

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 2 of 2)

Before the Honorable DONNA MARIE COLLINS,
Judge of the Circuit Court, Twentieth
Judicial Circuit, at a hearing held in the
above-entitled matter at the Lee County
Hearing Examiner's Office, Fort Myers,
Florida, on December 14, 2023.

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ORIGINAL

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I N D E X

E X H I B I T S

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1 (Thereupon, commencing at 9:08 a.m. the
2 following proceedings were had:)

3 THE HEARING EXAMINER: Good morning. My name
4 is Donna Marie Collins. I'm the hearing examiner
5 presiding over the zoning request to intensify the
6 development approvals on the Bayshore Village
7 Commercial Planned Development. This is the second
8 day of hearing. We concluded yesterday with public
9 input, taking written testimony and documentation
10 from members of the public. Now that that portion
11 of the hearing is closed and returning to the
12 parties so that they may respond to questions
13 raised by the public and request for clarification,
14 and also an opportunity for them to supplement the
15 record with any additional information they wish to
16 provide.

17 Following that, we will move to concluding
18 remarks, if any, and then we'll discuss what we
19 need to leave the record open for in terms of
20 updates and changes to conditions and master
21 concept plans.

22 So I am ready. I'm going to administer the
23 oath new today; so if you plan to speak on the
24 record, please raise your right hand.

25 Do you swear or affirm the testimony and

1 evidence you give today will be the truth?

2 PARTICIPANTS: Yes.

3 THE HEARING EXAMINER: Thank you.

4 MS. MONTGOMERY: Madam Hearing Examiner, we
5 would call Kirk Martin.

6 MR. MARTIN: Good morning. Do I just go
7 ahead? Okay. Thanks. There were two questions
8 raised or two comments given regarding residential
9 wells, and -- that I did not address those. The
10 reason that was not addressed is because we were
11 very specific to the Wellhead Protection Ordinance,
12 which is an ordinance within Lee County and the
13 Lee County code for protection of major wellfields.

14 However, individual, what's called, domestic
15 self-supply wells, are protected by the State of
16 Florida. In fact, there's a setback requirement
17 for all fuel tanks and other potentially hazardous
18 fluid storage of a hundred feet setback from any
19 domestic wells, and of course, we are abiding by
20 that and even more so.

21 Most importantly though that, even though --
22 the main reason the Wellhead Protection Ordinance
23 is so specific to wellfields is because of the
24 magnitude of that withdraw. Not only do you have
25 high capacity wells but you have them concentrated

1 in a small area, which means that their impact can
2 extend hundreds or thousands of feet; whereas, a
3 domestic self-supply well, typically the extent of
4 its influence is 10 to 15 feet.

5 In fact, probably the biggest factor that
6 would affect a domestic self-supply well would be
7 activities on their own property, not on this
8 property; so their own storage of facilities, their
9 own septic tank, so forth, would have much more --
10 much greater effect than this facility would, but,
11 again, they are protected by -- not only by the
12 same conditions I described for Lee County's
13 wellfield in terms of confining beds, but they also
14 are protected by State ordinance and other water
15 management district rules that say that nobody can
16 have an adverse effect on it; so they are
17 protected, but it's not within Lee County's
18 ordinance.

19 Any questions?

20 MS. MONTGOMERY: Is there a condition of water
21 quality monitoring?

22 MR. MARTIN: There is. I was going to say
23 kind of in conclusion of that, you know, our
24 application is fully compliant with the code, and
25 even though the code is based on very -- I call it

1 extreme conservative analysis that ignores
2 confining beds, ignores the aquifer levels and, as
3 testified by Lee County staff. But in addition to
4 that, we have the containment sector, the
5 containment, the monitoring within that
6 containment, and the groundwater monitoring as
7 protection.

8 So if anything was to occur, which it's very
9 unlikely to, it would be captured long before
10 anybody would ever see it in our system.

11 MS. MONTGOMERY: Thank you.

12 MR. MARTIN: Any questions?

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

15 MS. MONTGOMERY: Mr. Treesh.

16 MR. TREESH: Good morning. Ted Treesh with TR
17 Transportation.

18 MS. MONTGOMERY: Mr. Treesh, were you here
19 yesterday for the testimony of Mr. Poole?

20 MR. TREESH: Yes.

21 MS. MONTGOMERY: Mr. Poole called in question
22 some of your analysis in regards to historic growth
23 rates and things of that nature. Do you have any
24 comments or response to that?

25 MR. TREESH: Yes. The historic growth rates

1 is dependent upon basically which traffic count
2 stations and which years you look at. Our study
3 that's on the record is dated -- last revision date
4 of November 2022; so there's new data available
5 now. There's -- depending on what count station
6 you look at, what years you look at, you're going
7 to get a different growth rate. So the data he
8 looked at, he came up with a different growth rate
9 than what's in RTIS; so that's --

10 MS. MONTGOMERY: In the staff report, there's
11 an Attachment L. In that memo, did they -- the
12 staff review -- do you want me to hand it to you?

13 MR. TREESH: Yes, this is a staff review of
14 the TIS from Greg Poole, yes.

15 MS. MONTGOMERY: And what did the staff find?

16 MR. TREESH: It's simply a review of our
17 traffic study and summation of the points in our
18 traffic study. Basically the -- it just is the
19 same data and summation of our -- the points made
20 in our TIS.

21 MS. MONTGOMERY: And did they find that there
22 was an acceptable level of service on all the roads
23 analyzed but for that one segment, Pritchett
24 Parkway to Wells?

25 MR. TREESH: Yes. In their Table 2 on their

1 second page of their -- their memo.

2 MS. MONTGOMERY: And in your opinion is the
3 State mindful of that problem and that's part of
4 why they kind of want to connect Wells and
5 Pritchett together?

6 MR. TREESH: Yes.

7 MS. MONTGOMERY: The hearing examiner
8 yesterday had a question about the three
9 intersections that could fail in the future with
10 the project?

11 MR. TREESH: Do we have an aerial? The
12 PowerPoint that I could go to?

13 MS. SAPEN: The very, very last slide is an
14 aerial.

15 MR. TREESH: That's fine.

16 MR. MENDEZ: Does this work?

17 MR. TREESH: Yeah, that's fine.

18 Yes, a part of our zoning -- part of the
19 administrative code requirements for this project
20 and the zoning requirements for this site of
21 property is we have to do intersection analysis,
22 and that was done as part of a sufficiency
23 response, and it's included in the staff memo as
24 well.

25 The three intersections that we analyzed were

1 Pritchett Parkway and Bayshore, Wells and Bayshore,
2 and then our right-in/right-out access -- well,
3 actually, it was a full access because, again, we
4 weren't having -- but I assume as a
5 right-in/right-out in our analysis, based on our
6 meetings with FDOT. Even with the two-lane
7 condition, FDOT said we were only going to be
8 permitted a right-in/right-out access at that
9 location; so those were the three intersections
10 that we analyzed as part of this analysis.

11 And so those three intersections currently are
12 all under -- one of them doesn't exist yet,
13 obviously, our site access drive; so the two
14 existing intersections at Pritchett and Wells are
15 under stop sign control as they approach Bayshore;
16 so in -- in the analysis world of capacity
17 analysis, it doesn't take much traffic approaching
18 a stop sign -- if you've ever sat at a stop sign on
19 a busy road such as Bayshore or any road, it
20 doesn't take much delay, and that's what the level
21 of service is based on at an intersection. It's
22 based on the delay, the amount of time you set
23 there waiting to turn out onto that roadway; and
24 you heard yesterday from the residents that you set
25 and wait on Wells and Pritchett and Nalle Road.

1 Those roads -- well, Nalle Road is a traffic light.
2 It used to be a flasher for the fire station that's
3 to the north, but FDOT and Lee County in the last
4 couple years turned that signal into a fully
5 operational traffic signal; so now that signal is a
6 full operational signal at that intersection.

7 So it doesn't take a lot of traffic coming out
8 of Pritchett and Wells to reach that poor
9 level-of-service condition, and that's exhibited in
10 our analysis. So that level -- that poor level of
11 service is on Pritchett and Wells and also at our
12 site access drive. It's not the conditions on
13 Bayshore itself because those movements don't stop.
14 Those are free-flow movements. The left turn in,
15 the right turn in off of Bayshore, those are --
16 those are free-flow movements. Those are not under
17 the stop sign conditions. Those don't have to stop
18 making those movements. It's just the left turn
19 out of Pritchett, the right turn out of Pritchett,
20 the left turn out of Wells, and the right turn out
21 of Wells.

22 So those are the -- those are the two public
23 intersections that were shown to have the poor
24 level of service, and again, it's just that
25 approach -- those movements, those specific

1 movements, it's not the overall intersection.

2 In the analysis world, you get an intersection
3 level of service at a traffic signal. When we do
4 an analysis at a traffic signal, you get an overall
5 intersection level of service because all the
6 movements have a level of service because all the
7 movements have to stop at a traffic signal
8 traditionally when all the movements are controlled
9 by the -- by traffic signal movement.

10 But at an unsignalized intersection, when you
11 only have one movement that's controlled by a stop
12 sign, which you do at these two T-intersections,
13 you don't have an overall intersection level of
14 service. You only get a level of service for those
15 intersections that have a delay; so there is a
16 level of service for the left turn movements off of
17 the -- off of Bayshore because they do have some
18 delay because they're waiting to turn into
19 Pritchett based on the movements off of -- off of
20 the main line, but they don't have a stop sign, but
21 the movements off of Pritchett and off of Wells do
22 have a stop sign; so those are the movements that
23 are shown to have a poor level of service, but
24 there's no overall intersection level of service.

25 So the intersection itself is not failing,

1 it's just simply some movements at that
2 intersection that are failing. So the table is
3 kind of mislabeled in terms of -- in the staff
4 report where it says, "future plus project." It's
5 not the overall intersection that's failing, it's
6 just some movements that are failing.

7 But if you recall in my presentation, with the
8 FDOT improvements that are planned; and again, I
9 indicated in my presentation -- and the residents'
10 traffic consultant also indicated this -- but those
11 improvements are not yet funded, but in our
12 discussions with FDOT, they are moving forward with
13 getting that project funded in the near future
14 because of what's happening in the area and the
15 development of Babcock Ranch, and specifically
16 what's going on with State Route 31 and getting
17 those projects funded together.

18 The Pritchett Parkway intersection is being
19 relocated, and I've been working on this -- that
20 project for a long time. The development of
21 Brightwater even has a condition in their zoning
22 that changes have to happen at Pritchett and
23 Bayshore. We've had -- we've met with FDOT many
24 times on that intersection at Pritchett and
25 Bayshore because Brightwater has a condition in

1 their zoning that addresses that intersection.

2 THE HEARING EXAMINER: What is the condition?

3 MR. TREESH: That at a certain level of
4 development in Brightwater, changes have to happen
5 at Pritchett and State Route 78.

6 THE HEARING EXAMINER: What changes?

7 MR. TREESH: The left turns off of Bayshore
8 have to be removed, the left turn in onto
9 Pritchett, and so we met with Lee County and FDOT
10 as part of the Brightwater project and said, "You
11 know, to do that, if you remove the left turns,
12 they have to come down to Wells and do a U-turn.
13 There's no room to do that right now in the
14 two-lane condition."

15 So FDOT and Lee County said, "We understand.
16 So let's wait until the widening of Bayshore occurs
17 when there's room to do U-turns," and then during
18 the PD&E process, that's when FDOT came up with the
19 concept of relocating Pritchett over to Wells Road,
20 as you saw in our concept yesterday.

21 THE HEARING EXAMINER: So where would the
22 U-turn have to happen if they closed it too soon?

23 MR. TREESH: At Wells.

24 THE HEARING EXAMINER: Oh, at Wells, okay.

25 MR. TREESH: Yeah. But because you've only

1 got a two-lane road at Bayshore and Wells, there's
2 literally no room to do a U-turn, and as you're
3 aware, Pritchett goes all the way up and serves a
4 lot of large tract, you know, agriculture uses,
5 trucks with trailers, horse trailers. There's just
6 simply no way operationally they could close off
7 that left-turn lane and left-turn movement without
8 accommodating U-turns at that location and doing a
9 significant amount of improvements. So they've
10 held off on that until the widening of Bayshore
11 occurs, and now with the relocation, with FDOT's
12 planned realignment of Pritchett over to Wells,
13 that solves that issue. And FDOT has said all
14 along they want to relocate Pritchett away from the
15 interchange. They do not like the influence of
16 this intersection that's close to the interchange,
17 and that their traffic consultant yesterday was
18 correct, but the signal at Wells is -- is going to
19 happen. I mean, it is part of the project that
20 FDOT is going to be doing.

21 THE HEARING EXAMINER: Okay. Can we bring up
22 that -- you had an exhibit yesterday that showed
23 two of the potential alignments of that, and I just
24 have a quick question.

25 MR. TREESH: Is that on this one or --

1 THE HEARING EXAMINER: It was, like, it had an
2 inset. It would be helpful to me to be looking at
3 that while you're talking about this.

4 MR. MENDEZ: Should we start at 71?

5 MR. TREESH: That's it, yeah.

6 THE HEARING EXAMINER: So the plans that are
7 under consideration, basically shifting Pritchett
8 to merge in with Wells, and then they would
9 eliminate that one intersection.

10 MR. TREESH: Yes.

11 THE HEARING EXAMINER: And bring all that
12 traffic to Wells and place a signal there?

13 MR. TREESH: Correct.

14 THE HEARING EXAMINER: From the jump there's
15 going to be a signal there once they make the
16 improvements?

17 MR. TREESH: Yes.

18 THE HEARING EXAMINER: Okay. And that would
19 allow for all turning movements?

20 MR. TREESH: Correct. Both those options, the
21 inset as well as -- both would allow all turning
22 movements in and out of that relocated
23 intersection.

24 THE HEARING EXAMINER: And what happens to
25 that segment of Wells from Bayshore to where Wells

1 is realigned?

2 MR. TREESH: This?

3 THE HEARING EXAMINER: Yes.

4 MR. TREESH: That's unclear, but that was our
5 question as well to FDOT. Again, that's a county
6 maintained road; so it would be -- that was one of
7 our questions as well. We would have to address
8 that with the County.

9 THE HEARING EXAMINER: Because here's my
10 question: The way I understood -- and please
11 clarify if I misunderstood -- FDOT is saying that
12 access to your site is right-in/right-out only.

13 MR. TREESH: Onto Bayshore, correct.

14 THE HEARING EXAMINER: Right. And so this
15 is -- you're asking for a level of commercial and
16 an array of uses that are expanded, that's fine,
17 but even with what's already approved, there's
18 going to be delivery trucks and -- under the new
19 request, possibly tanker trucks and everything, and
20 I'm thinking about, well, how are these things
21 going to access -- how are these vehicles going to
22 access this site? You're telling me that there's
23 an uncontrolled intersection at Wells right now,
24 and the plan is that they would access Wells and
25 enter the site, right, because they're not going to

1 make a U-turn at Nalle, right. These big tanks and
2 delivery trucks they're not going do that. They're
3 going to make a left into Wells and a right into
4 the site; and the internal traffic circulation
5 under your site design will allow for them to come
6 in, access the rear of the building or the fueling
7 stations or whatever.

8 Then I look at these two proposed scenarios --
9 now, understanding nothing's set in stone. It can
10 be changed.

11 MR. TREESH: Yes.

12 THE HEARING EXAMINER: They're going to enter
13 at a signalized intersection, which is better,
14 they're going to make a right as the road branches,
15 and then what? They're going to have to make
16 another right and come down to your site? How are
17 they going to access that site now?

