:25
green
66:1,2 73:3 93:3,
13
Greenwell
24:16
Greenwell's
163:22
Griffis
259:20,23,24
260:16,17,18

grocery
28:13 214:19 264:19
gross
124:25 144:1 171:25 174:1
ground
35:11 60:13 64:8 68:23 71:18 128:21
groundwater
62:19,24 63:19,24 64:5 65:4 72:1,8, 12 73:10 77:10,11, 20
group
53:5 61:17,21 176:3 235:11
grouped
23:14
groups
43:6,8
grout
68:10
grouted
68:9,15,24
grow
47:19 85:1 196:3
growing
58:5 59:3 101:6 123:9
grown
122:22,24
growth
55:21 85:1 91:16 96:4 196:3 229:20 230:8,20,23 231:1 242:9 260:11 261:13,14 262:8
guardrails
237:20 239:22
guess
133:7 141:16 157:23 221:10 251:10
guide
49:5,7 237:21 256:17
guidelines
137:19 140:4 205:4,9,12
guidepost
240:14
Gulf
78:20 143:16,24
gutter
29:20 96:19,21 233:4,10,14,18 234:2
guy
196:7
guys
117:12 195:19 260:12

H

half
9:1,8 37:22 48:14 120:3 125:10 145:11 189:7,8 263:4
halves
189:7
hamper
126:4
hampered
159:2
hand
9:14,20 62:7 66:25 225:20
handed
226:16
handle
218:14
handles
235:19
Hang
12:21 32:7 176:14
happen
15:19 155:18 157:13 235:21 237:21 240:10 246:12 252:11
happened
11:7,13 174:5
happening
91:17 248:24
happy
19:23 58:19 80:16 221:23
harbor
234:15
hard
22:2 23:5 38:10 93:5 114:10 179:8 208:17 210:24,25
hardwoods
130:25
harm
173:4,6
harmful
181:13 214:7
harms
192:12
Harney
171:6
hate
241:21
hauling
42:17
Hawthorn
66:7,8,9,17,21 67:13,16,24 68:22 69:3,23 71:10,11, 17 73:12,22,25 74:21 75:5 76:3,25 77:16
he'll
16:20 17:1,7 18:4, 11,13 19:3,9,13
head
68:1 69:9,13,16 70:1,9 71:18
heading
40:21 55:8
headlight
132:14
headlights
149:21
health
45:14 157:22 158:2,23 159:4 166:4
hear
6:5,25 9:19,21 11:2 97:1 166:21 179:8 206:13 210:12 225:18,19, 20 247:19 258:2
heard
82:24 121:15 122:4,10,20 130:15 135:9 157:11 166:18 181:5 183:8 199:18,19 200:22 207:1 209:17 210:4,9 213:5 237:5 239:3 243:6 250:16,21 258:8,9 263:1
hearing
4:3,5,6,10,16,25 5:10 7:16 8:22 9:19 10:4,5,11,16, 17 11:18 12:8,17, 18,21 13:2,5,9,10, 13,18,21 14:10,23 19:19,24,25 29:23 30:11 31:2,5,7,10, 16,22 32:7,10 34:17 35:25 39:15 40:15,25 41:3,9 43:18 50:20 52:16 53:17 54:2 55:5 58:20 59:2,19 60:1,16,19,24 61:3,9,11,14,23 62:3,6,11,15 64:12 69:11,15 70:12,16, 19 75:2,4 77:9,19, 23 78:2,3,9 79:12 80:17,25 81:4,11 84:15,20 85:6,9, 14,19,24 86:7,17, 23 87:1,6,11,15, 19,23 94:18 95:2, 7,10,14,18 96:1,7, 25 97:11,20,25 98:3,6,12,15,22,25 99:2,5,9,13,21,24 105:14,21 106:1,4, 11,19 107:1,10,14, 19,23 108:9,22 109:4 110:17 111:12 112:3,6,14 113:7,14,18,20,22 116:7,9,17,21 117:9,13,22 118:1, 4,11,24 119:6,9, 13,20,25 127:12 128:24 129:4,18 132:25 133:5,12 134:7,10,17,21 135:8 137:7 138:14,17,22 139:18,23 140:21 141:16,22 146:21, 25 147:4 150:13, 25 151:3 168:18 169:17,21 170:5, 17 171:2,12 172:24 173:23 175:15,17,22,25 176:6,10,14,16,18, 21,24 177:3,8 178:7,10,19,21,23, 25 186:4,7 187:11, 14 196:15,19,22 197:6,23 198:8,11, 23 200:4 201:17 202:10,20 203:3,6, 9,16 205:15 210:15 221:24 222:4,8,13,15 223:4,9,15,20,25 224:7,10,14,17,19, 21 225:2,11,19 226:8,10,11,18,22 227:2,4 235:2 236:24 240:9 242:11,13 245:4,5 246:2,3 247:7,16 252:17,19,21 253:2,5 254:8,23 255:5 256:2,9,24 257:10 258:14,18 259:9,13,17,21 260:15,21 266:23
hearings
4:8 7:17
heart
171:17
heating
35:8
heavier
213:14,16 215:3 216:15 219:15
heaviness
206:11 217:22
heavy
53:6 179:16 184:18
hedge
133:15
height
37:16 48:25 49:12 69:20 70:5 126:24 142:5 160:6 162:4, 16 166:15 168:8

204:10 207:16 210:22 211:18 213:12 216:23,24 219:15 220:2,24 258:20
Hein 242:14
held 16:13 61:8 151:2 152:19 223:14 251:16
helpful 48:21 197:10 237:24
helping 187:25
helps 231:19
hesitations 229:1
hierarchy 122:1
high 53:7 69:22 130:2, 3,10 134:21 136:7 140:12 158:1 184:16 189:17 203:25 261:20 262:19 263:14
high-span 100:10
higher 68:3 69:9,14 119:4 136:16 140:16,17 145:22 153:8 230:12
highlight 226:25
highlights 54:19 58:7
highly 232:7
highway 96:2 159:14 185:19
hire 86:2
hired 151:21
historical 85:1 194:8
historically 22:8
hit 258:22 263:6
hitting 227:14
hodgepodge 26:25
Hofland 171:7,9,10 175:16, 21
holding 76:13
hole 66:14 67:5 68:12, 13,14,18,21 192:3
home 52:9 59:15 102:15, 16 112:4 170:3 179:5,10,14,21 180:3 181:19 184:6,22,23 188:1, 4 189:22 210:21
homebuilder 55:4,8
homes 59:10 156:5 186:10 188:11,20
honored 187:3
hope 42:22 91:19 136:19 143:11 220:9 224:24
hoping 100:13,16 159:8, 11
horizontal 74:2,18
horizontally 73:15,16
horse 210:18 260:24
horses 190:20 265:12
Horton 55:2
hospitality 194:6
hotel 44:8 116:7,8,13, 18,24 117:1,6,15, 17,19,20 118:2 119:10,14,19,24 128:1 142:18 154:18 181:17 210:23 211:1,13, 14 216:25 258:21 259:2 263:10
hotel/motel 41:20
hotels 193:24 211:4
hour 9:1,5,8 84:21 86:9 257:15
hours 35:24 86:12 184:12,14 260:8
house 189:22 254:9 262:19
household 55:12
housekeeping 112:16 254:9
houses 59:4 170:25
how's 159:4
hub 191:8
huge 199:9 244:15 250:3 261:9,13
human 193:4
hundred 166:14 185:20 195:7
hundred-year 80:12
hundreds 156:4 197:9
hurricane 22:25 49:10
husband 177:10,23
hydrants 50:9
hydrogeology 65:24
hydrologist 62:20 194:12

I

I-75 13:16,17 15:11 20:10,11 21:2,11, 13 22:10,17,25 24:18 25:17 30:19 32:2 58:15 78:25 81:17 86:21 89:16, 17,25 90:13,16 96:23 97:15 98:10 155:14 156:15,18 159:15 162:25 163:4 164:2 169:9 228:25 250:11
idea 59:1 133:8,20 205:3
ideas 191:22
identical 213:3
identification 13:1,8 113:24,25 114:1,2 169:22 222:12 225:4,13 254:17,19
identified 60:6 73:1 232:22
ignore 202:8 238:13
II 61:17,20 65:6,12, 15,16 70:25 72:4
III 65:6,17 71:2
illuminate 259:7
illustrate 76:7
illustrating 96:15
illustration 79:12 124:12 126:21
imagine 72:12
immediately 52:10 74:1 173:8
impact 52:5,6 115:21 139:2,10,13 142:5 158:23 161:24 167:4 242:12,18 243:5 260:1 261:9 264:10 265:20 266:3
impacted 70:22 138:18 243:11,14 265:22
impacting 76:18 262:13 265:19
impacts 5:18 64:23,24 73:7 76:7 89:13 118:5 120:23 134:13 135:21 139:3 157:25 159:18,21, 23 161:5 165:24 166:3 168:3 169:10 179:20 206:25 207:12 212:14,22,24 213:12,20,24 214:14,25 215:5 216:19 218:24 234:3,4
impediment 105:16
impermeable 174:14
implement 255:16
implementing 129:12
important 29:12 64:2,16 66:11 89:1 121:20 177:16 213:6 240:7 242:20 252:8,9,10
importantly 19:9 64:24 68:11 76:12 239:5
impossible 74:4,17 156:24
impractical 185:14
impressive 227:6

improperly
174:11
improve
141:9 161:16
improved
56:13 109:23
154:5
improvement
75:9 90:25 98:16,
18 100:2 266:2
improvements
82:24,25 83:2,5
103:12 104:5
106:9 136:22
137:3,13,15,25
138:7,10 139:6,10,
12,14,15,16
140:11 159:11
200:17 232:11
inability
121:11
inadequate
161:3,13
inception
225:15
inches
37:25
include
5:19 39:9 71:10
72:2 90:15 92:13
121:10 124:25
233:4
included
36:14 131:22
168:16 171:21
247:6,23
includes
79:20,22 116:18
239:10
including
10:14 122:15
161:23 168:5
211:5
incompatibility
174:2 219:22
241:11 248:25
incompatible
123:15 172:21
180:16 181:22
186:24 202:21
248:10
inconsistency
219:21 220:7
230:24 250:23,24
inconsistent
94:19 153:9
165:15 168:11
173:19 202:25
237:15 245:16
251:8
incorporated
137:4
incorporating
205:17
increase
37:11 58:16 117:6
125:21 133:22
144:20,25 159:22
160:6 163:5
167:12 180:18
207:16 217:4,5
230:5 237:10
238:15 248:25
increased
37:14,15 39:24
43:11 121:23
158:1 167:3
increasing
92:4 123:22
145:24 159:3,5
164:22 165:1
248:11
Indicating
19:25
indigenous
36:6,8,10,14 38:16
40:2 49:6 126:10
130:14 131:10
132:2,9 150:6
industrial
165:11,14 167:2
infestation
36:22 48:17
influence
229:1
influences
181:13 214:8
information
7:1 8:16 50:6 79:3,
10 88:13 109:13
140:23 255:7
informed
90:7
Inge
9:25 10:5,7,18
12:19 13:4,15
14:14,24 20:1
108:1,13,25 109:5
236:4 253:23
inherently
53:10
inhouse
235:10
initial
19:22 104:24
111:10 165:22
198:24
input
8:11,12 42:21
50:23,25 87:21
150:16 151:6
172:10,11,13
223:6 257:13
259:18
ins
31:1
insert
95:2,3,5,8,12
inset
31:5,7 90:5 93:2
122:6
inside
93:8,9
installed
37:16,25
instance
61:20
instructed
227:13
integrate
121:22
integrity
160:24
intended
95:23 122:12
139:13 209:11
218:24 220:15
intense
32:20 42:10 52:22,
24 53:4,7 134:2
135:18 154:22,23,
24 167:22 181:16,
18 183:2 185:5
199:23 201:23
204:17 207:15
209:20 221:18
248:17
intensifying
125:13
intensities
158:12 220:16
intensity
44:18 110:7
118:22 119:19,22,
24 121:20,23
123:22 125:21
126:2 133:22
138:19 142:1,3,8,
11 144:20,23
145:13,21,24
153:8,24 154:25
155:6 158:1,22
160:6 165:1
167:12,17 168:8
172:1 180:15,18
182:1 183:18
202:18 204:19
206:11 208:12,15
209:5 212:2 214:6,
13 217:5 220:22
229:18 237:11
239:10,13 242:13
248:12 254:1
262:5 264:14
intensive
153:18
intent
11:8 46:14 173:8,
20 196:1 201:3
206:14 249:11
intentions
36:11
interchange
11:5,9 16:19,25
20:10 21:2,4,7,20,
22 22:7,17 23:11,
12,19,25 25:16
29:14 30:5,16
51:4,6,12 56:2,10,
18,24 58:12 81:17
83:15 89:10,17,18,
19,21,22 90:2
101:4 107:20
109:7 110:2 116:3
118:16,17,18,20
120:16 121:7
122:6,9 124:9,17,
20 125:1,5,20
145:16 148:3,6,9,
11,12,14,22,25
153:25 154:12,22,
24 159:14,15
163:14 167:22
168:2 183:9,11,12,
13 201:19,23
202:6 208:11
209:7 219:18,19
220:13,16,18
228:25 233:7,11
238:18,21,22,23
248:6,17 251:19
interchanges
107:21 238:3,22
interconnection
46:13
interconnections
45:17
interest
112:1 152:13,16
195:12 223:22
236:2
interested
8:9 10:23 247:18
interesting
192:16,18 195:20
241:17,25 242:10
245:23 246:7,10
interior
33:4
intermediate
66:18,23 67:25
internal
34:7 37:13
interrupt
247:16
intersect
138:13
intersecting
136:13
intersection
26:16 29:11 81:17
84:5 90:4 92:14,17
93:14 107:15
108:23 135:24
136:17 138:5,8
139:15,17 140:8,
10,14,20 144:12
intersections
53:12 135:25
136:5,23 137:9

