

THE OFFICE OF THE LEE COUNTY
HEARING EXAMINER

CASE NO.: DCI2022-00026

IN RE: RIVER HALL RPD/CPD

PROCEEDINGS: PUBLIC HEARING

BEFORE: Amanda Rivera
Hearing Examiner

DATE: January 11, 2024

TIME: 9:00 a.m. to 1:15 p.m.

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

REPORTER: Deborah M. Bruns
Florida Professional Reporter

ORIGINAL

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12 ALSO PRESENT:

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14 Shane Johnson, Passarella & Associates, Inc.
Stephen Leung, David Plummer and Associates
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1 P R O C E E D I N G S

2 HEARING EXAMINER RIVERA: Good morning, my name is
3 Amanda Rivera. I'm the Hearing Examiner presiding over
4 today's case. I apologize, I have a little bit of a
5 throat issue, so I will do my best to not let that
6 affect us.

7 Today is January 11th, 2024, and this is case
8 DCI2022-00026. It is a rezoning request affecting the
9 River Hall RPD/CPD and the Caloosahatchee Shores
10 Planning Community.

11 Because this is a quasi-judicial hearing, all
12 evidence and testimony must be taken under oath. So if
13 you intend to speak, if you could please raise your
14 hand. Do you swear or affirm the testimony you will
15 provide is the truth?

16 (Participants sworn en masse.)

17 HEARING EXAMINER RIVERA: Okay, thank you.

18 So the order of proceedings today is first we're
19 going to hear from the Applicant. They're going to
20 present their request in the case and call any
21 witnesses that they may have.

22 Following that, we're going to hear from the
23 County Staff. They are going to present their review
24 and recommendation in this case. They are recommending
25 approval with conditions and carrying forward

1 deviations from approvals from prior zoning actions
2 that are already in place.

3 After the Staff finishes their presentation, I
4 will open up the public comment period. The way that
5 we'll do that is I'm going to call the cards that I
6 have here in the order that I have them. So if you
7 have not yet completed a card from the door, please do
8 so and provide it to the Staff so that I'll have it
9 here whenever I call.

10 The way that that works is there is only one
11 opportunity to speak, but there's no time limitation.
12 But I would encourage you to take notes as we go
13 through things this morning so that you can make the
14 most of your time at the podium. If you have
15 questions, please ask them. We're going to be taking
16 notes of those, and then the Applicant and the Staff
17 will address the questions after we conclude public
18 comment when they do their rebuttal. So don't be
19 surprised if we don't answer it right away, but we are
20 listening and making a note of that.

21 I am going to be issuing a recommendation in this
22 case to the Board of County Commissioners. So their
23 hearing on this case will be the final hearing. If you
24 intend to speak at that hearing, you must speak at the
25 hearing today. At the Board hearing they do impose

1 time limitations, and they do restrain you to the
2 comments that you make here today, so please just be
3 sure you're mindful of that if you intend to speak
4 before them.

5 Just in terms of procedure, we'll take breaks as
6 we go through things to offer the court reporter a
7 break and the chance for the rest of us to stretch our
8 legs. We'll take a lunch break, if we go that far, and
9 we will conclude at 4:30 today. If we need an
10 additional day of hearing, we'll reconvene tomorrow.

11 And with that, I believe that's everything I've
12 got to say, if the Applicant would like to begin. Good
13 morning.

14 MR. AKIN: Yes, thank you. Good morning, Madam
15 Hearing Examiner. For your record, my name is Richard
16 Akin. I'm an attorney with Henderson Franklin here in
17 Fort Myers, Florida, and I'm here this morning
18 representing the Applicant on case number
19 DCI2022-00026, which is the River Hall RPD/CPD
20 rezoning.

21 Just a couple of housekeeping matters. So the
22 Applicant did submit a 48-hour letter in response to
23 the Staff Report. We identified several areas of -- I
24 call them disagreement, but really they're more
25 clarification with the Staff Report. The Staff

1 responded on January 10th, which was yesterday, with an
2 updated set of conditions and attachments to those
3 conditions. We are now in agreement with Staff with
4 all the conditions in the submittal that they made
5 yesterday.

6 If you'd like me to, I can walk you through the
7 areas that we raised in more specificity in the 48-hour
8 notice, or if you've got enough, we can --

9 HEARING EXAMINER RIVERA: Probably address those
10 as we go through, unless that disrupts your
11 presentation flow.

12 MR. AKIN: I don't think it will. You know,
13 largely there were clarifying points specifically with
14 regard to some areas of the density table, the schedule
15 of uses that we wanted to have attached, to make sure
16 it was there, some grouping of that. So we can address
17 those as we go through.

18 HEARING EXAMINER RIVERA: Okay.

19 MR. AKIN: All right. So before I get started, I
20 have a couple of exhibits for you. So I have a copy of
21 our PowerPoint presentation. I also have a copy of the
22 full-size master concept plan, and I have an 11-by-17
23 master concept plan for you, as well.

24 HEARING EXAMINER RIVERA: Okay, thank you. So
25 then Applicant's Exhibit --

1 (Applicant Exhibits submitted.)

2 HEARING EXAMINER RIVERA: -- thank you -- A was
3 the 48-hour letter that you already identified.
4 Applicant's Exhibit 1 will be the presentation, and
5 then I'll do a Composite Exhibit 2 with both master
6 concept plans. Are those identical to what I had in
7 the Staff Report --

8 MR. AKIN: Yes.

9 HEARING EXAMINER RIVERA: -- the master concept
10 plan?

11 MR. AKIN: Yes.

12 HEARING EXAMINER RIVERA: Thank you. Okay.

13 MR. AKIN: All right. So I'm here this morning
14 with my project team. Jennifer Sapen is the project
15 planner. She's an AICP certified planner. She's with
16 Sapen Site Planning. The majority of the presentation
17 that you will hear this morning will be from her. Carl
18 Barraco is our project engineer, and he's with Barraco
19 and Associates, and you'll also hear from him. Shane
20 Johnson is the ecologist with Passarella & Associates,
21 and he has a brief presentation, as well. Stephen
22 Leung is the transportation consultant with David
23 Plummer and Associates. And Kirk Martin is the project
24 geologist, he is with Water Science Associates.

25 I want to give you just a little bit of history as

1 we start this morning. So this parcel was rezoned in
2 1999 from AG-2 to residential planned development in
3 order to allow for 1,598 units on 1,797 acres. At that
4 time the land was predominantly in the rural future
5 land use. The reason for the density at that point in
6 time was largely due to DRI thresholds, which have now
7 changed pursuant to state statute.

8 In 2005 there was another rezoning that went from
9 AG-2 and RPD to RPD and CPD in order to allow for 1,999
10 units on 1,978 acres. The land at that time was still
11 predominantly in the Rural Future Land Use.

12 There was -- the existing zoning, the governing
13 zoning, was in 2015. There was also a Comprehensive
14 Plan amendment at that time. The rezoning in the
15 Comprehensive Plan amendment allowed for 2,695 units on
16 1,978 acres. As part of that, there were 1,064 acres
17 of rural and 223 acres of wetlands that were converted
18 to 153 acres of conservation wetlands and 264 acres of
19 conservation uplands, as well as 870 acres of
20 sub-outlying suburban future land use. And that
21 Comprehensive Plan amendment created some irregular
22 isolated sub-outlying suburban shapes in the future
23 land use map, as you can, I'm sure, see from having
24 reviewed the file.

25 And I wanted to point out at this point in time

1 that the existing zoning allows townhouse and
2 multi-family -- allows townhouse and multi-family
3 dwellings as part of the existing zoning. That's an
4 issue that we've had raised a few times in public
5 comment as part of the community meeting. So I just
6 wanted to make that clear, that's not a change that
7 we're -- or use that we're adding. It's just something
8 that's been there since the zoning that governs the
9 exist -- the existing zoning.

10 HEARING EXAMINER RIVERA: All right. And you're
11 removing that use, aren't you, in the CPD?

12 MR. AKIN: We're just moving it to the RPD, I
13 believe, instead of -- we're not removing it completely
14 from the project --

15 HEARING EXAMINER RIVERA: No, but from the CPD
16 portions.

17 MR. AKIN: Correct.

18 HEARING EXAMINER RIVERA: Okay.

19 MR. AKIN: So to highlight some of the changes, we
20 are adding 9.98 acres to the project. That 9.98 acres
21 is surrounded by the existing boundary of River Hall on
22 all sides, and I'll show you a map that identifies
23 where that is in a minute.

24 We're adding additional density that's being
25 requested, but it's being requested only in the

1 undeveloped portions of River Hall. So that additional
2 density is not going into the places that are already
3 developed or already have homes, it's areas that have
4 existing infrastructure to support the density, but
5 there's no development there right now. We're seeking
6 to utilize the existing infrastructure, as I had
7 mentioned earlier, within the approved development
8 footprint in order to maximize that use.

9 The conditions and the deviations that are in the
10 approved zoning are largely being carried forward. As
11 you can see, we're basically modifying them, and you
12 can see the strike-through/underline that's been
13 provided by Staff. The modifications are largely just
14 to reflect what we're doing as part of this rezoning,
15 but most of the governing conditions are moving
16 forward.

17 We're only increasing the development footprint by
18 .5 acres, and that's actually in that 9.98-acre parcel.
19 There's .5 acres within that that may be developed.
20 The rest of that development footprint is not changing,
21 and I'll show you that in just a minute.

22 We're not impacting any additional wetlands or any
23 environmentally sensitive areas, and we're not adding
24 any new uses to the schedule of uses. We're moving it
25 around between RPD and CPD but not adding anything new.

1 So the request applies to 172.67 acres in three
2 primary areas, and you can see those here on this map
3 in front of you. So the first area is this box right
4 here we call area one outlined in red up near State
5 Road 80, which is also Palm Beach Boulevard. That's
6 the 9.98 acres that I mentioned to you a minute ago.
7 So this will largely be -- the vast majority of this
8 9.98 acres will be open space and preserve. There's
9 about .5 acres that may be ultimately developed within
10 that, and that's it. There's also this second area
11 that's the subject of the rezoning also up near State
12 Road 80 and Palm Beach Boulevard that you can see
13 outlined in red. And then finally, the third area is
14 the area that is to the southeastern corner of the
15 project down here at the bottom.

16 The request is to establish a maximum density of
17 3,244 units within the project, which is an overall
18 increase of 549 units over the existing approval. As I
19 mentioned, we're adding that 9.98 acres.

20 There is a companion Comprehensive Plan amendment
21 that's on 391.85 acres that would allow for an increase
22 of 434 units. So it's a combination of the CPA plus
23 we're asking for some additional density within what
24 would be allowed in the existing future land use.

25 The companion Comprehensive Plan amendment has

1 already been heard by the LPA and has been transmitted
2 by the Board to the State for review, and it's our
3 anticipation that that would go to the Board at the
4 same time as this rezoning for hearing, for final
5 hearing.

6 So unless you have any questions of me following
7 that, I can turn it over to Ms. Sapen at this time.

8 HEARING EXAMINER RIVERA: No, thank you.

9 MR. AKIN: All right. So Ms. Sapen is an AICP
10 certified planner. She's been accepted as an expert in
11 front of the Hearing Examiner on numerous occasions.
12 Her résumé is on file with the Hearing Examiner's
13 Office, and we'd ask that she be recognized as an
14 expert here today.

15 HEARING EXAMINER RIVERA: Yes, thank you.

16 Do we have an updated résumé for you?

17 MS. SAPEN: We do. You have one on file --

18 HEARING EXAMINER RIVERA: Already on file? If
19 it's already on file --

20 MS. SAPEN: -- but I can give you another one.

21 HEARING EXAMINER RIVERA: No, we have it if it's
22 on file. I just wanted to be sure we had a current
23 version, thank you.

24 MS. SAPEN: So good morning, my name is Jennifer
25 Sapen. As Richard said, I'm an AICP certified land

1 planner.

2 Before we get into the project, I want to zoom out
3 and talk a little bit about the area. This graphic
4 here shows the changes that have happened to the area
5 since the previous zoning approval was -- so when that
6 last density increase occurred. Since then a few
7 commercial developments have come in: The two on State
8 Road 80 and 31; the one on the west side, clearing has
9 begun on that one; on the east side, that's where the
10 new RaceTrac is; and then north of the entrance into
11 River Hall, there's a large commercial development. So
12 the existing -- you see two Publix and a Winn-Dixie
13 here -- the existing commercial services, as well as
14 the added commercial future services, will serve these
15 additional densities.

16 The bottom of the slide, there's a table showing
17 Portico and Buckingham 345. Those were each approved
18 since the previous density increase, and you can see
19 there was a Comprehensive Plan amendment and a rezoning
20 with both of those cases. The aerial shows the status
21 of Portico generally now. They're building out just a
22 little bit left, on the western side, but Buckingham
23 345 is still to start.

24 Looking at the neighboring densities, Portico and
25 Buckingham 345 are each 3 units per acre. Lehigh,

1 south of the project, allows 6 units per acre, and
2 north of the project has lower density, by future land
3 use of rural, at 1 units per acre. But I do want to
4 point out that the majority of that rural acreage abuts
5 what is already developed in River Hall. The majority
6 of the new density is in the southeast corner where
7 it's undeveloped. So that AG property is a large
8 distance from that.

9 HEARING EXAMINER RIVERA: Is there any -- you said
10 the majority of the density. Is there any new density
11 that's going anywhere other than the areas that
12 Mr. Akin just identified?

13 MS. SAPEN: No, no. Those areas -- those are the
14 three affected areas by the zoning. Two of them are
15 density receiving areas.

16 The proposed density would increase from 1.4 units
17 per acre to 1.6 units. So it's half that of what is
18 allowed in Portico and Buckingham 345.

19 To familiarize yourself with the project, if you
20 aren't aware, River Hall consists of three distinct
21 communities. In purple up near the entrance is
22 Cascades. That's an active adult community. In yellow
23 in the southwest corner, it is Hampton Lakes. It's a
24 family community. And then in green in the northeast
25 is a golf community.

1 Each of these communities has a separate gated
2 access. There are two existing amenity sites shared by
3 the Hampton and golf -- the -- let me see. The Town
4 Center -- there you go. The Town Center at Hampton
5 Lakes, that's shared by the golf community, as well as
6 Hampton Lakes, and then the amenities in the golf
7 community are privatized for the golf community only.
8 And then Cascades, the active adult, has their own
9 amenity site across from the school. The --

10 HEARING EXAMINER RIVERA: I'm sorry to interrupt
11 you. I did a site visit already, and it was difficult
12 for me to line up the master concept plan with where I
13 was since there isn't infrastructure labeling of the
14 roads on here -- and there doesn't need to be, but just
15 in --

16 MS. SAPEN: Right.

17 HEARING EXAMINER RIVERA: -- terms of orienting
18 myself. Is the area that you're showing as future, is
19 there any activity happening there right now? Because
20 there's a lot of construction that's happening south of
21 the golf course, but I couldn't orient myself to know
22 entirely where I was on this.

23 MS. SAPEN: You're correct, that is where the
24 activity is going on right now. This bold parcel here
25 is an expansion of Hampton Lakes, and it's a

1 development order that has been approved and is under
2 construction now. And then there's also quite a bit of
3 earthwork that's going along in the future area. Some
4 of it is for dewatering, just moving around -- as being
5 the last holding area in a phased -- to manage the
6 earthwork for the property.

7 HEARING EXAMINER RIVERA: All right, thank you.

8 MS. SAPEN: The aerial shows the preserve areas,
9 still showing where you can see the vegetation. That
10 is unchanged by this request, and it has been unchanged
11 in the previous amendment. This footprint has been the
12 same since 2005.

13 There is one development order under review right
14 now up near the entrance in that future area; but the
15 bold parcels shown in this graphic, four of them here,
16 all four of those are approved development orders that
17 were recently reviewed that are under construction now.
18 We refer to them as parcels C, H, Z, and Hampton East.

19 HEARING EXAMINER RIVERA: And does the future area
20 for the DO -- you just mentioned that lines up with the
21 RMF -- what we're talking about here today.

22 MS. SAPEN: That's correct.

23 HEARING EXAMINER RIVERA: What is that -- what is
24 that requesting approval for?

25 MS. SAPEN: The development order?

1 HEARING EXAMINER RIVERA: Uh-huh.

2 MS. SAPEN: It's a townhouse product. That area
3 does allow by zoning -- has historically allowed by
4 zoning townhouse and multi-family and a mix of uses.
5 Previously it was within the CPD.

6 HEARING EXAMINER RIVERA: Okay, thank you.

7 MS. SAPEN: This is a view of the companion
8 Comprehensive Plan amendment. In purple are those land
9 areas affected by the amendment. As Richard mentioned,
10 it's a density increase of 434 units, and we do have a
11 letter of no objection. The DEO number is referenced
12 here.

13 The Comprehensive Plan amendment is broken up
14 essentially into three areas. The first, north by the
15 entrance; the second, down in the south in this future
16 area; and then there's also just some map cleanup. The
17 proposed and existing future land uses are shown in
18 this graphic.