18 MR. TREESH: Yeah, we've looked at
19 possibilities. I mean, there's the possibility
20 that, you know, if this right-of-way gets vacated,
21 you know, then obviously half would go to this
22 site, half would go to this site. We could connect
23 here. You know, then they would come into here,
24 and then there would be a driveway here. So site
25 traffic would just come out -- and come in and out

1 of here. We could have possibly a
2 right-in/right-out here. You know, so people could
3 come in here. I don't think Lee County would allow
4 us to turn left out of here, but maybe come in,
5 enter here, but come out here, come here, and then
6 come back here to get to the light.

7 THE HEARING EXAMINER: And would that require
8 this property owner to purchase land to achieve
9 that connection? Because it looks like you'd be
10 crossing adjacent --

11 MR. TREESH: I don't know, it's still up for
12 -- it's still all up for negotiations just because
13 this is all still just in flux.

14 THE HEARING EXAMINER: All right. So I'm
15 being asked to consider an intensification of use
16 on this parcel, and what I see is one of your main
17 access points of reliance is going to be changing
18 dramatically.

19 MR. TREESH: Well, ours is about here, and we
20 still have frontage, you know, here; so there's
21 still a possibility to connect, you know, here
22 within the right-of-way. And again, these lines
23 aren't set. This has not been set yet. This is
24 just still conceptual. So in the final design
25 stages, this will be worked out with FDOT. If they

1 decide to purchase this, they have to maintain
2 access for this, and if they have to purchase more
3 or we have to work out the access -- if they have
4 to buy -- if they have to buy more property to be
5 able to maintain access to that property.

6 THE HEARING EXAMINER: You understand what my
7 dilemma is though.

8 MR. TREESH: Yes.

9 THE HEARING EXAMINER: I'm relying on your
10 testimony that this Wells access is going to be --
11 let's face it, that's your main access for
12 deliveries of inventory, fuel, everything else, and
13 this does not look ideal, and the prospect of
14 U-turns at any intersection on Bayshore, I don't
15 know if you've looked at that and said, "Oh, they
16 can't do it at Nalle, but maybe they can do it
17 at" --

18 MR. TREESH: No. We're not counting on
19 U-turns at all. That's why we -- we've already
20 presented some concepts with FDOT, you know,
21 especially with the property on the west side, to
22 look at different alternatives for this concept of
23 Pritchett and Wells. And we've already worked with
24 the property owner to the west to look at different
25 concepts, and again, FDOT is amenable to -- and

1 open to different ideas to the Pritchett/Wells
2 realignment.

3 Again, this is still in the PD&E process. It
4 hasn't been finalized yet. So that's a county
5 road. Both Pritchett and Wells are county roads;
6 so the County is involved, as well, in this
7 process. We have some fixed parameters here.
8 We've got a bridge right here. So, how this -- you
9 know, we've got this space to work with, and like
10 we said yesterday, one of the alignments we came up
11 with was bringing this up to here to align with our
12 access drive.

13 THE HEARING EXAMINER: Why is it not a
14 consideration just to extend it due east?

15 MR. TREESH: That was one of the options we
16 talked about. One of their concerns just was the
17 throat depth, you know, from the traffic light.

18 THE HEARING EXAMINER: Okay. I understand
19 now. Yes.

20 MR. TREESH: They don't want to come in
21 straight, they want some curvature to give it a
22 little bit of throat depth to the traffic light,
23 which we understand, and we've got a property owner
24 here that he has some uplands here that he's
25 looking to develop. He's got -- you know, he's in

1 the same land use category we are. I believe
2 that's AG zoning right now, but he's got potential
3 development potential of that property as well.

4 But, again, we've looked at access
5 alternatives. We've got -- just the way this is
6 laid out, that yellow line is the right-of-way --
7 we've got -- our access is about right here; so we
8 can get the access to Wells. It doesn't change
9 significantly, it's just a little bit longer travel
10 path to get to the Pritchett intersection, but it's
11 a signalized intersection to get out onto State
12 Route 78, and now those two -- the two Level of
13 Service F movements are now under a signalized
14 condition onto State Route 78; and the third one
15 was, again, our site access drive, and that delay
16 was simply the right-out movement onto State Route
17 78. That delay is all contained on our property;
18 so the Level of Service F, the third line, the
19 Level of Service F, that delay is all contained on
20 our property. That's not really --

21 MS. MONTGOMERY: So it doesn't impact the
22 general public?

23 MR. TREESH: It doesn't impact the general
24 public. That's just our -- that's just a delay
25 within our project of people waiting to turn right

1 out of our driveway.

2 MS. MONTGOMERY: Okay. Ted, let me ask you a
3 question.

4 THE HEARING EXAMINER: I'm not finished.

5 MS. MONTGOMERY: You took a breath; so I --

6 THE HEARING EXAMINER: Would you please
7 clarify what this red marking is on the north side
8 of Bayshore? You've got two red markings.

9 MR. TREESH: Where's that? These?

10 THE HEARING EXAMINER: Right there.

11 MR. TREESH: That's existing right-of-way.

12 THE HEARING EXAMINER: So that red marking
13 that kind of comes down alongside of Pritchett on
14 the north side of Bayshore, and then tapers to the
15 south, that is -- what is that?

16 MR. TREESH: That? That line?

17 THE HEARING EXAMINER: No, the lower one.

18 MR. TREESH: This?

19 THE HEARING EXAMINER: Yes.

20 MR. TREESH: They labeled that as -- one of is
21 existing right-of-way, and then the other is
22 existing limited access. This is the limited
23 access right-of-way of I-75; so there's no -- this
24 line is the limited access right-of-way line,
25 meaning there's no access to Bayshore within this

1 L.A. line.

2 THE HEARING EXAMINER: Okay. So that's not
3 right-of-way line?

4 MR. TREESH: That is not right-of-way. This
5 is right-of-way. This is limited access
6 right-of-way.

7 THE HEARING EXAMINER: So the yellow is
8 right-of-way, proposed right-of-way.

9 MR. TREESH: That is proposed right-of-way,
10 the yellow.

11 THE HEARING EXAMINER: And then what's the
12 north red line? Just go north of it. Yeah.
13 What's that?

14 MR. TREESH: That's existing right-of-way of
15 Pritchett Parkway, and this is L.A. line. It's
16 hard to see on this, but it's -- there's three
17 little cross-hatches, which is -- which means
18 that's existing limited access right-of-way, and
19 this is just right-of-way.

20 THE HEARING EXAMINER: For Pritchett?

21 MR. TREESH: For Pritchett and Bayshore, yeah.
22 It's all just right-of-way.

23 THE HEARING EXAMINER: Okay. Thank you.
24 There's a lot of lines on that exhibit.

25 MR. TREESH: Yeah, there is. It's hard to see

1 on this PowerPoint with the legend.

2 THE HEARING EXAMINER: And this is all in
3 flux? It can change?

4 MR. TREESH: Well, our last meeting with FDOT
5 is they have made their final decision on the PD&E.
6 Their final public hearing is scheduled for the
7 spring of '24 where they'll finalize the PD&E.

8 THE HEARING EXAMINER: So what alignment did
9 they go with Pritchett?

10 MR. TREESH: They have two options: A north
11 widening, and a south widening. They've went with
12 the north widening option, which this is. It would
13 just -- the alignment of which side they were going
14 to take right-of-way on, and they went with the
15 north widening; so it's about 10 to 15 feet of
16 right-of-way acquisition on the north side versus
17 the south side.

18 The concepts were the same in terms of
19 roundabouts, and the intersection concepts were the
20 same in both options, it was just which side were
21 they going to take the right-of-way. They've opted
22 for the north right-of-way option.

23 Right now they're back at the drawing board in
24 terms of -- they have to look for more pond sites.
25 They were informed by the Water Management District

1 that they needed to find more water treatment areas
2 for this project; so they're in the process of
3 identifying additional water treatment area sites
4 along the corridor, which doesn't really include
5 the right-of-way, it's -- they're just looking for
6 additional properties.

7 THE HEARING EXAMINER: So that would be
8 outside the waterway, and it would run off and be
9 held there?

10 MR. TREESH: Yeah. But that's all part of the
11 PD&E, and they anticipate public hearing in the
12 spring, and then right-of-way acquisition funding
13 to be identified in the July work program, to be
14 funded in late '24. Again, with a design build
15 project to be done in 2025 is -- our last
16 discussion with them -- and that was, again, just
17 last month.

18 THE HEARING EXAMINER: So 2025 is when they
19 would commence construction?

20 MR. TREESH: Design -- it's called a design
21 build contract. So the design build contracts,
22 they hire the design firm first. It's usually
23 about a 12 to 16-month design. The design company
24 starts, and then they start construction as they're
25 designing it. That's why it's called a design

1 build contract.

2 THE HEARING EXAMINER: So in 2025 they're
3 going to --

4 MR. TREESH: 2025, 2026.

5 THE HEARING EXAMINER: -- they'll secure the
6 design build contractor; so construction will occur
7 after 2026?

8 MR. TREESH: Yes.

9 THE HEARING EXAMINER: And your buildout is
10 2028.

11 MR. TREESH: That's my analysis.

12 THE HEARING EXAMINER: How long is it going to
13 take to construct the improvement?

14 MR. TREESH: This improvement? Probably 18 to
15 24 months, I would assume. This would be probably
16 a two-year project because there's no -- the only
17 bridge is -- there's one bridge just -- I think
18 there was one bridge in the project. There's a
19 bridge, I think, right -- right here, and they're
20 not redoing the bridge with operational and safety.
21 That's usually one of the biggest timeline
22 projects, but this bridge is a new bridge.

23 THE HEARING EXAMINER: So what does that mean?
24 Is it going over a creek?

25 MR. TREESH: Yeah, this is a creek.

1 MS. MONTGOMERY: Is that Popash Creek?

2 MR. TREESH: That's Popash Creek, but the
3 bridge over I-75 is staying in this project.

4 THE HEARING EXAMINER: Okay. Neale, now you
5 may speak.

6 MS. MONTGOMERY: So, Mr. Treesh, you've been,
7 as you indicated, working with FDOT; so it sounds
8 like you're working with FDOT in regards to the
9 subject property and in regards to Brightwater and
10 that whoever owns the property where the --

11 MR. TREESH: Pritchett realignment.

12 MS. MONTGOMERY: -- connection is to the
13 north.

14 MR. TREESH: Yes.

15 MS. MONTGOMERY: So in those discussions, is
16 FDOT mindful and aware of what's proposed for the
17 subject property?

18 MR. TREESH: Yes.

19 MS. MONTGOMERY: And in your discussions, in
20 your expert opinion, is it your belief and
21 understanding that the traffic from the subject
22 property will be accommodated in those
23 improvements?

24 MR. TREESH: Yes.

25 MS. MONTGOMERY: In other words, the hearing

1 examiner is concerned that how can I improve this
2 because it may not work, but if I listen to you,
3 what I think I hear you saying is you're working
4 with FDOT, and they know they need to make it work
5 for all the property owners.

6 MR. TREESH: Yes. Yes. We've given them
7 everything, the Brightwater project, our analysis
8 for the zoning, even potential development of this
9 northwest quadrant of Pritchett, the property at
10 Pritchett and -- this property here that's AG right
11 now. The client on that property has potential
12 uses that he's looking at as well.

13 MS. MONTGOMERY: Okay. So we know next year's
14 an election again, and we know that several
15 elections ago we embarked on shovel-ready projects
16 that not all of them got started. So let me ask --
17 go back to a question that came up yesterday, and
18 that is -- I think Mark has testified to this as
19 well -- that you -- I think it's 10-286, you'll
20 have to do traffic analysis on the actual trip
21 generation at the time of D.O.

22 MR. TREESH: That's correct.

23 MS. MONTGOMERY: And I think it's the next
24 section after that, 287 that says, "If you have a
25 problem, you've got to do a traffic -- proposed

1 traffic mitigation?

2 MR. TREESH: That's correct. We have to do a
3 traffic mitigation plan addressing the issues that
4 arise during the development process.

5 MS. MONTGOMERY: So -- and one of the young
6 ladies that testified yesterday talked about the
7 delay on Wells because it sounds like the trips
8 that want to turn right get stuck behind the trips
9 that want to go left.

10 MR. TREESH: That's correct. The Wells -- as
11 you're coming down south on Wells, as you get to
12 the stop sign, there's only the one-lane approach;
13 so if you want to turn left, you're waiting at the
14 stop sign; if you want to turn right, you're
15 setting behind the person waiting to turn left; so
16 one of the solutions might be for the project to
17 add a right-turn lane on Wells at the stop sign; so
18 the person in the left could be setting in the
19 left-turn lane, and the person turning right could
20 utilize the right-turn lane and not have to wait on
21 the person turning left, so that would decrease the
22 delay, and improve the level of service and
23 operational characteristics of the stop sign and of
24 the intersection.

25 MS. MONTGOMERY: And I think you indicated

1 that there's another location, North River Road
2 where they did a temporary signal as a solution.

3 MR. TREESH: That's correct. In fact, we were
4 involved in that. We put in a temporary signal,
5 and the County put in a temporary signal at State
6 Route 31 and North River Road. Even those vehicles
7 coming out here, probably in the next few months,
8 as FDOT widens 31.

9 MS. MONTGOMERY: So then, in your expert
10 opinion, at the time of D.O., when you provide that
11 traffic mitigation, will you be able to address
12 whatever the issues are?

13 MR. TREESH: Yes. If our TIS shows the
14 development would need a signal and warrant a
15 signal at Wells with our project, we could petition
16 FDOT and show that we need a signal and put in a
17 signal at Wells even if -- you know, because a
18 signal is coming in with this project, and we could
19 put in a temporary signal, and then it would be
20 replaced by the permanent signal with the widening,
21 similar to what was done at 31 and North River
22 Road.

23 MS. MONTGOMERY: So in your expert opinion,
24 regardless of what the option selected by you and
25 the County is, you will be able to address or

1 mitigate the issues?

2 MR. TREESH: Yes.

3 MS. MONTGOMERY: Okay. Thank you.

4 So with whatever improvements that occur, will
5 deliveries be able to occur?

6 MR. TREESH: Yes.

7 THE HEARING EXAMINER: Okay. Let's -- let's
8 revisit that for a minute.

9 MR. TREESH: Okay.

10 THE HEARING EXAMINER: Of course deliveries
11 will occur. The roads are going to be in place,
12 but where are they turns going to be made in
13 relationship to the residential development
14 immediately north of the property line? I mean,
15 there's been a lot of talk about how the access has
16 been shifted to the south away from the adjacent
17 residential land uses; right? I see that as an
18 improvement over the originally proposed site plan;
19 however, the realignment of this road may force
20 changes to this which will then place this access,
21 all your deliveries, all your most heavy vehicle
22 type-access to the truck closer to the residential
23 development.

24 So how is that -- how do you view that
25 working? I mean, I see that as not -- based on

1 what you've told me, this access point cannot be
2 relied on. It's likely going to shift to the
3 north. It's certainly not going to shift to the
4 south.

5 MR. TREESH: I don't -- I don't think so. I
6 think -- I don't think it will shift up here. It
7 will stay here. Where it will connect to here will
8 be -- we can't shift it to the north without coming
9 back to you and modifying the master concept plan.
10 Is that safe to say?