138:15,18,20,24 139:3,8,20 140:3,5,7 174:21,22 175:4 244:5
intersects 21:12
interstate 25:11 159:14 164:25
intervening 249:17
introduce 114:5
introduced 237:6
introductory 5:9
invasive 184:2 185:4
inventory 56:17 179:18
investments 188:12
invite 150:20
inviting 170:13
involved 193:5 236:6,10
Irma 23:4
irrelevant 242:4
irreplaceable 188:18,21
irresponsible 194:18
irrigation 192:14
Island 144:21
issue 80:5 94:17 109:3 121:16 167:9 215:8 219:22 220:4,6,7
issued 120:7
issues 7:8 8:4 10:21,22 18:9 19:7,15 120:9 121:19 151:20 152:15 195:13 211:17 216:23 219:12 242:10 244:1,16 257:21
italics 213:18
item 16:2 17:17
items 10:10 12:10 13:19 14:17,25 15:5,7 110:17 174:10 199:20
IV 42:14 65:6,17

J

Jenn 60:8 96:16 222:19
Jennifer 15:8,15 16:7 20:4 223:23
Jennifer's 53:24
Jim 101:13
job 187:24
jobs 99:25
John 169:23
joint 106:21
Jones 22:19
Joseph 171:4
joy 177:25
judgment 240:20
judicial 195:7
July 87:7 100:20,21 204:3
jumping 6:23
jumps 119:14
junior 128:9
jurisdictions 197:20
justification 171:24
justifications 228:10
justified 125:21 200:23
justify 126:1 200:21

K

Kathy 177:10
keeping 249:8
kennel 44:4
key 122:18 143:24
kicker 231:10
killing 263:14
kind 9:3,13 15:19 22:2 23:13 26:24 41:24 46:2 51:5 53:12 54:22 55:21 75:9 86:17 93:5 97:5 115:2 130:18 132:2,5 187:21 191:8,19,21 195:3,20 200:1 203:25 204:18 207:11 208:17 209:19,20 210:24 213:14 217:18 218:5 220:15 227:16 231:9 232:17 233:1 240:12 252:1 253:11 260:10
kinds 204:17,23 214:25 249:2
Kirk 61:6,10 110:9
knew 194:25
knowing 185:2

L

label 113:7
lack 29:3 164:19 181:11 220:25
laid 11:11 173:24
lake 45:9,10 170:21
lakes 72:22
land 4:21 5:15 7:18 8:6 15:9 16:8 18:1,4 20:5,6 21:3,4,6,8,17 23:10,11 24:3 25:12,15 27:23,25 28:8,17 29:14 30:4 33:7 35:1 36:12 37:7,19 38:6 40:5 42:25 46:14 47:5,10 49:22 56:2,19,20 57:21 58:10 65:9 67:4,8,9,12,13,17,19 68:10 70:7,9 71:19 74:1 88:1 112:11,21 116:5 120:16 122:4,15,25 123:6 124:1 125:5,8,11 126:12,14,17 129:20 132:19,24 141:7 142:2,4 143:13 144:15 145:6,11 148:15 149:12,13,14 152:14 153:25 157:20 158:16,20 159:17,25 161:7,12 164:5 173:24 181:6,25 197:3 198:2 199:4,25 201:6,20,23 202:6 205:16 208:12 209:1,7 210:1 212:23 215:19,23 220:13,18 244:20 245:14 247:1,4,12 248:21 249:17 255:16,18 265:12 266:8
landmark 147:12
lands 17:3 126:5
landscape 35:15 137:14
landscaping 208:4 215:7
lane 93:4,6,7,8,9,12 95:11 106:5 109:1,3 136:15 137:19 155:23
lanes 30:25 93:16,17 96:19 108:20 137:21 138:3 227:15
language 46:3 173:2,3,11 240:3 254:5
large 11:24 24:12 29:11 31:1 41:23,24 42:16 56:15 65:10 125:7,23 128:9 142:22 186:11,13 188:9 212:9,10
large-scale 56:7
largely 122:24 127:7 186:13
larger 31:10
largest 24:14 71:7,11
lastly 214:5
late 43:24 169:24 257:15
laundry 121:7

law
7:18 8:7 173:24 239:19
Lawhon's
22:22 26:17 28:13 35:1 40:20 52:17, 21 53:3 96:11 164:8,9 190:21,25 191:7 193:16 194:8 264:18,22
Lawhon's's
42:7
lawns
261:9
lay
123:4 124:4
layer
72:25 76:16
layers
71:12 73:1,4 74:16
laymen's
75:24
LCEC
36:8 47:15,17
LDC
247:23
leader
57:7
leads
232:17
leak
72:6,11
lean
179:9 215:24
leave
23:3 169:15 189:12
leaves
26:4 56:19
leaving
23:6 52:8 58:12 79:23,24
LEC
239:4
Lee
5:16 6:6 11:5 15:8 18:9 22:3 23:2 27:8 54:6,9,13,18 55:18 57:5,11 58:6 63:1,5,10,13 64:3, 7 65:3 66:10 68:6, 7 69:2,5 78:16 80:2 82:19 84:13, 24 85:3,22 87:23 88:1,20 94:6 105:6 112:10 114:14 120:22 129:8,14, 17 135:2 139:16 142:2 153:11 154:1 157:14 160:21 161:19 165:25 167:3 168:13 171:14 172:4,25 173:13, 25 180:12 183:17 186:19 196:1,4 198:1,2,9,19,21 203:5 209:6,25 218:3 219:17 237:14 238:21 239:8 240:8 242:15 245:17 256:23 261:14
Leetana
24:19 54:24 55:3,6 112:23
left
27:14 30:7,13,17 33:15 39:24 93:11 97:7 98:1 136:14 156:25 229:5 250:17 261:23
left-hand
67:1
left-turn
93:9 226:6
lefts
30:25
leg
138:11
legal
19:14 195:14 239:12 249:19 254:12 256:4,8,10
legally
246:16 251:8
legends
130:21
lends
127:18
length
122:5 179:23 185:10
lengthy
121:2
Lennar
55:2
letter
13:4 20:8 50:12 78:16,21 204:5 225:6,22 236:11, 18 238:8 248:2 252:15,16,22,24, 25 253:16 254:12 255:14
level
19:8 67:3,11,18 68:1 69:13,21 70:4,17,18 71:19 83:6,10,23,25 84:7,10,11 88:5,6, 8,9,10,18 105:10 138:9 155:15 156:10 167:1 203:13,25 207:14, 19 208:14 209:18 214:17 215:18
levels
125:12
Lewis
175:22
liaison
114:9
licensed
135:3 225:22
lies
70:23,25 71:2 120:12
lieu
144:16
life
261:17,18
lifestyle
153:3 164:15
lifetime
188:12
light
14:15 35:21 40:8, 23 71:3 93:10,13, 16,17 95:13 165:14 167:2 226:3,14 229:17, 18 244:3
lighting
28:18 33:8 35:17, 23 38:5,8 40:6 164:24 179:17 184:18 190:1,4 213:11 214:18 218:1
lightly
229:15
lights
38:3 52:7 184:13 189:19 213:22 262:6
likelihood
174:25 232:23
limb
201:14
limit
14:3 147:22 149:10
limitation
128:12
limitations
124:17 214:6
limited
15:2 17:9 23:12 56:2,4 60:11 115:9 124:10,11 146:5 162:4
limiting
146:15
limits
144:4
Linda
178:12
lineal
188:1
linear
37:16
lines
33:16 49:13,14 63:7 71:13 72:5 126:6 157:17
linings
193:2
lip
171:19
lipstick
215:9
liquidity
45:24
Lisa
176:12 177:1 178:19,22 186:7 237:3
list
14:12 39:5 41:23 117:22 204:14,20 212:12,17 213:25 215:3,15 218:20, 21 219:24
listed
21:2 39:12 61:19 148:4 184:7
listen
177:16
listening
7:13 260:20
lists
61:20,21
litany
213:24
literally
193:22 261:21
live
163:11 168:23 170:20 177:11 184:23 186:15 187:17 189:23 190:8 213:15 244:13,14 259:24 260:18 262:8,22 264:11 266:4,9
lived
261:12
lives
249:3 261:6 262:9 264:21 265:19
livestock
192:13
living
184:11
Lizette
171:6
loading
29:5 35:6 79:22
local
26:1 81:18 84:13 109:10 136:12 137:2 165:19 197:21 264:23
localized
25:2
located

11:7 13:23 20:9 72:3 78:24 80:9 125:19 127:1 130:16 131:23 144:12 164:17 182:10 218:15 219:25 229:25 235:4
location 12:13 17:20 21:15 23:8 27:5 28:1 44:25 45:21 57:2 66:11 81:15 106:18,25 110:19 120:10 121:17 122:14 132:1,10 133:2 199:23 201:15 211:2 214:4 216:20 217:23 220:24,25
locations 15:1 24:2 55:24 124:11 212:19
locked 30:23
logical 248:15
logistical 213:13 215:4
Lombard 175:23
lombardo 175:24,25 176:2,7, 12,15,17,20,22 177:1,6 178:16,18 179:2 187:12,13 195:15 196:16 224:5,11,12 226:16,20 237:1,2, 3 247:18 252:18, 23 253:4,7,11,15 254:11,13,16,18 255:2,13,17,23 256:13 257:6
long 6:12 73:16 74:23 110:14 184:13 198:16 259:10,12 260:3
long-lasting 146:1
long-range 246:4
longer 10:1 29:21,22 87:25 88:4 95:16
looked 49:7 82:15,20 90:5 94:2 108:9 118:15, 19,20,21 135:23, 24 141:17 200:19 230:9,21 245:4 248:2
Loop 22:19
LOSD 155:20
losing 131:8
loss 179:19
lost 211:22 241:9
lot 7:11 18:23 23:18, 19 24:7 31:19 33:16,18 38:23 45:16 46:9,18,20, 21 47:4 50:1 65:25 90:1 92:20 97:7 108:10 122:20 130:13 132:4 142:7 146:10 164:6 175:7 176:2 178:3 189:24 190:2 192:4,19 197:24 202:17 204:4,6 208:16 209:17 211:4,16 212:11,14 213:11 216:1,3,9,21 217:7,17,24 218:4, 8 219:12 221:19 223:21 226:11 230:6 241:7 245:4, 22 250:10 255:7 257:8 260:1 262:19 263:1
lots 27:14,16 46:24 132:13 158:14 186:11 213:10
loud 196:13
loudly 183:1
lounge 39:13 44:5
Love's 22:22 121:7 193:15,17
lovers 266:8
low 48:16 123:14 130:23 132:3 152:2 172:19 181:24 186:23 212:1 214:13
low-intensity 209:11
lower 30:13,17 36:22 66:7,9,20 67:16,24 68:22 69:2,23 71:11,17 74:21 75:5 76:3,25 77:16 186:12 204:19 208:11
lowering 217:7
LSI 53:20
lunch 9:6 150:15 151:4

M

machine 86:5
Madam 10:5,11 12:8 13:18 59:21 61:11 78:3 110:17 112:6 171:12 172:24 173:23 178:23 187:16 195:17 265:25
made 10:25 13:20 16:15 19:20 43:6,8 82:5 88:24 121:24 139:6 149:20 159:12 166:2 182:16 206:7,8 233:17,23 254:10, 11
magnitude 111:2 202:16,17 237:23
main 8:1 126:22 127:2
maintain 103:14 164:14 173:5 200:18
maintained 37:25 137:24 162:17 173:16 249:10
maintaining 103:21,22 123:14 152:2 172:19 186:23
maintenance 44:12
major 22:25 32:1 53:12 128:8 136:13 213:16 254:1
majorily 21:11
make 4:6 6:1 7:2 8:17 9:20,21 17:15 63:6 64:15 65:1 70:15 71:24 72:9 75:12 79:5 103:5,7 105:3 111:21,22 136:14, 21 138:7 139:7,10, 12,14,16 140:11 141:14 142:22 156:24 160:3,18 180:22 199:17 201:17 206:3 215:11,22 218:6 219:13 220:3 221:15,18 225:17 230:17 231:1,3 233:14 239:7 241:20 247:15 248:16,23 250:1, 25 251:12 252:12 253:14 257:1,4,11 261:22,23 265:1
maker 231:19
makers 4:24
makes 27:23 181:15 215:24 217:12 219:3
making 24:8 96:16 144:17 196:22 207:9 223:11 224:1 240:20 253:13 263:24 266:16
man 101:24
manage 64:23
management 19:6 36:14 40:3 45:8,10,12,19 46:17 72:22 79:19, 25 102:6 127:7 227:22 235:11 242:9
manager 114:12,22
mandated 158:15 159:24
maneuverability 155:21
maneuvering 49:25
manner 132:12 146:9
Manor 24:16 28:5 55:1 156:6
manual 85:7
map 21:6 22:2 25:13 26:8,13 27:5 63:8, 9 78:23 79:8 129:22 159:17 199:25 201:20 202:11 203:7 205:25 245:19 250:25
maps 22:1 112:19,20,22, 23 113:10 163:25
Marathon 193:16
Marcus 134:11 135:1 140:24
Margaret