19 First starting with the map cleanup, the small
20 sub-outlying suburban areas, we reverted those back to
21 rural, so we decreased density by 12 units there, and
22 really it was just kind of to help clean up the map
23 with these small isolated pockets.

24 The north amendment acre -- or area is 25 acres.
25 The change here is from sub-outlying suburban to

1 suburban, and this is an expansion of the existing
2 suburban that's within Cascades. And the density
3 increase here is 101 units by future land use.

4 The south amendment area is rural and sub-outlying
5 suburban to outlying suburban, but the predominant
6 change is going from sub-outlying suburban to outlying
7 suburban. And what I want to point out here in these
8 two policies referenced is whether or not
9 infrastructure is planned or is it in place; and in
10 this case the infrastructure is in place, and that is
11 why Staff and the State deemed it an appropriate future
12 land use category and an appropriate area to increase
13 infrastructure -- or increase density.

14 The existing infrastructure consists of a roadway
15 network, potable water, and sanitary sewer,
16 CDD-operated and maintained water management system.
17 Carl Barraco, our engineer, will go through that a
18 little bit further.

19 The request is to allow a total of 3,244 units.
20 That is an increase of 549 units. This is 141 units
21 less than allowed by the future land use. The
22 allowable density table here is the same that is in the
23 Staff Report, and that was a table that was revised in
24 the 48-hour to match what was in the Staff Report.

25 So the proposed densities are consistent with the

1 respective future land use categories in Policy 1.1.5,
2 1.1.6, 1.1.11, and 1.4.1. It is also consistent with
3 Objective 5.1.10 by allowing the sum of the densities
4 to be counted, and Policy 1. -- or 124.1.1, that
5 preserved wetlands are allowed the same underlying
6 density, and in this case the rural future land use, so
7 there's 1 unit per acre for the preserved wetlands,
8 which is 168 acres.

9 These are the three amendment areas that Richard
10 mentioned. I am going to go into detail into each of
11 those areas.

12 First, looking at the surrounding properties in
13 areas one and two, again, north of Palm Beach is a
14 commercial planned development with a lot of intensity
15 going in. East of these areas are the rural --
16 rural -- or AG zoning and rural future land use
17 properties, and then the remainder of these parcels are
18 surrounded by River Hall development. And then the
19 inset down here you can see the proposed graphic site
20 plan.

21 The southeast area where the majority of the
22 density is going into, the future area to the south is
23 Lehigh, to the east are preserved conservation lands,
24 and then developed River Hall lots to the north, and
25 then Cascades to the west. In the graphic here you can

1 see the lots to the northeast, those are platted, but
2 right directly above the word "future," that is just a
3 tract that is platted. No lots are platted on those
4 yet. We do expect that to be one of the next
5 development orders that comes through.

6 You see here the proposed master concept plan, but
7 before I get into details with that, I want to go back
8 to the 2005 master concept plan to just walk through.
9 We have two different revisions to the master concept
10 plan through public hearings, and then a few
11 administrative amendments that change the master
12 concept plan.

13 So this is the '05 approval. I want to point out
14 the southern entrance. You can see here there is one
15 southern entrance, but the communities are not
16 connected. The golf community, which has a loop spine
17 road, and Hampton are not interconnected in this
18 particular zoning.

19 The next public hearing in 2015, one entrance is
20 proposed here. So this amendment would have allowed
21 Hampton Lakes to also utilize that southern access into
22 Lehigh, and a roundabout is shown connecting those
23 communities. This plan also is the first time you see
24 shaded areas on the master concept plan. This is River
25 Hall 2. That is what this particular zoning -- where

1 the density from this zoning would be applicable to.
2 So that concept of shading where the density goes is --
3 is carried forward from a '15 approval.

4 The first administrative amendment in 2017, we
5 were making a few other changes on the master concept
6 plan, and while doing that realized that the notes in
7 the previous plan did not show -- did not show the
8 RMF -- well, that shows the RMF-1, but the detail
9 doesn't show the RMF-1, and the deviation wasn't clear.
10 So we made it clear on here that RMF-1 -- which is
11 approved in the resolution from the '15, we made it
12 clear that that use is on the master concept plan, and
13 that Deviation 10 is just noted on the site plan
14 itself.

15 The Hampton Lakes lots have been reshaped
16 slightly. You can just kind of see the shape -- or the
17 lakes have been reshaped. You can see they're just a
18 slightly different configuration. And the southern
19 entrance, the roundabout has been removed, and a parcel
20 has just been extended from the golf community to a
21 shared access in the -- in the south.

22 The 2019 amendment was fairly small. The only
23 change here was to increase this central club site.
24 That's where the tiki and the clubhouse is for the golf
25 course. It was 10 acres before. This request -- or

1 this amendment increased it to 15 acres. And the pod
2 directly south of that, Pod S, that was revised to
3 allow single-family attached, twin villas, for a Pulte
4 parcel.

5 And we also expanded on this master concept plan
6 the lake directly south of the tiki and -- this lake
7 right here, we expanded that. That's to give a nice
8 southern view for that new tiki bar.

9 And then in 2021, the most recent administrative
10 amendment, this changed the configuration of the golf
11 community. The loop road was eliminated, and Hampton
12 Lakes was expanded eastward, and a southern -- second
13 southern access was added. And a gate separating the
14 golf community and Hampton was added. That red star
15 shows where the gate was. So when you compare the 2019
16 to the 2021, you can see it's a fairly decent change in
17 the master concept plan of an expansion of Hampton
18 Lakes; but, again, this is also approved in this -- in
19 this amendment. We also decreased the lot width for
20 single-family detached just in this R-1A area, a 10
21 percent decrease. So we went from 45 feet wide to 40.5
22 feet wide.

23 HEARING EXAMINER RIVERA: So that's already
24 approved?

25 MS. SAPEN: Correct.

1 HEARING EXAMINER RIVERA: Are there any lot
2 reductions requested in this request?

3 MS. SAPEN: No.

4 HEARING EXAMINER RIVERA: Okay. There was a lot
5 of material -- I read every page that was in here --
6 and there was a lot -- I know that you went through
7 iterations, I'm sure, over time, but it seems like that
8 was a concern. But that's been eliminated at this
9 point?

10 MS. SAPEN: Part of the concern was the previous
11 zoning resolution wrote out the development regulations
12 in somewhat of like a paragraph, and it didn't always
13 pick up the setback for each use. So it didn't pick up
14 the lot width for each use. So through amendments, as
15 we started to build, we realized that certain uses
16 didn't even have any criteria at all. So what we went
17 from is from a paragraph form in the resolution to a
18 table to ensure that every dwelling type had a property
19 development regulation.

20 So when you look at the master concept plan that
21 is already approved, there are very few graphical
22 changes. Looking now at the proposed plan, the largest
23 change you'll see is the shaded area because we are now
24 looking at a new density increase and a new area
25 affected by this zoning amendment.

1 So this parcel adds 9.98 acres -- that's that
2 square parcel up near the entrance -- and this is where
3 you see that half an acre of upland that could
4 potentially be developed. It's a small triangle in the
5 northeast corner unhatched. The hatched area in that
6 newly added square, the hatched area will be preserved,
7 but that triangle -- and Shane from Passarella will
8 show you a little bit more of that in the FLUCCS map,
9 but that is now part of the CPD. It's behind the sales
10 center and just might have some opportunity for a
11 little commercial development.

12 The CPD was decreased from 27 acres to 5.55 acres.
13 This is in large part due to pulling the RMF, the
14 multi-family, out of the CPD. This master concept plan
15 designates where the additional density can go, and it
16 establishes maximum thresholds. So some densities
17 still remain on the 2,695 approval. So these maximum
18 density caps include whatever density is remaining, as
19 well as the additional densities added. So the north
20 is capped at 310 units, and the southern area at 600
21 units; but, again, not to exceed 549 additional units
22 by this policy -- or by this request. This additional
23 density and the proposed housing types is consistent
24 with Policy 135.1.9, which seeks a mix of housing types
25 throughout the county.

1 Zooming into the north amendment area, area one,
2 this is the RMF area -- RMF-1 area, which allows
3 townhouses and multi-family with 310 maximum units.
4 The additional 9.98-acre parcel -- you can see the
5 triangle a little bit clearer here, that's a half an
6 acre, .51 acres of uplands.

7 And reducing the CPD, the reason to do that is the
8 Land Development Code only allows multi-family in CPDs
9 if there is an excess of 50,000 square foot. The
10 previous approval at 45,000 square foot didn't meet
11 that requirement, and reducing it to 15 doesn't, as
12 well.

13 The -- this Policy 5.1.5 is elaborated in the next
14 slide, to protect existing and future residential
15 areas. We are doing this by proposed new criteria and
16 setbacks that were not in place previously in this
17 multi-family area. There's a density cap. We are
18 increasing the setback to 150 feet if the building
19 height is over 35 feet. We chose 35 feet because the
20 AG property abutting to the east, that is their maximum
21 height, as well. So any height over that, these
22 setbacks would be increased to 150 feet. And, also, if
23 that height is over 35 feet, a buffer lake needs to be
24 provided. And the site, you can see a conceptual
25 buffer lake drawn in there. And then if roads or

1 drives are within 125 feet of the boundary, a wall will
2 be required with 5 trees and 18 shrubs per 100 linear
3 feet.

4 The top graphic shows the -- the breakdown. This
5 is on the master concept -- and in the bottom left
6 corner where you can see the RPD area and then the
7 revised CPD area, a sketch of legal descriptions, and
8 both of these areas are on file.

9 The CPD shown in the bottom, you can see a little
10 bit of a preserve is within the CPD. That remains.
11 That was the preserve that served that CPD area so that
12 is unchanged. It covers the fire station, which I have
13 some pictures I'll bring up. And then the existing
14 sales facility, which is on the west side of the road,
15 and the parking lot that serves the sales facility.
16 But there's some upland area south of the parking lot,
17 and then the new triangle which could add some
18 expansion. And, of course, the sales facility can be
19 repurposed. And the uses of the CPD are unchanged.

20 The CPD is consistent with Policy 6.1.6, through
21 its proposed buffering and open space provided; and
22 Policy 6.1.7, by not creating a commercial development
23 in a premature area in a scattered strip design.

24 The south amendment area, the density cap on here
25 is 600 units, and, again, that's using new density, as

1 well as remaining density.

2 And since we have this zoomed in, you can see it a
3 little better. I wanted to point out these southern
4 entrances. Both of these southern entrances, you'll
5 note the -- the note of access says the same, that
6 they're in different locations. The original
7 requirement for this western entrance was to access
8 75th Street. So 75th Street is the east/west road.
9 That was to allow flexibility at that time to access on
10 any one of those roads. So we followed -- we just kind
11 of carried that same condition forward for the eastern,
12 but the western one is under construction, so it is at
13 Queen Avenue, and our plan is to put the eastern one at
14 Karen Avenue.

15 There are seven deviations that are approved, have
16 been previously approved, and there are no changes
17 proposed to that. I've highlighted here just real
18 quickly so you can see generally what they are about:
19 Fire hydrant spacing, lake bank slopes, setbacks from
20 bodies of water, setbacks from indigenous plant
21 communities; and then the last one that was recently
22 added to an administrative amendment was to allow an
23 open drainage cross section. That was for the southern
24 access. Because of the future land use of Lehigh Urban
25 Community, a closed drainage section was required.

1 Looking at the access points:

2 Access point one, that's the traffic light at the
3 main entrance at State Road 80. That was installed in
4 2017.

5 There are two entrances, emergency entrances, into
6 Portico, one from Cascades, the active adult community,
7 and the other from Hampton, the family community. So
8 access points two and three, emergency accesses into
9 Portico, both of those are complete and have been
10 certified.

11 Access number four, the first southern entrance is
12 90 percent constructed.

13 And then the new fifth access point, we think,
14 really brings in a unique opportunity even though they
15 are right next to each other. That eastern access
16 point, because of the way that Lehigh's canal systems
17 and roadway systems just are designed, that western
18 access -- southern access point that is already under
19 construction, that feeds you out to Buckingham.
20 There's a canal that cuts through. This new eastern
21 access will feed you to Sunshine; and eventually, once
22 Alico is constructed, would allow residents of River
23 Hall to go to Gulf Coast Town Center and the airport
24 without the need to go to I-75.

25 HEARING EXAMINER RIVERA: What is the timing --

1 you may get to it. So the western one was under
2 construction now. You said 90 percent --

3 MS. SAPEN: Yes.

4 HEARING EXAMINER RIVERA: -- complete. What's the
5 timing on the eastern one? Is it -- there seemed to be
6 discussion about that, as well, in here, and is that
7 completely at the developer's discretion, or does that
8 function like a traffic signalization warrant where
9 there's a certain number that triggers --

10 MS. SAPEN: There's a certain --

11 HEARING EXAMINER RIVERA: -- construction?

12 MS. SAPEN: -- number. EMS has a condition in
13 here --

14 HEARING EXAMINER RIVERA: That's one of my
15 questions because I wasn't sure if that was the western
16 or the eastern southerly --

17 MS. SAPEN: I --

18 HEARING EXAMINER RIVERA: -- access.

19 MS. SAPEN: We took it to be the eastern one.

20 HEARING EXAMINER RIVERA: Okay. I want to clarify
21 that so hold on one second and let me grab my questions
22 to be sure. That was on my list of questions to ask
23 you, and I apologize for interrupting you.

24 MS. SAPEN: No.

25 HEARING EXAMINER RIVERA: Because there's -- you

1 have two access connection -- conditions, excuse me.

2 One was carried over from either the '05 or the '15 --

3 MS. SAPEN: Here, this might help.

4 (Document submitted.)

5 HEARING EXAMINER RIVERA: Yes, thank you.

6 MS. SAPEN: Condition 23 is for the western access
7 point and is tied to the 1,598 density. And Condition
8 30 -- sorry, other way around. Condition 23 is tied to
9 the 2,695, and Condition 30 is tied to 3,244.

10 HEARING EXAMINER RIVERA: Okay. Because they both
11 just reference southerly access to 75th Street, which I
12 think they both are doing. So if we -- is there any
13 objection to clarifying between western and the eastern
14 on those conditions?

15 MS. SAPEN: I would let -- I think we need to --

16 HEARING EXAMINER RIVERA: We can discuss it later.

17 MS. SAPEN: -- discuss it with Staff.

18 HEARING EXAMINER RIVERA: It's on my list because
19 it was one of the things I kept coming back to, and
20 there's a note on the master concept plan, as well,
21 that talks about -- it's note 5, other southerly access
22 points to 75th Street may be constructed, and it
23 references back Condition 26 of the '05 resolution,
24 which is a little confusing because now we've adopted
25 the '15 resolutions and now this one.

1 MS. SAPEN: Right.

2 HEARING EXAMINER RIVERA: So I just want to be
3 clear about which one we're talking about.

4 MS. SAPEN: It was our understanding that access
5 point four was -- was the subject of the last public
6 hearing --

7 HEARING EXAMINER RIVERA: Okay.

8 MS. SAPEN: -- and that there was a density
9 threshold put on access four at that time. And then at
10 this new public hearing, the new density request, that
11 access point five would be required if you wanted to
12 add these 549 additional units.

13 HEARING EXAMINER RIVERA: Okay. And we can put a
14 pin in that and come back to it. It was just -- it was
15 very confusing the way it's written because they just
16 both talk about the southerly access to 75th, which
17 they both are so --

18 MS. SAPEN: They both are.

19 HEARING EXAMINER RIVERA: -- I want to be sure
20 that we're -- that you're not running afoul of
21 something where someone starts asking why it hasn't --

22 MS. SAPEN: Right.

23 HEARING EXAMINER RIVERA: -- been constructed if
24 that wasn't the intention.

25 MS. SAPEN: It might be worth noting specifically

1 on the master concept plan this access tied to this
2 density, this access -- we can discuss it with Staff,
3 but I think that might be a way to clean that up.

4 HEARING EXAMINER RIVERA: And I think at a minimum
5 we need to do that anyway just to correct that note
6 because it's referencing still the old condition that
7 got carried forward into new Condition, I think, 23.
8 So at a very minimum it should be referencing 23 of
9 this resolution and not something that we're --

10 MS. SAPEN: A previous --

11 HEARING EXAMINER RIVERA: -- rescinding and
12 replacing by this one.

13 MR. DANLEY: Right, just --

14 HEARING EXAMINER RIVERA: But I'm sorry to
15 interrupt.

16 MR. DANLEY: -- just to put it on the record --

17 HEARING EXAMINER RIVERA: Yes.

18 MR. DANLEY: -- Dirk Danley. Any -- any changes
19 to those conditions, I'd also want to loop emergency
20 services in. They don't typically participate in these
21 hearings, but I would definitely want to make sure that
22 their intent is being met, as well.

23 HEARING EXAMINER RIVERA: Absolutely. It was
24 their language, it looked like, exactly that got
25 carried over into Condition 30.