11 How it connects to here, we have to work out
12 with Lee County and FDOT as part of this project if
13 that happens.

14 THE HEARING EXAMINER: Okay.

15 MR. TREESH: Because they're changing Wells
16 Road with this project, and we're going to say,
17 "Okay. If you're going to do that, you've got to
18 give us access" --

19 THE HEARING EXAMINER: You mean when it
20 happens?

21 MR. TREESH: When it happens, you've got to
22 give us access to this, and how that happens over
23 here to connect, we -- we're not going to move this
24 up here.

25 THE HEARING EXAMINER: And you don't have to

1 come back to me to move that by the way.

2 MR. TREESH: We don't?

3 THE HEARING EXAMINER: Usually that's
4 something that just happens, the development order
5 stays unless I put something as a condition.

6 MR. MENDEZ: We can include that as a
7 condition.

8 MR. TREESH: Would that be fine with --

9 THE HEARING EXAMINER: I'm not saying I'm
10 considering it, I'm just asking for an explanation
11 so I can have a better understanding of how all
12 these pieces are going to fit together.

13 MR. TREESH: Again, that's discussions that
14 we've had with FDOT that our access is in this
15 location. If this happens -- and we've talked
16 about moving this down further to be able to get to
17 our driveway with this right-of-way; you know, and
18 that's something that they've even looked at is
19 potentially moving that right-of-way to be able to
20 give us the right-of-way to get to that Wells Road,
21 and I've seen that happen in other cases where
22 they've purchased additional property. You know,
23 we're not talking about a lot of additional
24 property to purchase. If they're going to buy that
25 property, that right-of-way, we're not talking

1 about a lot more. I mean, you're only talking
2 about buying this little clip to be able to get our
3 driveway to that connection without having to move
4 that driveway, and we're still utilizing the public
5 roads to get to that entrance.

6 THE HEARING EXAMINER: Okay. Thank you. I
7 appreciate the explanation.

8 MR. TREESH: Anything else?

9 MS. MONTGOMERY: No.

10 MR. TREESH: All right. Thank you.

11 MS. MONTGOMERY: Our next witness is Jenn
12 Sapen.

13 MS. SAPEN: Good morning. My name is Jennifer
14 Sapen for the record. I have a couple of handouts.
15 First I have the replacement slides that were
16 corrected from yesterday. Those are Slides 35, 65,
17 and 66, and since I'm handing that out, I also gave
18 you the presentation I'm doing today.

19 THE HEARING EXAMINER: And just a note on
20 these replacement pages, I am going to put a note
21 on them, and they're going to replace the actual
22 exhibit. I'm not giving it a new exhibit because
23 we talked about we were going to clean it up and
24 just slide it in so we have one PowerPoint with
25 everything up to date, and then, of course, today's

1 PowerPoint.

2 MS. SAPEN: And with that in mind, the slide
3 numbers are unchanged on here; so you can just
4 slide them right in.

5 THE HEARING EXAMINER: So let me just make a
6 note to my staff.

7 And then this will be Applicant Exhibit 3,
8 which is Day 2 PowerPoint.

9 (Exhibit 3 marked for identification.)

10 THE HEARING EXAMINER: Thank you for your
11 patience.

12 MS. SAPEN: So I want to start with the two
13 questions that Madam Hearing Examiner mentioned at
14 the end of the day yesterday. The first was
15 regarding hotel height and hotel land use
16 conversions which also ties to the conversations
17 that happened yesterday about the ten-percent
18 density increase.

19 So hotel height, it is shown here in condition
20 11E. To simplify it, hotel height is a maximum
21 height of 48 feet, accessory 35 feet, and then the
22 setbacks are based on height; so the hotel would be
23 restricted to only the 300 southern feet; so
24 similar restriction as other uses if it is over
25 35 feet in height. However, if it's shorter, it

1 can be a little bit closer to the north property
2 boundary; so if it's under 35 feet in height, it
3 has a setback of 150 feet from the north property
4 line.

5 And then further, Condition 9 says that all
6 buildings over two stories have a setback of
7 150 feet from the north property line; so there's
8 kind of two conditions that ensure that the hotel
9 will be a minimum of 150 feet from the north
10 property line in all instances.

11 Some of the language here, we were revising
12 this in the process; so I did talk with staff
13 before this hearing began, and what we would
14 suggest is the red sentence where it starts
15 "Buildings exceeding," that that sentence just
16 simply say, "Buildings must be set back," and then
17 get rid of "exceeding 35 feet in height." Just
18 say, "Buildings must be set back a minimum of
19 50 feet from Wells and Bayshore." So that cleans
20 that up just saying that all hotels are 50 feet
21 from the roads.

22 And then near the end, before Condition 9, and
23 then strike through the end of that sentence where
24 it starts, "and the Wells Road right-of-way, and
25 15 feet from the Bayshore right-of-way." So we

1 just have one -- just one sentence then saying it's
2 35 feet. Just kind of a cleanup.

3 THE HEARING EXAMINER: So we'll leave the
4 record opened for a cleaned up version of
5 conditions.

6 MS. SAPEN: Yeah. And that's what we
7 discussed with staff.

8 THE HEARING EXAMINER: And staff is in
9 agreement with this revision?

10 MR. MENDEZ: I want to lean yes, I just
11 haven't looked at it holistically.

12 THE HEARING EXAMINER: Okay.

13 MS. SAPEN: Yeah, I did, at the last minute,
14 just give it to him this morning -- or discussed it
15 with him this morning. I didn't give him a hard
16 copy of it.

17 Condition 9, this is the conditions at the
18 bottom here where you see in red that "All
19 buildings exceeding two stories must be set back
20 150 feet. So you have that assurance there.

21 And also, any additional height would require
22 a public hearing. Condition A here, the Land
23 Development Code allows some heights be increased
24 administratively. This would prohibit that, and
25 require a public hearing should the height be

1 increased.

2 THE HEARING EXAMINER: Increased above what,
3 48?

4 MS. SAPEN: Correct. The Land Develop Code
5 allows, in 34-2174, if you increase setbacks, you
6 may potentially be able to increase height
7 administratively.

8 THE HEARING EXAMINER: So you're capping
9 height at 48 unless there's another public hearing?

10 MS. SAPEN: That's correct.

11 THE HEARING EXAMINER: And the current height
12 is 24? 25? What's the current height?

13 MS. SAPEN: On the proved.

14 MR. MENDEZ: It's 25 feet, one building story.

15 THE HEARING EXAMINER: Okay. Thank you.

16 MS. SAPEN: The surrounding area, however, it
17 does have a building height of 35 feet, which is
18 pretty standard in the county for agricultural.

19 Looking -- we wanted to look at the hotel
20 conversion condition, 11A. Previous versions of
21 our application included a density matrix which
22 included that ten percent increase, potential
23 increase in intensity. That conversion matrix has
24 been deleted from the prescription and is now
25 replaced with this condition and one that will

1 follow; so a hotel conversion is one hotel room
2 equals 120 square foot of commercial.

3 THE HEARING EXAMINER: And what is that based
4 on?

5 MS. SAPEN: I believe it's based on ITE, which
6 this next condition, Condition 12 references the
7 ITE.

8 THE HEARING EXAMINER: Okay. So let's stick
9 with this. I just want clarification on that.

10 So for every extra unit over 44, you're going
11 to subtract --

12 MS. SAPEN: 120.

13 THE HEARING EXAMINER: -- 120?

14 MS. SAPEN: Correct.

15 THE HEARING EXAMINER: And then what is it
16 capped at?

17 MS. SAPEN: 125 hotel rooms.

18 So the math that is shown here, which it's
19 covered up in the video, but applying staff's
20 recommendation and Applicant's recommendation, if
21 you maximize hotel of 125 rooms, the square footage
22 remaining would be 77,780 on staff's
23 recommendation, and on Applicant's proposed, it
24 would be 115,280 square foot remaining for retail
25 after hotel is maxed out.

1 THE HEARING EXAMINER: So I don't understand
2 this 87.5 reference.

3 MS. SAPEN: The 87.5, that is what staff is
4 recommending as the maximum retail; so the 120
5 square foot per unit would be reduced out of the
6 87.5.

7 THE HEARING EXAMINER: All right. So for the
8 purposes of the condition, you're assuming I go
9 with staff's recommendation?

10 MS. SAPEN: This is just taken straight from
11 staff's -- this Condition 11 is from staff's --
12 their report; so that includes their recommendation
13 of 87,500.

14 THE HEARING EXAMINER: Okay. But you're
15 providing me with the information that, if I were
16 to go with your request, that number changes?

17 MS. SAPEN: It -- yeah, it would be right
18 under the --

19 THE HEARING EXAMINER: I can't see it.

20 MS. SAPEN: Yeah, it's 150 --

21 THE HEARING EXAMINER: If I could see that,
22 then I wouldn't have to ask you.

23 MS. SAPEN: There we go. It's 115,280.

24 THE HEARING EXAMINER: And that would replace
25 the 87.5?

1 MS. SAPEN: Well, the 125,000 replaces the 87.
2 These two calculations on the right shows if you
3 use all of hotel rooms.

4 THE HEARING EXAMINER: Okay. So in theory,
5 you could have a 100 -- as proposed a 125-unit
6 hotel, and 115,280 feet of commercial use?

7 MS. SAPEN: That's correct.

8 THE HEARING EXAMINER: Okay. And that would
9 go up if the hotel was less?

10 MS. SAPEN: Correct.

11 THE HEARING EXAMINER: And if there was no
12 hotel, it would be your maximum requested --

13 MS. SAPEN: That's correct.

14 THE HEARING EXAMINER: Which is --

15 MS. SAPEN: 125.

16 THE HEARING EXAMINER: -- 125?

17 MS. SAPEN: Correct.

18 THE HEARING EXAMINER: It's still not as clear
19 as I'd like it to be, but I understand. I do
20 understand.

21 MS. SAPEN: We started with one of those large
22 matrix that --

23 THE HEARING EXAMINER: I remember. I recall.

24 MS. SAPEN: But it was replaced with a more
25 general condition, Condition 12, which just goes to

1 the ITE. And we see that a lot in planning where
2 we try not to duplicate information that is from a
3 resource material.

4 THE HEARING EXAMINER: Right. So really the
5 barrier, the additional barrier, is we are
6 anticipating this level of trips impacting the road
7 system from this development, and we're going to
8 try to stay within this bubble, and these are some
9 extra parameters, but this is the overriding thing
10 we're trying to achieve.

11 MS. SAPEN: That's correct.

12 THE HEARING EXAMINER: Capping the impact of
13 what gets developed here while allowing
14 flexibility. Is that an accurate --

15 MS. SAPEN: That is absolutely correct, based
16 on trips. Now, there are several other site
17 components that will decide what level of intensity
18 goes into the project. Parking requirements,
19 landscaping requirements, all of these things
20 within the Land Development Code back the site into
21 what the maximum intensity could be, and it really
22 very greatly depending on the uses.

23 THE HEARING EXAMINER: Right.

24 MS. SAPEN: Uses that have low-parking
25 generators can have very high square footage on an

1 acreage; whereas, a high-parking generator and
2 drive-throughs, you yield much less square footage
3 because they're a single-story structure, and they
4 require a lot of parking. A two-story structure
5 with a lower parking generator can really provide a
6 lot of square footage on the side. So it's that
7 flexibility that opens up several options of how
8 this site might be developed depending on which
9 use.

10 THE HEARING EXAMINER: So is it only the hotel
11 use that can go to 48?

12 MS. SAPEN: Correct.

13 THE HEARING EXAMINER: All other uses are
14 capped at 35?

15 MS. SAPEN: That's correct.

16 THE HEARING EXAMINER: And that's a two-story
17 building -- it could be a two-story building?

18 MS. SAPEN: Up to, correct. And that -- that
19 taller hotel must be within the southern 300 feet
20 as noted here.

21 Now, that's important to note too because the
22 fast food and the gas stations, those were allowed
23 up to 400, and that was just to give a little more
24 room because of wellfield protection. The hotel is
25 further restricted a little bit closer to the

1 southern boundary than the other uses were
2 restricted.

3 THE HEARING EXAMINER: So it must be located
4 within --

5 MS. SAPEN: 300 feet of the southern boundary.

6 THE HEARING EXAMINER: Okay. And how many
7 feet is the property from top to bottom?

8 MS. SAPEN: It's 571 feet.

9 THE HEARING EXAMINER: So it's like 250 plus
10 some from the north property line?

11 MS. SAPEN: Right around middle, and that is
12 for the building, and of course, landscaping and
13 parking will be around it.

14 So Condition 12 does reference the ITE manual
15 so that the transfer between uses will be based on
16 traffic rates. Early submittals did include that
17 converse chart. That's been deleted, and with that
18 the notes at the bottom of the table about the
19 ten-percent intensity increase. For this kind of a
20 hearing, we'll pull from charts we've used in other
21 zoning. That whole chart has been deleted and
22 replaced by this condition, and there are no
23 references to ten-percent density increase anywhere
24 in our application.

25 THE HEARING EXAMINER: All right. So

1 administrative intensification of the project?

2 MS. SAPEN: Isn't noted anywhere, correct.

3 And any potential future amendment, there's no
4 note, other than what we had talked about, the
5 height. The Land Development Code has governed
6 whatever standard for administrative processes.

7 So switching over to the Comprehensive Plan.
8 There was a lot of discussion about --

9 THE HEARING EXAMINER: Okay. Can you just
10 hang on one second? I want to make sure the
11 question I want to ask, if it's not going to be
12 covered with what you have coming next, that I ask
13 it now.

14 Okay. I can ask it later.

15 MS. SAPEN: So looking at the Comprehensive
16 Plan. Yesterday there was a lot of discussion
17 about goals, specifically Goal 18. The Florida
18 statute shown here, 163.3194(3)(a), it outlines
19 that goals are really just broad statements of
20 purpose, and that future development orders
21 actually rely on objectives and policies, not goals
22 for their review.

23 So during development order review to see
24 whether the project is consistent with the
25 Comprehensive Plan, it states here that objectives

1 and policies are what govern.

2 And there is an additional policy within
3 community planning, Policy 17.1.3, which I don't
4 have on a slide, but it says, "The community plans
5 should consist of long-term objectives and
6 policies," not goals, but it says that they are not
7 regulatory in nature. "If needed, land development
8 code regulations may be adopted to implement the
9 community plan." And in this case, this community
10 does not have any Land Development Code
11 regulations.

12 THE HEARING EXAMINER: What are you reading
13 from?

14 MS. SAPEN: Policy 17.1.3.

15 THE HEARING EXAMINER: Thank you.

16 MS. SAPEN: That's within the Community
17 Planning Goal 17.

18 However, while the goal is not criteria for
19 development order review. Just looking at this
20 broad statement and the language within it, they
21 note minimal commercial activities. This is not
22 the same as minimal commercial intensity on any
23 given site.

24 So the commercial uses shown on the map
25 here -- this was the map provided by County staff.

1 The blue line is the Bayshore Community; so some of
2 the commercial shown here is on the outside of the
3 community. The commercial uses or activities are
4 restricted, minimized to two locations -- two large
5 locations, the largest being along the interchange,
6 and then, of course, the Civic Center, and then
7 there are other locations on Bayshore and 31, but
8 by far that is the largest area in the general
9 interchange within the Community Plan that was
10 expecting commercial activities. So it is my
11 opinion that this policy -- or this goal, this
12 general guideline, is to minimize how many
13 commercial sites are within the Bayshore Community,
14 not to reduce commercial intensity within any
15 singular development.