170:2
Maria
59:3
Marie
4:4
Mark
114:18 178:13
marked
12:25 13:7 113:24, 25 114:1,2 169:22 222:12 225:4,13 254:16,18
market
16:20 17:14 21:16 53:20,22 54:1 171:20 200:20 245:24 246:8 262:20
marketed
127:22
markings
235:23
Martin
18:8 61:7,10 62:1, 3,5,10,12,16,19 64:14 69:13,16 70:14,17,20 72:19 73:3,9,17 74:5,20 75:7,11,16,22 76:1,6,19 77:6,12, 22 78:1 110:9
Maryland
197:18
Mason
223:24
masonry
133:17 185:16
Mass
44:12
massive
177:21,22
massively
180:18 182:4
master
15:17 32:4 33:2, 10,15,22 34:4,13 45:7 46:2 51:14,22 52:11 59:12 81:22 126:25 127:8,24, 25 132:12 142:12, 17 149:25 164:20
master's
197:13
match
108:7 180:15 181:19 182:3 186:17 187:6 213:3
material
35:12 41:20 45:11 257:8
materially
249:16,18
materials
36:17 210:10 211:10
matter
9:5 112:16 123:21 130:16 177:14 185:14
matters
10:14 81:9
max
168:7
maximize
159:16
maximum
144:4 155:6 167:11,19 168:8
MCP
160:3
meander
46:15
meaning
44:14 86:11 173:20 254:5
means
39:14 90:9 95:18 123:20 142:11 175:2 181:4,5 240:15 244:12 247:5
meant
70:10 74:6 101:2 163:14 166:3 216:17 245:8
measure
121:22 133:21 142:8 145:25 150:10
measurement
142:3
measures
115:12 133:24 159:20 166:2 229:3 237:13 249:3
measuring
74:18
mechanical
28:25 35:8,16 213:21,22
mechanics
63:4
mechanisms
218:18
median
96:20 107:5,7,8
medical
184:9 214:13
meet
17:6,8 58:14 110:15 141:2,8 163:3 175:1 191:10 220:19 228:15,17 242:7
meeting
16:14 42:21 43:1, 3,5,18 81:25 82:3, 7 88:24 152:19,24 159:8 182:25 207:7 216:6
meetings
16:14,16 91:18 182:21 233:22
meets
5:15
member
87:17 111:8
members
4:18 10:6,23 50:22 111:24 113:22 114:4,24 245:5 255:6 257:25
memo
135:12
memorandum
12:15 134:13 171:21
Mendez
5:23 13:5,21 112:6,7,15 113:15, 21 114:3 116:8,11, 20,22 117:11,16, 25 118:3,7,13 119:3,8,12,21 120:1 129:2,5,19 133:3,7,10,19 134:8,11 141:23 147:3,9,18 148:4, 9,12,23 149:2,7, 11,14,18 150:3,9 172:1 187:19 247:10,11 254:22
mention
124:15 137:12 206:14 207:21 228:12
mentioned
10:19 11:16 14:24 29:7 48:15 71:6 108:5,18 110:9,16 113:2 135:11 136:25 205:12 208:7 210:13 216:1,22 218:3 219:12 221:1 231:4 239:21,22 256:19
mentions
205:20
mesh
259:3
met
43:4,7 108:5 120:21 152:21 159:1
methodology
105:7
Michael
176:8,12,20 177:1 187:13,17 237:4
Mid
66:7,17 67:13 71:10 73:12,22,25
middle
66:25 203:24 212:11 238:13 241:16 265:12
midway
242:23
mile
22:13 144:12 156:14,17 168:23 170:22 263:4
miles
163:20 263:2,8
million
57:6 144:2
mind
77:15 97:2 195:24 197:6 199:6
mindful
258:16
mine
50:16
minimal
123:14 125:16,22 155:10 167:17,18 172:20 173:5 186:23 209:16 210:4 239:25 240:4,15,24 241:4 251:21
minimally
144:22
minimization
217:20
minimize
159:18,21 161:4 173:4 207:11 218:24 219:1
minimizes
219:3
minimizing
207:12
minimum
46:20,21 51:25 80:24 123:18,25 152:3 207:8 216:2, 6,10 240:16
minimums
207:3
mining
10:14 62:23
minor
121:16 124:4,7,10, 22,23 125:12,19 127:3 145:16 199:24 200:10 201:9 210:18 214:11,14
minus
126:23
minute
69:25 92:5
minutes

223:13 261:22
missed
205:11
missing
226:14 246:13
mitigate
185:15 193:1
214:24 218:1
mitigated
174:24 215:5,6
mitigates
139:2 216:18
219:21
mitigation
139:1 141:19
158:7 175:5
mix
32:5
mixed
32:8 60:11 130:24
mixed-use
128:4
mixture
115:9 116:1
model
14:2 64:6 71:10,15
73:10,18,19,22
model-derived
64:4
modeled
71:7
modeling
63:14 73:6
models
46:22 64:17 73:11
modernize
264:6
modernized
243:19
modification
11:17 12:6
modifications
6:1
moment
7:23 82:11 223:24
266:1
money
99:10 100:12,15
233:21 265:1
monitored
77:11
monitoring
18:23 72:8,13
77:10,21 114:5
128:22 146:19
193:3,8 229:25
Montgomery
9:24 19:14 31:6
32:12 50:18 51:1,
8,13,22 52:2,13
53:8,15 58:22
59:1,18 61:11
62:1,16 72:16,18,
20 73:5,13 74:3,11
75:1,3,5,8,14,19,
23 76:2,15 77:3,8
79:7 101:20 102:2,
8,25 103:8,19,25
104:4,8,11,15,21,
23 105:3,6,9,14,19
134:22,25 140:24
141:6,15 146:23
147:1,6,15,20
148:8,10,16,24
149:4,8,13,16,19
150:7,11 168:19,
21,25 169:2,12,14
170:18 175:20,24
178:9 179:6
198:12,16,18,22
222:6,25 223:19
224:3,9 225:8
226:13,24 235:3,6,
13 236:4,8,11,19,
22 252:16,25
253:9,13 254:20
255:1,13,18 256:7,
11 257:5 258:13,
15 259:11
month
59:9
months
64:10 65:4
monument
184:16
morning
4:3 10:5 20:3
53:19 59:21 78:3,
10 81:6,10 89:23,
25 112:5,6 115:6
134:18,23 177:24
190:11 261:23
mornings
190:7
move
9:9 20:1 100:6
140:1 141:23
176:8 177:3 237:6
moved
43:15 52:4 91:13,
14 260:8,11,12
261:16 262:17
264:23
movement
62:24 68:18 92:24
93:4
movements
64:5
moving
91:16 92:3,6,7
184:13 208:17
232:19 261:15
MPD
24:16
mud
230:15
multi-family
51:7 122:15 149:1
multi-level
143:22
multi-use
33:11
multifamily
27:6
multiple
30:25 33:25
208:19 209:5
212:7,8,10 235:21
247:9 260:24
municipal
62:22
Musho
176:8,12,20
178:19,20,22,23
179:4,9 186:6,7,8
187:13,16,17
207:1 237:4
250:22 262:2
Musho's
199:2 210:21
262:2
Mushos
203:22 206:20
223:17 237:16
239:17 241:6
242:1
Mushos'
260:24
Myers
124:16

N

Nalle
26:16 40:20 52:19
96:10,12 106:14,
16 107:18 135:23
228:18 230:1
name's
259:23
names
150:20 250:17
narrative
259:5
narrower
218:21
Nathan
176:13,16 177:1
224:12,17 237:5
national
59:15 197:22
native
60:13
natural
33:6 67:2,18 69:7
114:8,13,15
120:21 128:18
179:19 186:14
nature
7:17 16:11 26:24
27:3,18,19 53:9,11
120:18 126:7
164:15 245:6
NAVD
80:20
Neale
19:14 175:19
241:21 255:12
nearby
18:19 140:7
163:13 164:4,17
194:19
nearest
140:8 228:1,2,18,
19
neat
246:11 250:25
necessity
16:3 17:20
needed
57:15 108:21
110:6 138:4 196:7
201:5 228:13
negative
179:20 180:4
181:13 212:14
213:20,24 214:7,
14 215:5
negatively
167:4
neglect
158:23
neighbor
97:2 106:21
237:17
neighborhood
12:1,5 101:10,15
115:10 116:2
166:22,25 180:9
182:6 184:19
185:6 188:15,21
191:8 201:10
204:16 212:1,2,20
214:12,25 249:3
250:2 252:13
258:8 262:14,16
264:21
neighborhood/
commercial
53:13
neighborhoods
11:10 161:15
188:11
neighboring
28:12 41:11 44:22
neighbors
16:15 48:21
164:22 168:4
212:25 213:15
250:16
Nelson
16:18 53:18,19
231:4
nests
61:1
net
17:7 56:20 57:19

126:7
network
84:1 103:5 157:17
neutral
181:10
newer
217:24
newly
48:24
newly-planted
49:17
news
199:11
News-press
152:18,21
Nic
114:6 128:19
129:7
nice
194:5 231:18
night
78:12 79:2 184:13,
14 190:7 212:11
Nightclub
44:8
nightmare
170:24
nil
71:22 74:8 77:2
nobody's
158:7
node
98:5 250:9
nodes
53:11 124:21
noise
162:12 164:23
179:16,18 184:12
185:15,24 189:20
190:1 213:11
214:15 218:1
262:6
nominally
144:24
non-conformity
249:20
non-residential
122:14 142:4
144:5,6
nonessential
35:23
noon
9:5 134:19,21
257:25
normal
99:17
north
15:23 16:1 17:20
18:5 22:18 23:6,
17,23 24:4,18
25:25 27:10,20
32:18,25 33:6
34:21 36:5,7
38:14,22 39:1
40:1,4,5 43:5,11,
13 47:6 48:20 49:9
51:16 52:5 56:22
60:9 68:7 69:4
84:11 90:10 94:22
99:25 111:1
124:16 128:6
131:6,9,12,16
132:18 134:5
138:11 146:1
150:2 161:25
162:6,12 168:4
169:8 188:2
208:10 237:4
northbound
228:20
northeast
20:10,12 26:10
northern
38:17 90:8 162:9,
15 166:9,12
northernmost
32:23 141:10
northwest
26:10
notation
13:20
note
7:2 34:13 113:8
126:5 127:10
136:25 151:20
229:9 230:16
248:3
noted
18:2 26:13 135:20
172:1 231:23
232:13
notes
7:3 113:16
notice
8:21 150:24 154:3
244:24,25
noticed
135:25 160:14
163:7 174:21
184:21
November
59:9 230:19
NPO
155:19
nuisance
162:12
number
15:5 16:23 24:24
37:14 41:18,25
58:23 59:4 63:11,
21 71:23 84:18,22,
25 89:7,12 97:25
103:1 128:25
135:21 193:6
202:18 207:6,25
209:18 219:14
227:23
numbering
152:23
numbers
84:23 97:7 147:3
numerous
5:19 188:6 193:23
196:8
nurse
260:21
nutrient
79:22
nutrients
79:23

O

oaks/pine
60:12
oath
5:7 9:11 62:4
objecting
250:18 251:5
objection
50:5,7,12 237:9
239:1,3,21 241:5
objections
225:24
objective
39:19 103:10,11
124:2 132:22
159:13 168:11
172:6,10
objectives
124:2 171:20
209:6
objectors
251:1,2
obnoxious
185:5
observe
60:19
observed
60:5,21,23
obvious
184:24
occur
16:21 20:25 24:1
50:23 64:25 65:2
75:10 77:14
125:18 126:16
131:18 179:15
202:12
occurred
16:21 28:20 236:9
occurrence
195:3 247:15
occurs
63:25 64:9 108:19
October
42:22
odors
164:24
off-site
35:22
offer
8:16 111:13
123:20 128:19
134:15
offering
207:8 249:6
office
10:12 44:5 102:17,
18,21,22 171:22
179:6 184:8,9
212:3 214:3,13,14
offices
215:1
official
111:22
Officials
185:19
offsite
40:8
older
26:23
one's
16:4
one-fifth
231:16
one-square-foot
142:20
one-year
65:12,16 71:1,4
120:11
ongoing
94:10
online
5:24 229:23
opacity
133:15
open
6:8 47:16,18 69:24
97:18 126:10
144:20,24 213:9
233:19 243:7
249:9
opened
59:14 100:14
184:12
opening
19:23 97:10,16
99:1 110:16
operate
83:10,23,24 84:9
operating
19:1 65:18
operation
226:3
operational
136:21 213:13
215:4 226:1
227:16 228:23
operations
121:10 212:4
235:11
opined
248:9

opinion
52:3 53:8 71:21 123:21 184:24 209:18 216:18 225:6,21 232:8 236:14,15,17 245:15 252:1
opinions
236:19
opportunities
172:11
opportunity
5:4 6:14,16,22 8:15 14:16 39:16 62:12 87:20 111:7, 13 250:10 255:10 257:1 259:7 266:25
oppose
151:19 165:20
opposed
48:23 150:5 214:1
opposing
227:15
opposition
183:6 233:24
option
31:11,13 90:8 93:3,21 95:3 133:14 233:18
options
29:10 90:3,6,7 92:21 93:1,20,23 108:13 245:18
orange
21:24 41:13
orchestrate
178:17
order
4:24 24:22 27:12 46:5,11 50:14 66:22 74:22 75:10, 12 88:16,17 105:17 120:2 137:2,14 138:23 139:24 141:18 143:7 164:14 165:23 166:20 174:24 176:25 201:7 207:9 242:7
ordinance
19:1 63:2,5,7,10, 17 64:22 65:3,7 73:6,10 74:9 77:4 110:10 120:24 247:8
organize
6:20
orient
96:7 129:23
origin
63:4
original
44:19 51:14 149:22 152:8,10 154:7 162:2 163:2 167:25 265:5
originally
11:14 165:5 166:16 190:19
originated
152:12
osmosis
75:11,14,16
outdoor
35:7 211:25 213:21
outline
15:18 18:13
outlined
120:1
outlines
20:22
outparcels
33:12 127:3
outpour
261:19
outs
31:1
over-intensive
182:4
overarching
201:3
overburdened
159:5
overfill
261:4
overflow
164:23
overhead
179:16
overlay
238:24
overly
167:5
overreach
171:25
overriding
220:8
oversees
120:23
overview
58:7 63:8 197:7
overwhelming
153:5 172:14
Owl
24:15 25:10
owls
261:5
owned
40:20
owner
5:12 33:17 168:14 245:1,12
owners
34:1 43:4 94:13 199:10 206:21 225:16 237:4 239:18 241:6 250:18
ownership
56:6