1 MR. DANLEY: Correct.

2 HEARING EXAMINER RIVERA: It just, again, wasn't
3 clear to me which access we've been talking about. So
4 thank you.

5 MS. SAPEN: So the first access to 75th Street,
6 this is the western one, the aerial -- you can see here
7 there's two aerials from '22 and from '23. You can see
8 quite a lot of work has been done in that year. North
9 of the canal is -- is done. It is landscaped. You can
10 see a photo of that in the upper right. The canal
11 crossing is -- is nearly done. You can see the
12 infrastructure as shown on the aerial. And then south
13 of the canal is stabilized, and the development order
14 is approved, and a bond is in place. We're just
15 waiting for a last couple steps, and then construction
16 will get going on that. We're expecting completion of
17 that by the first of March.

18 HEARING EXAMINER RIVERA: And that will be gated,
19 according to the master concept plan?

20 MS. SAPEN: Yes, yes. EMS will be allowed to go
21 freely, but only River Hall residents would be able to
22 come and go other than emergency services.

23 Some amenities have been added to River Hall
24 community since the last zoning amendment, the past
25 public hearing. Photos here are from the River Hall

1 Town Center. Again, that's in the middle of the site.
2 It's by -- by Hampton Lakes. There were four
3 pickleball courts added, two tennis courts -- the
4 pickleball courts are on the left in the photo, and
5 then the tennis courts are on the right in the photo --
6 and then bocce ball courts, and there's a courtyard
7 green between them, and you can see the little sitting
8 area. And, again, this is enjoyed by the golf
9 community, as well as the Hampton community.

10 The tiki pool and bar, that was the expansion,
11 that amendment where we added five acres to the golf
12 club. And it's a very resort feel there, walking in a
13 real like wide boardwalk between two of the finishing
14 greens and going to the tiki pool. It's an open-air
15 bar with full food service, and it's got a nice
16 southern view across that expanded lake, you can see
17 here, with poolside cabanas.

18 The fire station has been completed. I got there
19 last week and took this photo. And with that, there is
20 adequate level of service from Fort Myers Shores Fire
21 Protection, and adequate service with -- from EMS, of
22 course, with that condition that they have added about
23 the southern access.

24 Adequate service exists from Lee County Sheriff
25 and the School District, and Lee County Solid Waste has

1 capacity.

2 And bringing back -- again, to the outlying
3 suburban future land use, and the distinction that
4 infrastructure is planned or in place, both service
5 areas for -- future service areas for water and sewer,
6 the entire property is within those service areas, and
7 this map really shows a delineation, a clear break
8 between urban and -- and rural development.

9 So in conclusion, I agree with the findings and
10 conclusions of the Staff Report. The proposal is
11 internally consistent with other policies within the
12 Lee Plan goals and policies. No additional deviations
13 are added by this request, and no new uses are
14 proposed.

15 We've added special setbacks and design
16 requirements in the northern RMF-1 area, and the
17 proposed density is consistent, if not less, than the
18 neighboring densities and surrounding development
19 trends in the area. And infrastructure -- which is the
20 key to this amendment, infrastructure is in place to
21 support the requested density.

22 That concludes mine unless you have any questions
23 for me.

24 HEARING EXAMINER RIVERA: I asked as we went
25 along. Thank you so much.

1 MS. SAPEN: Thank you very much.

2 HEARING EXAMINER RIVERA: Good morning.

3 MR. BARRACO: Good morning, Madam Hearing
4 Examiner. My name is Carl Barraco. I'm a professional
5 engineer with Barraco and Associates. I've been
6 accepted as an expert witness in civil engineering in
7 this venue in the past, my résumé is on file, and I
8 would ask to be seen as such again today.

9 HEARING EXAMINER RIVERA: Yes, thank you.

10 MR. BARRACO: Thank you.

11 I'm going to cover utilities and drainage for the
12 project. And, Jenn, where do I --

13 MR. AKIN: (Indicating.)

14 MR. BARRACO: Okay. Wrong way, there we go.

15 So utilities. Lee County Utilities has available
16 potable water and sanitary sewer. That is evidenced by
17 letters of availability that are on file.

18 Since I have been involved with River Hall since
19 the beginning of the infrastructure, including the
20 force main that was constructed within State Road 80
21 for River Hall, I do know that the River Hall water
22 distribution and sanitary collection systems were
23 originally designed to accommodate -- accommodate
24 various land uses within the development. And we had
25 to do that because back then we really had to design

1 for the maximum potential demands within the project.
2 We didn't know how this project would develop over the
3 years, so we did it to be conservative.

4 Finally, with the Water Management District, there
5 is a Water Management permit. The numbers are on the
6 board. The -- as you heard already from Jenn, the
7 development footprint has not changed since the
8 beginning of this project, with the possible exception
9 of the approximate .5 acres of uplands that were added,
10 which, again, Ms. Sopen mentioned earlier.

11 The land uses within the surface water management
12 system continue to mature with the surrounding area and
13 market conditions as originally intended and assumed.

14 The existing River Hall construction and operation
15 ERP will be modified, as it has been in the past, to
16 accommodate the land use as it develops, and that water
17 management system is owned and operated and maintained
18 by River Hall Community Development District.

19 And then, finally, there are no changes proposed
20 to the historic discharge rates of this project. All
21 of the outfalls on the external of the project which
22 discharge off-site are in place; and, again, they are
23 owned, operated, and maintained by the Community
24 Development District.

25 HEARING EXAMINER RIVERA: So there won't be any

1 off-site impacts or changes to anyone as a result of
2 the additional density?

3 MR. BARRACO: No. Everything is internal, and it
4 will stay consistent with the existing water management
5 plan.

6 HEARING EXAMINER RIVERA: Do you happen to know --
7 there's a condition that speaks to water quality
8 monitoring, and it happens to have the exact same
9 permit number that ends with a "W" -- I think it's a
10 consumptive use permit probably -- instead of a "P."
11 Is that correct, they both have the same number except
12 for the last letter?

13 MR. BARRACO: Different permits. One is a
14 drainage permit, and one is a water use permit.

15 HEARING EXAMINER RIVERA: Okay. I just wanted to
16 be sure.

17 MR. BARRACO: And there has been continuing
18 monitoring reports done, and have all -- all have been
19 acceptable.

20 HEARING EXAMINER RIVERA: Okay, thank you.

21 MR. BARRACO: That's all I have for you. If you
22 have any questions, I'd be happy to answer them.

23 HEARING EXAMINER RIVERA: That was the extent of
24 my questions at this time, thank you.

25 MR. BARRACO: Thank you.

1 Oh, I'm sorry, I did have two more. These are
2 really simple. This is the 100-year floodplain map
3 from the Lee Plan. That is Map 5B, and it shows where
4 the project is located, not within the 100-year
5 floodplain. And similar, the coastal high hazard map,
6 Map 5A, again, shows that the property we're talking
7 about is not within that coastal high hazard area.

8 Thank you.

9 HEARING EXAMINER RIVERA: Thank you.

10 Good morning.

11 MR. MARTIN: Good morning. I'm Kirk Martin with
12 Water Science Associates. I've been a hydrogeologist
13 in Lee County for the last 40 years, been approved as
14 an expert in hydrogeology, water resources, and
15 modeling in this forum and others, and ask to be
16 received as such.

17 HEARING EXAMINER RIVERA: Yes, thank you.

18 MR. MARTIN: Thank you.

19 To my knowledge, there was no water resources
20 issues raised by Staff; but as part of the team's
21 preparation, I want to make sure that the record was
22 full and complete. We wanted to at least address some
23 water supply issues, and that way if there's any
24 issues, we can address it by questions.

25 So as Carl and -- and Jennifer have said, the

1 potable water and the wastewater services are being
2 provided by Lee County Utilities, so those are not an
3 issue.

4 The irrigation water, however, is provided on-site
5 under Water Management District Permit 36-040006-W.
6 That permit provides for all the irrigation demands for
7 the entire project build-out. Therefore, that permit
8 and the allocations are unaffected by the proposed
9 changes in this -- in this request.

10 The permit also addresses all potential impacts to
11 the aquifers, the environment, and other users. As
12 part of the creation of that water use permit, we
13 actually chose three different permit sources in order
14 to make sure there was no adverse impact on any one
15 particular source. About half of it comes from the
16 water table aquifer, and that is actually the lake
17 system. So it's really stormwater harvesting.
18 However, in the dry season, we do have to supplement
19 that water with groundwater, at least two different --
20 two different aquifers, the sandstone and Lower
21 Hawthorn.

22 Lower Hawthorn is a brackish aquifer down about
23 500 feet. There's really no issues. There's no
24 competing uses. There's -- there's -- it's a very
25 robust resource.

1 Sandstone, however, does have issues further south
2 into Lehigh Acres; however, this site, there is no
3 issues with regard to water levels seasonally or -- or
4 in any other way. So we were able through modeling,
5 through evaluation, to provide the District with
6 reasonable assurance that these resources were
7 available.

8 And just -- and just to give you an overview of
9 what it looks like, the green areas are confining
10 layers of sulphate aquifers. So the areas that we're
11 using are the water table -- again, that's just the
12 lake system we use at the top; the sandstone, which
13 occurs around 100 feet or so, and that's a freshwater
14 resource that, like I said, does have issues to the
15 south but not at this particular site; and then the
16 Lower Hawthorn, which is a brackish source down deep
17 below 500 feet.

18 And that's all I had. I do have some -- some
19 illustrations if any questions come up, but I don't
20 think they're necessary at this point.

21 HEARING EXAMINER RIVERA: Just to clarify, on the
22 slide you said that it was unaffected by the change,
23 but I assume there have been modifications required to
24 address the additional units?

25 MR. MARTIN: No, because those were already

1 planned. In fact, ultimately we may actually see some
2 decrease in the overall indication; but, no, there's
3 no -- do not see any need for changes to the allocation
4 in the current permit. That permit should be good for
5 everything.

6 HEARING EXAMINER RIVERA: So the permit that you
7 had anticipated additional units beyond what were
8 actually constructed at the time that you got the
9 permit?

10 MR. MARTIN: It didn't necessarily look at units.
11 It looked at land areas that may be irrigated, and that
12 was already involved --

13 HEARING EXAMINER RIVERA: So --

14 MR. MARTIN: -- because, like they say, the
15 footprint hasn't really changed.

16 HEARING EXAMINER RIVERA: Right, it's just a --
17 it's a relationship, right, between more units creating
18 more demand.

19 MR. MARTIN: That is correct.

20 HEARING EXAMINER RIVERA: And so just to make sure
21 that -- on the record that we know that you've looked
22 at that --

23 MR. MARTIN: Yeah. And, again, we didn't look at
24 units -- you know, when you look at potable water, you
25 think about units and per capita. In irrigation we

1 look at land areas, and the land area hasn't changed in
2 that regard.

3 HEARING EXAMINER RIVERA: Okay. So that
4 additional -- it's very minor, but the .5 acres that
5 they're looking at, that would be negligible --

6 MR. MARTIN: Nonissue, yes, ma'am.

7 HEARING EXAMINER RIVERA: Okay. And there's
8 permitting requirements under that permit that you
9 provided that require groundwater monitoring?

10 MR. MARTIN: There is. In fact, there's
11 permits -- there's monitoring required by the Water
12 Management District as part of that permit. There's
13 also monitoring requirements even more robust required
14 by Lee County D&R, and those are ongoing. I think
15 they're quarterly, and we have a whole record of that,
16 and there's been no issues to this date.

17 HEARING EXAMINER RIVERA: Okay, thank you.

18 MR. MARTIN: Yes, ma'am.

19 HEARING EXAMINER RIVERA: Good morning.

20 MR. JOHNSON: Good morning, Shane Johnson with
21 Passarella & Associates. I'm a project ecologist. I
22 have been accepted as an expert witness in ecology
23 previously, my résumé is on file, and I ask once again
24 to be accepted today, please.

25 HEARING EXAMINER RIVERA: Yes, thank you.

1 MR. JOHNSON: Thank you.

2 So as part of any rezone, environmental
3 information required is the land use, their habitat
4 mapping, which is a FLUCCS map, and a protected species
5 survey.

6 So Passarella & Associates conducted the updated
7 mapping of the property in August 2021 and March 2022
8 on the three areas that have been discussed today as
9 part of the project boundary. So the large area in the
10 southeast here and this track here, essentially, you've
11 heard has already been cleared of native vegetation and
12 prepped for development. So those reflect as disturbed
13 land in our mapping. Also, we separated out the lakes
14 that were, you know, man-made surface water management
15 lakes as part of that, as well. And together that
16 disturbed land, plus the lake area, represents about 94
17 percent of the property.

18 So there's approximately 9.94 acres of native
19 vegetation that occurs within this square area that
20 you've heard discussed this morning. That's primarily
21 wetland. There's 8.2 acres of wetlands within that
22 that are not proposed for development. So this area
23 here, as you've heard, is primarily utilized for open
24 space and preserve area, with the exception potentially
25 of this triangle on the corner here. I want to discuss

1 that.

2 We -- as part of the original information we
3 provided as part of this zoning effort, we mapped this
4 area as wetland; but upon further investigation of this
5 area and field visits, it was clear that it was
6 uplands. So we went back and fixed that, for the
7 record.

8 And you can -- you can see a clear -- maybe not on
9 this projection, but a clear signature difference
10 between this area and the adjacent wetland, which is
11 primarily cypress here to the south. The corner here
12 consists primarily of pine and oak, with heavy saw
13 palmetto in the ground cover, which is upland; plus,
14 there was a clear -- a gradient difference between this
15 area and the adjacent wetland. So we remapped that as
16 uplands and provided that to the County, for the
17 record.

18 So as Ms. Sopen indicated, there's a half-acre
19 area that could potentially be developed within that
20 triangle area in the northeast corner since it is
21 uplands, but the balance, again, is part of open space
22 preserve.

23 HEARING EXAMINER RIVERA: And that half acre it
24 immediately abuts, is that the model center that's
25 right there --

1 MR. JOHNSON: The building there, is it --

2 MS. SAPEN: Sales center.

3 MR. JOHNSON: Sales center.

4 HEARING EXAMINER RIVERA: So you won't have to
5 traverse or affect any of the wetlands to --

6 MR. JOHNSON: Correct.

7 HEARING EXAMINER RIVERA: -- access that area?

8 MR. JOHNSON: Correct.

9 HEARING EXAMINER RIVERA: Thank you.

10 MR. JOHNSON: And the Applicant understands, you
11 know, development in that area would require a review
12 and approval of the wetland lines by the Water
13 Management District, and for further development, as
14 well.

15 So with respect to protected species, Passarella &
16 Associates conducted a Lee County protected species
17 survey in August 2021 and March '22. There were 57
18 gopher tortoise burrows identified within the project
19 limits, one burrowing owl, and two hand ferns. So if
20 you -- the hand ferns are located within that square
21 piece within the wetlands, again, not proposed for
22 development. There was two tortoise burrows located
23 within this northern tract here, and the remaining were
24 down here in the larger tract in the southeast. So
25 this inset is provided just because of the density of

1 tortoise burrows to kind of get a better look at those.

2 So as Ms. Sapen indicated, this area is already --
3 there's earthmoving going on associated with an
4 existing DO. There is a management plan in place that
5 handles gopher tortoises and the burrowing owl. These
6 tortoise -- tortoises have already been relocated to
7 the adjacent preserve area in accordance with that
8 management plan and in accordance with an incidental
9 take permit that was previously issued for the entire
10 project by the Florida Fish and Wildlife Conservation
11 Commission.

12 So, again, these are mostly tortoise burrows.
13 There is one burrowing owl burrow located right there.
14 There was also another permit obtained for the
15 burrowing owl, and that has since been removed in
16 accordance with that permit, again, issued by the
17 Florida Fish and Wildlife Conservation Commission.

18 HEARING EXAMINER RIVERA: Okay. So the DO for the
19 southeastern has already been issued. If you do decide
20 to develop in the northwestern, you would have to do
21 another species review before DO would be approved for
22 that portion?

23 MR. JOHNSON: Well, we've completed the protected
24 species survey, which is good for a period of five
25 years. We would be required to produce another

1 management plan for that area.

2 HEARING EXAMINER RIVERA: Okay.

3 MR. JOHNSON: So that management plan would
4 include the species that we observed -- the gopher
5 tortoise, the burrowing owl, and potentially the hand
6 fern -- but in accordance with previous conditions
7 approved from previous zoning efforts, that would also
8 include protection measures for the American alligator,
9 Florida scrub jay, and the sandhill crane, in
10 accordance with Condition Number 3 of the Staff Report.

11 Just a quick note on the Florida scrub jay,
12 because this issue came up while we were going through
13 the Comp Plan amendment process. Although we didn't
14 observe any Florida scrub jays in our survey, there's
15 certainly the potential that they could utilize
16 portions of this site, but that's a nonissue because
17 we've already gone through the environmental permitting
18 process, there was a Corps of Engineers permit issued
19 many years ago; and as part of that process, the U.S.
20 Fish and Wildlife Service evaluated the project for
21 federally listed species issues, including the Florida
22 scrub jay. And because of the preserve that's provided
23 on the property, primarily this preserve in the
24 southeast corner that provides scrub jay habitat, and
25 its adjacency to Lee County's Hickey's Creek Preserve,

1 which there are known scrub jay occurrences, the U.S.
2 Fish and Wildlife Service determined that the project
3 will not affect the Florida scrub jay. So if that
4 issue does come up, I just want to get in front of that
5 and say this is a nonissue. It's already been
6 permitted and put to rest so -- for the -- for the
7 record.