16 THE HEARING EXAMINER: So why do you think
17 they use the word activities versus locations or
18 sites?

19 MS. SAPEN: Well, I would say, looking at the
20 map, Civic Center -- you know, that is potentially
21 looked at maybe more as a commercial activity. One
22 of the largest ones isn't what you would think of
23 as, you know, commercial site. The question is why
24 they say "commercial activities" and not "sites."

25 THE HEARING EXAMINER: Sites or locations or

1 nodes, something that would be consistent with your
2 interpretation that its intent is to reference the
3 number. Is there maybe a policy that reenforces
4 that interpretation?

5 MS. SAPEN: I don't have anything other than
6 just my -- my view of what the language says.

7 THE HEARING EXAMINER: And that's fine. I
8 respect your opinion. I just -- I want to have as
9 much information as possible as I look at this
10 request.

11 MS. SAPEN: I understand. Well -- and it's
12 also in counter to the Boggs planning report that
13 was turned in and some of the testimony yesterday
14 that indicated that this minimal commercial
15 activities was equivalent to minimal commercial
16 intensity, and it is my opinion that, if they
17 intended commercial intensity, they would have said
18 commercial intensity, that activities is not the
19 equivalent of intensity.

20 THE HEARING EXAMINER: And are activities
21 equivalent of location?

22 MS. SAPEN: When I read, that is how I
23 interpreted it. Now, when I read it, I was looking
24 at this map. So when you look at the map and the
25 language together, it makes sense.

1 Oh, and also, this map where the commercial
2 yellow is shown, this is from the 1989 future land
3 use map; so when they developed this Community Plan
4 they were expecting that area to be commercial.

5 THE HEARING EXAMINER: What is that little
6 area to the south? I've been down this corridor a
7 couple of times now in preparation of this case,
8 and I'm -- I'm at a loss.

9 MR. MENDEZ: Are you talking about the long
10 parcel? That's Hogbody's. They have a large
11 commercial parcel behind them that is not
12 developed. They're just developed along the
13 frontage of that.

14 THE HEARING EXAMINER: Okay. Thank you.

15 MS. SAPEN: So looking at community
16 protection, which is a general goal there for 18.
17 So commercial intensity will be needed in this
18 area. The additional rooftops on Bayshore
19 Community, like on Bayshore Road and east of that
20 on State Road 31, the improvements that are being
21 made to Bayshore Road, the evidence given by Nelson
22 Taylor's report.

23 I submit that to protect the community with
24 these demands that are coming from all of the
25 rooftops, from -- and everything was outlined in

1 Nelson's report, that there is a high demand here.
2 Unrealizing intensity in a location where it has
3 been prescribed to be here since 1989, not allowing
4 maximum intensity in this site opens up the
5 potential for development pressures on other areas
6 within Bayshore Community.

7 And if you look along Bayshore Road right now,
8 rural is on the north side. Sub-outlying suburban
9 is on the south side; so you wouldn't expect
10 commercial activities to go there, I mean, other
11 than what we just mentioned, Hogbody's.

12 But if the proper amount of commercial doesn't
13 provide the services that these resident need, that
14 pressure might be felt in other areas which are
15 even less inappropriate -- or are inappropriate,
16 and the term "development pressures" actually was
17 mentioned in the Boggs planning report.

18 And one example of a development pressure was
19 the recently approved Bayshore Ranch. As I
20 mentioned yesterday, it allows more density than
21 the rural future land use allows, but due to its
22 location on an arterial road and within an urban
23 service area for utilities, a text amendment was
24 made. So there was a creative amendment to the
25 plan which allowed development to occur that is

1 higher than rural; so it is -- there have been
2 instances already along Bayshore where development
3 pressures have occurred to exceed and creative
4 planning has occurred. So not realizing the
5 intensity in that site, that might occur in other
6 areas on Bayshore Road.

7 So Policy 18.1.1., the first sentence in it
8 says that retail uses will be limited to the
9 interstate interchange designation at Bayshore and
10 I-75, and then it goes into, plus other uses in
11 other locations, but when they talk about this
12 site, the words before the comment just basically
13 says that retail will be limited to where the
14 subject site is; and the policy does not specify
15 minor commercial at this site, as referenced in the
16 Boggs report.

17 I also want to bring up Policy 17.1.1. So
18 this policy says that community plans are to be
19 coordinated with countywide and regional plans with
20 respect to population accommodation,
21 transportation, employment, economic development,
22 and infrastructure needs in an effort to avoid
23 inconsistencies. That was Policy 17.1.1. So this
24 policy would have the community plans eliminate and
25 avoid inconsistencies with transportation or

1 economic development.

2 The Community Plan in this instance, we were
3 showing Bayshore Road and improvements to that road
4 with rural on either side. I would submit that
5 this Community Plan for some areas of Bayshore Road
6 has not continued to be amended to avoid
7 inconsistencies with an area that is changing and
8 becoming less and less rural.

9 THE HEARING EXAMINER: Wouldn't that be on the
10 property owner though to make those changes?

11 MS. SAPEN: Policy -- this is speaking to the
12 rural in nature and that the Bayshore Community
13 Plan has been rural and is always rural and always
14 will stay rural. Well, and the policy actually
15 says, no, community plans are to change, based on
16 transportation, employment, and economic
17 development, and those need to be updated based on
18 this criteria.

19 THE HEARING EXAMINER: So are you suggesting
20 it's time for the County to update the Bayshore
21 Community Plan?

22 MS. SAPEN: I am suggesting that some of the
23 residents who testified that they want it rural and
24 they want to stay rural and it always has to stay
25 rural, I'm testifying that those desires may not be

1 possible due to the need -- to the community's need
2 to update their plan.

3 I added all of the policies here, policies and
4 objectives within 18 just to show that the
5 remaining are not related to FAR. They do not have
6 any type of intensity guidelines, and again, they
7 do not have a Land Development Code in Chapter 33.
8 Ten communities do have specific guidelines and
9 criteria. This community does not.

10 So next I want to respond to the Boggs
11 planning report, specifically page 4 of 11. This
12 goes into some discussion about low intensity
13 commercial uses, and it places an emphasis on
14 tourism, commercial tourism. I wanted to point out
15 that in this policy, commercial tourism is listed
16 as just one potential use without or mention of any
17 other tourism; so it is just one of the uses.
18 There's no specific emphasis on tourism, it's just
19 one of the uses; and one of the uses includes light
20 industrial. So it allows for a broad range of uses
21 as the policy specifies.

22 THE HEARING EXAMINER: What do you -- what do
23 you make of the Bayshore Community's plan that was
24 adopted subsequent to this property's designation
25 as general interchange? What do you make of the

1 Bayshore Community Plan's choice not to exempt the
2 interchange from the scope of the plan and its
3 directives?

4 MS. SAPEN: I would say, without the
5 interchange, the community really would lack some
6 of the diversity, even in a rural area, that you
7 would expect. You would expect to have some
8 commercial services in any community, and I know a
9 lot of the residents spoke of Lawhon's and how they
10 go there for all of their needs, but I do believe
11 they're closed on Sunday.

12 The Civic Center, while it's a large land
13 area, it doesn't provide daily commercial needs; so
14 I think that this site and this location is
15 important for the community to be able to have
16 services.

17 We heard a lot of the residents say, "We don't
18 mind driving," and then the next resident would
19 say, "Well, there's a lot of traffic congestion."
20 Well, those two things go hand in hand. If you
21 have to drive further away to get to your goods and
22 services, more and more traffic is created.

23 THE HEARING EXAMINER: Well, I understand
24 that, but the community plan says -- describes the
25 character of commercial uses that is anticipated,

1 and the type of commercial uses that are
2 anticipated in the community, there's a disconnect
3 with the types of commercial services we understand
4 would be appropriate in an interchange area. So
5 given that it wasn't exempted from the plan, I
6 don't think there's any dispute as to whether
7 commercial is appropriate on this property.
8 Clearly it is. I think the question is about the
9 character of the commercial that's on this, and I
10 want you to help me understand how you resolve
11 this.

12 MS. SAPEN: Well, it is very difficult because
13 traveling public is not the same as some of the
14 testimony we heard of people riding on horseback to
15 Lawhon's. Those are -- interstate traffic is very
16 different than that community. We see this in
17 communities though where they have fringe areas of
18 the community, like the Buckingham community, where
19 it's more rural in the center, and as it goes to
20 the edges becomes more intense. It won't become
21 more intense in this case on the east side because
22 it is even more rural over there; but on the west
23 side -- and I would also submit that the
24 interchange was the very first comprehensive plan,
25 the very first use map, the County countywide

1 realized the importance of these interchanges; so
2 that is what we have to do then, is balance the
3 needs of the County, the safety needs of people
4 being able to evacuate during a hurricane, looking
5 at that 17-mile stretch where there are no gas
6 stations. It is a balance between those needs. I
7 think it's very beneficial.

8 The site is a very short distance, and off of
9 I-75. It is not deep into the community. It is
10 right next to a very similar use today. Lawhon's
11 has a gas station with a lot of the components that
12 are not as aesthetically appealing that would be
13 expected in any kind of future development.

14 So I think the residents have become
15 accustomed to a similar use in the area, some of
16 the zonings in the area already allow similar uses;
17 so I don't think that it is inappropriate for an
18 interchange different type of use on the edge of
19 this community. I think the edge of the community
20 is different than the center or the core of the
21 community.

22 THE HEARING EXAMINER: Okay. Thank you for
23 that explanation.

24 MS. SAPEN: Looking at the Land Development
25 Code about planned developments. Two master

1 concept plans -- this was brought up as a concern
2 due to ambiguity. Two master concept plans. They
3 allow this graphical representation of two
4 different options. The uses are really what
5 govern, the conditions, the uses, the setbacks.
6 That is what really creates your site plan and your
7 development in the long run. The master concept
8 plan is just a graphical representation to show
9 what one option may look like. If the graphical
10 representation is so much changed, when it goes to
11 final design and the final tenants are decided,
12 then the administrative process would be needed to
13 move around some of these areas.

14 THE HEARING EXAMINER: Okay. So let's talk
15 about your two master concept plan options. One of
16 them reflects, I think, what we typically think of
17 that we might encounter at an interchange. You
18 know, maybe gas station-ish looking development in
19 the front, maybe a hotel, maybe a -- I don't know,
20 some other commercial building, fast food, and the
21 other one is a proposal to put the 125,000 square
22 feet of commercial use in a single structure.

23 MS. SAPEN: Correct.

24 THE HEARING EXAMINER: Okay. That can be
25 35 feet in height possibly, two stories; so I look

1 at that option and the community and the Lee plan
2 policies and goals and objectives I have to
3 balance, and I look at that option, and I'm
4 struggling to find how that's compatible with the
5 area.

6 And I understand multiple options. I
7 recommend approval of them all the time. I've very
8 accustomed with them, and I understand the need
9 for -- without an end user, the need for
10 flexibility; however, this particular alternative
11 is -- I want to share with you -- is troubling to
12 me because, imagining a building of that size, all
13 the square footage in one building at this location
14 in this community, understanding it's on the
15 fringe, it's next to the interchange, you know,
16 we're balancing. This is a struggle for me; so I
17 need your help to illuminate me on what the
18 rationale was on that in terms of how that would be
19 made compatible with the community and how it is
20 compatible with the community from your
21 perspective.

22 MS. SAPEN: So you're speaking of the
23 single-use tenant?

24 THE HEARING EXAMINER: Exactly.

25 MS. SAPEN: So that particular outline that

1 you see in the master concept plan -- and I'm not
2 saying that the developer is committing or even is
3 in talks with this -- but I had to come up with
4 some kind of graphical representation. That is
5 actually Rural King, an outline for a Rural King
6 there.

7 THE HEARING EXAMINER: I'm sorry? Say that
8 again.

9 MS. SAPEN: Rural King. So it's a Wal-Mart --
10 (Multiple people speaking simultaneously.)

11 MS. SAPEN: It's a Wal-Mart with baby chickens
12 inside.

13 THE HEARING EXAMINER: One person at a time,
14 please.

15 MS. SAPEN: It's a small Wal-Mart with --
16 like, small -- with baby chickens inside is how it
17 was described to me. So it's kind of a -- you can
18 go pick up some groceries there, but you can also
19 get maybe feed for your horse there; so it's a --
20 it's a grocer-type retailer; and again, I'm not
21 saying that that is -- but that is one potential
22 user and an example of a single -- yeah, there we
23 are -- of a single user -- man, those are some old
24 ones.

25 THE HEARING EXAMINER: So this is like a

1 serving-the-traveling-public kind of use.

2 MS. SAPEN: Well, this is a retail use, which
3 this interchange allows a broad range of retail
4 uses, but that would also serve the neighboring
5 residents and the community.

6 THE HEARING EXAMINER: And this would
7 potentially be in a single 125 square foot --

8 MS. SAPEN: Yeah, there you go; so it's -- the
9 materials that they sell, they cater to a rural
10 environment. Now, this wouldn't get to the
11 125,000 square feet on itself, and when you look at
12 that site, you can see there's quite a bit of
13 parking all the way around it. And, again, that
14 goes back to, to be able to achieve that 125,000
15 square foot, the use needs to be a low-parking
16 generator, and it will need to be a two-story
17 building. All other types of development would be
18 expected to be lower than the 125,000 square foot,
19 but that is very common in zonings.

20 When we were looking at Brightwater, the
21 zoning for that approved for 1,500, but the
22 development order has 1,275.

23 THE HEARING EXAMINER: All right. But let's
24 go back to what the proposal is. The alternative
25 is 125,000 square feet in a single building.

1 That's the alternative. I'm assuming that that's
2 including the parking because otherwise you would
3 have proposed a smaller square footage; right if
4 it's all in one building; so what kind of use would
5 be in a 125-square-foot building that could also
6 accommodate all the parking on the site?

7 MS. SAPEN: The 125,000 square feet may or may
8 not be within one building. That intensity
9 limitation is for either master concept plan.

10 THE HEARING EXAMINER: Right. I understand
11 that, but I'm focusing on -- the one alternative is
12 the one I'm --

13 MS. MONTGOMERY: Can I interrupt? And I hate
14 to do this, but I think we're having a discussion
15 perhaps, that we don't need to have.

16 THE HEARING EXAMINER: Okay.

17 MR. INGE: As part of my presentation in a
18 moment, I have a proposal, something that I've
19 talked with staff about that would change those
20 square footage limitations that you're talking
21 about.

22 THE HEARING EXAMINER: Okay.

23 Jenn, please proceed.

24 MS. SAPEN: So as we -- so master concept
25 plans are graphical representations. This site

1 is -- because of the size of the site, the master
2 concept plan is zoomed in very close, and you can
3 see a lot of detail; and I bring this up, again,
4 because of the graphical representation. When you
5 have very large developments -- I'm thinking of Oak
6 Creek just up the road, or a Wild Blue, or
7 developments like that, or River Hall, the CPD or
8 the commercial area, is just a small parcel within
9 this large master plan, and those cases it might
10 just say "C" or "Commercial," and then the uses and
11 the regulations govern what can happen within that
12 parcel.

13 I'm not suggesting that our master concept
14 plans have no detail to them, but what I am saying
15 is that plans are commonly approved in commercial
16 areas where the detail and the graphics within the
17 master concept plan for the commercial area isn't
18 even shown at all or very minimal.