P

P.d.s
118:21
p.m.
151:2 223:14 259:15,16 267:4
P.T.M.S.
229:25
pace
59:8
package
44:9 81:14
packet
150:17
pads
56:24
pages
111:14,19,20 218:18
palm
37:22,23 193:23 198:15
palmetto
60:13 130:3
Palmettos
189:17
palms
37:17,18
paper
195:25 255:4
papers
6:9
parameters
183:14
paraphrase
122:11
paraphrased
122:11
parcel
11:6,13 12:2,14 15:20 18:10 38:17 47:1 50:11 52:17, 20 53:3 55:19 61:2 189:23 191:11 195:10 243:22 248:16 251:25
parcels
17:4 26:15 34:8 46:14 51:9 52:14 56:5 58:12 186:11, 13 204:7 221:19
Pardon
55:5
park
40:22 56:22 246:25
park-and-ride
213:10
parking
29:2 38:23 45:16 46:9 49:25 130:13 131:24 132:1,13 144:9
Parkway
83:12 84:11 89:17 92:15,23 94:5 135:22 136:1
part
5:13 6:6 15:16 16:17 44:7 77:17 81:13 89:5 108:21 116:9 123:2 143:25 159:13 172:5,11 174:17 180:12 207:25 230:17 232:20 233:10,11 235:9 242:12,13 246:9 253:2
part-time
235:8
participants
7:19 9:18
participate
4:25
participating
167:14
participation
6:10 8:18
parties
7:5,8,19,20,21,23 8:9,15 151:5 175:12 257:14,17
parties'
258:4
parts
173:1
Pasco
233:7
pass
12:15 177:13
pass-by
101:8 102:9,10,12 103:2 231:5
passed
152:10 196:13
passing
155:22
past
62:14 78:7 83:18 120:3 135:5 156:2 157:9 248:8 249:4 266:18
path
96:21
patient
13:14
patronized
145:2
pause
199:20

pavement
108:10 141:12
pay
139:2 143:12
PD
200:25 201:7 202:14 207:10 208:6,25 214:11 218:6,7,8 219:6, 10,13
PD&E
89:6,8,11 90:6 91:8 93:19 94:8,10 97:6 98:19 101:21, 23 157:2 200:13 228:16
PDS
218:4,23
peaceful
262:23
peak
82:21,22 84:21 86:9 87:2,4,5,7
pedestals
130:1
peek
229:21,22
pending
40:17,24 42:6
penmanship
176:23
people
4:7 6:23 7:12 54:7 150:20 152:23 153:1 156:23 169:5,6,7,8,24 173:25 178:2,4 190:19,23,25 192:12 225:20 244:13,14 247:9 251:3,4 262:22 263:11 264:10
percent
125:10 130:22,25 131:1 140:9,19 143:6 154:23 167:12 189:9,11 194:20 195:7 230:5,8,21,23 231:5,11,12,13,15 238:15 265:7
percentage
103:1 230:11
perfectly
214:3
perimeter
38:24
period
52:10 54:19
permanent
86:11,19 87:8 247:13,15,20,22
permissible
18:21
permissive
249:16
permit
80:5 82:6,7 158:19
permits
65:18
permitted
14:12 41:16 51:3,5 59:9,10 122:15 124:5 125:12 145:7 148:21 154:8 158:17 159:25 165:12 221:8 237:14 244:20
permitting
88:20,23 236:5
perpetuity
72:8
Perry
223:24
person
7:14 85:25 177:16 226:7 227:11,12, 14
personal
22:24 156:13
perspective
237:22
perspectives
214:21
persuaded
223:20
petition
113:2,14,17,19 165:17 169:3,7 182:22 183:6 251:1,3
phase
92:8 157:2 246:12
phases
232:3
Phil
114:10
photo
147:9
photograph
147:2
photos
35:1 48:19 49:9
pick
102:19 177:25 191:1 257:12
picked
205:14
picking
92:5
picture
89:8 147:2,5,8 205:5
piece
13:11 41:1
pig
215:9 260:25
piling
213:14
pine
60:10 130:22 144:21 189:17
Pines
177:11 259:24 260:19 265:17
pink
23:13 25:17 40:21 41:12
pixilated
238:8
place
9:16 18:22 28:21 48:23 63:15 68:9, 24 76:14 98:16,18 123:1 150:19 174:18 180:5,11, 24 186:1,2 202:7 221:9 249:15,24 251:19 263:23 264:23 265:3 266:9,21
placement
47:3 220:24
placements
33:18
places
204:8 207:4
placing
181:16 194:13
plan
5:16 9:12 11:12 15:8 16:13 20:21, 22,23 21:19 27:13 32:4 33:10,15,22 34:4,13 36:14 39:18 40:3 45:8 46:2 51:14,23 52:11 56:1,4,12 58:17 59:12 81:23 88:2,5 94:19,20 103:10,20 112:10 116:4 122:20,22 124:18 126:25 127:25 128:8 129:14,17 132:12, 23 142:2,17 147:15,18 148:17 149:3 150:1 151:21,24 152:8, 10,21 153:1,10,11, 19,20 154:17 155:8,10 157:14 160:1,21 161:19 162:18 164:20 165:10,25 167:3, 17,19 168:9,13 171:14 172:5,12, 16,25 173:13,25 177:15,18 180:11, 12 182:4 183:17 186:18,19 187:7 190:16 196:1 197:3 198:1,9 199:11,12 201:4,6, 16,25 202:5,9,25 203:1,4,5 204:1,25 205:19,23,24 206:1,6,7 207:4 208:12 209:2,6,7 210:1 215:14 216:3,9,10,11 217:13,14 218:4,9 219:16,17 220:14, 15,17 237:14,20 240:3,9 241:4 242:9 243:4,9 245:17,20,21 246:2 248:21 252:2 254:4 255:16 263:22,23 265:2 266:20
planned
4:11 26:12 58:5 108:23 126:18 138:19 161:1 165:14 197:4 200:3 206:15 240:11 252:3 266:14
planner
5:22 20:5 112:8 114:7,17,20 151:22 196:25 209:21 223:17 240:21 248:9,20 250:22
planner's
246:21
planning
4:13 15:13 20:6 38:1 54:8,15 55:20,24 57:3 58:9 95:23 101:12,24 108:4 114:7,17,22 129:8 135:6 152:11 163:6 172:6 193:19 197:3,13,19,24,25 208:24 209:1 214:21 216:18 224:25 231:25
plans
15:12,17 29:8 33:2 105:24 108:21,25 109:25 110:13 127:8,24 142:12 172:6,7 203:14 206:4,8 208:19 218:17 220:20 227:25
Plant
197:1
planted
38:1 48:24
plantings
36:16 38:24,25 131:7,11

platted
27:15 33:14,16 47:2 49:21
play
73:23 130:11 216:21
plays
125:6
podium
5:1,5 6:21 170:6, 13
poignantly
171:20
point
10:22,24 11:20 12:20 16:12 21:16 22:23 25:6 31:21 32:25 36:19 38:11 42:13 44:24 48:18 54:16 67:20 68:7 74:18,19 78:13,19 79:1,5,6 80:14 83:3 96:16 97:8 98:8,22 100:25 108:7,16,22 127:19 138:4 141:23 149:24 153:4 173:2 202:4 206:3 209:8 239:8, 13,14 240:4 243:23 244:7,8,18, 22 248:11 249:18 252:15 253:16 258:24
pointed
19:17 105:15 109:6
pointing
78:24
points
19:16 32:22 88:19, 23 121:13 128:16 135:11 145:21 159:16 249:14 257:4
police
25:14 51:2 157:19
policies
39:20 124:14,18 152:14 157:14 161:19 162:19 168:12 209:6,25 216:11,13 218:9 251:11,16
policy
20:21 21:8,14,22 28:2 32:2 39:18,19 122:10 124:2,3,23 137:20 148:4 157:14 158:9 160:21 161:10,14 165:10 187:4 200:15,16 242:20, 21 243:23 251:17, 22
polylines
23:15
ponds
261:3
poole
176:13 224:12,16, 17,18,20,21,23 225:3,4,5,9,11,13, 14,21 226:25 227:3,6 235:5,8,15 236:7,10,14,21,23 242:17 243:24 250:23
poor
83:23,25
pop
191:7
Popash
79:4,15 126:3
population
54:6,8,12,20 55:13,15 57:9,12 58:16 163:5 186:12
portable
229:25
portion
13:23 17:21 70:24 88:4 148:13 257:14
portions
240:8
portrayed
189:3
poses
167:9 181:22
position
203:18
positive
181:9
possibilities
160:19
possibility
16:25
possibly
184:4 192:23 251:9
post
229:23
postpone
263:23
potable
18:9 78:15
potential
25:20 47:19 55:23 63:18 64:23 65:19 68:18 71:25 74:8 82:18 131:17 161:4 166:24 181:12 211:6 213:20 227:19 228:13,23
potentially
55:9 65:11 70:22 105:25 106:13,14, 18 107:10 139:11 160:17,23 164:6 228:25
potentiometric
68:2 69:17,19 70:1 75:21,22
pouring
262:11
power
49:13,14
Powerpoint
10:1 12:23 22:5 111:15,18 112:18 113:9,16 176:5 179:1 196:17 221:25 226:21,23 253:3,4,6 254:10
practically
244:12
practices
185:13
pre-app
88:24 89:3
pre-application
81:25
pre-developments
234:16
precautions
18:24
preceded
11:12
precise
256:18
preclude
110:3
predates
201:24
predict
206:21,24
predictability
127:18 205:2
predictable
127:17 206:20 214:5 216:22
predicted
167:8
predominantly
24:5 63:23
preexisting
249:7
prefer
222:4
preference
103:15 158:13 243:16
preferences
242:25
preliminary
94:5 105:24 108:4
premature
199:7 200:12 210:19
premises
44:10,13 209:1
preparation
171:15 198:9
prepare
4:18 258:11
prepared
5:23 6:2 81:12 120:7 173:18 177:19 258:17
preparing
78:12 79:22
presence
48:2
present
16:18 19:18 50:24 80:15 221:14 248:4,5
presentation
4:15 5:14,19,21 6:25 8:1,17 15:16 16:17 22:5 61:16 82:11 111:11 112:13,18 115:7 120:1 121:14 125:25 126:1 150:14 174:7 176:4 177:5 189:15 192:15 221:2 233:3 237:7 240:6,8 242:22 246:11 247:17 264:16
presentations
6:7 109:14 174:5 199:18 257:20 258:4
preservation
126:11 189:1 190:15 191:14
preserve
5:4 32:18 33:6 40:2 52:10,12 111:1,3 127:7 130:14,17 131:5,7, 10,12 132:2,9 147:14 149:23 150:6 162:7,14 168:3 179:22 180:24 189:1 190:16 191:14,17, 20 196:2 249:7,10
preserves
33:23
preserving
145:14 191:13
presiding
4:5
pressure
70:9 75:25 76:1,3, 12,16
pressures
16:22
pressurized
76:8
pretty

26:17 43:2,3 46:25 49:11 60:9 128:11 144:1 198:25 213:3 256:10
previous 34:4 39:23 43:14 57:18 146:4 195:1
previously 10:13 53:21 59:23 112:9 114:25 197:2 198:5 230:18 249:1 252:14
primarily 14:8 120:15 122:3, 12 130:7,8 163:15 182:10 184:8 209:11
primary 35:14 136:6 239:21 243:10
prime 234:13,20
principal 38:9 237:9
prior 27:7 50:13 83:25 84:4 113:13,20 128:23 137:1,14 180:1 232:24 245:1 252:19
priority 234:15
Pritchett 27:11 83:12,14,18 84:3,10 88:11 92:14,15,19,23 93:10 94:1,5 95:20 106:13 112:23 135:22 136:1 191:6 230:20
private 62:22 63:3 235:14
pro 65:13 143:15,16, 21 191:25 241:16 250:13
proactive 173:3
problem 76:17 161:13 203:19 229:16 264:2,3
problematic 95:3
problems 165:2 167:5 177:21,22 234:10
procedural 19:15
procedurally 246:16
procedure 255:25
proceed 5:10 10:17 54:2 59:25 60:1 62:15 78:8,9 81:11 90:11 112:14 135:8 198:23
proceeding 89:20 90:20 91:5,9 252:3
proceedings 4:2 259:15 267:3
proceeds 88:13,15
process 18:16 43:24 68:11 82:3,8 89:6,8,11 90:6 91:8 93:19,21 94:10,14 96:4 105:1 167:15 172:13 182:24 187:22,25 200:3 219:9 246:17 247:2 265:4
processed 202:15
processing 41:19
produce 138:9
produced 45:11 135:12
product 205:6 219:10
production 68:6
professional 71:20 78:4 114:12, 16,18 135:3 187:21 225:17
program 72:8,13 90:19 91:23 92:1 100:19, 20,22 127:17 181:22 232:6,14, 20,21,25
progress 121:14 196:23
prohibit 146:14
prohibited 167:3
prohibition 65:20
prohibitions 65:9,13
prohibits 38:7
project 4:12 10:9 15:22 17:13 20:19 25:21 26:23 27:10,18 29:6 36:3 52:25 54:1 60:3,15 63:6 70:23 71:1,23 72:9 77:20 79:3,4,18 80:1,9 82:9 83:25 84:4 85:4 88:13,15 89:13 90:22 91:2, 3,10,12,15,16,19, 21 92:3,5,7,12 95:23 96:5 97:17 99:20 100:4,11,18 101:2,4,7,8,9,11 118:1 123:22 133:23 135:14 137:1,10,11 139:21 140:1 148:19 149:25 199:1 203:1 205:9 207:21 208:15 210:2 228:16 230:21 232:1,18 234:18
project's 95:21 138:7 139:20 229:12
projected 54:13 55:17 56:24 131:25 226:2 231:15
projection 99:4
projections 98:20 157:10
projects 25:7,9 27:20 35:3 45:5 82:1 91:11,13 99:16,17 207:15 220:23 229:11 232:22
promote 126:19
promotes 145:15
pronounce 224:14
pronouncing 114:11
proper 175:9
properties 23:23 24:12 26:18 35:10 40:8,13 41:12 42:2,11,19 46:16 107:12,16 125:15 164:10 190:23,24 199:3 208:8 211:20 214:8 261:8
property 5:12 11:6,8 13:12, 17,23 14:7 17:21, 25 20:14,18 21:3, 5,7 23:19 24:8 25:11 26:2,10,11, 13,15 29:4 31:2 32:19 33:20,25 34:2 35:18,19,22 36:7,25 38:13 39:1,7 40:14,15,21 42:6,7,9,12 43:4, 21 44:24 45:22 46:5 47:2,7,8 51:16,19 52:5 60:5,22 70:25 78:24 79:17 88:25 89:14 94:1,3,12 97:15 101:14 109:16 120:12 126:2 129:22,25 131:5,6,9,13,17 132:21 133:2,11 134:5,6 135:18 145:13 146:1 147:13 148:13 151:17 162:6,9,10, 12,15 163:22 166:9,12 168:13 179:11,12,14,21, 23,25 183:11 184:2,3,17,20,25 185:10 188:2,3,23 189:8 192:9 194:24 199:10 203:21 206:21 208:13 233:25 234:4 237:4 239:18 241:6 244:23 249:19 250:18 251:2 260:24 261:12 262:1,2,21 263:24 265:1,14
property's 120:10 126:18
proposal 11:18 32:21 110:13 115:13 152:21 162:2 182:2
proposals 157:4,15
propose 37:10 104:25
proposed 24:21 29:15 36:6 39:17 40:14 42:8, 12 43:17 47:14 48:11 49:16 51:22 52:25 61:18 82:2 94:19,20 96:24 102:3 104:1,11,13, 17 110:24 115:3, 17,24 116:17 117:7,23 130:19 144:18 145:19 149:25 152:15,20 153:9 158:7 160:1, 25 162:1,3,21 165:5 173:11,19 174:3 180:15,18, 19 181:16 182:2, 20 184:17 185:7 186:17 188:3 189:2 191:25 196:5 199:1,16 201:8 206:12 208:6,15,22 209:9, 23 227:25 233:3