8 That's all I had. So if you have any questions,
9 I'll be happy to answer.

10 HEARING EXAMINER RIVERA: Nothing further, thank
11 you.

12 MR. JOHNSON: Okay, thank you.

13 HEARING EXAMINER RIVERA: Good morning.

14 MR. LEUNG: Good morning. My name is Steve Leung,
15 I'm with David Plummer and Associates, traffic
16 consultant for the Applicant. I've been sworn in. I
17 have previously been qualified to provide expert
18 testimony in the field of transportation planning and
19 site impact analysis, and I ask to be qualified to
20 speak today.

21 HEARING EXAMINER RIVERA: Yes, thank you.

22 MR. LEUNG: Thank you.

23 Transportation, the impacts that we're looking at
24 is the additional 549 single-family dwelling units
25 being proposed for River Hall. We obviously looked at

1 the surrounding roadway network in terms of
2 transportation on a segment basis, as well as on --
3 with the specific intersections. And how do we do
4 that? Well, the Florida Department of Transportation
5 and Lee County have established level of service
6 standards for their roadways. We look at the future
7 traffic volumes associated with the project; and then
8 based on that, we measure against the level of service
9 standard and the capacity provided based on the level
10 of service standards. And in terms of level of
11 standard (sic), we have a grading of between A and in
12 this case for State Road 80, the level of service
13 standard maximum allowed would be LOS D. So we go from
14 A, B, C, to D, A being the best, D being the most --
15 most vehicles that could be accommodated.

16 So what we found was that for State Road 80, and
17 as well as the County roads seen here in the exhibit --
18 we have State Road 31, State Road 80, and Buckingham
19 Road. Buckingham Road is a County road. And we found
20 that based on the expected future traffic volumes for
21 both background and the project, that it all meets the
22 acceptable level of service standard.

23 And regarding the intersections, we also looked at
24 State Road 31, Buckingham Road, and of course at the
25 entrance to River Hall Parkway. Again, the signal was

1 installed and fully operational in 2017. We've been
2 monitoring the traffic volumes and the operations of
3 that -- of the intersection, and we expect that
4 intersection will operate at an acceptable level of
5 service through the build-out of River Hall.

6 We've talked -- you've heard a lot of testimony
7 regarding the southern entrances being provided.
8 Eventually those entrances will be open and fully
9 functional. It's going to enhance fire and EMS access,
10 as well as the River Hall Elementary School, which
11 obviously is on-site, and it's been in operation for --
12 since almost day one, and it will provide great
13 accessibility, especially from the population to the
14 south in Lehigh, and have an extra access point for the
15 project.

16 HEARING EXAMINER RIVERA: So the school -- just to
17 clarify, I think the testimony earlier was that the
18 southern access would be gated and only accessible to
19 residents or FIRE EMS. Will it be accessible to the
20 Public School District, as well?

21 MR. LEUNG: I believe so. That's something that
22 I'll ask Carl to clarify, if you need further
23 explanation.

24 In terms of road impact fees, the additional 549
25 single-family dwelling units are expected to generate

1 approximately \$5.5 million in road impact fees that the
2 County could put towards any other roadway improvements
3 in the area.

4 HEARING EXAMINER RIVERA: (Nods head.)

5 MR. LEUNG: Other than that, if you have any
6 questions, I'll be happy to answer.

7 HEARING EXAMINER RIVERA: Can you just explain
8 the -- it wasn't in the TIS, I don't believe, but the
9 County's infrastructure memo made a distinction
10 between -- there were six roadway segments that were
11 identified as being significantly affected or
12 significantly impacted, but the conclusion was that
13 there were no adverse affects to those roadway
14 segments. Can you just explain what the difference is
15 between that terminology?

16 MR. LEUNG: Certainly. When we say significant
17 impact, it means that the project generates
18 approximately five percent -- it will consume five
19 percent of the service volume of that roadway. We do
20 consume that, but we don't trigger any deficiencies,
21 and that's the important thing. Yes, we are adding
22 traffic. With additional units, you are expected to
23 add traffic. But as long as we don't trigger to make a
24 failure, then -- then there's -- we're not really
25 responsible to help improve or eliminate that

1 deficiency.

2 HEARING EXAMINER RIVERA: Okay. And with respect
3 to State Road 80, because that is a State Road, that --
4 you did evaluate it; but if there were improvements
5 that would be required, that would be something that
6 the State would handle and not the County?

7 MR. LEUNG: Correct, correct. As part of the
8 whole process, State Road 80, it's in the 2045
9 long-range plan. This is the long -- you know, the
10 long-range outlook for the State, as well as for the
11 Lee County MPO, which govern the future improvements
12 that will be needed up to year 2045 at this point. And
13 they've established that roadway, even though it
14 appears to be busy, and based on our traffic analysis,
15 because we have to kind of assume the worst-case
16 condition, that we anticipate that there may be
17 deficiency based on the methodology that we're required
18 to -- to -- to assess the traffic conditions, but in
19 real life -- sorry, in real life that condition --
20 oops -- that's been operating well within the level of
21 service standard, and in the future expected to -- to
22 continue on. So they actually expect a widening of
23 State Road 80 from State Road 31 all the way to the
24 county line at this point.

25 HEARING EXAMINER RIVERA: And the southern

1 entrances or exits -- access points, I suppose I should
2 call them, the two of them, they are approximate -- one
3 of them is actually within the southeastern area that
4 we're talking about. The other one is very proximate.
5 Is it possible to assign how many trips you think those
6 are going to absorb from the primary entrance?

7 MR. LEUNG: Yeah, we've looked at that for many
8 years, and we don't anticipate any more than two or
9 three percent of the River Hall traffic to use those
10 entrances. Now, that may change based on what's
11 happening on, you know, the future growth of the
12 county. As you know, you know, we're almost at 800,000
13 in current population now, a far cry from when this
14 project was approved.

15 So the important things are that we're providing
16 those opportunities. Whether the residents are willing
17 to use it or desire to use it, it's up to that, but the
18 important thing is that we are providing that
19 opportunity to help balance traffic so that we don't
20 have all your emphasis up here at State Road 80.
21 Again, this is -- you just have to provide that
22 opportunity.

23 HEARING EXAMINER RIVERA: So the intention is for
24 those entrances or access points, though, to act as
25 relievers, essentially, to the current traffic where

1 it's a single access point for the entirety of the
2 development, and reduced conflict points, is that
3 generally the idea?

4 MR. LEUNG: Yes, correct.

5 HEARING EXAMINER RIVERA: Okay, thank you. Those
6 are all the questions I had.

7 Good morning again.

8 MR. AKIN: Good morning again, Madam Hearing
9 Examiner. Once again for the record, Richard Akin.

10 So in summary, that concludes our presentation.
11 We believe that the proposed development makes the
12 most efficient use of the existing infrastructure by
13 extending development into the less developed areas
14 that are within the existing developed footprint and
15 have the existing infrastructure to support it.

16 We believe that Ms. Sapen's testimony demonstrated
17 that the project, as proposed, is consistent with the
18 recently approved plan amendments and rezonings in the
19 area, including the Buckingham 345 project and the
20 Portico project, and is actually less than the
21 (unintelligible) at this point in the project.

22 The project also meets the relevant criteria for
23 rezoning in the Land Development Code. It's internally
24 consistent with the other portions of the Lee Plan,
25 including the Caloosahatchee Shores plan, which was

1 addressed at length in the -- in the Staff Report, but
2 it was also -- we provided evidence of community
3 meetings and the other necessary steps to be taken.

4 It's also supported by the relevant and
5 appropriate data analysis, as you heard from the
6 experts here this morning.

7 I would like to just ask you briefly -- you know,
8 I did mention early on this morning the 48-hour letter
9 and the specific clarifications that we pointed out in
10 Staff's response. Is there anything about that that
11 you require further clarification on before we turn it
12 over to Staff?

13 HEARING EXAMINER RIVERA: I have questions about
14 some of the conditions. So I can either wait until
15 after Staff presents, or we can do that now, whichever
16 you prefer. Does Staff have a -- there are not many.
17 It's very -- it seems like getting into the weeds of
18 things a little bit, but there's been so many
19 iterations of this that I want to be sure that we're
20 dealing with the correct --

21 MR. AKIN: Sure.

22 HEARING EXAMINER RIVERA: The first is just a
23 question. Condition 1 -- this wasn't addressed in the
24 48-hour letter, but what is the significance of the
25 January 11th plat date? Because we obviously

1 haven't -- I mean, that's today, but is the idea just
2 that anything that's not platted prior to today, you're
3 freezing that date in time?

4 MR. DANLEY: Yes, the intent is to protect
5 existing development from being increased in the
6 future.

7 HEARING EXAMINER RIVERA: Okay. So basically
8 there's a built-in condition that says what's already
9 on the ground right now is on the ground right now; and
10 if the plat has been approved, then those have been
11 approved, but there's no concern that they could come
12 back and change something that's already been platted?

13 MR. DANLEY: Correct.

14 HEARING EXAMINER RIVERA: So that's what that
15 protection is, okay.

16 And then we already talked about --

17 MS. SAPEN: Can I -- excuse me, can I interrupt
18 with that?

19 HEARING EXAMINER RIVERA: Yes.

20 MS. SAPEN: I would want to point out that that
21 would be platted lots because the Tract L is a platted
22 tract right now that doesn't have any lots in it. It's
23 that eastern one that's just north of the future area.
24 So we took that condition to mean --

25 HEARING EXAMINER RIVERA: That has the

1 infrastructure in place, but the lots hadn't been
2 platted around it?

3 MS. SAPEN: There's no infrastructure in place
4 either.

5 HEARING EXAMINER RIVERA: Oh, okay.

6 MS. SAPEN: It's just an unplatted future tract,
7 but there's no platted residential tract. And we took
8 that to -- the intention of that condition to be
9 platted lots, not tracts.

10 HEARING EXAMINER RIVERA: I can make that change
11 then if Staff is amenable to that.

12 MR. DANLEY: Right.

13 HEARING EXAMINER RIVERA: We talked about 23 and
14 30 a little bit. We'll just need to come back to that
15 at some point. And I think we're going to have to
16 leave the record open for master concept plan changes
17 regardless, so if that's something that we want to work
18 on, I will just leave that for later.

19 Condition 24 -- and you mention it here about
20 Portico. What exactly is that trying to say? If that
21 has already been constructed, are we just acknowledging
22 that the -- the Portico and River Hall wall has already
23 been constructed?

24 MR. DANLEY: That's the intent of --

25 HEARING EXAMINER RIVERA: Okay. So it's just

1 recognizing that that has already occurred based on the
2 ADD that you referenced --

3 MR. DANLEY: Uh-huh.

4 HEARING EXAMINER RIVERA: -- back in 2007.

5 MR. DANLEY: Yes.

6 HEARING EXAMINER RIVERA: Okay.

7 And the same with 26. The confusion that I have
8 is when we're removing 2 for River Hall 2 -- I
9 understand through Ms. Sopen's testimony that that was
10 essentially what we're talking about today, was River
11 Hall 2. But when we just say River Hall, then that
12 means River Hall. So, again, I don't know if that's
13 already been done -- because then Mr. Barraco's
14 testimony was that the proposal doesn't change the
15 stormwater management system. So are these just
16 memorializations of things that have already happened?

17 MR. DANLEY: Correct.

18 HEARING EXAMINER RIVERA: Okay. They're not new
19 requirements?

20 MR. DANLEY: Correct.

21 HEARING EXAMINER RIVERA: Okay.

22 MR. DANLEY: And one of the conditions -- I forget
23 which one it is now -- in the 48-hour letter, we
24 basically added language that said this condition has
25 been satisfied.

1 HEARING EXAMINER RIVERA: Yes.

2 MR. DANLEY: Just to keep -- ensure that it is
3 there, it's about the traffic signalization on State
4 Road 80. It may be beneficial for these conditions
5 that you're bringing up that seem to just be lingering
6 even though the condition has been met up to this
7 point.

8 HEARING EXAMINER RIVERA: Okay. What I may ask
9 for then, again, if leaving the record open, is just if
10 I could get clarification on going back through any of
11 these, because there are 30 conditions on this case, of
12 what has already been satisfied. I'm fine to leave it
13 in if there's comfort that's provided by virtue of
14 that, but, again, I don't -- it wasn't clear to me
15 whether we were imposing new requirements on just the
16 new development areas, or if these were things that had
17 already been complied with.

18 MR. AKIN: Sure. And it was my under -- so these
19 are not -- the only language that's been added is the
20 underlying language so they're not new conditions,
21 obviously. And I guess our understanding of that is
22 these are existing conditions that in some part -- in
23 some places have been complied with or in other places
24 may be in various stages of compliance based upon what
25 the condition may be, and that we're just carrying it

1 forward. We're not eliminating it as part of this
2 rezoning so...

3 HEARING EXAMINER RIVERA: Okay. And then my last
4 question, I believe, on the 48-hour letter, under the
5 new property development table, it distinguishes lot
6 sizes between R-1 and R-2, so my -- and R-1A, so my
7 first question I believe Ms. Sapen already answered,
8 which was that this request is not affecting lot size
9 anywhere within River Hall --

10 MS. SAPEN: That's correct.

11 HEARING EXAMINER RIVERA: -- correct?

12 And then where are the R-2 lots? I looked all
13 over the master concept plan. I can't always see these
14 things, once you start staring at something for too
15 long, but I don't see R-2 anywhere on the master
16 concept plan.

17 MS. SAPEN: Let me look at that and get an answer.

18 HEARING EXAMINER RIVERA: Okay.

19 MS. SAPEN: That might have been an area that was
20 removed from an old plan, but I'll review.

21 HEARING EXAMINER RIVERA: Thank you. Again, just
22 while we're doing cleanup, we may as well do all of it.

23 MS. SAPEN: Uh-huh.

24 HEARING EXAMINER RIVERA: And then that was the
25 extent of it. Because otherwise it sounded like you

1 did provide me with the attachments for the conditions,
2 so I've got those now; and then if Applicant is in
3 agreement with the Staff's strike-through and underline
4 changes, then that's the document that I'll work from
5 until we have the revisions post-hearing.

6 Okay, thank you.

7 MR. AKIN: Thank you.

8 HEARING EXAMINER RIVERA: So if Staff is ready --

9 (Sotto voce between Hearing Examiner and
10 reporter.)

11 HEARING EXAMINER RIVERA: Okay. We'll take a
12 break after Staff's presentation before we start the
13 public comment, if you're ready.

14 (Staff Exhibit 2 submitted.)

15 HEARING EXAMINER RIVERA: Thank you. So I will
16 accept Staff's presentation as Staff Exhibit 2. Staff
17 Exhibit 1 was the Staff Report, and Staff Exhibit A was
18 the 48-hour letter received prior to hearing.

19 Good morning.

20 MR. DANLEY: Good morning.

21 Just in case I miss it later, I wanted to just
22 jump in with clarification from the Applicant's
23 presentation regarding EMS services. Based on the memo
24 that was provided by EMS, with the conditions that were
25 provided by their staff, they believe that they're able

1 to meet the requirements of the EMS response times.
2 The fire station currently does not serve with EMS.
3 They are -- they are trying to work that out as of the
4 meeting earlier this week with our EMS director, but I
5 just wanted to put that on the record, they're trying
6 to solve that problem. You know, jurisdiction of fire
7 districts and EMS are different so working out the
8 conditions of that requirement are still being --
9 that's in process.

10 HEARING EXAMINER RIVERA: Okay. So EMS provisions
11 are made to the development, just not from the fire
12 station that's on-site?

13 MR. DANLEY: Correct.

14 HEARING EXAMINER RIVERA: Okay, thank you.

15 MR. DANLEY: For the record, Dirk Danley. I'm a
16 principal planner with the Zoning section. I have
17 previously been accepted as an expert witness in the
18 Lee Plan and Land Development Code, and I'd like to do
19 so again today.

20 HEARING EXAMINER RIVERA: Yes, thank you.

21 MR. DANLEY: The Applicant's already gone into
22 great detail about what the request is today so I'll
23 try not to belabor any of the points that they've gone
24 through, but there are some changes happening, and it's
25 kind of hard to track just because there's been a lot

1 of history on this property, and most of it is
2 developed to this point. But there is going to be an
3 increase proposed by the Applicant of 549 dwelling
4 units, a reduction of 30,000 square feet of commercial,
5 an addition at 9.98 acres of land, and they're not
6 proposing any new development areas or deviations as
7 part of this request.