19 THE HEARING EXAMINER: Right. But we have a
20 lot of balls in the air on this case.

21 MS. SAPEN: I understand. This is somewhat in
22 response to the planning testimony yesterday where
23 there was a lot of instances and concern that,
24 because there was two master concept plans, because
25 there were so many deviations, that everything --

1 THE HEARING EXAMINER: I'm very familiar with
2 the whole deviations and why they're needed and how
3 they enhance the project, and they have to be shown
4 that they don't -- be a detriment to the public.
5 That's not -- don't feel like you have to spend a
6 lot of time on that, all right?

7 MS. SAPEN: That goes through the next couple
8 of -- and the criteria for deviation is not a
9 trade-off to exceed requirements.

10 THE HEARING EXAMINER: Okay.

11 MS. SAPEN: The Land Development Code has
12 clear criteria for deviations.

13 I apologize. This is a duplicate slide from
14 before.

15 THE HEARING EXAMINER: Okay.

16 MS. SAPEN: And just into some general notes.
17 Food trucks would require administrative approval
18 through Condition 13. Those were mentioned
19 yesterday; so an administrative review would be
20 needed on that, and I believe staff has a little
21 bit more to add about the use of food trucks.

22 The buffer on the north side, I wanted to
23 point out that the master concept plan does have a
24 note that, should additional plantings be needed
25 once exotic materials are removed from that

1 indigenous vegetation, that additional plantings
2 would be installed, creating a continuous visual
3 screen, as required by 10-416, and this -- sorry,
4 this -- this code provision states that shrubs are
5 intended to provide visual screening and may not be
6 pruned to reduce height. So that is what it
7 finished up -- that opaque screen --

8 THE HEARING EXAMINER: So I'd like to discuss
9 this a little bit more so that I understand the
10 Applicant's interpretation of site design in this
11 case. As I understood the previous approval, there
12 was the 75-foot wide indigenous area set aside --

13 MS. MONTGOMERY: Can I interrupt you again?

14 THE HEARING EXAMINER: Yeah.

15 MS. MONTGOMERY: I think that there may be
16 more information on this particular topic.

17 THE HEARING EXAMINER: Okay. Thank you.

18 I just want to make an observation that your
19 doubling the intensity on the site, but your
20 reducing the buffer that's provided, and I need
21 more on that.

22 MS. SAPEN: I believe more will be coming on
23 that.

24 THE HEARING EXAMINER: Maybe we should have
25 led with that.

1 MS. SAPEN: Well, the very last one of this
2 leads into Barrett after me.

3 THE HEARING EXAMINER: Okay.

4 MS. SAPEN: The vegetation is more dense on
5 the north side of the property. With absolutely
6 all respect to Lee County staff, the photo that
7 they showed was actually in the middle of the site.
8 It's very near the access point. The boundary
9 survey you can see in the right, there is a
10 little -- right here. And in the boundary survey,
11 the legend up at the top says that is the
12 telephone. So you can see in the photo -- and it's
13 good to have a land marker in your photos. So it
14 shows that telephone box; so that photo was taken
15 kind of in the middle of the site.

16 And yes, I have Barrett up who can speak a
17 little bit more about the vegetation. If you have
18 any questions for me before I leave.

19 THE HEARING EXAMINER: Well, I'm very anxious
20 to hear what Mr. Inge has to say before I ask any
21 more questions, and I appreciate that you're
22 available to clarify.

23 MS. MONTGOMERY: Okay. Can we go back to 9?

24 Okay. Let me ask you a question, if you know:
25 When the Bayshore plan was adopted, did the County

1 still have site location standards?

2 MS. SAPEN: Oh, wow. I believe they did.
3 That was a long time ago, but yeah, I believe they
4 did.

5 MS. MONTGOMERY: We've been doing this a
6 while, I guess.

7 MS. SAPEN: It's been a while, yes.

8 MS. MONTGOMERY: And the site location
9 standards would have addressed minor or minimal
10 commercial activities based on where you're
11 located?

12 MS. SAPEN: That's correct.

13 MS. MONTGOMERY: So your testimony was that
14 Goal 18 -- well, the whole Community Plan is not
15 regulatory to the extent that it's not implemented
16 through the LDC?

17 MS. SAPEN: In the land development, correct.

18 MS. MONTGOMERY: So the hearing examiner asked
19 you about whether certain things could or couldn't
20 have been accepted from the plan, and in the
21 general interchange, industrial's allowed by way of
22 example, but in the Community Plan, they expressly,
23 in 18.1.3 said there couldn't be any more new
24 industrial.

25 MS. SAPEN: Correct.

1 MS. MONTGOMERY: So had there been an intent
2 to eliminate, reduce interchange commercial, that
3 could have been done?

4 MS. SAPEN: Correct, yeah. And that does show
5 a clear divide between this general interchange and
6 what uses are expected there versus the remainder
7 of Bayshore Community.

8 MS. MONTGOMERY: And in the general
9 interchange, it doesn't allow single family?

10 MS. SAPEN: Correct.

11 MS. MONTGOMERY: So the folks who are
12 concerned are inconsistent with the comp plan?

13 MS. SAPEN: That's correct.

14 MS. MONTGOMERY: And they could have, since
15 1989, taken themselves out of the interchange, but
16 opted not to?

17 MS. SAPEN: That's correct.

18 MS. MONTGOMERY: Because the minimum density
19 in the interchange is eight units an acre?

20 MS. SAPEN: I don't have it up.

21 MS. MONTGOMERY: Well, here. I don't have
22 that one. You have it later.

23 MS. SAPEN: Yes, I do.

24 MS. MONTGOMERY: It's defined in the general
25 interchange policy.

1 Now, they also have an exception, being
2 mindful of the fact that they had site location
3 standards, Policy 18.1.1., and 18.1.2 said where
4 minimal or commercial uses could be, and it
5 specifically said they were going to limit
6 commercial; so we're going to minimize it. We're
7 going to limit it, and we limited it to Bayshore
8 and I-75, plus minor commercial uses; and "minor
9 commercial," I think, relates back to the
10 30,000 square feet and the site location standards.
11 Is that -- what does "minor" mean in that context?

12 MS. SAPEN: Well, it says, "minor commercial
13 uses," it doesn't say, "minor commercial
14 intensity," but the word "minor" is usually related
15 to 30,000-square foot, but the important point here
16 is that it differentiates that the subject site is
17 one thing on the interchange, and then other areas
18 are the minor commercial at intersections of Nalle,
19 and the other ones listed here.

20 MS. MONTGOMERY: So whether minor commercial,
21 the 30,000 square feet that used to be there, or
22 minor meaning limited, it's limited at those
23 locations, but not at the interchange?

24 MS. SAPEN: That's correct.

25 MS. MONTGOMERY: And then they completely

1 excepted properties from the site location or
2 anything else in Policy 18.1.2 and said, "All these
3 properties are deemed consistent"?

4 MS. SAPEN: Yeah, specific properties. That's
5 correct.

6 MS. MONTGOMERY: Which includes CG, general
7 commercial zoning, on one of those parcels?

8 THE HEARING EXAMINER: They really dialed it
9 down on those parcels.

10 MS. SAPEN: Exactly, right there. A hundredth
11 of an acre.

12 MS. MONTGOMERY: And in your opinion, is CG
13 minimal, minor, rural in character?

14 MS. SAPEN: CG has very intense uses, and the
15 existing CG zoning district where Lawhon's is and
16 the pending potential CG zoning directly to the
17 east of our property; and as we looked at
18 yesterday, the Bayshore right-of-way taking has not
19 occurred yet on the Lawhon's property; so the
20 future of that is a little unknown, but as
21 conventionally zoned CG today, they could develop
22 with those uses.

23 MS. MONTGOMERY: And you did talk about -- you
24 mentioned 17.1.1, which essentially, I think, in my
25 words -- you tell me if I'm right or not -- that

1 community plans have read -- well, my favorite
2 word -- pari materia, or in conjunction with other
3 provisions of the County's plan and regulation; so
4 they -- so one doesn't necessarily overrule the
5 other, they have to be internally consistent as
6 required by 163, do they not?

7 MS. SAPEN: That's correct. And in this
8 Policy 17.1.1 states this in an effort to avoid any
9 inconsistencies, to -- to modify those plans based
10 on transportation, economic development, and a
11 population accommodation for residential densities.

12 MS. MONTGOMERY: So other than the industrial
13 just taken out of or denied in the Bayshore
14 Community, all the other uses and intensity allowed
15 in general interchange is allowed?

16 MS. SAPEN: Correct.

17 MS. MONTGOMERY: And yesterday -- can you go
18 to Objective 18.2? Do you have that one?

19 MS. SAPEN: Yes.

20 MS. MONTGOMERY: There's discussion about that
21 from Planner Swift and the traffic consultant and
22 others that somehow that objective limits the road
23 improvements that can be made, and if you look at
24 Policy 18.2.1, it says, "Any expansion of State or
25 arterial roadways should be physically separated."

1 So it seems to acknowledge that the State's going
2 to make improvements, but does that objective have,
3 in your planning opinion, have any impact
4 whatsoever on road improvements considered by the
5 State? It seemed to me to just say considered by
6 the County.

7 THE HEARING EXAMINER: It does use the word
8 "all."

9 MS. MONTGOMERY: "All road improvements within
10 the Bayshore Community considered by the County,"
11 but not by the State. The County can't regulate
12 the State through its comp plan.

13 MS. SAPEN: I think that's where the problem
14 lies is that the County does not have control over
15 the State and that this objective allows that
16 control in one place that the County can and is
17 within theirs.

18 MS. MONTGOMERY: So the urban section proposed
19 by the State can happen regardless of what's in the
20 Community Plan?

21 MS. SAPEN: Well, yes, and -- it is already
22 happening.

23 THE HEARING EXAMINER: Yeah. I mean, I don't
24 think there's any -- I don't think there's any
25 dispute that that's a supremacy of the State with

1 regard to that road improvement.

2 MS. MONTGOMERY: I don't have any other
3 questions.

4 MS. SAPEN: And Barrett is up now to describe
5 a little bit of his -- no, Ron has breaking news.

6 MR. INGE: Good morning, Madam Hearing
7 Examiner, members of the audience. Ron Inge for
8 the Applicant. I would like to touch on a couple
9 of things, and our timing of how we got people up
10 here probably didn't work maybe as conducive as
11 maybe it should have been, but we want to make sure
12 we address many of the planning objectives and
13 things that Planner Swift and transportation
14 representative for one of the nearby neighborhoods
15 addressed because those are important to make sure
16 that we address those minor, more from a
17 development standpoint, because, as you all know,
18 I'm not an expert in transportation planning or a
19 planner, but I am a developer, and I understand how
20 some of these things work. So, I have some ideas I
21 want to talk about.

22 The first, Mr. Mendez, if I could go back to
23 the drawing you showed on page 71 of the overall
24 presentation that was the item we discussed at
25 great length earlier about the intersection

1 alignments with Pritchett Parkway and Bayshore
2 Road.

3 THE HEARING EXAMINER: This was Applicant's
4 PowerPoint?

5 MR. INGE: Yes, ma'am.

6 A lot of discussion was had about how that was
7 going to work and whether -- how it would tie into
8 our access point.

9 Let me talk about the practical application
10 here: First off, all of us in the room have
11 probably visited the RaceTrac at Daniels Road and
12 Ben Hill Griffin or Treeline. It's on the
13 northwest corner of that intersection. It's this
14 exact same design element to get into this. If you
15 go off of Daniels Road around, you go back over
16 here to the FDOT operations center, but you have to
17 go in through a turn like this to get into
18 RaceTrac. It has no access directly on Daniels
19 Road. You have to go through that turn to get in
20 there, and the delivery trucks go through that
21 turn, go around the building, deliver, and go back
22 out. Now, there's another access point on the
23 northeast side of it, but that dynamic works at
24 that intersection for RaceTrac, and that's a busy
25 facility. I've been in it many times.

1 THE HEARING EXAMINER: Well, I don't dispute
2 that. My concern was there was a lot made of the
3 fact that the access point was shifting to the
4 south, and I'm just -- I'm eager to preserve that
5 if we're going to examine intensification of the
6 use of this site.

7 MR. INGE: As Mr. Treesh said, we've had
8 meetings with DOT to talk about how do we get from
9 here to here. There's a connection here, there's a
10 connection down here, or as I mentioned yesterday,
11 just Pritchett Parkway come and tie directly into
12 it, and have a T intersection.

13 We presented all those options to DOT, and
14 from the practical aspects of it, DOT also has to
15 consider what takings are they going to have to do
16 to make these things work, and how that's going to
17 be financially feasible. Well, if they figure out
18 how to cut out all of our assets, that's a fairly
19 big taking that they're going to have to deal with.
20 They're mindful of that too.

21 That's the business prospective. They got to
22 think about, wait a minute. We've got this
23 development, whether this particular application
24 gets approved or whether the existing zoning
25 remains, it would still deprive us of that access

1 if they're not careful, which would still be
2 problematic for DOT. So they have in mind, and so
3 that's one of the things that's -- the business
4 side of it talks to them about, more so than the
5 transportation planning side. It's, "Okay, guys.
6 Think about what happens here if we can't gain
7 practical access to that roadway." So that's under
8 consideration by them, and hopefully they'll do
9 something that will make everything work. We
10 believe that they will. So that's the practical
11 aspect of it.

12 The second one is the right-in/right-out that
13 we have here can still be used for deliveries as
14 well. You can come in to Bayshore, go right in,
15 deliver, come out, and go the other way and get on
16 the interstate and --

17 THE HEARING EXAMINER: Yeah. But your
18 delivery trucks are coming from the interstate.
19 They're not going to be coming from 31; right?
20 They're not going to be coming from the east
21 county, they're going to be coming from the
22 interstate.

23 MR. INGE: They -- they will. They will
24 probably have to go down, maybe around one of the
25 roundabouts that are designed in the facility.

1 If you go down Alico Road where the new Amazon
2 warehouses are, they don't have direct full median
3 access to all of those sites. They'll go down and
4 make U-turns and various things from time to time
5 to make the turn to go back to the interstate. I
6 see it in the mornings. So the truck drivers will
7 figure that out.

8 There's facilities that are planned as part of
9 the widening of Bayshore to create roundabouts to
10 allow them to come back if they need to. Now,
11 granted it's a little more of a distance to drive,
12 but it would still work.

13 So that's what I really wanted to point out in
14 this slide is that we had discussions with DOT how
15 to make this happen so this will be a reality and
16 can happen.

17 All right, Mr. Mendez. Thank you, sir.

18 Madam Hearing Examiner, one of the things that
19 I like to do, that our team likes to do, as you
20 know and as we talked about yesterday, we held a
21 community meeting, even though we're not required
22 to do so, to try to take input because we like to
23 present our ideas, see what members of the public
24 may have to say; and oftentimes, there's a good
25 idea that comes out of that meeting. You go, "Wow,

1 I didn't think about that." You never know. It
2 does not hurt to talk to folks. And so we do that.
3 We reduced our square footage initially after that,
4 and as of yesterday, we're at 125,000 square feet.
5 Well, after listening to the testimony of the
6 nearby folks, especially the single-family
7 residences that are north of us, again, within the
8 general interchange category, as Ms. Montgomery and
9 Ms. Saper pointed out, they're concerned about that
10 intensity. So what we did is I took the chart from
11 the staff report, which is page 5 of 25, Table 1,
12 which shows all the -- not all, but a number of
13 intersection development intensities in the county
14 and their square footage per acre; and admittedly,
15 I took the higher ones, but if you take Exit 143
16 Bayshore 22; Exit 131, Galleria east; Exit 128,
17 which is Vintage Commerce Center, if you take those
18 and you calculate the square footage, add on the
19 equivalent square footage for the hotel units at
20 120 square feet, which is what we used in the ITE
21 analysis that we've done, you'll get somewhere on
22 an 8.75-acre of parcel, which is what ours is, a
23 range of intensity somewhere between 93,000 and
24 106,000 square feet for an 8.75-acre site. After
25 having done that analysis, I called Mr. Mendez and

1 said, "I have an idea. I know that the intensity
2 is of concern" -- now, let me step back for a
3 second.