237:10
proposing
12:6 29:10 33:2 40:11 41:14,21,25 42:18 45:22 96:18 109:18 141:25 143:23
protect
40:3,7 63:17 69:6 123:11 132:17 151:25 153:2 160:21 162:5 172:17 186:20 213:22 243:10 249:3
protected
17:25 60:6 71:17 192:17
protecting
63:2 216:13
protection
18:12,25 19:3 39:20 40:1 63:1,5, 9,17,20 64:17,21 65:3,6 70:21 71:6, 14 72:3 73:6,9 74:6 110:10 120:11,24 157:19 191:19 244:19
protections
28:20 69:7 180:12 183:16,20 238:24
protective
249:2
protects
70:12
protocol
77:24
provide
16:7 24:9 25:2,4 45:5 46:7 47:12,21 49:15 50:1 64:24 106:6 109:10,17 110:20 111:20 126:9,10 150:24 159:19 160:2 162:10 172:11 185:21 209:12 213:16 224:24 225:6 234:14 238:9 256:17 257:18
provided
8:19 10:3 21:19 46:12 65:15 78:16, 18 79:10 85:2 113:5 116:23 125:25 153:23 158:15 171:23 174:23 204:20 236:20 243:20 245:7 251:17,22
providing
14:18 36:15 45:6 50:2 236:17
provision
167:11
provisions
71:23 110:12 174:18
proximity
136:23 139:8 157:16
public
4:18 5:24 6:8,10 7:4,6,7,9 8:7,11, 12,18 10:23 11:10 12:4 17:9,16 19:19,21 21:10 23:7,9,21 25:5,22 39:14 42:21 45:14 50:22,23,25 57:17 58:15 63:2,17,22 74:7 87:21 101:3, 5,6,10,16 109:9,19 110:3 111:9,24 113:1,13,23 122:13 129:3 150:16 151:6 152:19 157:19,22 158:2 159:7 163:4, 15,19 167:14 172:10,11,13 193:22 194:3 223:6 233:22,24 234:4 240:10 245:5 255:7 257:13,25 259:18
publish
84:24
Publix
190:8,11
Publixes
163:21
pull
148:10 176:25
pulled
230:4 232:24
pulling
189:20 190:5
pulls
227:12
pump
64:8
pumps
28:14 41:17,18 120:17 192:22 211:25
puncturing
174:13
Punta
22:11,18 23:2
purchase
194:23
purchased
188:22 244:23
purchaser
5:12
purple
41:12
purpose
4:9 50:3 63:16 64:21,25 67:2 68:16 69:1 126:15 195:24 262:18
purposes
10:15 11:9 77:19 112:12 239:19
pursuant
18:25 19:19 82:13
pursuit
115:25
purview
134:14 138:2
push
76:11
pushed
76:5
pushing
76:4 234:20
put
12:3 17:15 39:3 68:14,23 70:14 86:4,14,24 92:16 95:22 97:6 99:11 100:22 109:1 115:8 122:23 160:17 176:24 177:20 194:13 202:5,6 203:16 217:21 233:10,13 246:24 247:3 252:5
putting
5:1 228:21 234:2
puzzled
202:11

Q

quad
78:23 79:8,9
qualified
112:9 173:17
quarter
170:22 231:16
quasi-judicial
7:16
Queen
177:9,10 178:8
question
13:15 58:22 73:17 77:9 101:20 103:11 105:22 138:22 139:25 140:25 143:9 158:6 159:3 160:11 161:18 170:19 226:13 251:10 255:24 256:1,14 258:13, 20
questions
6:13 7:4,10,12 8:11,15 19:24 50:17,21,22 53:16 58:18,21 72:15,16 80:16 92:9 101:19 105:1,2 107:24 128:23 129:3,15 137:6 146:19,20, 22,23 150:12 170:16 175:16,18 178:8 221:23 222:16 223:11,18, 21 236:25 244:4 246:4 251:11 256:5,12 257:2,18 258:15
quickly
41:24
quiet
179:20 185:6 262:23
quote
172:9,16 181:4,14, 21 182:1 185:13, 16,22,24

R

Racetrac
193:17
Racquet
26:22
radios
190:11
radius
50:9
rails
256:17
raise
9:14,20 62:6 70:2, 6 225:20
raised
7:9 10:21 96:20 111:9 257:18
ramp
98:4,5 228:20
Ranch
11:23 24:14,16 25:9,10 27:21 54:25 55:1 58:15, 24 90:24 91:1,15 92:2 99:20 156:6 163:4 182:9,18
Randy
171:5
range
21:15 122:14,16 127:22
rarely
63:25
rate
117:6,19,20 142:20 231:5
rates
85:1
ratio
144:16 147:16

149:8,10 237:18 256:21
rationale 10:24
ratios 142:7
re-opened 259:16
reach 140:18 143:8 162:25
reached 128:25
reactive 173:3
read 46:3 103:9,18 137:8 171:14 204:17 209:24 215:20 250:17
reading 8:3 181:15 257:9
ready 9:23 14:22,23 81:5 107:24 151:5 237:1
real 7:11 57:7 74:12 76:17 77:4,6
realigned 92:22,24
realignment 94:22
realize 66:11
realized 79:2
realm 239:12
rear-end 226:5 227:9
reason 7:10 14:9 17:11 27:24 28:15 54:16 67:15 69:19 108:11 136:6 161:11 162:1 242:15 266:5
reasonable 158:16 159:24 162:3 234:24
244:19,21 245:11 250:1
reasons 174:20 184:24 187:6 220:10 221:21
rebuttal 8:1 222:20 223:11
recall 125:24 137:10 140:5
receive 8:19,21
received 7:14 113:1,13,20 245:16
recent 54:17 58:6 241:24 242:4
recently 90:21
recess 61:8 151:2 223:14
recesses 38:7
recession 123:4
reciprocity 181:10 213:17
recognitions 223:21
recognize 8:8 125:2 130:20 132:19 164:13
recognized 10:13,15 53:21,25 116:4 124:22 132:22
recognizes 8:7
recommend 145:22,24 168:9 191:22 220:9 221:22 253:19
recommendation 4:19 5:25 6:2 8:20 15:1 16:6 17:23 88:6 110:19 111:5 115:5 116:25 117:7 118:12 119:2,17,21
141:25 150:24 180:25 238:2,17 258:11
recommendations 12:9 253:18
recommended 14:6,12 15:24 83:10 88:2,8 115:16 119:10 120:13 125:21 146:12 162:8 188:7 217:3 253:20
recommending 132:25 145:20 152:8 185:25 241:3
recommends 116:12
reconsider 234:22
record 5:2,24 8:2 9:12,13 20:3 61:10,24 62:18 101:22 111:14 112:7 113:4 114:6 122:23 129:7 134:22 151:4 168:17 171:11 172:3 174:10 182:23 223:16 224:5 225:10 246:24 247:11 259:18,22 267:1
recreation 190:24
Recycling 44:11
red 24:13
redeveloped 51:9,10 52:21
redevelopment 53:3 148:24
reduce 46:21 52:4 56:25 57:21 119:24 165:23 166:3 168:3 221:20
reduced 44:18,20 45:9
127:12,14 132:9 153:16 155:20 165:4,22 166:9 219:23
reduces 52:6
reducing 45:15 145:25
reduction 144:24
reenforce 101:12
reevaluated 246:15
refer 112:2
reference 79:14,15 239:24
referenced 243:23
referred 52:17,20
referring 183:13 261:15
reflect 257:21
reflected 236:17
regard 6:18 14:17 78:15 160:10 163:7 164:21 166:18 258:3
regional 22:12 197:21 212:20
registration 65:18,22
regular 219:13
regularly 77:17
regulate 121:11
regulated 33:19 146:9
regulates 247:8
regulations 33:20 47:3 88:1
123:1 149:9,12 161:2 255:22
regulatory 95:16
reiterate 135:10
reject 266:13
rejecting 266:2
related 18:18 44:10 81:9 195:15 226:1 227:17
relates 34:10
relationship 181:6,9,11,23
relative 12:14 16:4 108:3 128:21 181:11
released 54:17 74:15
relevant 157:21
reliability 205:2
reliable 214:6
relied 85:11 219:5
relies 54:10
relocate 92:14
rely 126:8 208:23 219:9 227:5
remain 6:12 106:16 121:4 180:5 181:1,2 183:23 186:1 188:24
remainder 71:1
remaining 17:3,7 110:6
remains 44:9
remarks

4:6 5:1,9 8:17 19:23 110:16 223:12 257:3,11
remediation 77:24
remember 117:8 219:8
reminded 260:20
reminding 87:22
remotely 114:5
removal 131:2 133:25
remove 87:24
removed 49:3 132:5 165:9 166:8 180:19,20, 21 189:6,9 245:20
removing 131:4 162:23 231:8
repair 41:16
repeatedly 183:3
Repeating 210:17
rephrase 247:20
replace 133:14 190:3
replacement 111:14
replenish 179:18
report 5:23 6:2 13:3 54:17 58:6 61:19 84:24 97:6 105:7 112:21 113:3,8,11 117:9 118:15 120:6,9 121:25 128:21 137:8 138:17 140:22 152:7,9,11 153:23 161:22 165:3 181:3,21 185:11 197:5 198:25 212:16 237:25 238:7 246:21 254:21,24 255:3 258:3 259:4
reported 152:18,21
reporter 9:2 226:8,11 259:10
represent 98:1
representative 195:15
represented 198:13
representing 5:11 10:8,19 151:13 198:5 203:22 223:17
represents 151:16 167:19
request 4:14 5:13,14 6:1 20:17 45:24 46:21 58:3 122:2 127:9 151:19 153:15 155:8 165:23 180:23 181:1,22 183:23 187:8 221:22 234:14 237:23 252:11 265:5
requested 16:8 17:12 44:17, 21 127:11 131:3 153:13 154:5 158:11 171:25 216:5 227:21 237:14
requesting 14:9 45:2,18 53:25 128:13 154:21 228:7
requests 10:25 11:1 154:18
require 39:11,13 45:1 47:6 84:13 138:10 139:5 140:10 161:8 175:5 192:22 233:20
required 16:13 28:4 35:3 38:6 42:24 47:9 80:4 88:4 131:4 137:3,13,20,25 139:7,10 141:9,14 142:13 148:16 166:8 179:24 185:9 188:16 239:4,5,7 246:9
requirement 87:25 88:3 149:10 227:24 242:2,3 256:15
requirements 36:1 77:10 79:20 82:14,19 126:11 162:5 207:12 218:8 228:14,15, 17 242:8
requires 37:7 45:16 49:23 205:25 241:4 242:24 244:19 255:15
requiring 162:7
reread 172:4
research 16:20 17:14 53:20 54:11 185:12 198:25
reserve 19:18 111:7
reserved 223:9 257:23
residence 199:2
residences 216:13
resident 57:11 170:12 171:10
residential 11:24 17:1 23:25 24:12 25:21 32:5, 11,13 34:5 38:13, 22,25 39:21,22 40:1,3,4 43:4 47:8, 13,22 51:3,5,18, 20,24 52:1 58:5,11 59:7,8,17 123:14, 17 130:24 132:18 134:5 152:1,3,6 160:22,24 161:15 165:6 168:4 172:17,19,22 181:18,25 184:19 185:6 186:21,23 187:1 188:20 199:8 200:23,24 204:19 212:14 213:17 216:17 249:20,22
residentially 23:23 56:13
residents 23:1,22 25:4 26:6 35:6 39:15 44:3 55:17 57:13,16 109:10 123:12 156:20 163:11 164:12,21 165:19 167:24 175:3 182:9,12,15,19,25 266:3
resides 21:5
resolution 121:18 131:20 144:3 146:4 184:8 185:9 221:9 244:22,24 249:1,2
resource 128:19
resources 62:21 114:8,13,15 120:21
respect 10:8 112:10 173:17 194:11 195:18
respectfully 180:23 185:1 187:8 221:21
respective 115:1 116:5
respects 111:17
respond 7:15 50:25
responding 8:11 257:2,17
response 141:20 221:5 241:22 255:23 256:5
responsible 90:25 106:9 196:4, 6
rest 9:3 183:19,22
restaurant 41:19 143:19 145:6 264:19
restaurant's 143:20
restaurants 37:9 46:19
restrict 126:24
restricted 34:16 39:6 43:19 44:6,13 155:21
restriction 43:22 65:21 146:16
restrictions 18:22 34:24 41:17 65:14 250:1
restrictive 221:4
resubmitted 43:9
result 16:16 166:5,6 179:12 181:23 183:20 213:25 214:7 220:8
resulted 172:14 229:13
results 154:8
resume 9:4,7 10:12 20:7 61:6 78:5 81:7 197:5 224:23 225:21 257:15,16 267:1
retail 11:15 17:1 20:25 56:1,3,7,11 57:1,5, 10,14 58:13 81:21 101:2 110:4