8 Just for reference, this is the aerial. This is
9 the 9.98 acres, and we'll show it in the master concept
10 plan in a second that it's intended to be added. The
11 Applicant did state accurately that this is wholly
12 within River Hall, and adding it in doesn't change or
13 expand the boundary of it, other than just also holding
14 that piece into their existing development.

15 The Applicant's already gone through the master
16 concept plan, but this is -- this is -- the requested
17 master concept plan that's part of this request is not
18 in any of those previous iterations that were discussed
19 by the Applicant. It does highlight the three proposed
20 change areas. We'll go into those a little bit more in
21 detail, the first of which is that that 9.98 acres on
22 the western side, the area was considered the Town
23 Center before, on the previous master concept plan,
24 which was commercial zoning district that considered
25 multi-family. That commercial zoning district is

1 proposed to be reduced, as dictated here, with just
2 multi-family being considered for this area.

3 And then the southern -- southeastern quadrant, as
4 well, that -- that is part of this in terms of them
5 taking in development intensity, but my understanding
6 is that there's not a change in the pattern here. It's
7 just what they -- what they have requested to increase
8 the intensity in this -- or the density in this area.

9 The Applicant's already gone through the zoning
10 history -- the zoning history up to this point. We
11 don't belabor those points either, but just to show
12 that there's been a progression of growth in the area,
13 increasing the density. The inclusion of commercial
14 intensity here in Z-05 -- or, sorry, in the Z-15
15 case -- oh, sorry, Z-05 did have commercial intensity,
16 and the Z-15 carried that forward just with an addition
17 of density, as well.

18 There have been a handful of ADDs. The Applicant
19 did go through those so we won't belabor those points
20 either.

21 I wanted to speak a little bit more about the CPA
22 that's companion to this case. That isn't heard at
23 this forum but has gone through the LPA and was
24 recommended for transmittal. Which for the benefit of
25 the public, that means that LPA was recommending that

1 the State considers -- reviews this case prior to the
2 Board making a final approval or denial of the case.
3 The Board did, in fact, transmit the case back on
4 January 18th of last year to the State, and the intent
5 is to wait to make a final decision on that CPA until
6 the time that this has made it to the zoning -- or the
7 zoning has made it to the Board hearing.

8 This is just a table listing out what changes were
9 proposed as part of the CPA, and that was just changing
10 the future land use categories -- we'll go through the
11 density in a little bit, but what each of those
12 densities -- or what each of those future land use
13 categories mean in terms of density, but just with the
14 changes, this is the acreage that's associated with
15 those proposed changes.

16 HEARING EXAMINER RIVERA: And that hearing, again,
17 the transmit -- or the adoption hearing will be held at
18 the same time that the Board considers this zoning --

19 MR. DANLEY: Correct, that's the intent -- that's
20 the intent.

21 This just shows a little bit of the maps of the
22 proposed change. The Applicant did go through this
23 already so I won't belabor some of these points, but
24 some of these areas have trans -- translated from
25 outlying -- or sub-outlying suburban to outlying

1 suburban, and then some of these areas here,
2 sub-outlying suburban to suburban here.

3 When reviewing a rezoning request, although this
4 is somewhat of an amendment, but with the addition of
5 land and addition of density, and with the boundary
6 changes for both the RPD and the CPD, this did really
7 necessitate a full consideration of a full rezoning as
8 opposed to just an amendment, but these are the
9 decision-making criteria associated with the rezoning.
10 The App -- or Staff did go through most of these
11 criteria within the Staff Report, just to reflect the
12 analysis provided by the Applicant in their submittal
13 materials, as well.

14 Just to talk briefly on the density, the Applicant
15 did go through this on what could possibly be built
16 here, based on the future land use categories, if the
17 Comp Plan amendments were adopted at the time of the
18 zoning hearing. Just for a side note though, this is
19 not the maximum proposed. This is just the maximum
20 allowed. The proposed density is 3,244, which is
21 140-ish less than what's allowed by the potentially
22 adopted Comp Plan amendment.

23 HEARING EXAMINER RIVERA: And if they wanted to
24 increase to get to full, they would have to come back
25 through this public hearing process?

1 MR. DANLEY: Yes. Any increase in dwelling units
2 will put them back into a public hearing situation.

3 HEARING EXAMINER RIVERA: Okay.

4 MR. DANLEY: The Applicant made references of this
5 on their PowerPoint of 5.1.10, but this is just the
6 language that basically allows developments with a mix
7 of future land use categories to utilize the densities
8 as they're assigned to the different acreages in the
9 property. And just to talk about the densities
10 assigned to them, the suburban future land use category
11 allows 6 units per acre; the outlying suburban allows 3
12 units per acre; the sub-outlying allows 2 units per
13 acre; and the rural allows 1 unit per acre.

14 And so in terms of where these are assigned on the
15 property, this orange is suburban, this is outlying
16 suburban, this will be sub-outlying suburban, and then
17 the lighter blue areas are rural, and then the rest of
18 it and including the wetlands.

19 The Lee Plan does establish provisions that allow
20 for the extracting of density off of preserved upland
21 areas and wetlands. The Applicant is seeking that in
22 their density table provided here. Where it says
23 wetlands and suburban, those are upland areas that are
24 being preserved, and in that way -- the wetland areas
25 are being preserved in a way that allows them to derive

1 density. So the -- that's the process to which they
2 can seek that density off of the wetland areas.

3 In terms of the infrastructure associated with the
4 project, the Applicant has explained that most of this
5 stuff is set already based on the existing development
6 pattern. Short of the emergency services that we
7 talked about previously, they're looking to resolve
8 those deficiencies with conditions in the -- in the
9 Staff Report, and then potentially future -- in the
10 future with the coordination of EMS with the existing
11 firehouse on the property.

12 In terms of the residential uses that are
13 predominantly established, but even with consideration
14 of the new ones and the existing ones because this is a
15 full rezoning, Policy 5.1.2 does prohibit residential
16 development where there are actual physical constraints
17 or hazards. This is not in a coastal high hazard area,
18 and it's in -- or a floodway, and it's in the Flood
19 Insurance Rate Map AE-EL9 and X(Shaded), which are not
20 really considered to be high-risk areas, much like our
21 coastal (unintelligible) zones.

22 The Applicant's gone through compatibility in
23 terms of providing injury to surrounding residential
24 uses. Really, the conversation topic has been the
25 multi-family component to the north along River Hall

1 Boulevard. The Applicant has proposed additional
2 conditions to ensure that there's compatibility,
3 particularly when it comes to height, and the enhanced
4 setbacks that they've discussed and then the transition
5 lake adjacent to rural areas have been provided to
6 reduce that destruction of character in the area.

7 And just to make a note, that the Applicant's
8 already stated the aggregate density for the area is
9 still very low as this development is predominantly
10 clustered in areas, with other areas being preserved
11 for use as a golf course.

12 HEARING EXAMINER RIVERA: So touch on that
13 multi-family plan for a second though. I want to be
14 sure I understood what Ms. Sapen said earlier. So
15 they're redesignating CPD areas to now be RPD areas,
16 but they're removing the multi-family component from
17 the CPD schedule of uses. So are the -- is the ability
18 to have multi-family in those locations changed, or
19 they're just changing the label of the land that it's
20 occurring on?

21 MR. DANLEY: The location of land has not changed.
22 That last Z-15 case did already consider on the
23 actual -- the plot of land that's considered for
24 multi-family today was previously considered for
25 multi-family. They didn't necessarily have a density

1 assigned to it --

2 HEARING EXAMINER RIVERA: Okay.

3 MR. DANLEY: -- like they have now. They've --
4 they've locked in what density they're seeking on that
5 property. But in terms of what was considered before,
6 it was really more of a mixed-used concept that they
7 were going for, and that's why it was called a Town
8 Center, where it would be a mix of commercial and
9 residential uses. But the inclusion of additional
10 commercial uses -- the Applicant's already
11 demonstrated -- along State Road 80, the intent now --
12 excuse me -- the intent now is just to do residential
13 in those areas. The commercial areas are just being
14 occupied as -- with the fire station and the sales
15 center with that remnant half acre.

16 HEARING EXAMINER RIVERA: Okay. So they reduced
17 the CPD acreage but -- and they locked in the
18 development -- the density, rather, of that area. But
19 right now if they didn't approve this, could they come
20 in and do the same multi-family development on those
21 same lands as requested, or were there --

22 MR. DANLEY: I don't know if they could do it as
23 requested today. There would probably be a lesser
24 density associated with that.

25 HEARING EXAMINER RIVERA: Because they had to do

1 some kind of a mix with the commercial previously?

2 MR. DANLEY: Correct.

3 HEARING EXAMINER RIVERA: Okay.

4 MR. DANLEY: Correct.

5 HEARING EXAMINER RIVERA: Thank you. That's what
6 I was trying to understand, exactly what we were
7 changing here, thank you.

8 MR. DANLEY: Just reviewing the commercial uses
9 as -- as has already been stated several times, there's
10 really just two commercial uses, one of which is a fire
11 station, and one of which is a sales center. There's a
12 little bit of land left, but there's no real new
13 consideration for significant commercial. You know, we
14 were at 45,000 square feet before. That could have
15 hosted a small Publix or something like that, so it
16 would have been a very significant commercial
17 development; but now with the reduction, there's really
18 no potential for a significant commercial product to
19 come online given the constraints of the acreage and
20 the development intensity as a whole.

21 HEARING EXAMINER RIVERA: And I should have asked
22 this to Mr. Leung, but does that delta -- the change
23 between the commercial square footage and the increase
24 in residentials, does that help offset the traffic,
25 which is why it's not yielding adverse effects for

1 traffic off-site?

2 MR. DANLEY: It does offset, but we coordinated
3 with our infrastructure planning staff and confirmed
4 that this still is an increase in trips. If there
5 wasn't a companion Comprehensive Plan case, and they
6 were just switching commercial for residential, there
7 may have been a chance to keep that at the same level
8 or less, but with the increase based on the future land
9 use change -- this will still be an increase of trips,
10 and it does offset some of that -- that traffic impact.

11 The Applicant went through their existing water
12 use permits and ERPs with the State. Staff's opinion
13 is that water quality will be maintained in the area.

14 Goal 135 does encourage a mix of housing in the
15 area -- these are just some of the remnant Lee Plan
16 policies that need to be discussed. But given the
17 housing constraints in the county, the mix of -- mix of
18 housing types does relieve some of the affordability
19 problems, although I don't believe this is considered
20 to be an affordable housing product that they're
21 pursuing today.

22 And then in terms of providing a diversified and
23 stable economy and business climate, Goal 158, Staff
24 does find that, you know, multi-family uses do create
25 jobs with maintenance and property management and

1 other -- other jobs such as that, plus the construction
2 jobs associated with that. So we do find that this
3 proposed use does meet that goal, as well.

4 There were two public information meetings that
5 I'm aware of that have taken place. In the Staff
6 Report there was the information meeting from the first
7 one, the 48-hour letter, the minutes from the second
8 one were provided, as well. Because the densities were
9 changing throughout the Comp Plan amendment, Staff
10 requested to go back out just to go and accurately
11 reflect what changes are actually being proposed.

12 With that, Staff does recommend approval as
13 conditioned in the Staff Report and then as amended by
14 the 48-hour letter. We're here for any questions you
15 may have.

16 HEARING EXAMINER RIVERA: On the -- it was
17 mentioned, the Alico Road extension. Do we have any
18 indication of timing of when that might come online to
19 actually connect?

20 MR. DANLEY: I don't want to -- I don't want to
21 mislabel it.

22 HEARING EXAMINER RIVERA: Okay. That can be
23 something we can address later. I'm just curious. It
24 was mentioned, and I didn't ask at that time, but I am
25 curious. If the intention is that this is going to act

1 as a reliever to the south to kind of divert folks
2 either west or east that way, and that's going to help,
3 I'm just curious as to timing, if we know when that's
4 programmed to maybe come online.

5 MR. DANLEY: My understanding is they're still
6 working on purchasing the rest of the right-of-way.
7 They may have just completed that. There's previous
8 zoning cases nearer the Alico area that we've seen some
9 cross section designs. I don't know if the
10 design plans have gone that far north -- I'm sorry --
11 but I suspect we're probably still five plus years from
12 that being constructed in a way that would benefit this
13 project.

14 HEARING EXAMINER RIVERA: Okay. But on a
15 countywide basis, that's kind of what -- I hear it
16 talked a lot about in these hearings. That's kind of
17 what that is acting as, a significant reliever for all
18 the traffic congestion that's happening west of that --

19 MR. DANLEY: Correct, by providing a southward
20 direction, yes.

21 HEARING EXAMINER RIVERA: Okay.

22 MR. AKIN: Madam Hearing Examiner --

23 HEARING EXAMINER RIVERA: Yes.

24 MR. AKIN: -- if I may? So my understanding is --
25 since I've had on some other projects discussions with

1 the County about this, as well as the website that's
2 maintained on it, is that the third phase, which is
3 where -- which would extend it up to State Road 80, is
4 likely the 2030 time frame at best, and that's still
5 tenuous, I think would be the best way to say it.
6 That's the timing they're hoping for.

7 HEARING EXAMINER RIVERA: Okay. Thank you for
8 that clarification.

9 Did Applicant have any questions of Staff?

10 MR. AKIN: I do not, no.

11 HEARING EXAMINER RIVERA: Thank you.

12 Does that conclude Staff's presentation?

13 MR. DANLEY: Yes. I'm just pulling up the aerial
14 for reference.

15 HEARING EXAMINER RIVERA: Thank you.

16 Okay. So with that, we're going to take a break.
17 We'll break for 15 minutes and reconvene back at 10:45,
18 and at that time we will start the public comment
19 portion. I'll call the cards in the order that I have
20 them. If there's anyone that needs to be heard sooner,
21 if you could just let someone know so that they can
22 rearrange the cards to put your name up top, I would
23 appreciate that. And thank you and enjoy your break.

24 (Recess from 10:30 a.m. to 10:45 a.m.)

25 HEARING EXAMINER RIVERA: Okay. We're back on the

1 record. We are opening public comment now, and I will
2 begin with the cards that I have in the order that I
3 have them. I did administer the oath at the outset of
4 the hearing, but if you weren't in the room at that
5 time, please just indicate that so I can swear you in
6 prior to beginning your comments.

7 The first card I have is for Jolene Tarleton.
8 Good morning.

9 MS. TARLETON: Good morning, Madam Hearing
10 Examiner.

11 All right. My name is Jolene, and I have
12 basically some questions. Most of you will have
13 actually answered this today with your presentation,
14 but I was going to ask them just to verify that what
15 y'all have said, you know, is correct. I'd rather hear
16 it straight from the horse's mouth.

17 THE REPORTER: I can't hear you.

18 MS. TARLETON: Sorry, please forgive my voice
19 today. But I'll be asking three questions, verifying
20 some of them, that it is -- you know, I am
21 understanding the presentation correctly.

22 Again, I'm Jolene. I am actually one of the
23 property owners that butts up against area two. I
24 own -- I'm on about five acres. I'm one of a little
25 over a handful of families that are on Linwood Avenue.

1 If you've ever been to Roosters Produce and gone down
2 past their driveway, you probably passed my house, my
3 neighbors' cows, my horses. So I'm sure y'all are
4 familiar with that.

5 And so three of -- my concern is my house is the
6 main one that butts up against area two that buffers
7 River Hall's border. So the first one is -- and let me
8 make sure this is correct. Your intention of area two,
9 is that for townhouses; is that correct?

10 HEARING EXAMINER RIVERA: We're making -- I'm
11 making notes of the questions, and then we'll address
12 them on rebuttal.

13 MS. TARLETON: Okay.

14 HEARING EXAMINER RIVERA: Thank you.

15 MS. TARLETON: And then the second one is --
16 although in this presentation I do see that y'all have
17 added a lake buffer in between the proposed townhouse
18 area and where, you know, my property would butt up to.
19 Is there -- my concern really with that is water
20 runoff.

21 So, for example, I mean, Saturday we got a pretty
22 heavy-hitting rain. If you know Florida, the only
23 season we have is wet or dry. So there is a ditch in
24 between Linwood Avenue and River Hall's grassy open
25 area that's in discussion, and, I mean, that ditch

1 filled up, you know, by the end of the day with that
2 rain. So my concern is that you're building more
3 townhouses, obviously you need heavy foundation, you're
4 going to be building that up to make sure the
5 townhouses don't get flooded. So how is the runoff
6 addressed towards, you know, obviously the back end of
7 that border of people not in River Hall? I live on a
8 private road. It's a dirt road. You know, me and my
9 neighbors all pitch in once a year and get that road
10 redone. But, you know, again, we live in Florida so we
11 do get a lot of rain and water retention. So runoff is
12 a concern coming in from those foundations into the
13 lake -- although I do thank you for any buffer you do
14 give us between townhouses and, you know, my property
15 and my neighbors' properties, but that is a concern of
16 getting more flood water, especially as Florida is not
17 drying up any time soon.