4 There are some uses that you can make work on
5 there at 125,000 square feet, depending on the
6 parking needs, and depending on the site design;
7 but those are fairly low-traffic generators, as
8 such, we don't have as much parking.

9 As you know, as you pointed out earlier, we
10 try it figure out a range of things because we
11 really don't know what's going to be there at this
12 point. However, having said that, I mention Mr.
13 Mendez. There are two things I'd like to talk
14 about and like you to consider:

15 One is the applicant is willing to reduce
16 their request for square footage from 125,000
17 square feet to 100,000 square feet. So we're
18 willing to do that. In addition, we're willing to
19 consider installation of the wall per Condition 8,
20 which several residents talked about, as long as we
21 have the flexibility to have some type of composite
22 material to do the same thing as a masonry wall
23 would because masonry walls are a little bit more
24 difficult to maintain than is some of the Weardeck
25 and bridge deck materials that you can get now

1 that's more composite material. It's longer
2 lasting, you don't have to paint it, and it
3 tolerates the weather better.

4 So those two things are significant
5 concessions. As I've talked about in my opening
6 remarks yesterday, there were three things we had
7 concerns about. One was the drive-through facility
8 location. I think Mr. Mendez said that's not an
9 issue, and I believe everyone's okay with that.

10 The second one was the square footage. We
11 were at 125,000 square feet; staff was at 87,000
12 square feet. And my proposal today to you is we
13 would be satisfied with 100,000 square feet as an
14 ask -- as a square footage request as part of our
15 application.

16 And then the third thing that we had a concern
17 about was the wall.

18 MS. MONTGOMERY: Can I stop you?

19 The hundred thousand square feet includes the
20 hotel.

21 MR. INGE: Thank you for clarifying. The
22 hundred thousand square feet includes the hotel.
23 So hotel rooms would detract from that at 120 feet
24 per hotel room. So that's not 100,000 square feet,
25 plus 44 hotel units; it's 100,000 square feet

1 total. So hotel units would detract from that.

2 THE HEARING EXAMINER: So 120 square feet of
3 commercial subtracted for each hotel room?

4 MR. INGE: Yes, ma'am. So it's -- if you did
5 the calculation, using the staff's analysis, I
6 believe, and equated those 44 hotel rooms with the
7 120 feet, it gets to right around 93,000 or so
8 square feet that we would be able to do based on
9 staff's recommendation. I'm just a slight bit more
10 than that. I'm right at a hundred thousand; so
11 they're -- I'll let Mr. Mendez talk about that. I
12 think he said 92,750 or something in the
13 calculation.

14 But as Ms. Montgomery just questioned, the
15 hundred thousand square feet would include the
16 hotel rooms and to develop any hotel rooms that
17 detracts -- subtracts from the commercial retail
18 square footage is 120 square feet per hotel unit,
19 up to a maximum of 125.

20 Now, the wall, recommended to Mr. Mendez that
21 perhaps it could be some composite material, that
22 would be easier for us to develop and maintain.
23 Mr. Mendez met with his team and discussed that and
24 he and I had a chance to discuss this earlier. I
25 believe he has some modified condition to pass out

1 to you that has what the staff feels comfortable
2 with square footage wise. It's not my number, but
3 at least we're getting to the range.

4 THE HEARING EXAMINER: Okay. Can we go back
5 to the wall? Does the code only permit masonry?
6 Is that the only option under the code? And if you
7 want an alternate material, it has to be a
8 deviation?

9 MR. INGE: I'm going to let Mr. Mendez speak
10 to that, but I believe that, if you have loading
11 docks or delivery areas, it has to be masonry a
12 certain distance at those, but outside of that it
13 can be other materials.

14 THE HEARING EXAMINER: Without a deviation?

15 MR. INGE: I believe so, but I'll let
16 Mr. Mendez talk about that.

17 THE HEARING EXAMINER: Okay.

18 MR. INGE: And as you mentioned earlier, you
19 were going to leave the record open to make sure we
20 get the condition --

21 THE HEARING EXAMINER: Yes.

22 MR. INGE: That's one thing I want to clarify
23 because I've seen a draft of what Mr. Mendez feels
24 might work there. I think it's okay, but I have to
25 think about it and get with my team to talk about

1 it.

2 THE HEARING EXAMINER: Okay. Further to the
3 wall concession, there is a condition right now
4 that says, when you clear out the exotics, that you
5 will supplement those plantings to ensure
6 continuous visual screen. Have you considered that
7 condition? You're going to keep it in place? Are
8 you going to modify it in light of the wall? Where
9 do you stand on that?

10 MR. INGE: I think we keep that in place.
11 That is not problematic because, as Ms. Saper
12 pointed out in her discussion of how extensive that
13 buffer was, as it exists and is supplemented in
14 lieu of a wall, well, okay, if that's what would be
15 acceptable to staff and provide the buffering that
16 the hearing examiner thinks might be needed, then,
17 yes, leave it.

18 THE HEARING EXAMINER: I just know that from
19 the presentation yesterday, the west section of
20 that had less exotic infestation, and would
21 probably be -- removing the exotics was not going
22 to really have much of an impact, but it seems like
23 it potentially could have more of an impact on the
24 eastern side.

25 MR. INGE: And we'll have to do some

1 supplemental plantings to get there.

2 THE HEARING EXAMINER: All right. So that
3 will still remain?

4 MR. INGE: Yes, ma'am.

5 So really the changes to what we've asked for
6 are pretty simple. We'll agree to a modified
7 condition that addresses the wall as long as we can
8 have some flexibility in design, given what the LDC
9 requires. We're requesting 100,000 square feet as
10 opposed to the staff recommendation that either has
11 been previously or may be modified, and I'll let
12 Mr. Mendez speak to that.

13 Another thing that Mr. Mendez suggested that I
14 know was an issue that members of the public raised
15 was concerns over a crematoria and what we were
16 going to do.

17 THE HEARING EXAMINER: Yeah. I wanted to ask
18 you if you had the opportunity to revisit your
19 entire list of permitted uses?

20 MR. INGE: We did, and I think that we're fine
21 and would support and request all that we have
22 asked for and all that were in the staff report
23 already, except for we'll agree to delete the
24 crematorium or whatever name you want to call it.

25 THE HEARING EXAMINER: No funeral homes, no

1 crematoriums.

2 MR. INGE: No funeral homes, no cremation.

3 THE HEARING EXAMINER: All right. When you
4 say "the list," in the December 4th letter, there
5 was a modified list, and my understanding at the
6 beginning of the hearing that you had agreed to
7 that modified list; so the only changes to that
8 list, minus this use?

9 MR. INGE: Is minus the -- on page 3 of 14 of
10 the staff attached to -- which is the conditions,
11 delete "Funeral home or mortuary, no cremation and
12 with cremation." Delete that whole phrase.

13 THE HEARING EXAMINER: And you're going to
14 provide me, together with staff, an updated
15 conditions and permitted uses and deviations based
16 on these modifications that you've considered?

17 MR. INGE: Yes, ma'am. And Mr. Mendez has a
18 draft that I know he will speak on. We just want
19 to make sure we get the language right.

20 THE HEARING EXAMINER: Right. And rather than
21 take that in today, I'd like to allow you to really
22 take a look at it and make sure it's exactly the
23 way you want it because I know one night scrambling
24 is -- you know, sometimes you need to really go
25 through it.

1 MR. INGE: Well, to Mr. Mendez's credit and
2 thanking him for his courtesy, he took my call
3 after hours to talk about this, and then we talked
4 this morning before hours to talk about this. So
5 we're trying to hash out some language that we
6 could present to you that is acceptable to address
7 these concessions that we are willing to make in
8 order to move forward.

9 THE HEARING EXAMINER: And I will leave the
10 record open for that to be submitted and if there
11 is -- it's necessary, it sounds like, to perhaps
12 modify the master concept plans to make appropriate
13 notations and deviation markings as a result of
14 this; and then I mean, I'm going to take a look at
15 it and everything, but if there's the possibility
16 that I require further clarification, I will set
17 another hearing day just so that everyone
18 understands. I want to make sure we get this one
19 right before I take it in to make a determination.

20 MR. INGE: And that hearing date would be to
21 address these conditions specifically?

22 THE HEARING EXAMINER: Yeah, the changes. The
23 new -- yeah. If necessary.

24 MR. INGE: Yes, ma'am. But I did want to --
25 and again, apologize for bringing up these

1 substantive changes kind of at the tail end of our
2 answers, but we wanted to make sure we addressed
3 the planning objections as part of our presentation
4 so you would have that on the record.

5 But thank you very much for your time in
6 listening to our case. We believe that the
7 reductions that we've asked for or agreed to and
8 the addition of the wall, that we're really down to
9 the only item that we have some disagreement with
10 staff on is that square footage. Otherwise, I
11 think we're ready to move forward. Thank you very
12 much.

13 THE HEARING EXAMINER: Okay. Will I hear from
14 Barrett or not necessary?

15 MR. INGE: Not necessary because Mr. Stejskas
16 was going to talk about the vegetation and all. As
17 you pointed out, we have to clear the exotics, we
18 may have to supplement it, but that discussion was
19 in lieu of a wall; but since we've agreed now that
20 we're going to do something with respect to
21 installing a wall, that discussion of the existing
22 vegetation --

23 THE HEARING EXAMINER: Well, I appreciate that
24 you -- very much so that you revisited this because
25 I was troubled -- full disclosure -- by the

1 intensification of the site and the reduction of
2 what was intended to protect the residential land
3 uses to the north; so I appreciate you revisiting
4 that.

5 MR. INGE: Thank you for that. We kind of
6 could see that was -- that consternation in some of
7 the questions you asked, and we know it was
8 sensitive to the single-family residences north of
9 us. So we did spend some time talking about it,
10 and said, "Okay, we understand that's a point.
11 Let's address it." So that's kind of the way we
12 wanted to address that and bring it to your
13 attention.

14 Thank you very much.

15 THE HEARING EXAMINER: Thank you.

16 MS. MONTGOMERY: Do you want me to comment on
17 any of the legal arguments now or later?

18 THE HEARING EXAMINER: Which legal arguments?
19 Of the attorney representing the Mushos?

20 MS. MONTGOMERY: Yes.

21 THE HEARING EXAMINER: No. Why don't you do
22 that now unless you want to do it as part of your
23 closing.

24 MS. MONTGOMERY: I'll do it as part of
25 closing.

1 THE HEARING EXAMINER: All right. Then we're
2 ready for Adam.

3 MR. MENDEZ: For the record, Adam Mendez,
4 senior planner with the zoning section.

5 Madam Hearing Examiner, I have a copy here of
6 a draft -- preliminary draft, just for discussion
7 of these conditions we're talking about. This is
8 just to put something in front of you so you can
9 see kind of where we're going, but I do appreciate
10 that you're leaving the record open so that we can
11 take the appropriate amount of time to not only
12 look at this with the Applicant and staff, but also
13 we had a close line of communication with the
14 Mushos' counsel and their planner; so we involve
15 all parties when looking at the language, and we
16 have not had that time. This is just to explain
17 what we see coming down the pipeline with the staff
18 recommendation.

19 If I may approach.

20 THE HEARING EXAMINER: Okay. Thank you. I'm
21 looking for my list of exhibits. This is staff
22 Exhibit 5. Thank you.

23 (Staff Exhibit 5 marked for identification.)

24 MR. MENDEZ: I'm also going to pull this
25 exhibit up right now on this projection screen; so

1 please give me a moment. Okay. And before we
2 discuss this, I'd also like -- I'd like to first
3 take the time to address some public comments that
4 I haven't heard addressed just yet and some
5 questions that you left me at the end of the
6 hearing yesterday, I'd like to address as well.

7 The first question from the public that I'd
8 like to address is from Steve Brodtkin. He asked a
9 question, and it was partially addressed here but
10 not directly. It was -- he thought that the
11 policy, removing industrial uses, was either in the
12 comp plan or was. It is still in the comp plan.
13 It's Policy 18.1.3, and through the sufficiency
14 review and substantive review process, staff
15 removed several uses that were included in the CG
16 district that we didn't find appropriate because,
17 perhaps at some scale or capacity, especially with
18 the intensity that was requested, might have a
19 quasi-industrial, quasi light industrial flavor to
20 them; so we removed those uses, and the Applicant
21 was amenable to that.

22 And we also included -- we removed a use that
23 was formerly approved in the existing resolution
24 that could be quasi-industrial. It was a printing
25 and publishing use. Depending on the scale and

1 capacity, that's industrial, and that's in the
2 existing zoning resolution. That has been removed
3 from this recommended schedule of uses before you.

4 There was a question from Mrs. Musho regarding
5 identification signs, and that resonated with me
6 because the access point -- if you're looking at
7 the master concept plan -- and I'm sorry I don't
8 have it up -- but they actually show where the
9 signs are going to be, and there's a legend that
10 says "Pylon signs or monument signs." Monument
11 signs, as we know, are usually relatively short in
12 height, eight feet high with a base; so we would
13 like the time to craft a condition regarding the
14 monument sign that will be near the access point
15 closest to the Mushos' to limit that height to a
16 height that would not promote a sign extending
17 above the wall or above the vegetation, just
18 because signs are meant to attract attention and
19 the bright colors and logos that could perhaps
20 possibly be seen from their property. So we'd like
21 the time to introduce a condition regarding project
22 signage.

23 THE HEARING EXAMINER: So this property could
24 have one of those big interstate lollipop signs?

25 MR. MENDEZ: It could not. It's too far from

1 the interchange. The interchange sign regulation
2 in the code requires a 660-foot -- if I recall
3 correctly, from the centerline of the interstate to
4 the quadrant, which it would happen; and this
5 property, as you know, it's on the easternmost part
6 of the interchange. It is too far. They are
7 limited to their project signage under the code
8 that allows a 20-foot-tall sign for an individual
9 establishment, up to five establishments, and then,
10 if it was a multi-occupancy establishment, the sign
11 height would then be 24 feet. That's the maximum
12 that would be permitted on this property without
13 some sort of deviation.

14 The interchange sign, once again, not a
15 possibility on this site, not even with a
16 deviation -- or not without public hearing
17 deviation. I'm not sure on that, but we're not
18 considering that. The sign height will be, at the
19 worst, 24 feet high, and we're going to further
20 ensure that that type of signage is by Bayshore,
21 and any signage that's further down Wells Road is
22 simply for identification to turn here, if you
23 will, eight-foot-tall monument sign, a fair amount
24 of copy, typical of monument signs. You might
25 think of a Publix monument sign.