115:22 116:15,24 117:2,3,14,18 118:2 119:22,24 124:7,8,25 125:11 142:25 143:4,7,8, 22 144:1 145:7 184:9 212:3 214:3, 13,25 215:1
retained 69:21 120:20
retaining 133:4,25
retention 127:6
retired 177:23
return 150:15
revenue 245:12
reverse 75:11,14,16 107:11
review 4:21 5:15 14:19 18:15 19:2 26:14 29:8 79:25 80:3 103:2 152:20 198:8 235:25 236:1 246:8,9,10
reviewed 80:1 82:13 105:11 135:15
reviewing 135:13
reviews 236:3
revised 44:1 87:24 112:19 113:10 162:2
revisions 14:12 43:8 105:3
rezone 37:1
rezoning 56:23 151:19 157:15 158:11,21 159:22 165:3 167:25 171:15 180:15 183:6 185:7 186:17 187:3,9
rezonings 165:11 244:1
Richard 177:11
rid 100:10 127:21 249:5
ride 190:20
right-hand 95:11 142:14
right-in 107:3
right-in/right-out 106:17 107:6,8
right-of-way 33:16 35:10 41:2, 6,7 49:22,24 52:15,20 90:18 91:20 99:17 157:7 232:2 233:20 234:3,4,19
rights 151:17 155:5
ring 196:13
rise 69:21
risk 193:10 194:16,17 195:5,9
river 22:15 27:4 91:7 169:8 261:4
road 13:17 15:14,22 19:9,10,12 20:11, 12,13 21:3,12 22:14,20,22 23:10, 16,17 24:4,5,7,14 25:5,7,8,25 26:16, 17 27:11,20,21 28:1,6 29:7,9,15, 20 30:9,17,18,19 31:9,21 32:18,22 33:1,5,12 34:3,21, 22,23 37:2,3,12 39:8 41:1 42:24 43:12 49:5,21 52:9,15,19 78:25 81:16,18,24 82:2,4 83:12,14,18,19,20 84:3,12,13,14,16, 21 85:16,20,25 86:4,8 88:19 89:2, 3,10 90:4,12,16 91:2 92:15,17,19, 22,25 93:1,11,18 94:4,6,7 96:10,12, 18,23 97:14,18 98:9,23 99:3 103:6,9,11 104:6, 7,19 105:15,23 106:2,12 107:9,11, 18 109:23 112:23 129:24,25 132:18 135:22,23 136:1,2, 6,7,12,13,16,20 137:23,24 138:1,2, 8,11,12 139:1,10, 13 140:13 141:2,9 146:7 155:14 156:14,16,22,23, 25 157:1,17 161:25 162:24 163:22 164:2,6,23 165:6 167:5,7 168:24 169:9,10 170:23,25 175:2 177:12,21,22 178:4 187:18 188:15 191:3 193:6 200:17 227:21,22 228:8, 14,18 230:1 233:6 234:21 243:3,4,5, 8,9,10,12,13 244:13 250:21 260:13,18 261:3, 22 262:4,12 263:5, 8,10
roads 26:1 85:18 86:4,6 103:16 155:22 156:20 157:24 158:25 159:5 243:1 261:19 263:19 264:7
roadway 25:22 81:19 83:7, 15 88:6 90:13 91:4 95:19 96:22 97:17 102:3 103:5 136:8, 22 167:6 228:22
roadways 83:8 102:13 135:21 158:3
Robert 114:16 169:23
role 125:6
Ron 9:24 10:7 29:7 108:1
rooftop 35:15 211:5
rooftops 24:24 25:3
room 5:8 117:19,20 131:8 198:4
rooms 116:14 117:6,15 142:21 154:18
roughly 120:3
round 192:2
roundabout 29:15 30:7 96:13
roundabouts 90:16 96:14,24
Route 81:24 82:24 89:8 90:13 91:1,6,7,11, 12 96:15,23 104:20 107:5 229:6
row 37:4 133:15
RPDS 123:4
rule 242:15
ruled 242:12
rules 19:1 123:1 255:25
ruling 244:3
run 64:7 84:6
runs 192:8
rural 24:5 26:24 27:1,2, 17,19,23,24,25 28:4,7,9 29:19,21, 22 31:21 53:9,10, 11,14 96:17 103:14,22 104:2, 13,16 123:12,17, 19 132:18,19,23 145:14 151:25 152:5 153:2,3,6 161:24 164:12,15 165:6 170:13 172:17,22 173:14, 21 175:10 180:13 182:16 186:21,25 188:11,20 194:4 199:8 200:18,23, 24 213:17 233:13 238:23 243:9 245:6,8 249:22 250:14 260:9,22 265:13
RV 56:22,24

S

sacrifice 182:16
safe 166:20 195:7 234:15
safeguard 134:1
safeguards 192:25
safety 18:23 45:14 136:21 157:22 158:2,23 159:4,20 166:4 167:9 226:1, 3 227:17 228:23 250:24
sales 41:20
saline 75:6
salmon 23:13
Samaritan 226:6 227:9,13
sample 248:6

sand
261:5
sandstone
66:7,17 67:10 71:9 73:11,25 166:23
sandwich
191:9
Sandy
177:11 259:24 260:18 265:17
Sanitary
78:18
Sapen
15:8 20:3,4 30:1, 15 31:4,8,13,19,23 32:9,14 34:19 36:2 38:4 40:19 41:2,7, 10 51:1,7,11,17,25 52:6,23 53:10,18 60:4 61:12,15 133:9 148:20 149:24 222:11,14, 19 259:12
scale
128:10 142:13
scanned
255:6
scary
265:22
scattered
56:18
scenario
98:23 115:19,23 117:17,24 118:10 119:10 142:15 143:2
schedule
120:14 145:7 146:5 162:3,16 165:4,7,14 166:17 184:1
schools
157:18
science
195:22 256:19
scientific
126:6
scientist
72:20
screen
13:16 132:7 252:5
scrolled
253:11
seal
68:10,17,24 76:9
sealed
68:15 76:9
season
82:21,22 87:2,5,7
seat
224:8
seconds
193:22
secretary
176:24
section
112:8 114:8,17,21, 23 129:8 153:22 155:14 167:7 172:9 205:20 219:6 233:3 240:5 247:14,25 255:14
sections
29:18 199:4
security
213:21
seek
212:19
seeking
112:11 142:23
sees
50:5 116:12
seesawing
170:9
segment
83:9,11,13,22 84:2,7,8 88:9,11 95:19 105:15 136:15 234:7,9
segmented
56:6
segments
84:6 100:14 105:10
select
93:21
selected
90:8 204:12
self-service
28:14 41:17
self-sufficient
163:9
self-supporting
182:11
sell
59:11 265:1
semi
179:17
semi-tractor-trailers
212:6 218:2
Seminole
56:21
send
150:23
senior
112:8 114:7,19
sense
180:22 230:17
sensitive
110:10 126:9,13 212:22
separate
50:3 117:1 122:16 131:16 247:7
separated
66:19 189:6
separating
131:5
separation
45:5 162:4,7 188:14,24
separations
188:16
September
120:7
sequence
127:10
sequential
120:2
serenity
262:23 266:9
serve
11:9 17:16 26:6 101:2,5,15 122:13 126:15 163:15,17 164:17 194:3
served
23:7 159:5
serves
22:25 158:1
service
19:8 24:9 25:5 28:2 37:9 40:22 56:16 67:9 83:6, 11,24,25 84:7,10, 11 88:5,7,8,9,10, 19 105:11 110:7 120:16 155:15,16 156:10 171:19
services
61:17,19 114:19 157:18 159:2 164:14 182:13,14
servicing
94:1
serving
23:21 163:12
set
112:19 159:10
setback
34:14,16,18,20 37:6 45:2,15 47:3 128:7 166:9,11 180:20 181:1
setbacks
16:1,6 33:21 39:25 146:11 162:15 180:6 204:8,9
severely
155:21 166:9 243:14
sewage
142:5
sewer
31:25 78:18 157:17
shade
123:20
shallow
63:23,25 64:18 71:8
shallower
166:24 167:1
shallowest
71:15
shape
142:5 249:9
share
6:14 7:2 179:11
shared
96:21 106:25
sharing
176:5
shave
117:20
she'd
61:12
she'll
15:10,11,17,21 16:11,12,16
sheer
241:12
sheet
22:3 79:3,9
sheets
151:7
shielded
35:9,16,20
shielding
35:12 217:20
shift
51:23
shifted
34:3 131:10
shockwaves
155:24
shop
41:16 143:16,21 191:25 241:16
shopped
55:3,7
shopping
81:21 182:17 212:20 214:16
Shops
250:13
short
88:11 174:6 188:10 225:18 227:10 234:7
shorten
174:15
shoulder
233:18,19
show
15:18 19:3 29:16 30:9,14,18 41:24 54:22 67:2 69:1 92:4,21 101:1 124:15 154:1,4,11 164:1 199:15 204:22 237:23 240:9 251:1

253:10
showed
71:8 138:24
139:19 155:13
189:15 245:6
showing
29:25 68:5 84:11
94:20 153:24
154:1
shown
23:13 24:13,14
29:8 30:21 39:2
47:9 48:19 49:20
83:10,23,24 84:6,9
88:10 229:7
shows
22:4,6 33:15
55:21,23 81:15
82:2 90:9 92:11
127:2,25 190:16
203:23 204:13
shrubs
37:24
shrunk
166:13
shy
119:16
sic
21:11 157:1
side
13:24 14:4 15:2
22:22,23 24:15,17
26:11,21 27:21
28:5 42:24 48:20
49:6 52:19 85:25
87:11 96:21 121:6
124:16 134:5
142:14 146:6,17
164:2,3,9 169:8
189:10 193:15
208:10 221:3
230:1 235:16,18
241:14 261:12
sides
191:20
signage
184:16 191:21
signal
92:13,16,25 93:8,
11 96:12 106:13,
14,15 107:14
228:13,22
signalized
106:16 108:23
signals
235:23
signatures
169:4 182:22
signed
165:19 169:6
182:21 251:2
significant
17:3 52:14 80:3
101:1,7 128:11
135:20 136:4,10
158:22 161:24
214:7 231:17
250:20 251:23
significantly
109:12,23 136:9
159:22
signs
184:16
Sikora
178:10
similar
32:21 33:3 41:14
118:20,21 160:9
181:9 214:12
similarity
213:8,9
simple
181:15 202:13
237:8 248:11
simplest
241:5
simplified
46:2
simply
14:2 121:17 146:3
249:12 251:6
simultaneously
247:9
sincerely
187:18
single
29:3 33:17 51:10,
11 148:20 150:1
208:13 209:23
212:13
single-family
27:16 32:19,24
51:9 210:21
211:19
single-use
33:24
sir
171:8
site
5:17 13:25 14:8
17:4 18:2,17 20:9
22:4,7,16 23:15,24
24:18 25:19 26:5
28:22 29:2 30:8,9,
21 31:9,25 32:1,6
40:16 42:23 43:17
45:11 52:7 58:1,14
60:7,20,23 65:20,
23 70:21 79:23,24
81:16 94:13,19,20
96:11 101:17
102:15 105:22
111:1 119:1
121:21,23 128:14
133:22 136:24
137:22 138:9,15,
25 140:6,18 143:1,
24 145:24 153:19
160:1 163:3 167:1
168:15,22 170:19
188:15 189:21
190:5,16 193:7
194:8 199:5,13
211:9 214:22
217:9 218:17
229:25 241:15
248:22 258:6
site's
46:11
site-related
106:9 137:3
sites
128:17 174:12
208:8
sitting
156:17
situated
186:10
situation
128:14 178:1
247:24
situations
218:4
Siverson
114:20
six-month
65:8 70:23
size
33:7,18 37:15
46:18,21 55:13
128:10 142:4
178:5 191:24
214:6
sizes
146:10 217:8
221:19
slam
212:10
slide
21:24 24:15 26:21
28:16 29:24 43:7
52:23 55:23 57:18
61:16 65:25 72:18
101:22 105:10
108:4 124:13
125:2 127:1
128:18 130:11
248:8 254:7
slides
39:23 54:4 78:14
226:17 248:1
slightly
20:11 31:15 33:4
154:14
Slow
64:12 226:10
slowly
227:2
small
46:25 52:10 70:24
214:16,25 243:12
263:17 264:22
smaller
27:16 31:11 46:22
178:6 204:7
221:19
Smith
178:11
sneak
167:15
soft
60:13 179:7
sold
262:20
solicit
169:3
solution
110:21 158:4,8
195:8
sort
8:3 66:25 75:18
114:8 131:14
240:13 242:23
249:6 253:17
255:20
sound
117:11 132:15
134:2 185:13,15
189:19
sounds
197:23 256:7
source
230:9
sources
85:2
south
22:15 23:16 24:5
28:5 34:4,23 39:8
42:23 43:15 45:22
51:15,17,24 52:4
79:16,19 91:6
94:24 100:4
104:16 111:1
136:2 150:1 194:7
237:17
southbound
136:11 138:11
southern
13:22 39:6 43:20
44:6,15 70:24
southwest
18:10 22:12 27:15
242:5
space
47:16 57:10
126:10 133:17
144:20,24 153:14,
16 162:22 163:16,
24 164:1,3,7,11,17
166:7 167:4 168:7
249:9
spacing
180:21 181:2
227:24 228:14,15
sparingly
7:24 8:5
sparse
36:17 189:12