18 And the third, really, is just discussing any
19 buffers. I know I saw here where there seems to be a
20 lake. Is -- and it seems like if you build higher
21 townhouses, then you may add an additional setback, or
22 you may then add trees and shrubs and things like that.
23 Is that -- besides the lake at the bare minimum, is
24 there anything else that may be just automatically put
25 in along with it, whether it be a fence or anything, or

1 even trees and shrubs? Because, again, I mean, I'm
2 going to walk out of my house and potentially see into
3 someone's living room. So the more space I have in
4 between there is very, very much appreciated so...

5 And those are my questions and concerns.

6 HEARING EXAMINER RIVERA: Thank you. Thank you
7 for coming today.

8 The next card I have is for Lawrence and Elizabeth
9 Damian.

10 MS. DAMIAN: We have no comment.

11 HEARING EXAMINER RIVERA: Okay, thank you.

12 Stuart Shorr?

13 MR. SHORR: I'll pass.

14 HEARING EXAMINER RIVERA: Thank you.

15 Paul Anderson?

16 MR. ANDERSON: No comment.

17 HEARING EXAMINER RIVERA: Jennifer Bajar? I
18 apologize if I mispronounced that. Jennifer?

19 Okay. Rudy and Barb Schilder -- Schider?

20 Thomas Finco?

21 Good morning, sir.

22 MR. FINCO: Good morning, thank you for the
23 opportunity to speak this morning. I am retired, and I
24 live at Cascades River Hall. I spent the past 40 years
25 with law enforcement, retiring from the State Police of

1 Michigan.

2 My concerns are a couple-fold here. Why are we
3 changing the existing plan from 1998 so many times?
4 And we're leaving it open again to change it one more
5 time, for what purpose? My concern is infrastructure,
6 with the lack of roads, the lack of -- it takes me --
7 if you go down that road entrance to our development,
8 and it's 3:30 in the afternoon when school is getting
9 out, it's one lane, and they're backed up and up so
10 that you probably have to go through six or seven
11 cycles of the -- of the stoplight in order to get out.
12 I bought in '17; and when I bought, we didn't have the
13 light there, and believe me we'd never get out if we
14 didn't have the light.

15 It's just -- do we need more houses? Probably,
16 but let's get -- let's get the infrastructure -- I
17 mean, you can tell me all you want that from 1998 they
18 said our roads are good, our water system is good, our
19 sewage is good. I mean, I don't believe it.

20 So thank you.

21 HEARING EXAMINER RIVERA: Thank you. Thank you
22 for coming today, sir.

23 Patricia Finco.

24 MS. FINCO: (Shakes head.)

25 HEARING EXAMINER RIVERA: Thank you.

1 James Russell? Good morning.

2 MR. RUSSELL: Good morning. Can you hear me?

3 HEARING EXAMINER RIVERA: Yes.

4 MR. RUSSELL: Thank you.

5 So this is not a dialogue? I just submit the
6 questions?

7 HEARING EXAMINER RIVERA: Yes.

8 MR. RUSSELL: Do we get a rebuttal?

9 HEARING EXAMINER RIVERA: After --

10 MR. RUSSELL: We can come back up?

11 HEARING EXAMINER RIVERA: Yes -- no. There's one
12 opportunity to speak for the public, and then after we
13 close public comment, we go to rebuttal. So that's
14 why --

15 MR. RUSSELL: So I get one chance?

16 HEARING EXAMINER RIVERA: Yes.

17 MR. RUSSELL: Okay. All right.

18 So my questions concern I think what you're
19 referring to as section three. Is that the southeast
20 corner? Are we on the same --

21 MR. AKIN: (Nods head.)

22 MS. SAPEN: (Nods head.)

23 MR. RUSSELL: Section three?

24 MS. SAPEN: Yeah.

25 MR. RUSSELL: So I'm unclear -- the question is

1 around traffic patterns. So I'm unclear -- say the new
2 residents of section three, it seems that they're going
3 to enter through the two -- the two new entrances, but
4 do they enter through State Road 80 through our -- and
5 by the way, I'm a River Hall Country Club resident. So
6 that's unclear to me.

7 So I guess the first question is do the new
8 residents of section three enter only through the two
9 new southern entrances, or do they also enter through
10 the main entrance from State Road 80?

11 And regardless -- I guess whichever way that is,
12 is sounds like residents of River Hall Country Club,
13 such as myself and my wife -- mention was made we'd
14 have quicker access to the airport in the future. Are
15 we going to have a way to get out through the two
16 new south exits -- entrances? And if so, how is that
17 going to be managed, because we're a secured gated
18 community? Are you going to put a new gate? I haven't
19 heard anything from our HOA regarding this -- with
20 RFID, with a guard, which will add a cost, so what's --
21 what's going on there?

22 And then what -- I guess I understood -- it seemed
23 pretty clear that emergency services will have a way to
24 get through all of the complexes for all of our safety,
25 which is -- is good. I suppose they'll go through some

1 type of access gate, probably RFID or something. Maybe
2 you could clarify that.

3 (Ms. Perez enters hearing room.)

4 MR. RUSSELL: And then students -- if they're
5 students in the new area, are they going to use the
6 River -- our new school there, the River Hall school,
7 or some school south in Lehigh Acres?

8 MS. PEREZ: I'm sorry, can you step back a little
9 bit? Because we're getting feedback --

10 MR. RUSSELL: Sure.

11 MS. PEREZ: -- because of the volume.

12 MR. RUSSELL: I usually don't need a microphone
13 so...

14 MS. PEREZ: Just step back --

15 MR. RUSSELL: I'll say "test." Is that better?

16 MS. PEREZ: Yeah, thank you.

17 MR. RUSSELL: Yeah, I wanted to make sure you
18 heard me.

19 So if there's -- it will be -- I would guess there
20 will be students in the households in section three.
21 Are they designated to go to the new River Hall
22 Elementary or to some other school? I suppose in
23 Lehigh Acres. And if it's River Hall Elementary, are
24 they going to drive all the way around, which is quite
25 a -- quite a distance, or are they going to be coming

1 through our development? Which, of course, we're in a
2 development for not a lot of traffic so what's the plan
3 on that?

4 So let's see, residents, students, and us, are we
5 going to be able to exit through their new development,
6 which is going to add -- you know, be convenient for us
7 when we want to go that direction?

8 THE REPORTER: Sir, excuse me, stand back from the
9 microphone.

10 MR. RUSSELL: Even more? How about -- is this
11 okay?

12 THE REPORTER: It's still --

13 MR. RUSSELL: I'm sorry, ma'am, I --

14 THE REPORTER: No, that's okay. I just want to
15 make sure it's projecting properly.

16 MR. RUSSELL: How does this work?

17 THE REPORTER: (Nods head.)

18 MR. RUSSELL: Third time a charm, okay.

19 So I think I got it clear. We got the residents,
20 can they come through the north, I guess, State Road
21 80?

22 Emergency services, sounds good for everybody, but
23 how are we going to do that? How are you going to
24 effect that, with what type of gate?

25 And the students, what are you doing with the

1 students? And I guess the parents -- because it
2 appears that quite a few -- I don't know if anybody
3 uses school buses anymore. I see them out on the road,
4 but I -- it's amazing today, from when I had kids, how
5 many people drive their kids to school and pick them
6 up. I don't know who's working anymore. But that's
7 just an editorial comment.

8 So, okay, those three things. Thank you.

9 HEARING EXAMINER RIVERA: Thank you. Thank you,
10 sir.

11 Diane Monahan?

12 MS. MONAHAN: Pass.

13 HEARING EXAMINER RIVERA: Do you have any comments
14 you would like to provide, ma'am?

15 MS. MONAHAN: No.

16 HEARING EXAMINER RIVERA: Thank you.

17 Terrence Monahan?

18 MR. MONAHAN: No comment.

19 HEARING EXAMINER RIVERA: Okay.

20 Deborah Burman? Good morning.

21 MS. BURMAN: Good morning. Can everyone hear me?

22 UNIDENTIFIED SPEAKER: Yeah.

23 MS. BURMAN: Good. My husband and I, we live in
24 the country club golf section at 16068 Herons View, and
25 I have a couple of questions -- I guess this would be

1 for Jennifer. At the present time has the developer
2 decided, is this going to be townhomes or apartments?
3 We'd like to know that.

4 If they are, once that's decided, is this going to
5 be their own community? Will they have their own
6 covenants and restrictions?

7 I was listening to your expert witness on the
8 transportation issue, and what I found is he kept
9 saying there were no adverse effects. What I want to
10 know is what was his last study, when was it done, and
11 how many -- how much was the daily count of traffic?
12 Was this done on a weekday, was it done during hours --
13 I would like to know this because that's really
14 important. Because when we drive down River Hall
15 Parkway, you cannot get out. You wait at least four
16 minutes for that traffic signal, and that is if you are
17 just in front of the fire station, you're still waiting
18 for minutes. Now, I can only imagine what it would be
19 with these new housing developments.

20 Let me see what else I have.

21 Oh, Jennifer also mentioned that this sales center
22 could be reused for something else. What could that be
23 used for? I mean, is this going to be a grocery store?
24 These are all concerns that we have.

25 I think that's it.

1 HEARING EXAMINER RIVERA: Thank you. Thank you,
2 ma'am.

3 Don Burman? Good morning.

4 MR. BURMAN: Good morning. Can everybody hear me?
5 (Participants respond en masse.)

6 MR. BURMAN: First of all, being a good husband, I
7 want to say I agree with everything my wife just said.

8 HEARING EXAMINER RIVERA: Always the right way to
9 start.

10 MR. BURMAN: Always the right -- happy wife, happy
11 life, that's the way I see it.

12 I do want to point out a couple of things that
13 continue to linger in my mind. I was in attendance at
14 the January meeting, as well, and my understanding is
15 that the project was approved at that point in time,
16 which is discouraging because relevant to the comments
17 that were made by the public, we were not in favor of
18 the project then, and we continue to not be in favor of
19 the project now. And it feels like the Golden Rule is
20 in place here, that he who has the gold can make the
21 rules. And that's unfortunate because we actually live
22 in the community.

23 The gentleman that did the traffic study, I'd like
24 to know where you live. What's the traffic look like
25 in your place? Because there is no way in God's green

1 earth that when we add additional housing there, that
2 you're going to be able to get through to 80 at all. I
3 mean, even on just a normal schoolday -- and we love
4 normal schooldays, by the way, we love our kids --
5 there's eight or nine buses that are lined up trying to
6 get them into the lot so they can come back around and
7 pick up the children and then exit. At the same time,
8 you have Mom and Dad trying to pick up their children.
9 And if they do get through that line -- there's a
10 rhythm to that, as well -- and then come back out, the
11 two lanes that are there are now backed up
12 substantially.

13 Now, if -- if I'm thinking properly, the firehouse
14 which seems to be the -- was the key element for the
15 developer to be able to get the request for expansion,
16 because they had to put that in in order to say we've
17 got fire services, and now we're negotiating for
18 emergency services.

19 The negotiation is very interesting because we
20 still have a need within the three communities for
21 emergency services, but they're not tied to the
22 firehouse, and so there is a delay between when a fire
23 would take place and the fire engine would respond --
24 and thank God for all of our emergency workers -- or
25 someone who has a heart issue, and the timing of that.

1 Heaven forbid that there would be an emergency issue
2 while school is in session, and we're trying to weave
3 through traffic. We have no access to that -- those
4 two entrances down south, none. I don't understand how
5 that would work. Even with a gate how would that work?
6 That seems to be a little bit of a fairytale, as well.

7 The biggest fairytale, though, in my mind is that
8 there will be no more development. I saw there was 143
9 potential additional units that could be put on the
10 property after this is approved, okay? Those 143 units
11 could be anything in the world, which means we're going
12 to increase density, which means we will increase the
13 amount of traffic and the amount of use of the roads.

14 The trips for each of us -- my wife and I live in
15 the gated community, and we're blessed to be here in
16 Florida. First of all, it's -- we come from different
17 places. But I will say that the number of trips that
18 we make to come out and then to go south to get to
19 resources, you've got to get up to 75, and then you've
20 got to take 75 down to the other congested areas, which
21 would include Exit 136 and Exit 131. Exit 136 for the
22 three years we've been here has been under construction
23 forever. I can't imagine if you're going to put
24 another light in to try to relieve the pressure where
25 we're at, that will be at least ten years, and by

1 then -- I'm 72, I'll be dead by then, and I won't have
2 to worry about it. My pathway will be already --
3 what's cleared up. But I gotta tell you, this is not
4 going to work out the way it's planned. Nothing ever
5 does.

6 Now, I spent 40 years in healthcare. I built five
7 hospitals in my lifetime. I've managed projects from
8 exactly where we were when this was originally
9 submitted -- and I appreciate your hard work around
10 this -- to where we are right now in public meetings.
11 I can tell you, when I worked for the federal
12 government, the public meeting piece was important
13 because that's who voted those individuals into office.

14 I also understand that the State was to approve
15 this project, as well. I think, if I heard right, the
16 State has to approve it before it comes back to the
17 Board, and then the Board will have that final deal.
18 Okay. When will the State allow an open mic for us to
19 be able to voice our opinion, as well? Because my
20 elected representative needs to hear from me, and I
21 need to be able to express my disdain for people that
22 are approving projects that have not done their
23 homework properly.

24 And I can tell you, the biggest issue -- we've all
25 heard it -- is going to be at that intersection. We've

1 already had two really fine residents of ours killed at
2 that intersection. How many more deaths will we need
3 to have before something is done on that road?

4 And you cannot build houses without putting
5 infrastructure in place, and the plans that you're
6 putting in are minimal for the need that will take
7 place once those are in place.

8 You have been very kind to let me speak. I
9 appreciate my time with y'all. And remember, my wife
10 is right.

11 HEARING EXAMINER RIVERA: Thank you, sir.

12 Robert Stark? Good morning.

13 MR. STARK: Good morning. I'm Robert Stark, and
14 I'm a resident of River Hall Country Club.

15 I had three comments -- and I'm not near as
16 elegant (sic) as Mr. Burman here, but I'll try and do
17 this correctly.

18 First of all, with the community access and -- to
19 these bridges, we have four -- or will have four gated
20 communities, and these two bridges are traveling south.
21 Access to either of these bridges is through another
22 community. Is there a plan for all four communities to
23 transit through a gated community and impinge on, you
24 know, the -- the quality of life of these folks? We
25 talk about highway traffic, but, boy, the -- we really

1 have limited road structures within the community.

2 So the question is what communities will benefit
3 from these bridges, and also in what time frames?

4 Because the -- the Queen Street Bridge is near
5 completion, and the only access to that would be going
6 out to the parkway and transiting back through the
7 Hampton Lakes community. So that's a concern.

8 Second concern is regarding amenities. There was
9 a comment this morning regarding amenities and that,
10 you know, the communities have shared amenities. Well,
11 DOS2023-00137 is for 202 townhomes in the northern
12 section there. Now, on their plans, they have a
13 limited facility. They have a pool, a tot lot, and a
14 volleyball court as their amenities. They don't have a
15 gym. We have a gym. Are these going to be exclusive?
16 And, again, they mention Hampton Lakes and River Hall
17 as being exclusive to the town hall, and if -- and the
18 reason I raise that is because we have some very
19 interesting voting requirements and shared
20 responsibilities within the town hall, weighted voting,
21 per se; and if we were to put a third community into
22 that facility, we'd create a Gordian knot where we
23 couldn't get approvals from anybody to do anything,
24 including mowing a lawn. So that's my second question.

25 And then the last -- maybe it's a comment or a

1 clarification -- is you were discussing on the 48- or
2 24-hour letter condition 1 of current replats. There
3 are replats underway for C, Z, and H within River Hall;
4 and, you know, I think what I heard was that you were
5 going to freeze things as they are today; and these
6 replats, I believe, are still underway, which sort of
7 conflicts. And that might just be a housekeeping
8 issue.

9 So with that, thank you very much for your time.

10 HEARING EXAMINER RIVERA: Thank you, sir.

11 The next card I have is Joseph Colarusso?

12 MR. COLARUSSO: No comment.

13 HEARING EXAMINER RIVERA: Okay, thank you.

14 Michael Hayes?

15 MR. HAYES: No comment.

16 HEARING EXAMINER RIVERA: Stephen Weinstein?

17 MR. WEINSTEIN: No comment.

18 HEARING EXAMINER RIVERA: David and Catherine
19 Kozak?

20 Jerry and Liz Novoty -- Novotzy. I apologize,
21 this one's a little harder to read. No? Okay.

22 That was the last card, actually. Was there
23 anyone else present that wished to speak today? No?
24 Okay. Well, then we will close public comment.

25 Do we want to take -- how long of a break do you

1 need? Do you want to break for lunch and return for
2 your rebuttal? How long do you need to prepare?

3 (Sotto voce between Mr. Akin and Ms. Sapen)

4 HEARING EXAMINER RIVERA: Yes? Okay.

5 MR. AKIN: I think the answer is -- it sounds like
6 it's yes so...

7 HEARING EXAMINER RIVERA: Okay, so let's break.
8 It's 11:12 right now. We'll come back at 12:30, and
9 we'll reconvene. So at that time it will be the
10 rebuttal. So we'll hear the answers to the questions
11 that were asked, and then the closing comments of the
12 parties.