1 So I share the sentiment that, as what was
2 proposed yesterday was just hard to digest, and
3 that's why we had a different number in mind in
4 terms of intensity with a lot of testimony you
5 heard, especially the Mushos' team, so to speak.
6 So I wanted to touch on the uses.

7 We did carefully look through those uses. We
8 do understand the use activity groups that lie
9 within each, and we did indicate, not only uses
10 which require public hearing -- so we could -- we
11 could, in effect, just remove those uses because
12 they require a public hearing anyways. It's the
13 double asterisk on the schedule of uses. There's
14 several uses where we thought we need more
15 information to see how this is going to work on
16 site. Just limiting it to the southern 400 feet or
17 southern 300 feet doesn't do it. So there are
18 several uses on there that require a public hearing
19 process in order for them to establish it.

20 THE HEARING EXAMINER: And that's by code it
21 would be required.

22 MR. MENDEZ: It would be required by the
23 recommended condition before you. If you look
24 right here: "Uses must be requested through
25 special exception or public hearing amendment

1 process." There's several uses in this list that
2 include that.

3 THE HEARING EXAMINER: And are they also in
4 the list of permitted uses but with the asterisk?

5 MR. MENDEZ: Exactly.

6 THE HEARING EXAMINER: So maybe take them out
7 of the list if you're --

8 MR. MENDEZ: I think it's creating anxiety
9 that's not necessary. I agree.

10 THE HEARING EXAMINER: Terse and pithy.

11 MR. MENDEZ: And then the other thing is
12 you'll see the asterisk regarding the site location
13 standard for being within the southern 400 feet.
14 Now digesting this idea that a wall is likely to
15 occur -- at least we've agreed on some variation of
16 a wall. We've agreed on that there's going to be
17 supplemental plantings in the preserve to create a
18 constant visual screen that's required by code; and
19 then to throw on that, we're going to have a lot of
20 these uses more than 200 feet from the property
21 line. We're creating that separation, that
22 transition, that you'd expect between Bayshore and
23 the interchange and the rural residential to the
24 north.

25 So I think, if you consider these two elements

1 of the schedule of uses, you'll see how we were
2 able to find a position of comfort that the
3 schedule of uses is appropriate and has been pulled
4 back from CG. I mentioned that in the staff
5 report. We acknowledge the purpose and intent
6 statement. We went through the schedule of uses,
7 and we found that largely, what we're looking at
8 today is appropriate.

9 I will note that I did make one change before
10 you to food trucks, and I want to talk about food
11 trucks a little bit because Attorney Lombardo made
12 a great point. How do we get there? It's not on
13 the district table regulations. It's in the
14 temporary regulations. How does the County have
15 food truck parks? How do they regulate them?

16 So, first, I'd like to mention that I have
17 included the food truck under the condition -- and
18 this is new -- that it has to be located within the
19 southern 400 feet, which from my understanding, the
20 Applicant is amenable to, because that use to be
21 more appropriately located near Bayshore Road to
22 attract attention; so that's new.

23 In terms of actual use, food truck park, and
24 how it's integrated in PDs, I would direct your
25 attention to Section 34-933. It's permitted uses

1 in planned development districts. The last
2 sentence of which states, "Uses that are not
3 specifically listed in Section 34-934 may also be
4 permitted if in the opinion of director they are
5 substantially similar to a listed permitted use."

6 Madam Hearing Examiner, I would submit to you
7 that we have permitted many food truck parks in
8 many PDs under this interpretation from our section
9 that a food truck park is very similar in nature to
10 a Restaurant Group II. The difference is it's
11 open. It's all open. It's not just outdoor
12 seating, the food is made within a vehicle food
13 vending car.

14 Most recently, you are aware of Backyard
15 Social. That's in the Jetport MPD. Food truck
16 park was included administratively because
17 Restaurant Group II was allowed, and now it's
18 existing now currently in the County under certain
19 regulations.

20 And so what we have here as a conditions as
21 part of this, and it's not changing, is that a food
22 truck park would require an administrative approval
23 with a site plan that meets the specificity of a
24 special exception site plan. So we get to see a
25 lot for detail with a special exception site plan

1 than we do with a master concept plan. We have
2 more opportunity to condition if, in staff's
3 opinion, there is a rational nexus to include more
4 conditions besides locating it in the southern
5 400 feet of the property. That's how we got to
6 food truck. Hopefully that addresses your question
7 on that if you had one.

8 THE HEARING EXAMINER: So food truck park --

9 MR. MENDEZ: Yes.

10 THE HEARING EXAMINER: Subject to Condition
11 13.

12 MR. MENDEZ: Yes, we can go to it.

13 THE HEARING EXAMINER: And also limited to the
14 southern 400 feet.

15 MR. MENDEZ: That's correct. I have Condition
16 13 up here if you'd like to look at it. I'll say
17 it for the record: "The principal use of a food
18 truck may be approved through the administrative
19 amendment and local development order process. The
20 application must be accompanied by a conceptual
21 site plan, meeting the minimum required details for
22 special exception site plans contained in Land
23 Development Code Section 34-202. The application
24 must include a project narrative of the intended
25 operation and other information deemed necessary by

1 the director."

2 And we're learning how to rope this use in as
3 it is being introduced in the market. We've seen
4 them come to life; so we're getting a grasp on it,
5 and there may be Land Development Code changes in
6 the future to cement that, but we have the
7 opportunity with Section 34-933 to state that this
8 is similar to Restaurant II. We're not creating a
9 new use. It's substantially similar.

10 I think we've went over the administrative
11 increase. That was a big question yesterday.
12 Whether that was in the record, not in the record,
13 part of the recommendation, it is not. For the
14 record, for anyone in the public listening
15 virtually or in this audience, that was included in
16 the application materials, but it has not made its
17 way into this recommendation, the staff
18 recommendation that the hearing examiner is
19 considering. Instead, we have a condition. It is
20 Condition 12, project vehicular trip generation,
21 which I might add -- and you might see it on your
22 exhibit I just provided you with this rough
23 draft -- that we need to make a modification of
24 this to adjust the square footage consistent with
25 the rest of this draft, but basically what it's

1 meant to do is, as you said most eloquently, it's
2 meant to cap the trips based on the worst-case
3 scenario, and instead of allowing some complicated
4 matrix to be included in this resolution, we allow
5 this to govern; and if there are changes in terms
6 of uses that they'd like to change, allocations or
7 square footages, that would go through the
8 amendment process.

9 THE HEARING EXAMINER: So does this get
10 tracked on a development order by development order
11 basis?

12 MR. MENDEZ: Yes.

13 You had some questions, Madam Hearing
14 Examiner, on the height in this PD, and I think
15 that you understand now, it's 35 feet everywhere
16 for everything except for the hotel use, and that
17 that hotel use can only exceed 35 feet if it's
18 located in the southern 300 feet, which actually,
19 if you look at the master concept plan and you take
20 the scale, that's how we arrived at where that
21 height might be appropriate. It was exactly where
22 it's located currently on the master concept plan.
23 The way that the condition is written is meant to
24 confine it -- setback from Bayshore, setback
25 from -- within the southern 300 feet. It keeps

1 that height there, and if for some reason a hotel
2 is desired somewhere else on the parcel, then the
3 height is limited to 35 feet, but the use is still
4 subject to a 150-foot setback. That number is not
5 necessarily arbitrary. It was used in the prior
6 resolution for where buildings were appropriate
7 except for carports.

8 So we're -- we're taking -- what we're doing
9 is we're amending this resolution, and we're
10 keeping what we thought was appropriate, and we're
11 changing what we think might be appropriate now
12 with additional conditions, additional
13 considerations. That wasn't a baseline for what
14 should always be appropriate here, it was a review,
15 it was a careful review. I read carefully through
16 the transcript to see what the rationale was, how
17 they got to those square footages, and it was all
18 based on what they were actually envisioning and
19 concessions they made to get to their idea. It
20 wasn't based on some special formula as to what
21 minimal commercial uses mean, it was what was
22 appropriate, it was what was compatible; and I
23 would submit to you that -- and this has been
24 spoken about, and I'm kind of jumping ahead here in
25 my thoughts, but while it's fresh -- is that, when

1 we talk about minimal commercial uses in the
2 Bayshore -- minimal commercial activities, sorry,
3 in the Bayshore Community, the goal, and if you
4 think back to my slide, which they had, which
5 showed these very general locations for either
6 minor commercial, and then commercial that wasn't
7 subject to that minor commercial uses language, and
8 whether that correlated to 30,000 square feet or
9 not, I'm not sure. I understand there's a little
10 bit of ambiguity there, but we know that this site
11 currently has 61,000 square feet of commercial uses
12 on it, which is greater than minor commercial by
13 definition.

14 So I would submit to you that that general
15 interchange is half of one percent of the total
16 land area right on the fringe of the community and
17 that, if there is any commercial intensity greater
18 than 30,000 square feet, minor commercial, it would
19 be located here as long as what is proposed is
20 compatible with the surrounding rural community,
21 the character of the community. And so I think
22 that's what this accomplishes right now, and I'll
23 move kind of backwards on this document to discuss
24 the intensity that we've arrived at and why.

25 Staff has considered Mr. Inge's concession for

1 100,000 square feet of retail, and we're still not
2 there yet. What we will consider is transitioning
3 those 44 hotel units -- was a separate allocation
4 in the original conditions -- converting those to
5 retail at the rate, 120 square feet per hotel unit,
6 and adding that to the figure that was originally
7 improved to 92,750 square feet. Staff is amenable
8 to that. We have no rational nexus to exceed that.

9 Staff report goes over in detail what our
10 position is, using existing interchange areas and
11 compatibility analysis, and so I can't get up here
12 and say that we have any basis for 100,000 square
13 feet, and we would disagree with that number. We
14 don't have that basis, but it's close.

15 THE HEARING EXAMINER: You're closer than
16 you've ever been.

17 MR. MENDEZ: 92,750 square feet. It's rooted
18 in our staff report as to why.

19 THE HEARING EXAMINER: Okay. So if they chose
20 to build a hotel, we're not eliminating this use,
21 then we go back to the condition with the formula,
22 120 square feet gets removed from the total?

23 MR. MENDEZ: That's correct. In fact, our
24 condition regarding the hotel has been updated to
25 reflect that, and this is preliminary. This is

1 just to share with you to let you know what's
2 coming down the pipeline; but here we go.

3 "Retail intensity may be converted to a
4 maximum of 125 hotel units at a conversion rate of
5 one hotel unit per every 120-square-foot reduction
6 of the 92,750-square-foot intensity allocation.

7 THE HEARING EXAMINER: So if they did the
8 whole 125, then how many square feet of commercial
9 would be left?

10 MR. MENDEZ: Good question for a calculator.

11 THE HEARING EXAMINER: 15,000.

12 MR. MENDEZ: Let me go back to the top.

13 THE HEARING EXAMINER: Okay. So Applicant has
14 modified their request to a hundred thousand, no
15 hotel; hotel to be subtracted from the 100,000.
16 Based on your discussions, you feel as though staff
17 can support 92,750, no additional hotel. Again,
18 hotel subtracted from that?

19 MR. MENDEZ: That is correct.

20 THE HEARING EXAMINER: All right. So the
21 differential is 5,250 square feet, and now you're
22 going to clarify the rest of the changes?

23 MR. MENDEZ: Yes. And I tried to highlight in
24 blue what was actually changed. I did miss one
25 point, and I'll bring that up, and that was the

1 food truck.

2 THE HEARING EXAMINER: And what does red
3 represent now?

4 MR. MENDEZ: Red was in the former 48-hour --
5 I'm sorry, the memo I gave to you. It's the same
6 memo I gave to you, I just made changes to that.
7 That's just the most up-to-date conditions
8 document. We'll clean this up. We'll make sure
9 it's all black, and it's all color coded by the
10 time it gets to you.

11 THE HEARING EXAMINER: Okay. I noticed that
12 you removed Business Services Group I, and that was
13 not mentioned by Mr. Inge.

14 MR. MENDEZ: Yeah, I'll explain. So Business
15 Services Group I right here was removed because
16 it's a duplicate. It was an error. It's Business
17 Services Groups I and II is permitted; so I just
18 struck that. Funeral home, cremation, no
19 cremation, stricken.

20 THE HEARING EXAMINER: They're quiet
21 neighbors.

22 I digress. I digress.

23 MR. MENDEZ: Okay. So let's talk about this
24 masonry wall berm combination, composite masonry,
25 easier to maintain, what's what.

1 The condition right here, it's very
2 preliminary. I had very little time to really
3 think about this, but I think I have the general
4 concept where this -- where a different material
5 other than masonry might be appropriate to satisfy
6 that continuous eight-foot wall that this existing
7 approval had and used as a compatibility measure,
8 and that's to say that "A wall's required in
9 masonry, no matter what, if, where roads, drives,
10 parking areas, service areas, or delivery areas for
11 goods and services exists within 125 feet of the
12 north property line. A completely opaque,
13 eight-foot high masonry wall" -- all that language
14 doesn't change. It's the same eight-foot high
15 wall. Where this particular activity is going to
16 occur within 125 feet of the north property line.
17 All other areas, they still need to provide an
18 eight-foot high wall berm combination but may
19 utilize composite non-wood material to extend the
20 wall continuously to the eastern property line.

21 So if I have the master concept plan in mind
22 right now and I'm looking at Master Concept Plan B,
23 which is the big box store, and we saw by virtue of
24 the master concept plan requirements, where it
25 shows where the location of general delivery and

1 service areas are, you'd have an eight-foot high
2 wall made of masonry along all the portion that was
3 either a road, drive, delivery, or a service area.
4 That masonry wall is going to provide sound
5 attenuation that's not equivocal to a composite
6 wall. It's the density that's going to drive the
7 sound attenuation.

8 So in areas where there's going to be
9 detention or green space or buildings setback
10 sufficiently, that's not necessarily a safeguard
11 that staff sees as absolutely necessary. Say that
12 again: So we could use just a composite material,
13 which I'm sure is cheaper and perhaps easier to
14 maintain, although it seems like concrete walls
15 stand the test of time, that that would be
16 appropriate in those areas where there is no --
17 none of that activity occurring, which we heard on
18 the record, would be disruptive to their quiet
19 enjoyment of their property.

20 THE HEARING EXAMINER: Okay. So with regard
21 to the masonry wall requirement, if roads, drives,
22 parking areas, service areas for delivery of goods,
23 or services occurs basically 50 feet south of where
24 this wall's going in, wall barrier, that's what's
25 going to trigger the need for masonry? So if they

1 maintain a 50-foot setback from that wall in terms
2 of those uses, they can use this alternate
3 material?

4 MR. MENDEZ: Yes.

5 THE HEARING EXAMINER: For a wall, slash,
6 fence, whatever it --

7 MR. MENDEZ: Wall berm combination or wall.

8 THE HEARING EXAMINER: Okay.

9 MR. MENDEZ: I want to just illustrate that
10 for you real quick. You see by code, by master
11 concept plan detail requirement, we have the
12 hashing there that says, "Location of service
13 areas," behind this big box store. That was one of
14 the main concerns was the idea of trucks coming in
15 at 2:00 or 3:00 in the morning and unloading and
16 providing inventory, and as we know, that backup --

17 THE HEARING EXAMINER: Yeah. Oh, yeah.

18 MR. MENDEZ: -- it's exempt from the noise
19 ordinance.

20 THE HEARING EXAMINER: Yes, it is.

21 MR. MENDEZ: So we can't rely on the noise
22 ordinance. And so what we're saying is, you see
23 the span right there in between the detention
24 areas? That would be masonry wall, and then the
25 areas where there's detention, you'd have your

1 composite material. That's just an example of how
2 that would shake out with this plan, and we may
3 refine the language to be more specific for that.
4 This was off the cuff, but it's the concept that
5 we're trying to share with you.