speak
6:12,22 9:12 15:4 31:19 39:16 50:4 87:20 170:4,6,8 177:15 179:3 187:12 188:25 207:5 216:13 227:2 233:22 258:1 266:25
SPEAKER
13:11 38:3
speaking
6:4 97:1,2 203:14 204:24 247:9
speaks
208:2
special
37:7 39:3,9,12,14 159:14 161:1 162:5 183:16
specially
239:15
specialty
215:1
species
18:1,2 60:6
specific
20:22 70:21 122:10 124:4,11 162:25 172:7 207:22 211:24 213:6 246:16 255:21 262:18
specifically
18:14 20:24 33:19 38:13 46:19 118:16,19 135:22 136:4 139:13 140:8 156:21 200:16 219:7 220:15 242:14 244:2,25 258:16 265:15
specificity
164:20 208:1
spectrum
125:14
speculative
236:13
speech
225:18
speed
84:17 91:15 92:2,5
speeds
155:20
spill
174:13 228:25
spillage
40:8
spirit
195:25 196:1
split
32:17 239:11
spoke
34:25
spoken
109:15 179:8 182:20
spot
203:17
spots
156:11
spread
37:17
spring
258:19
square
17:12,13,21 57:4, 13,14,23 58:2,3 110:8,22,23 115:9, 18,22 116:10,11, 15,19,23 117:2,14, 18,20,21,23 118:14,25 119:16 122:3 123:23,24 124:24 127:5,11, 13,15 128:13 142:16,25 143:3,5, 8,19,20 144:4,14, 15,16,18,22,25 145:4,23 147:16, 22,24 148:2,17,18 153:13,16 154:2,7, 9,14 155:1,3 158:19 162:21 165:22 168:6 180:7 183:9,10,20, 23 192:2 199:14, 22 200:21 203:24 204:7 210:9,11 238:4,5,10,16,20 239:24 240:18,22 241:15 243:18,20, 21 245:3,9 251:12, 15 253:21,24 255:19 259:2
squeeze
43:23
staff
4:17 5:22,23 6:2 7:5,21 9:21 10:22 12:9 13:3,20 14:5, 16,25 15:24 16:2,6 17:18,22 18:16 19:20 34:9 39:4 45:25 50:11 61:18 82:13 110:18,24 111:5,9,21 112:18, 20 113:3,8,9,10, 11,12,18,24,25 114:1,2,3,24 115:4 116:11,12 117:7,9 118:15 120:6,9,13, 20 121:3,20,25 123:21 125:3,20, 25 128:20 129:11 132:6 133:24 134:13 135:12 137:8 138:17 140:22 141:24 145:12,20 146:19 152:7,9,11 153:22, 23 155:7 161:22 162:8 165:3,4 171:22 174:8 180:1,8,25 181:3, 21 185:11,25 187:19 188:16 199:20 208:21 211:12 212:16 217:8 235:8,9 236:3 237:25 238:1,7,12 240:1 241:3,13 245:7 246:7 248:13 251:13 252:14 253:19 254:21,23 255:3 257:17 258:3 259:4 266:15,19
staff's
14:11 123:20 137:9 145:19 150:14 167:21 189:15 209:17 219:21 221:1
staff-proposed
18:14
stage
5:2 88:16,18 139:24 141:18
stages
89:11 94:5 108:5 232:1
staggered
37:4
stakeholders
208:23 219:7
stance
172:14 262:4
stand
173:24
standalone
44:7,14
standard
29:17 36:4 40:7 93:15
standards
32:3 141:3,8 205:5 216:2,6 228:4 243:12
standing
250:5 252:4
standpoint
13:25 82:5 102:10 214:21
stands
11:15 22:13
Stanford
178:12
staple
264:18
star
27:5
stark
181:24
start
94:15 115:2 124:21 130:20 142:14 150:17 151:5,6 196:17 203:20 234:24
started
100:16 120:4 121:25
starting
40:19 91:3 99:22 121:24 172:5
starts
68:11 100:21 122:3
state
24:14 30:19 81:23 82:2,4,24 83:20 86:25 87:23 89:8 90:13,16 91:1,5,6, 11 96:2,3,14,23 100:15,23 103:9 104:1,6,7,19,20 107:5,9 135:4 137:23 157:1 163:22 181:8 185:18 197:14 225:22 227:21 229:6,24 233:6 239:19 243:3 259:21 263:25 264:4
State's
137:24 138:6
State-proposed
104:5
stated
110:1 153:20 182:5,7 183:1,3
statement
169:16 204:17 247:21
statements
202:23 243:6
states
151:25 159:13 167:17 185:19 212:16
station
23:7,8 26:17 28:23 38:5 86:16,18,20, 22 87:9 166:21 193:13,14 194:25 195:9 263:9 264:12,20
stations
22:14,16,17,19,21 23:3 28:21 37:9 86:10,11,13,14 87:10,13 120:16 166:18 193:24 263:3,7
statistics

177:17
statutes
87:23 239:6 255:15
stay
76:23 168:17 170:13 257:5
stays
265:3
Steering
151:22 152:19
Stejskal
17:24 59:21,22 60:2,18,21,25 61:4
Stejskal's
59:20
stem
81:1
step
246:13 248:7
Stephanie
178:10
Stephen
170:14
stepping
22:10 97:2
Steve
151:10
Steven
151:13
steward
193:7 194:18
stick
61:1 243:17
stipulate
175:5
Stonehill
24:16 28:5 54:25 55:1 156:6
stop
64:22 93:17 102:14,17,18,19, 20,23 121:5,7 193:15 227:10 266:18
storage
35:7 65:10 72:2,5 198:14 211:25 213:10,21
store
37:8 38:21 41:15 44:9,11 102:19,21 120:17 128:3,8,9, 10,15 164:9 191:7 194:4 264:19
stored
213:23
stores
39:10 146:8 163:21 214:19
stories
128:2 207:17 210:23,24 211:7,8, 9
storks
261:5
storm
79:21 80:7,8
storms
80:6
stormwater
19:6
story
22:24 126:24 143:7 153:17 207:18,19
strange
248:22
strategies
110:14
stream
155:25
street
35:10 147:10 156:17 263:5
street already
260:2
stressed
162:22 231:8
stretch
9:3 22:14 30:18
stricken
14:9 61:22 120:14 121:4
strict
65:9
strip
36:12
strokes
249:12
strong
153:2
strongly
108:17 198:25
structure
38:9 141:13 142:9
structures
181:7 216:25
stub
46:9
studies
82:17,19
study
81:20 82:12 88:17 101:25 102:7 135:15 137:19 139:19 140:4 157:1,11 228:12, 16 229:10 230:8, 13,17
stuff
76:25 208:25 231:2
style
241:16
sub-outlying
24:6 28:8
subcanopy
130:6
subdivide
49:25
subdivided
47:1
subdivision
49:20 127:25
subdivisions
11:24
subject
8:25 13:17 20:9 21:3 22:4,7,15 23:15,24 25:11,18 26:5 28:22 30:8,21 31:9 42:9 46:11 60:7 61:2 78:23 79:17 81:16 103:20 122:9 124:17 126:2 127:9 179:12 183:11 238:14 243:4
subjected
124:14 190:12
submission
204:3
submit
9:12 61:24 104:23 112:17 113:3 239:15
submits
21:14
submittal
43:16 230:19,23
submitted
14:18 43:7 53:23 120:5 182:23 230:18 252:14 254:25 255:2 259:4
subsection
219:6 251:18
subsequent
172:15 210:10
substance
76:22 77:24
substances
65:11 121:9
substandard
216:7
substantial
212:24
substantially
11:22 19:11,12 173:13
substituted
111:21
substitution
113:11
suburban
24:6 28:8 164:5
successful
224:1
sufficiency
105:1
sufficient
120:6 151:17 164:16 166:20 168:14 175:10 183:24 188:13 228:9
suggest
75:8 103:1
suggested
14:6 108:14 110:12
suggestion
254:4
suitable
75:12
suited
212:19
Sullivan
178:13
summarize
19:16 108:2 229:5
summarized
135:12
summarizing
254:12
summary
13:21 58:4 97:5 109:5 121:15 145:18 165:21 169:18 197:11
summer
120:5
super
74:3 163:19
supermarkets
163:20
supervisor
114:14
supplement
36:16 111:14 131:7 257:19
supplemented
131:13
supplies
191:1
supply
63:18,22 74:12 76:18 192:11,20 194:16
support
17:22 128:5 144:9 153:5 235:10
supporting
58:13
supports
18:6
supposed
42:15 205:10 206:15
surface
67:4,7,8,12,14,17, 19 68:2,10 69:17,

20 70:1,3,8,9 71:19 74:1 77:1 114:12 127:6 128:22 131:25
surficial 73:7
surpasses 219:16,18
surprised 246:6
surround 220:22
surrounding 11:10 15:10 26:20 28:12 58:8 126:4 157:20 163:13 180:17 184:10 188:10 199:2,10 206:9,21 214:8 220:11 241:7 249:17
surrounds 258:8
survey 133:9
survived 49:10
Susan 176:13,22 177:1 196:16,19,24 237:5
suspended 259:15 267:3
swap 218:19
swear 9:15 62:8
swift 176:13,22 196:16, 19,21,24,25 197:12 198:4,10, 14,17,20,24 200:8 202:4,13,24 203:4, 8,11,19 205:19 210:17 222:1,9,12 248:20 250:23
sworn 81:8 135:4
system 29:20 72:1,11 79:16 129:21 234:1
systems 46:17 130:21 235:11

T

T-INTERSECTION 93:15
table 47:9 66:7,13,16,21 67:4,6,7,23,24 68:3,17 69:4,10,14 71:9 73:11,24 76:24 77:1,13,21 121:5 153:23 154:12,20 164:19 167:12 210:14 238:1,8,18
tables 237:24
takes 52:19 73:16 74:23 215:17
taking 52:18 233:24
takings 234:4
talk 12:11 15:5,10,14, 21 16:20,24 17:7, 24 18:4 19:5,9 30:1 62:25 63:3 64:2 65:24 66:6 72:24 73:13 78:10 121:16 123:3 134:12 164:1 175:7 189:13 207:5,18 212:15 213:8 214:10 231:22 236:11 239:23
talked 108:6 109:25 169:5,9 185:12 204:10 210:23 217:17 245:6 263:25
talking 45:19 51:14 73:14 75:20 76:21 106:11 132:19,20 149:11 150:4 155:1 157:12 193:21 209:14 226:4 227:7,18 229:6,20 231:2,23 233:1 234:8 238:15 240:14 251:20
talks 20:25 155:10 207:2
tall 49:13 128:2
taller 49:14
Tampa 197:20 235:4
tangible 143:10
tanks 192:11,21,23 194:14 195:9
tap 63:13
tapers 83:19
tapped 66:10 69:2
tapping 69:23
taps 71:17
targets 208:17
task 4:15 187:24
taste 194:5
Taylor 16:18,23 53:19 54:3 55:7 58:25 59:6 110:1
team 10:20 12:10 15:4 19:17 94:10 109:6 111:8 173:18 265:18
technical 101:25 174:4
technically 99:8 100:17
technology 75:17
Ted 15:14 19:8 30:1 31:19 81:5,6 107:25
teenagers 191:2
telephone 130:1
temporary 86:13,21 247:10, 12
ten 35:18 63:12 64:10 65:5 119:7 167:12 238:15 265:7
ten-and-a-half 230:5
ten-foot 80:19,24
ten-minute 9:2,9 59:20 61:5
ten-percent 210:8 228:4
tenant 33:11,25
tendered 59:23 62:13
term 69:16 70:10 101:21 102:1,8 158:8 239:25
terminals 216:15
terminates 83:20
terms 59:4 75:24 76:17 82:16 88:6,23 89:1 115:24 118:5 121:20 124:1 130:2 131:15 132:1 210:5 216:3 218:19 222:22 229:18 232:18,19 233:14 235:16 236:16
terrible 171:1 176:23 178:1
Terry 170:1
test 77:17,21
testified 125:3 198:19,21
testify 5:6
testimony 4:16 5:3 7:6 9:15 31:17 59:20 62:8 128:19 137:5 149:20 169:19 174:23 198:9 200:6,12 202:1 209:17 223:16 239:2 242:17 245:7,14,23 246:1 248:7 250:21 255:25 256:3 257:13 258:9
text 21:24 203:7 205:25
thankfully 260:4
theme 205:1
themes 206:13 207:14
theoretical 76:17
theoretically 160:15
thick 60:12
thing 11:20 22:13 67:12 78:25 108:3 157:23 163:7 190:13 196:8,9,10 208:16 221:1 234:6 254:9 256:22 265:22
things 16:9,10 17:11,15 18:20 31:17 43:10 72:22 104:9 108:16 109:10 120:17 143:11 174:4,6 176:2 181:8 189:4,16 193:2 194:1,25 196:2,5 204:4

207:2,20 212:7,11 213:11 214:10 215:4,18,22 216:12,21 218:2, 19 219:3 220:25 235:18 237:11 241:10 248:23 250:8 252:5 253:23 254:1 256:4 260:19

thinking
38:12

thought
75:6 205:1 222:25 258:5

thoughts
6:20 14:19 266:13

thousand
69:25 116:10

threat
74:12 77:5,7

threshold
140:19 175:1

throwing
133:7 230:14

tied
126:19

ties
230:7

tighter
234:2

time
6:9,11 7:11 9:11 19:22 21:21 23:6 24:2 27:9 31:18 43:21 44:18 46:5, 10 50:8,23 54:19 58:21 64:9,24 65:1,8,12,15,16 70:24 71:1,2,4,5 74:2,21,23 83:5 94:16 100:14 114:10 127:15 131:25 132:21 137:2 140:16 146:8 152:18 153:1 155:13,17 156:18 157:6 162:8 163:2 165:13 166:2 174:16 175:14 177:24 180:8 183:4 187:3,4,10 190:6 195:3,12,18 204:2 217:6 221:14 222:20 223:22 235:9 237:12 244:9,15 249:17 253:7,8 255:9 257:4,21 265:25

timeline
234:22

times
55:12 57:13 58:1 65:1,4 71:7,15 73:14 101:22 156:22 171:15 196:8 203:21 210:4 235:22 265:4

timing
90:17

TIS
104:23 137:11

today
5:5 9:16 10:20 11:16,19 15:4 20:17 21:23 22:9, 21 32:21 41:22,25 44:21 62:9 79:24 97:21 106:16 114:4 122:11,20 135:7 146:9 157:12 177:15 198:9 199:18 210:7,8,13 228:15, 17 233:12 239:3 240:25 241:18 245:23 250:15 252:4 257:12 258:12 260:20 263:1 266:25

today's
4:5,10 10:16 141:8

told
159:7

tomorrow
199:15 223:10 257:2,16,24 258:23 259:14 267:2

ton
250:16 257:8

tool
95:24

top
49:7 59:12 66:13 68:12,21 76:23 85:4 93:2 97:9 123:11 130:9 160:18 189:22,23 192:11,23