13 (Recess from 11:12 a.m. to 12:30 p.m.)

14 HEARING EXAMINER RIVERA: All right. We are back
15 on the record. It is 12:30, and we're going to begin
16 now with the Applicant and Staff's rebuttal. Is the
17 Applicant ready to proceed?

18 MR. AKIN: Yes, thank you, Madam Hearing Examiner.
19 For the record, again, Richard Akin on behalf of the
20 Applicant.

21 So I'm going to start off briefly by trying to
22 answer a few of the questions that came up from the
23 public input. I'll answer some of them, and then some
24 of the other members of our team will answer those that
25 fell within their specific expertise area.

1 So the first speaker was Jolene Tarleton.
2 Ms. Tarleton is not here anymore. She had to leave and
3 go back to work. We did speak with her during the
4 break, between those things, and did actually try to
5 answer her specific question. We asked her where she
6 lived. My understanding is that she lives in this
7 L-shaped parcel that would be directly adjacent to
8 where the -- one of the northern parcels that we have
9 spoken about today is.

10 But she had a question about whether area two was
11 for townhouses, and I think from talking to her off the
12 record, she explained that her real concern was, is it
13 going to be commercial, or is it going to be
14 residential. And we explained that we're -- we're
15 amending this zoning. It's going to an RPD portion now
16 instead of a CPD portion, and so it will be
17 residential, and we're asking for a multi-family or
18 townhouses as part of the zoning request. I also did
19 explain to her that the -- currently -- there is a
20 current DO that has been submitted to the County for
21 townhouses.

22 There were a couple of questions -- Mr. Russell, I
23 believe it was, asked questions about the -- where the
24 students would go to school. So I'll do my best to
25 answer that question. The bottom line is that where

1 the students actually attend school is up to the Lee
2 County School District. We don't have any control over
3 that. The elementary school at River Hall is just an
4 elementary school. So to the extent there are students
5 that are in different age groups, they have to go
6 somewhere else. When it ultimately comes to what
7 school they get zoned to or what school they get sent
8 to by the School District, that's up to the School
9 District. There's some choice, to some degree, still
10 in Lee County.

11 There was also a question about how students would
12 access the school. So I think to sort of clarify that,
13 so everyone has access to the school from the State
14 Road 80 entrance. The school buses -- and I believe
15 Mr. Barraco will clarify this a little bit, but the
16 school buses would have access through this southern
17 access down here. Anyone who wasn't a resident would
18 not be able to get in through the southern access
19 because it would be gated. So unless the students were
20 residents of River Hall, they would either have to come
21 in by school bus, whichever direction the school sent
22 them, or they have to come in by State Road 80. So I
23 hope that answers that question for you.

24 There was a question by Ms. Burman about the
25 townhome parcel up at the front, and whether there

1 would be their own -- whether they would have their own
2 set of covenants and restrictions, and some questions
3 about the HOA documents for them. The bottom line is
4 we don't have answers to those questions at this point
5 in time. That's not part of a zoning action. I'm not
6 an HOA attorney so I don't know yet, at this point in
7 time, what those documents will look like, but they
8 will be governed by state law on that topic, and they
9 will be developed as necessary.

10 There was another question -- and I'm not sure
11 this was the specific question, but in our discussions
12 we wanted to make sure this was clarified, and this may
13 have been by Mr. Burman. So you saw pictures that
14 there is an existing firehouse up here near the State
15 Road 80 entrance. Currently it is our understanding
16 that EMS services are in discussions with the fire
17 department to also be housed in the fire station. That
18 circumstance is not within our control. They are
19 negotiating it. It is our understanding that there is
20 an ongoing negotiation where they're trying to work out
21 an agreement for EMS services to be there at that
22 location.

23 The -- there was also a question by Mr. Burman
24 talking about the opportunity for public input, and he
25 asked when the State was going to allow for input from

1 members of the public on these matters, and I just
2 wanted to clarify that issue. The State does not
3 actually approve a rezoning request. The CPA amendment
4 goes to the State DEO in order for the State
5 coordinator to review -- to review certain things.
6 It's not actually something that is voted on by any of
7 the State elected representatives. So your opportunity
8 for public input comes at this process right here now
9 in front of the Hearing Examiner; at the prior LPA
10 hearing, which people attended; as well as the prior
11 Board transmittal hearing; and then finally the Board
12 adoption hearing. Those are your opportunities for
13 public input. And so if you want to have public input,
14 that would be the time and place to do it.

15 Finally, there was a question or a comment about
16 the fact that there had been a fatality at the
17 intersection -- or somewhere near the intersection near
18 River Hall. And I just wanted to point out from a
19 factual standpoint that the members of the community,
20 along with the CDD, including the developer, did
21 actually coordinate with the Department of
22 Transportation following that incident in order to make
23 some changes in order to ultimately reduce the speed
24 westbound here on River Hall. So I believe that did
25 occur. And with regard to the other traffic comments,

1 Mr. Leung can address those, and he will do so.

2 Also, finally, the questions that Mr. Stark asked
3 about the townhomes, the voting rights, there was a
4 number of questions he asked there. Ultimately, that
5 goes back, again, to the HOA documents or the
6 condominium association documents, if that's what it
7 was, that I don't have answers to at this point in time
8 because those have not been developed. So that's
9 something that will have to work itself out over time,
10 and it's not part of the zoning process.

11 So that covers for now on rebuttal what I had. I
12 believe Ms. Sapen will come up next and address some of
13 the other comments.

14 MS. SAPEN: Dirk, can you put up our presentation?

15 MR. DANLEY: (Complies.)

16 MS. SAPEN: And go to slide 27.

17 MR. DANLEY: (Complies.)

18 MS. SAPEN: Hello again. For the record, Jennifer
19 Sapen.

20 The woman who lived just east of this RMF entrance
21 area, she had questions about the buffers. So we had a
22 slide where we walked through what the buffer would
23 look like and what criteria would happen, if there's
24 roads or drives, if it is over 35 feet in height. But
25 her question on this pointed out to me that there is

1 not a buffer stated generally there. I looked at
2 previous zoning approvals, and it did have a Type B, as
3 in boy, buffer required. And that is required by the
4 Land Development Code, and we are not requesting a
5 deviation. So I believe we're going to leave the
6 record open, and that would be one of the changes we
7 would make to the master concept plan, to note this
8 Type B, as in boy, buffer is required. That is
9 Condition 25A of the previous zoning resolution
10 Z-05-051.

11 And a Type B buffer, for the public, is 15 feet
12 wide, it has 5 trees, and a double-staggered hedge
13 maintained at 36 inches high. And that would be --
14 that buffer would be provided with any type of a
15 multi-family use there, as required by the Land
16 Development Code. And then these additional buffers if
17 these other types of height or driveway criteria was
18 triggered.

19 HEARING EXAMINER RIVERA: And is that -- this is
20 the area where the DO has already been applied for;
21 correct?

22 MS. SAPEN: That's correct.

23 HEARING EXAMINER RIVERA: So are they in excess of
24 the 25 -- or, excuse me, the 35 feet?

25 MS. SAPEN: In the development order? No, I don't

1 believe so.

2 HEARING EXAMINER RIVERA: Okay. So was that --
3 but this was explained to the particular individual
4 that had the question since she was able to identify
5 her exact property --

6 MS. SAPEN: Correct.

7 HEARING EXAMINER RIVERA: -- relative to this?

8 MS. SAPEN: Right, right. The discussions with
9 her -- we talked with her a little bit about the
10 buffer, but more the concerns were about the drainage
11 and water management, which Carl can explain --

12 HEARING EXAMINER RIVERA: Okay.

13 MS. SAPEN: -- that discussion.

14 And then, Dirk, can you turn to slide 19?

15 MR. DANLEY: (Complies.)

16 MS. SAPEN: So this slide shows the proposed
17 master concept plan. I wanted to walk through the
18 questions on access. Now, first I would say that
19 master concept plans and zonings in general do not
20 really get into the division between communities and
21 how those communities interact with one another;
22 however, on this plan we show where the gates are
23 intended. And extracting from the layout of the site
24 plan, you can see that the intention here is for the
25 golf community to terminate at a gate in the southeast

1 before it connects to the new future area. So if you
2 were a golf course resident, and you wanted to go out
3 of either one of the southern accesses, you would enter
4 the gate through a Hampton expansion and go down to
5 either one of those gates. Now, that would be allowed,
6 golf course through Hampton, but not the reverse, not
7 Hampton into the golf course.

8 All communities have access, from their gates up
9 north, to State Road 80. So all three communities have
10 that 80 access, the golf course and Hampton will both
11 have both of these southern accesses, and then Hampton
12 has an emergency access into Portico, and then Cascades
13 has an emergency access into Portico.

14 HEARING EXAMINER RIVERA: So the southerly access
15 points though will be gated, but it's --

16 MS. SAPEN: That's correct.

17 HEARING EXAMINER RIVERA: -- going to be gated to
18 the public outside of River Hall, but all of the River
19 Hall residents will have access through the gates?

20 MS. SAPEN: All of the Hampton and golf course --

21 HEARING EXAMINER RIVERA: But not the Cascades?

22 MS. SAPEN: That's correct.

23 HEARING EXAMINER RIVERA: Okay. To either access
24 point, the western or the eastern southerly?

25 MS. SAPEN: Correct.

1 HEARING EXAMINER RIVERA: And that was -- and that
2 gets into the traffic patterns and the circulation a
3 little bit, because there was confirmation that the
4 school traffic and the emergency traffic would have
5 access to the southerly gates --

6 MS. SAPEN: Correct.

7 HEARING EXAMINER RIVERA: -- as well as those
8 folks. So it really is intended to serve as kind of a
9 relief valve for the additional units that are going
10 into the south?

11 MS. SAPEN: Correct, a relief valve for the
12 additional units -- and I also want to clarify, the
13 school access, that means for school buses, not for
14 residents driving their own child to school from
15 Lehigh. They would not have access through there.

16 HEARING EXAMINER RIVERA: Okay. So it should be
17 fairly limited traffic coming into those gates then, it
18 sounds like.

19 MS. SAPEN: Correct, only the residents that live
20 there, and, yeah, during emergency situations.

21 HEARING EXAMINER RIVERA: Okay. And that will all
22 be explained, I assume, to the golf course residents at
23 the time that the gate is actually -- there was a lot
24 of technical questions, I think, about functionally how
25 that would work. But for our purposes today for

1 zoning, it will be a gated facility that will be
2 restricted in access --

3 MS. SAPEN: Correct.

4 HEARING EXAMINER RIVERA: -- as you identified?
5 Okay.

6 MS. SAPEN: There were some questions on uses. In
7 the residential area in the southeast, the question --
8 which is kind of a general broad question of can
9 anything go here. The residential uses are designated
10 as RMF-1 and R-1A in this area. R-1A would allow
11 single-family only, whereas an RMF-1 allows any of the
12 residential product types. So that includes townhouse,
13 multi-family, two-family attached, or single-family
14 attached, and a zero lot line unit.

15 For the commercial uses, the types of things that
16 are allowed in there -- again, the uses are unchanged
17 from the previous approval, and they're a fairly small
18 list of uses. There's only 15 uses approved in the
19 CPD, including accessory uses and temporary uses and
20 essential services. So it's -- it's fairly restricted.
21 Food store is included.

22 As far as what the sales center could be in the
23 future -- Verandah has just kind of recently gone
24 through this where they had their old sales center --
25 and I know the things that were looked at was a -- like

1 a bank or maybe a day care -- I'm not saying that that
2 is what would go in here, but that's what developers,
3 when they repurpose these sales centers, the type of
4 use that is usually expected. And it's just really
5 nice to be able to recycle the building and the parking
6 that's associated with it.

7 HEARING EXAMINER RIVERA: But the envisioning
8 would be it would be some sort of a neighborhood use,
9 it sounds like then, not a large-scale commercial
10 attractant that's going to draw a lot of outside
11 traffic?

12 MS. SAPEN: Well, it is -- it would be limited to
13 a maximum of 15,000 square foot in the commercial, and
14 understanding that the fire station is already
15 constructed out of that, and there's only so much land
16 that is in there. Breaking the CPD up into two tracts,
17 with the road cutting through it, really eliminates the
18 option to be able to have a large box.

19 HEARING EXAMINER RIVERA: Okay. So site
20 constraints are going to dictate to some extent --

21 MS. SAPEN: That's correct, the irregular shape of
22 it, the setbacks, the buffers.

23 The only other thing I think I wanted to add was
24 in response to a question that you had, and you very --
25 you found the needle in the haystack. R-2 is not a

1 listed use. That is a mistake. It should be corrected
2 to say R-1A in the table. So that the minimum lot area
3 for single-family R-1A would be 4,860 square foot. And
4 when we leave the record open, we can correct that, as
5 well.

6 That's all I had, unless you or Richard had any
7 questions for me.

8 MR. AKIN: No.

9 HEARING EXAMINER RIVERA: The only other question
10 with respect to the southerly access was the time frame
11 expected. So Condition 30 ties it to that unit count.
12 Is there any ballpark on the horizon of when that unit
13 count might be reached?

14 MS. SAPEN: I don't have anything on that.

15 MR. AKIN: Yeah. So -- Madam Hearing Examiner,
16 again, Richard Akin for the record. So we -- I was
17 thinking that we could talk about Condition 30 and 23
18 once we get through everything, because I think there's
19 a lot of confusion -- Condition 30, as it reads right
20 now, it references the requirement to build the
21 secondary access -- two -- two accesses in A and B;
22 right? So if you look at it, it says, the following
23 improvements must be completed prior to the approval of
24 development order, free of the additional dwelling
25 units beyond the 2,695 units approved by Resolution

1 Z-15.

2 And A is the construction of the access point in
3 the southwest corner of the development in connection
4 to Portico, and it references a DOS number, all right?
5 And that is the development -- that's the DO number for
6 the Portico access in the southwest, which is already
7 existing, it's already completed.

8 And then it references B, construction of the
9 proposed southerly access point from 75th Street west,
10 and it references another DO number. So it's my
11 understanding that that's the DO number for the
12 southerly access that we've already got built that's
13 supposed to be open by March.

14 So I think there's some confusion, and we probably
15 need to go back with Staff, and leave the record open,
16 as to whether this is intended to be a condition to
17 open up the second southerly access to 75th Street, or
18 whether it was intended to be for the southerly access
19 that's already -- that was already on the master
20 concept plan. And whether it is, in fact, cumulative
21 to Condition 23, which already addresses the southern
22 access.

23 HEARING EXAMINER RIVERA: Yes, thank you, I
24 appreciate that. Because as I said, when I was reading
25 through it, I went back and forth a number of times and

1 couldn't make a lot of sense out of it. And the way --
2 and 23 is labeled "second access" without that being,
3 again, demarcated as the second access. If there's a
4 way even to combine -- just having an access condition,
5 perhaps, and then subsections to try to keep it -- I
6 just want whoever is picking this up to be able to read
7 it and understand it, if that's the direction that
8 we're going.

9 MR. AKIN: Yes.

10 HEARING EXAMINER RIVERA: Okay.

11 MR. AKIN: Thank you. And so we will work with
12 Mr. Danley and the rest of Staff in order to clean this
13 up and figure it out.

14 There's one other -- 23 did have one other
15 sentence added to it about the requirement being
16 contingent upon approval from the East County Water
17 Control District. And I think that was originally in
18 there because the access has to actually cross that
19 canal, which is owned by the water -- well, it's
20 LA-MSID that owns it now, and so we don't have
21 permission to cross it. We have to get permission to
22 cross it. And so these are all things that we need to
23 work out, as far as the wording of the condition. And
24 we've spoken about it, and we will do that when you
25 give us the opportunity.

1 HEARING EXAMINER RIVERA: Yes. And just as a note
2 on the second access Condition 23, it also references
3 page 4 of the MCP, but we've got a single page MCP now,
4 so I don't know what that would reference either, but
5 I'm sure that will come out in the cleanup --

6 MR. AKIN: Yes.

7 HEARING EXAMINER RIVERA: -- anyway. Okay, thank
8 you.

9 Then next you had Mr. Barraco or Mr. Leung?

10 MR. AKIN: Mr. Barraco can come up next, yes,
11 thank you.

12 HEARING EXAMINER RIVERA: Good afternoon.

13 MR. BARRACO: Good afternoon, Madam Examiner. For
14 the record, Carl Barraco. I am going to address four
15 of the issues that came up.

16 The first is the young lady that is east of River
17 Hall and has the horses, and she was concerned about
18 drainage. I did have an opportunity to speak to her at
19 the end -- at the beginning of the break, and she
20 understood, and that is the water management system for
21 River Hall has a perimeter berm. I explained to her
22 what that was, the perimeter berm, and she seemed to
23 understand exactly where it was and be knowledgeable of
24 it. And then I explained that any water falling
25 outside of the berm is her water. Anything falling --

1 any water falling inside the berm stays within the
2 River Hall surface water management system, it must be
3 directed to the lake system. That lake system
4 attenuates and treats the water, and then allows it to
5 leave the site in a controlled manner. And that goes
6 back to the statement I made in my presentation, there
7 will be no external impacts -- no external drainage
8 impacts due to this request.