6 THE HEARING EXAMINER: So you're trying to
7 achieve separation and sound attenuation?

8 MR. MENDEZ: Which was afforded by the
9 existing resolution.

10 THE HEARING EXAMINER: Okay. Can I see the
11 other site plan?

12 MR. MENDEZ: Absolutely.

13 THE HEARING EXAMINER: And I understand this
14 is conceptual and they do have flexibility in how
15 they lay the property out, I just want to take a
16 look. I think it was on the slide before. So
17 under this scenario, assuming that it was to be
18 built like this, the potential for the wall would
19 be on this western side?

20 MR. MENDEZ: That's correct, and then you'd
21 have a natural wall here, and then an additional
22 wall here with composite material. This is going
23 to reduce the financial impact of this condition on
24 the developer in a sensible way.

25 THE HEARING EXAMINER: Yeah, because that's a

1 wide property.

2 MR. MENDEZ: It is. It's a wide wall, and I
3 looked at the cost of what a poured masonry wall is
4 per square foot. It's not cheap, but we're talking
5 about the cost of compatibility here.

6 THE HEARING EXAMINER: Okay. And this is
7 agreed? This is resolved here? You're going to
8 tweak the language.

9 MR. MENDEZ: We're close. I don't think we've
10 come to a perfect agreement, but this is -- I'm
11 going to talk to all parties to make sure that
12 we're not missing something, and then we'll get you
13 language that staff ultimately finds most
14 appropriate to recommend to you.

15 THE HEARING EXAMINER: Okay.

16 MR. MENDEZ: I wanted to talk to you about a
17 question you had and clarify. You asked Mr. Inge
18 whether masonry, the type, was required by code and
19 whether a deviation was necessary so that composite
20 could be made. We have no code requirement that
21 specifies material, it specifies opacity, and so
22 this is a condition that's in abundance of the
23 code.

24 THE HEARING EXAMINER: So it's an enhancement?
25 The code is silent as to what the wall has to be

1 made of?

2 MR. MENDEZ: That's correct.

3 THE HEARING EXAMINER: Okay. Thank you.

4 MR. MENDEZ: Where you'd find that is in
5 10-416, which is the landscape requirements. Note
6 1 under the table, it says, "A solid wall/berm
7 combination," but it doesn't specify the actual
8 material of the wall, just that's opaque.

9 THE HEARING EXAMINER: And the existing
10 condition in the current resolution just says
11 "wall."

12 MR. MENDEZ: No. In the current resolution it
13 says, "masonry wall," and that's where we're
14 establishing our baseline from.

15 THE HEARING EXAMINER: All right. So what --
16 you're limiting that requirement to these areas
17 that you anticipate would create the most impact?

18 MR. MENDEZ: That's correct. I'm sure it's
19 been a long 12 hours for you, Madam Court Reporter;
20 so I will brief here to wrap up what I have to say
21 unless Madam Hearing Examiner has any additional
22 questions.

23 THE HEARING EXAMINER: I don't.

24 MR. MENDEZ: I was going to touch on what --
25 you may or may not want to see this condition, but

1 we're going to provide you one anyways because we
2 spoke at length about access to this site and how
3 that might change, and how that -- and it was
4 offered as a compatibility measure. We'll find
5 some language that says that in the event that
6 access moved north, maybe within some sort of
7 range, that they need to come back through the
8 public hearing process or some sort of safeguard to
9 keep it from getting too close to the north. It's
10 just going to be an idea. If you don't find it
11 necessary or appropriate, then, you know, all due
12 respect.

13 THE HEARING EXAMINER: Yeah, I'll take a look
14 at it. I'll tell you just what immediately comes
15 to mind: The original access, right, was further
16 north, and it was a masonry wall all the way
17 across, which is -- I'm figuring out that that's
18 probably why they wanted that enhanced
19 construction.

20 MR. MENDEZ: Yeah.

21 THE HEARING EXAMINER: So perhaps, rather than
22 requiring a public hearing, that would be the
23 alternative. That way there's not this going
24 through the public hearing process again. We are
25 reverting to what was required before, but I

1 need -- I'm not committing to that. I need to go
2 over everything and try to do a big view of the
3 property. I would like to confine coming back to
4 the public hearing process to a true
5 intensification of the use of the property, you
6 know, whether that's appropriate in the future or
7 not. That's where I see the public hearing process
8 being the most beneficial to everyone, and I think
9 the administrative approval process can pretty much
10 handle everything else as long as there's
11 guardrails.

12 MS. MONTGOMERY: I have a question because I
13 think -- the way I understand you're going to write
14 the condition on the wall, we get to where the
15 hearing examiner is thinking because you said that,
16 if there's a drive, parking area, or loading area
17 within a certain distance, then you have to do the
18 masonry wall; so it seems to me that for moving a
19 road further north, would they automatically then,
20 under your condition, not have to provide the
21 masonry wall?

22 MR. MENDEZ: Just for the portion of that
23 access or road that is within 125 feet.

24 THE HEARING EXAMINER: I mean -- I'm troubled
25 by the proposed intensification and simply

1 reverting back to what they had to do before; so I
2 feel like, if they're going to shift it to the
3 north because they have to, FDOT, whatever, that
4 maybe there's that wall and, like, trees too
5 because, I mean, let's face it, we're talking about
6 more intense uses in addition to greater intensity
7 overall, and there needs to be -- we need to be
8 mindful that the adjacent use is single-family
9 residential, and they need to be protected;
10 otherwise, this project fails the compatibility
11 test.

12 So please think about that as you're working
13 together on addressing that possibility, and if it
14 can be achieved without bringing it back to the
15 public hearing process, it might be worthwhile
16 thinking about what would have to -- what would the
17 corner of this property have to look like to ensure
18 compatibility without having to go through the
19 public hearing process.

20 Because, if all we're doing is saying, okay,
21 the masonry wall gets extended, but now the project
22 access is closer, then that's not going to be
23 acceptable to me because we are significantly
24 increasing the intensity of the use and the types
25 of uses; so let's keep that in mind when we're --

1 if we talk about that possibility, what would be
2 appropriate up there.

3 MR. MENDEZ: Well, I have no further comments,
4 and I hear you loud and clear. We will carefully
5 look at that and see where we can land with
6 compatibility.

7 THE HEARING EXAMINER: Okay. I appreciate
8 that. I need a break. I'm sure Heather needs a
9 break; so we're going to take a break and then come
10 back. I understand there's going to be concluding
11 remarks and legal argument on the part of the
12 Applicant. Do you have anything further?

13 MR. MENDEZ: No, ma'am.

14 THE HEARING EXAMINER: Okay. So why don't we
15 break for ten minutes, and then we'll come back,
16 and Applicant can make any concluding remarks or
17 arguments they wish to put on record.

18 (Recess held from 11:33 a.m. to 11:47 a.m.)

19 THE HEARING EXAMINER: Neale Montgomery.

20 MS. MONTGOMERY: Good morning, almost
21 afternoon. Neale Montgomery for the record. I'm
22 going to be brief, but there are some points that I
23 do want to make. In the last six months, I've had
24 more than a few occasions to discuss whether or not
25 goals are regulatory or not with the County

1 Attorney's Office. My legal opinion is they are
2 not. Due to the LDC and comp plan amendments
3 relative to another Community Plan that got a lot
4 of coverage, it's very clear the County Attorney's
5 Office does not believe goals are regulatory
6 either, and that the goal's policies and objectives
7 in these plans that are intended to apply are those
8 that were put into Chapter 33 in the LDC.

9 So we spent a lot of time about what Goal 18
10 means, but it's aspirational, and it's not
11 controlling.

12 Jennifer had a chance to put up Section
13 163.3194(3)(a). That section is the consistency
14 section of 163, and that's how it's determined. I
15 found it interesting that, perhaps, unwittingly,
16 Mr. Lombardo referenced the Hein decision because
17 you were the hearing examiner in the residents and
18 Miramar against Center Place, and the Heins were
19 one of the residents that objected. They appealed
20 the Board's decision in that case, and they
21 submitted that the County and the Circuit Court
22 failed in their consistency determination because
23 they didn't take into account a certain amount of
24 construction of commercial, and they didn't take
25 into account plantings, buffers, or landscaping;

1 and they didn't take into adequate consideration of
2 noise security and visual impacts on the property.
3 The Court said those things aren't appropriate for
4 a consistency challenge.

5 So -- and then the Conservancy had challenged
6 a lot of the zonings and approvals in the eastern
7 rural land stewardship area, and in that case, the
8 Court said, "The Circuit Court correctly applied
9 Hein when it confined the scope of the
10 Conservancy's rather sprawling consistency
11 challenge to claims alleging material alteration to
12 the use or intensity of use."

13 So a lot of the things that we talked about
14 are issues and certainly should be considered in
15 terms of compatibility, but they aren't consistent
16 with comp plan consistency; and in this case, I'd
17 submit that, with reduction in the square footage
18 and the change to the buffering condition as -- I
19 think as agreed to by the staff and the Applicant,
20 I think we have addressed those issues.

21 Thank you.

22 THE HEARING EXAMINER: Thank you. Okay.
23 Let's discuss procedure going forward. My
24 understanding is staff, Applicant, and perhaps
25 Mr. Lombardo are going to work together on some

1 conditions or putting a finer point on the draft
2 that you provided, and that I will then receive a
3 joint submittal, staff and Applicant, of
4 recommended conditions and deviations, and that may
5 or may not be accompanied by an updated master
6 concept plan to reflect relevant notes.

7 How much time would you like to achieve this?
8 And I will share that this is going to be a long
9 transcript. I'm not going to work on this case
10 until I have the transcript. I have some initial
11 notes I'll organize, and I'll start doing the
12 outline of my recommendation, but I will rely
13 heavily on the transcript in this case because
14 there is a lot of information I want to take a
15 closer look at and consider. So give yourself
16 enough time to meet and get it to where you want it
17 to be before you give it to me.

18 MR. INGE: Maybe we should ask -- Ron Inge for
19 the record.

20 Maybe ask Adam what he feels comfortable with
21 because he's -- I assume you're going to draft the
22 initial conditions.

23 MS. SAPEN: And liaison with Lombardo.

24 MR. MENDEZ: My first idea is by end of day
25 Thursday the 21st, which is exactly a week. Does

1 that work with you guys?

2 MR. INGE: That works for me.

3 MS. MONTGOMERY: Is your office going to be
4 open? Sometimes you close during the holidays.

5 THE HEARING EXAMINER: We are open until end
6 of business on the 21st. We are closed that
7 three-day week in between Christmas and New Year's.
8 We're closed Tuesday, Wednesday, Thursday, and then
9 we're opening up again Tuesday, the following
10 Tuesday, the day after New Year's.

11 MR. MENDEZ: And, Madam Hearing Examiner,
12 while I will work closely with the parties we
13 discussed, this submittal would be from staff as
14 there may be disagreements still; so it will be a
15 submittal from staff.

16 THE HEARING EXAMINER: Okay. So then with
17 that in mind, the record is going to be left open
18 for a submission from Adam, and if Applicant has a
19 disagreement -- and he will note the disagreement
20 on the issue of the square footage, but if there's
21 a disagreement with anything else, Applicant,
22 please submit their response. I'm going to give
23 them time because you're going to submit it on the
24 21st; so how about by end of business on
25 January 5th for Applicant's submittal, and that's

1 January 5th, 2024. If either of you need more
2 time, please contact my office.

3 MS. MONTGOMERY: You indicated that we were
4 going to involve Mr. Lombardo.

5 THE HEARING EXAMINER: Well, I base that on
6 the testimony I heard today.

7 MS. MONTGOMERY: Okay. Because the record's
8 closed to the public input; so when the submittal
9 comes out, I was thinking it was going to be staff,
10 and then if there's any areas of disagreement,
11 we'll point that out.

12 THE HEARING EXAMINER: Right. Mr. Lombardo is
13 not going to submit anything, but what I heard
14 during testimony today was that there was going to
15 be a further discussion with him regarding this
16 masonry wall, landscape buffer issue.

17 And so insofar as you're going to address what
18 happens if this access shifts further north, I
19 think it's wise if you include him in the
20 discussion of what might be considered appropriate
21 by who will be the most affected property owner
22 should that happen.

23 MR. INGE: If I may ask for clarification; so
24 that involvement would be relative to the wall,
25 not -- as we know, they have concerns about other

1 issues.

2 THE HEARING EXAMINER: Yes, certainly. No.
3 No. No.

4 MR. INGE: Just that one issue.

5 THE HEARING EXAMINER: No. I'm keeping the
6 record open for revised conditions and deviations
7 from staff, hopefully a master concept plan that
8 reflects everything except for what you disagree
9 on, and then supplemented by a written submission
10 if you feel as though there's something that
11 there's still not agreed to, and that you'd wish me
12 to understand your position.

13 MS. MONTGOMERY: I've got a question, and
14 maybe this is a dumb question, but since you left
15 this up here, we're obviously within the four
16 corners of the site, and when Mr. Treesh talked
17 about what might happen, you know, he pointed out
18 that the access may go here; so are we going to end
19 up trying to regulate outside of the site on
20 whatever may happen wherever that connection may
21 be? Does that make sense?

22 THE HEARING EXAMINER: No.

23 MR. MENDEZ: No. Can you rephrase that?

24 MS. MONTGOMERY: So in other words, let's
25 say -- I'll be in the wrong spot, but let's say

1 this is the spot, and it comes over here, are we
2 going to have to buffer --

3 MR. INGE: Adam, if I may, I think what
4 Neale's concern is, is we may still come out at the
5 same place, but it may extend northward to access
6 that road. Do we have to buffer on the property to
7 our west that we can't control?

8 THE HEARING EXAMINER: No. If you're --

9 MR. INGE: I think your point, Madam Hearing
10 Examiner, is if the access point to Wells shifts --

11 THE HEARING EXAMINER: Yes.

12 MR. INGE: -- regardless of where it goes
13 westward?

14 THE HEARING EXAMINER: Exactly.

15 MS. MONTGOMERY: Okay. I just wanted to be
16 clear on that. Thank you.

17 THE HEARING EXAMINER: A list of scope of my
18 authority has changed. I think I'm limited to the
19 property in question.

20 MS. MONTGOMERY: Well, I believe that. I just
21 wanted to make sure that everybody in the room --

22 MR. INGE: Well, it depends on what we hear
23 from the people to the west.

24 THE HEARING EXAMINER: Is there any other
25 questions by the parties?

1 So we're clear, Adam is going to submit
2 something by end of business on the 21st. Neale,
3 representing the Applicant is going to submit
4 something by end of business on January 5th, but if
5 additional time is required, please just contact my
6 office, and we will extend.

7 My understanding from the court reporter is
8 that the transcript may be available the first week
9 of January. Once that's available, we'll let you
10 know. If you need more time, that's fine too.
11 We'll let everyone know, and it will be uploaded.

12 MR. INGE: Okay. Thank you.

13 MS. MONTGOMERY: Appreciate it.

14 THE HEARING EXAMINER: Thank you, everyone.

15 (Thereupon, the proceedings were concluded at
16 11:57 a.m.)

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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 269 through 392 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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