top-mounted
38:7

topic
6:13 183:4 192:7 195:8

tortoises
18:3 60:4,17,20

total
22:17 25:18 58:23 59:7,9 90:15 125:7,11 131:16

totally
190:9 192:3

touch
12:10 15:6,8,12,15 16:16 17:2 19:13 30:2 121:13

touched
51:2 115:6

towering
184:18

Town
89:19 143:16

toxins
174:16

TR
81:6

tracked
7:5 90:22

trade-offs
208:19 218:17

trade-over
207:9

tradeoff
37:18

traffic
38:3 53:7 81:20 82:12,17,19,21,22 84:14,21 85:4,17, 20 86:5,6,12,15 87:4 88:17 89:22, 24 92:3,13,16,25 93:10,15,17 95:13, 22 96:5,12 97:12 102:9,11,12 115:21 118:6 134:13 135:6,13, 15,16,17 136:7,16 137:19 138:9 139:20 140:4,9,13, 14,15,17,20 155:13,20,24 156:1,7,8,17,25 157:11 158:5 159:3,18,21 162:23 164:23 167:5 177:21,22 179:16,17 184:13 190:2 191:6 224:25 225:24 228:13 229:23,25 230:2,22 231:9 235:10,22 241:22 242:4,8,12,19 243:6 260:9 261:24 263:11,18 264:5

traffic's
94:21

trail
191:16,18

trails
190:17,18,19 191:12

training
62:20

transcript
252:19 254:14

Transfer
144:21

transient
41:20 164:24

transit
44:12

transition
134:2 148:14 181:24

transitioning
84:2

transitions
116:1

transmission
72:5

transportation
80:4 81:7,9,12 87:24 88:3 95:15 102:9 134:12 135:6 185:19 224:25 225:14 234:13

trash
33:8 35:7

travel
64:9 65:1,8,12,15, 16 66:3 70:24 71:1,2,4,5,7,15 73:14,16,23 74:2, 21 155:20 162:24 164:13 169:9 174:14,16 231:9

travelers
164:24

traveling
11:10 12:4 17:9,16 21:10 23:7,9 25:5 57:17 58:14 101:3, 5,6,10,16 102:13 109:9,19 110:3 122:13 142:6 163:3,15 193:22

treated
75:11 115:19

treatment
35:14 75:9,18 77:18

tree
37:19 47:18 189:18

trees
37:2,3,14,15,22,23 38:23 45:4 47:17, 24 48:2,3,9,21 49:12,13 61:1 133:16 189:17

Treesh
15:14 19:8 30:1 81:5,6,12 84:19,23 85:8,13,17,21 86:2,10,19,25 87:3,8,13,22 94:25 95:5,8,12,17,25 96:2,9 97:5,12,22 98:2,4,7,13,17,24 99:1,4,7,11,14,23, 25 101:21,24 102:4,12 103:3,18,

24 104:3,7,10,14, 18,22 105:2,5,8, 13,18,20,25 106:3, 8,15,23 107:4,12, 16,22 108:5,18 109:25 135:11 236:5
tremendously 266:16
trespass 132:14
triggers 206:10
Trinda 259:19,20,23 261:16
trip 88:18 115:20 118:8 138:24 229:18
triple 154:19
Triplet 25:25
trips 83:25 84:4 85:15 86:8 103:1,2,4,6,7 106:4 137:18 140:7 229:12 231:10
troubled 183:25
truck 87:18 121:5,7 179:17,18 193:15 212:8 216:15 246:25 247:22
trucks 42:16 170:24 189:19 190:6,10 191:13
true 76:18,19 99:5 124:8 189:16
trunks 189:18
truth 9:17 62:9
tubes 86:4,24
tuned 257:5
turn 5:21 52:7 93:11 94:22 106:5 108:20 109:1,3 136:14,15 137:19, 21 138:3 156:25 231:6
turnaround 49:23 50:2
turned 35:24 49:7
turning 155:23 156:24 231:13,14 243:22
turnover 262:19
turns 251:23
turtles 261:11
two-lane 83:19 84:1,2,7 136:8 155:21
two-story 128:12 153:14
two-weeks-ago 57:20
tying 234:9
type 19:7 27:16 28:19 36:23 37:21 45:4, 6,13 47:6 48:12, 13,14 131:4 133:25 137:12 145:13
types 19:2 26:9 28:18 32:20 38:12 118:18 184:4 209:22 215:2 261:5
typical 68:5 233:3 234:3 250:4
typically 63:25 67:8,11 68:12 75:16 76:22 99:16 226:5,7 227:8 228:5
typo 42:14
typographical 78:13,21

U

U.S. 56:16 83:17
UF 54:17
ultimately 105:6 115:4 132:9 164:21 195:23
unanimous 152:22
unanimously 151:23 182:25
unaware 247:1
unchanged 21:23 34:12
uncommon 156:15
underestimated 156:7,8
underlying 65:25
undermines 206:14 218:10
understand 6:17 7:1 74:11,13 96:4 127:19 132:6 187:23 189:24 192:25 193:1 202:20 203:17 223:8 231:25 237:16,18 239:16 241:5 243:3 249:18,25 250:12 254:13 255:24 263:18 264:25
understanding 47:20 128:24 133:12 141:1,7 193:19 259:8
understory 130:4
undertaken 18:16
underway 19:10
undisturbed 186:14
undivided 83:19
unfamiliar 247:2
unfunded 234:17,18
UNIDENTIFIED 13:11 38:3
unification 56:7
unintelligible 147:23 228:24
unique 24:8 33:21 172:8 186:9,13
unit 28:4 116:24 144:21
units 24:12,20,22 27:11, 22 28:6 55:12 58:23 59:2,7,8,11, 17 117:1 119:11, 14,19,24 122:16, 17 123:8 149:5
University 54:11 89:17,19 147:21 148:6,7 197:14
unknowns 219:11
unnecessary 15:25 193:11 194:15,17,20,21 195:5
unparalleled 134:3 181:25
unpleasant 192:7
unprecedented 172:1 241:2
unrecorded 174:11
unstable 155:22
unusual 190:25
unwieldy 8:10
updated 85:7
uphill 67:21 217:15
upland 60:10,11 130:25
uplands 60:3
uploaded 111:25 255:6,10
upper 22:2 29:9 30:12, 15,21 31:3 76:3
UPS 102:21
upset 241:9 264:17
urban 21:18 29:18 30:6 96:19 104:2,6,12, 14,16,18,21 132:24 233:4,6,14 260:23
urge 6:20,24 150:18,22 222:18
users 219:7,8
utilities 78:11,15,16
utility 19:5 28:2 78:19 131:11
utilize 86:5,16 87:8 120:19
utilized 50:15
utilizing 162:6
utmost 195:18

V

vacant 55:19 158:14 211:21
vacuum 253:20
valid

158:14
values
145:14 184:20,25 263:15
variables
208:20,21
varied
183:25
variety
11:14 109:17
vastly
133:22 180:16
vegetation
15:25 16:5 18:5 36:16 48:15,22,24 49:15 134:9 185:21,23 189:2 262:7
vegetations
189:11
vegetative
130:16 147:4 185:14
vehemently
252:6
vehicle
41:18 42:13,16 53:5
vehicles
52:7 132:11 155:23 189:20
vehicular
49:23 50:2 142:9
venue
78:7
venues
53:22
version
111:16 208:6 211:12
versions
210:8
versus
93:14 110:23 133:17
vertical
74:17 76:15
veterinary
44:5
VIBE
225:15 235:17,22
vice-president
53:20
video
22:4 54:5
vied
262:21
Vieths
178:14,15
view
35:11 147:10 151:18 158:18 189:12,16 246:5 249:5
viewed
35:10
Village
4:12 10:9,20 58:1 70:21 131:20 151:15
violates
208:25
Virginia
197:18
virtue
122:13 138:19 139:20 218:8
vision
15:19 123:10
visit
199:5 263:12
visual
159:19 162:11 209:13,14
volume
92:3 97:14 136:7, 16 175:2 230:22 241:12 261:20 263:20
volumes
65:10 82:22 85:4 97:10 98:8 101:1 140:12 229:10
voluntary
43:1

W

W&w
40:22
wait
41:5 244:10 264:4
waiting
156:17
waking
123:5
walk
261:7
walked
39:23
wall
15:24 16:4 17:20 18:6 47:24 48:2,9, 10 81:2 110:25 115:16 121:21 131:22,23 132:16 133:1,6,17 134:1 145:21 160:8,10, 13,14,18 161:11 162:9,14 166:8 168:3 179:23 180:19,24 185:8, 16,21 186:1,2 190:2 215:7,10 252:7,8
walls
162:8
wanted
30:2 38:11 41:23 49:21,24 129:9 135:10 186:9 196:6 199:17 202:22 245:2 248:10 253:14,16 257:22 260:10,19
wanting
25:19 70:1 160:7
warehousing
41:19
warranted
123:24
wash
38:22 128:4 264:20
washes
37:10 39:10 46:20, 24 213:10
waste
65:10
wasted
126:14
water
18:9 31:25 45:8,9, 12,19 46:16 62:21 63:18,22 64:8 66:3,6,13,15,16,21 67:2,4,6,7,11,18, 20,22,23 68:1,3,17 69:3,9,13,14,21 70:1,4,15,17 71:9, 18 72:22 73:11,24 74:12,25 75:15 76:11,18,23,24 77:1,12,17,21 78:15 79:16,19,25 102:6 114:12 127:6 128:21,22 142:6 157:17 174:17 192:11,14, 20,24 193:10 194:16
watershed
126:3
waving
227:11
ways
127:23 142:8 160:11 193:1
website
111:25
weeds
246:19
weeks
56:22
welfare
45:14 157:22 158:2,23 159:4 166:4
welfare-related
18:8
well-prepared
258:5
wellfield
18:11,25 19:3 43:23,25 63:18 64:20 66:10 68:6,7 69:5 71:22 73:6,9 110:10 120:11,24 192:8 194:13,14, 15 195:2,8,11
wellfields
63:3,12,22
wellhead
62:25 63:5,9,16 64:17,21 65:3,6 70:21 71:6,14,16 72:3
wells
20:12 31:8 32:22 33:5 34:3,21,23 37:2,11 39:8 43:12 69:22 81:17,18,24 83:12 84:3,12,14 88:11,21 90:4 92:15,17,19,22,24 93:1,11 94:1,4,6, 21 95:20 98:9,11 105:23 106:1 129:24,25 132:18 136:2 138:1,8,10, 12 141:2 146:7 155:14 156:22,23 161:25 165:6 166:22,25 167:7 174:6,12 177:12, 21 178:3 187:17 188:15 192:12,16, 19 228:8,14 243:4, 5,8 244:13 250:21 259:24 260:1,6,14, 18 261:3 263:5,8 265:16
Werst
114:14
west
22:22 24:17 25:9 40:21 79:2 83:14, 16 84:9 86:20 87:11 89:23,24 124:19,20 136:2 162:24 164:3,4 189:7,8 193:14 197:16 208:10 228:1,19 231:9 262:25
westbound
93:17
wetland
56:17 59:24
wetlands
17:4 23:18 25:23 56:16,17 58:11 60:3 126:4 245:24 262:7
whatsoever
265:21
when's
265:9

wide
36:7 37:1,3,11 47:15,25 48:11 127:22 141:11 144:1
widen
90:10,12 233:7 263:19
widened
233:8
widening
90:8 91:1,5,11 232:1 233:11
width
33:7 46:20 48:1,3,7,14 133:2
widths
217:7
wildlife
56:16 59:24 261:6,9 266:8
window
53:24
wise
224:1
witnesses
5:19 7:22 195:16 223:7
wonderful
235:20 253:8 256:22
wondering
106:20 137:12
woods
60:10
word
43:2 75:20,23 123:18 172:2 175:9 199:6 219:8 227:5 240:4
wording
129:1
words
67:22 173:9 196:13 213:18 216:9 226:15 256:17
work
26:7 72:22 90:19 91:23 92:1 94:12,16 100:19,20,22 119:18 120:20 124:19 156:15 190:24 195:21 196:25 197:7 225:14 232:6,14,25 235:6,14,17,22,25 236:2 260:8
worked
50:11 62:21 90:21 129:10 147:24 197:21 251:13 266:16
working
14:17 91:24 94:3,7,11,13 100:6 109:24
works
92:10 100:15 114:8 117:4 121:2
worksheets
230:22
world
265:8
worse
69:17 156:1,2 171:1 220:4
worst
85:11
worst-case
115:19,23 117:16,24 118:9
wrap
200:7 223:6
wrapped
91:9
write
10:2
written
119:17 151:21 176:22
wrong
53:1

Y

y'all
15:12
Yacht
26:22
yards
262:2
year
38:1 59:5 64:10 65:5 82:15,16,18 85:11 86:12,14,15 87:9 91:21,22 97:10,16 98:12,21 99:1 100:21 120:3,8 156:18
yearly
84:25 85:8
years
11:8,13 25:1 55:22 59:13,16 62:21 64:10 65:5 74:22 89:7 98:16,25 99:2 109:8,16 155:19 156:3 159:9 179:5,10 193:6 197:15 198:17 222:24 233:9 264:6,10
yellow
27:5 40:23 56:15 98:14
yellow/orange
22:6
yesterday's
204:5
Yup
94:25 224:9

Z

Z-046
20:16
Z-06
20:16
Z-06-046
131:20 184:8 185:9
Z-20-022
144:3
Zach
195:15 237:3
Zachary
175:23 178:16
zonation
63:1
zonations
63:14
zone
43:23 65:8,12,15,16 70:23,25 71:2,3,14 72:4 80:9,10,11 130:13 163:14 167:22 168:2 192:10 194:15 240:16,17 250:6
zoned
11:14 20:15 23:23 40:16 45:23 46:6,8,9 109:16 193:18 208:9 249:20,21
zones
18:12 43:25 63:10,15 64:3,9,17 65:6,17 71:7 73:10 76:8 120:11 195:2,11
zoning
11:15 24:23 26:8,9,14 27:13 40:12,17,24 42:3,4 45:24 52:22 82:17 88:14 105:17 112:8,22 114:21 115:22 134:15 135:16 151:15 153:12,15 155:4,8,12 159:23 161:21 165:20,21 166:13 180:2 181:7 195:1 199:13 201:13 208:13 209:3 220:11 240:17 243:17 244:21,24 247:3 249:23 266:2
zonings
220:22
zoom-in
31:12