9 HEARING EXAMINER RIVERA: And I asked the question
10 of the other water expert about the irrigation demands
11 and the fact that that -- excuse me -- that permit was
12 not going to need to be modified, but I assume the ERP
13 that you're talking about either will be or has been
14 modified to accommodate the additional units?

15 MR. BARRACO: Yes. Since the first ERP, the first
16 construction, this ERP has been modified many times,
17 and it stays consistent with the ERP, but it has to
18 address the additional detail, and this would go
19 through that same process, so that the water management
20 system evolves with every new project.

21 HEARING EXAMINER RIVERA: Okay.

22 MR. BARRACO: The second -- there were some
23 questions about infrastructure, and I'd like to address
24 them all at the same time. So I would tell you that in
25 my professional opinion, there is adequate

1 infrastructure, including potable water, sanitary
2 sewer, and roadway systems to serve the project and the
3 request.

4 Third is emergency access and the gates. As
5 Jennifer said, the area -- the homes that will access
6 these southern connections already have gated entrances
7 so that it's really more of the same. Emergency
8 vehicles or school buses using this southern connection
9 would be treated the same as they are now. They have
10 access to the existing gates, and they would have
11 similar access to the -- to the southern gates.

12 HEARING EXAMINER RIVERA: All right, thank you.

13 MR. BARRACO: And then finally, just a quick note
14 on the River Hall Parkway traffic and emergency
15 vehicles. And I think we're fortunate that River Hall
16 Parkway is a multilane divided facility, and because of
17 that there is adequate lane-age to provide emergency
18 vehicles access in every situation because it is a
19 multilane facility.

20 HEARING EXAMINER RIVERA: So this question that
21 keeps coming up about the location of the actual
22 emergency -- the EMS facility, again, just on the
23 record, there is EMS service available even with the
24 additional units that you're requesting. It's just
25 unclear where that facility might be housed, whether

1 it's at the fire station or someplace off-site?

2 MR. BARRACO: My understanding, that it is just a
3 question of where they would be housed, yes.

4 HEARING EXAMINER RIVERA: Okay. But there is EMS
5 capacity to service the additional units that are being
6 requested?

7 MS. SAPEN: (Nods head.)

8 MR. DANLEY: (Nods head.)

9 HEARING EXAMINER RIVERA: Thank you. They're
10 saying yes. I said that for the record.

11 MR. BARRACO: That's all I have. Do you have any
12 other questions for me.

13 HEARING EXAMINER RIVERA: That covered what I had
14 written down for your area, and then Mr. Leung, I
15 believe, as well.

16 Good afternoon.

17 MR. LEUNG: Good afternoon, Madam Hearing
18 Examiner. For the record, Steve Leung with David
19 Plummer and Associates.

20 I'm going to address the questions about the
21 traffic impact statement, when it was performed.
22 Primarily, in your package -- I believe it's
23 appendix P, that -- that included our traffic study
24 that was prepared to address the rezoning traffic
25 impacts dated September 13th, 2023.

1 There was also a question about when the -- when
2 did we -- did we do a traffic count out there. The
3 traffic count at the intersection of State Road 80 and
4 River Hall Parkway was September of 2021.

5 HEARING EXAMINER RIVERA: Was that -- that was for
6 this purpose, or that was for one of -- a DO? Because
7 there's multiple traffic studies that are done on a
8 project like this, if I understand it correctly.

9 MR. LEUNG: Correct.

10 HEARING EXAMINER RIVERA: You have to do one for
11 my purposes here today, the zoning, and then there's
12 another impact statement that's reviewed before you can
13 get a development order?

14 MR. LEUNG: Yes, the development order is a
15 parallel process in terms of permitting. Sometimes we
16 use the same data as -- as zoning, depending on timing.
17 Sometimes new counts are done if it's like two or three
18 years after the rezoning traffic study.

19 UNIDENTIFIED SPEAKER: Can I say something?

20 UNIDENTIFIED SPEAKER: Are we able to speak?

21 HEARING EXAMINER RIVERA: I'm sorry, no. Florida
22 law treats participants of the public and the parties
23 differently. So I have to conduct the hearing in a
24 certain way, but they'll be available for questions
25 after we conclude the hearing, thank you.

1 MR. LEUNG: So I'll point you to the -- to the
2 rezoning traffic study dated September 13th, 2023, on
3 page -- starting on page 6 -- the roadway analysis
4 under existing conditions as presented on page 6. And
5 I will note that, as you can see, if you're seeing that
6 table, near the bottom the State Road 80 roadway
7 segment from State Road 31 to Buckingham Road, we show
8 an LOS of F, and that suggests that the current four
9 lanes would need to be six lanes to bring up to
10 standard.

11 And then also on page 7 would be the intersection
12 analysis right at the top of the page in the table,
13 indicates State Road 80 and River Hall Parkway, the
14 existing LOS a.m. is A, as in apple, and during the
15 p.m. peak hour is B, as in boy.

16 Now, what's the significance of that? Well, as
17 you recall, the signal went through a signal warrant
18 that was initiated by the Florida DOT, and I believe
19 that was in response to the request of the -- of the
20 School Board. So the warrant was completed in 2014, I
21 believe the construction actually started sometime in
22 2016, and kind of ended near the end of 2016, and in my
23 testimony I indicated that signal was fully operational
24 in 2017. And obviously the State looked at all the
25 future impacts or future traffic volumes generated by

1 both River Hall and the school, and also the traffic
2 along State Road 80. So that signal was approved based
3 on build-out conditions, so it could be assumed that,
4 yes, that signal may need adjustments in the future;
5 but at least for the next 10 to 20 years, it should
6 operate at an acceptable level of service.

7 So based on that assumption, we looked at future
8 conditions without the -- without the proposed
9 rezoning. So it's back to the current zoning that we
10 have doing nothing. We provided the segment analysis
11 on page 10, and as you can see, that the same segment
12 of State Road 31 to Buckingham is also at F; and
13 Buckingham Road to River Hall Parkway, that also came
14 to an F. So what we're saying is that even without any
15 additional units here, the roadway is going to perform
16 at F, and it's up to the State to bring that up to
17 standard based on state rules.

18 Now, I'll remind you that Lee County does not have
19 a concurrency system, a regulatory concurrency system,
20 and any traffic study that they see in terms of
21 rezoning or permitting is really a wake-up call to say,
22 hey, you need to do something with that road. And
23 per the -- per the state statute, under section -- or
24 under Chapter 163, Section 3108, it clearly says that
25 if a road is failing, either existing or without the

1 particular project, all the project has to do is
2 mitigate their impacts through the payment of road
3 impact fees or proportionate share, but that's only if
4 that road fails with the project traffic. So when my
5 testimony said that we have the same LOS as without and
6 with the rezoning, we are -- even though we're
7 achieving LOS F, as long as we fulfill our obligation
8 of mitigation of paying road impact fees, or some kind
9 of proportionate share with the State, we're not
10 responsible to improve that, and that's the timing --
11 depending on whether the State decides that it's time
12 to make the improvement or not.

13 And I also testified that we tend to overestimate
14 a project during the rezoning as worst-case condition.
15 That's why every year when the Lee County MPO decides
16 what type of priorities -- what roadway improvements
17 are needed, they go through, you know, the whole
18 process of prioritizing and then getting funding to do
19 it. And even though everybody says, yes, State Road
20 80, sure, volumes have increased, you know, doubled in
21 the last ten years; but the MPO, based on their
22 projections and their analysis, still shows that State
23 Road 80 from Buckingham all the way east, it's
24 anticipated it will work adequately until 2045 at this
25 stage. That doesn't mean that it's not going to change

1 next year or the following year. It's a continual
2 process.

3 And based on our projections, specifically to the
4 intersection of State Road 80 and River Hall Parkway,
5 it's going to operate at an acceptable level of
6 service, and we indicated that on page 12 of the
7 traffic study. Again, the future conditions under a.m.
8 peak hour is LOS D, and then during the p.m. peak
9 hours, LOS E, as in effort, and that's within the level
10 of service standard.

11 HEARING EXAMINER RIVERA: And that's still looking
12 exclusively at State Road 80. So I know I asked
13 before, but how -- and I know you answered me. I don't
14 have it ready. Is there a certain percentage that
15 you're looking to alleviate some of the traffic that's
16 going to 80? Is that the purpose of the southerly
17 access points, is to divert them away from 80, to act
18 as some kind of a reliever for that?

19 MR. LEUNG: No. The level of service -- to
20 achieve acceptable level of service, we're not
21 dependent on the southern access.

22 HEARING EXAMINER RIVERA: Correct, but just in
23 terms of the daily experience of people that are
24 driving --

25 MR. LEUNG: Yes, it would -- it would help.

1 HEARING EXAMINER RIVERA: Will it be enough to be
2 noticeable? I mean, by those words, again, that we
3 talked about earlier where there's a significant impact
4 versus an adverse impact. Would it be enough that if
5 it's some -- that you're driving every day, would you
6 notice a difference that made you --

7 MR. LEUNG: I don't think so. I believe I
8 testified we're looking at maybe two to three percent
9 of the overall River Hall traffic to utilize that
10 access.

11 HEARING EXAMINER RIVERA: And that's because it
12 will be restricted to just the folks that are in
13 the immediate vicinities?

14 MR. LEUNG: Right. And, again, we can't force
15 them -- you know, maybe someone said, I don't need to
16 go anywhere south, and I'm used to State Road 80, and
17 that's the way it is.

18 So, again, I want to emphasize that State Road 80
19 is an important road because it's in the FDOT SIS
20 system; it's a part of the strategic intermodal system.
21 And what it means is that it's an elevated status, that
22 it's a very important road for commerce, and so the
23 priority for DOT is to maintain flow east/west. All
24 connections to State Road 80, all signals, the minor
25 approaches such as River Hall Parkway, it's going to

1 have to sacrifice. You know, they're going to optimize
2 the green time to -- you know, to maintain adequate
3 flow east/west, and we all have to wait at signals, and
4 that's just the way -- you know...

5 HEARING EXAMINER RIVERA: And just to ask again,
6 so the DO that's pending right now, I assume the
7 traffic study had already been approved -- or not
8 approved but provided for the northeastern 100 and
9 whatever units they said that that was for. The
10 majority of the units that you're putting, though, in
11 the southeastern, when you go in for that DO, you'll
12 have to look at traffic again at that point? There
13 will be some kind of traffic study that you need to
14 update?

15 MR. LEUNG: Yeah. At the time of DO, we would
16 have to look at what's available to the access. If the
17 southern entrances are not open, then we can't assign
18 any traffic to it, so everything is still going to be
19 up at State Road 80.

20 HEARING EXAMINER RIVERA: Because -- I hear what
21 you're saying. I understand you've met the legal
22 obligation to do that today. I just want to be sure
23 that there's some -- so that everyone understands, it's
24 going to be looked at again before rooftops actually
25 start to go -- or additional trips are actually being

1 generated on the roadways --

2 MR. LEUNG: Yes.

3 HEARING EXAMINER RIVERA: -- that you would have
4 to do that.

5 MR. LEUNG: But I want to be clear that we're not
6 dependent on the southern access. It's provided as --

7 HEARING EXAMINER RIVERA: Because it's failing
8 without, correct, okay.

9 That was the extent of my questions. Did you have
10 any questions?

11 MR. DANLEY: Can he just clarify for the public,
12 there's -- there's the traffic count that happened in
13 2021, but the most recent traffic impact statement, the
14 most recent information, was complete September of
15 2023.

16 MR. LEUNG: Correct.

17 MR. DANLEY: And so the numbers throughout there
18 have been revised and updated to reflect current
19 conditions -- or at least used a multiplier to
20 understand where the current conditions --

21 MR. LEUNG: Oh, yes. Well, what I said, the
22 existing conditions, as presented in the report,
23 reflects 2021; but the future condition is actually the
24 year 2026. That's when we assume the build-out of the
25 additional 549 units.

1 MR. DANLEY: Okay, thank you.

2 HEARING EXAMINER RIVERA: Thank you.

3 MR. AKIN: Thank you, Madam Hearing Examiner. I
4 don't have anything else to add unless there are any
5 other questions that you feel we did not address that
6 came up in public comment.

7 HEARING EXAMINER RIVERA: There were a few
8 questions, again, that were internal about amenities
9 and gating and things that are HOA-related, so those
10 are outside the scope of what we can get into here, but
11 I would just -- I assume -- it sounds like you were
12 having conversations with the residents. I would hope
13 and encourage that that continues to happen to get some
14 of those questions answered. It's just not something I
15 can accept into the record.

16 MR. AKIN: Understood, thank you.

17 HEARING EXAMINER RIVERA: Did Staff have anything
18 for the rebuttal?

19 MR. DANLEY: Just one piece. You had asked about
20 the timeline for the Alico extension. Our Staff did --
21 we have a timeline. This is tentative. It's -- you
22 know, the time line is built out all the way out to
23 2029.

24 HEARING EXAMINER RIVERA: Okay.

25 MR. DANLEY: It's outside the five-year work plan

1 so a lot of stuff is not funded just yet.

2 HEARING EXAMINER RIVERA: Okay.

3 MR. DANLEY: But in terms of a tentative --

4 (Staff Exhibit 3 submitted.)

5 HEARING EXAMINER RIVERA: Thank you.

6 MR. DANLEY: -- timeline --

7 HEARING EXAMINER RIVERA: I'll accept that as

8 Staff Exhibit 3 for the record. Thank you for --

9 MR. DANLEY: My understanding is that phase one,
10 which is much further south of State Road 82, it's at
11 90 percent (inaudible) so it's going to be a while
12 before that actually connects to 82.

13 HEARING EXAMINER RIVERA: And this goes out to
14 2029, it looks like?

15 MR. DANLEY: Yes.

16 HEARING EXAMINER RIVERA: Thank you.

17 Were there any other items for rebuttal that you
18 wanted to address?

19 MR. DANLEY: Let me look at my notes real quick.

20 I just want to put something on the record just
21 for the benefit of the public. Emergency services,
22 school buses, anything that has a municipal association
23 to it, there is an ability for those types of vehicles
24 to have access that's preempted by either a clicker or
25 an RFID chip or something, just so that it's not going

1 to be an issue where one HOA is going to be able to
2 stop an emergency service from entering into the
3 facility. At the time of development order, they all
4 have to have the same way of getting into these --
5 these types of facilities. What that technology is I
6 don't know, or I can't specifically speak to, but that
7 is -- that is baked into the development process.

8 I think that's all I had, between those two
9 things, thank you.

10 HEARING EXAMINER RIVERA: Okay, thank you.

11 Well, we need to leave the record open. How long
12 do we need to do that? The items that I have is a
13 revised master concept plan, revised conditions both to
14 address the access conditions and the satisfied
15 conditions, and just a general -- if you'd like to
16 reorganize them in any fashion, not change the
17 substance obviously; the revision to the master concept
18 plan for the buffer; and then the revised property
19 development regulations to correct the label. So how
20 long would the parties need to do that?

21 (Sotto voce between Mr. Akin and Ms. Sapen)

22 MR. AKIN: So I know you -- Dirk, you've got to
23 talk to emergency services. I don't know how fast that
24 can happen. I mean, within a week we could probably
25 get it done, or do you need more time?

1 MR. DANLEY: I would need at least two weeks. I
2 mean, emergency services is usually busy with something
3 so...

4 HEARING EXAMINER RIVERA: Okay.

5 MS. SAPEN: Emergencies?

6 MR. DANLEY: They deal with emergencies.

7 HEARING EXAMINER RIVERA: Emergencies.

8 I'll set a date of January 26th, by end of
9 business that day. If additional time is needed
10 because other agencies haven't gotten back to you,
11 please just request that to my office, and I can grant
12 an extension if it's needed. So, again, that's January
13 26th by 4 p.m.

14 Okay. So we will conclude the hearing for today.
15 If you filled out a card -- and for anyone that did,
16 even the folks that have left already, if you just want
17 to let them know, they will receive a copy of the
18 recommendation once it's released, as well as the
19 hearing date information before the Board of County
20 Commissioners. And I would encourage everybody to keep
21 talking to each other to get some of the questions
22 answered that weren't able to be addressed in this
23 forum. Thank you everyone for coming today. Please
24 stay well and stay healthy.

25 (Proceedings concluded at 1:15 p.m.)

CERTIFICATE OF REPORTER

STATE OF FLORIDA)

COUNTY OF LEE)

I, Deborah M. Bruns, Florida Professional Reporter, do hereby certify that I was authorized to and did report the foregoing proceedings, and that the transcript, pages 1 through 126, is a true and correct record of my stenographic notes.

Dated this 22nd day of January, 2024.



Deborah M. Bruns, FPR

(This transcript was electronically signed.)

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