

THE OFFICE OF THE LEE COUNTY
HEARING EXAMINER
CASE NO.: DCI2023-00010

IN RE: SUNNILAND TOWN CENTER CPD

PROCEEDINGS: PUBLIC HEARING

BEFORE: DONNA MARIE COLLINS
Lee County Hearing Examiner

DATE: April 25, 2024

TIME: 9:05 a.m. to 3:19 p.m.

LOCATION: Hearing Examiner Meeting Room
1500 Monroe Street
Fort Myers, FL 33901

COURT REPORTER: Christi K. Cole, Florida
Professional Reporter

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

2 HEARING EXAMINER COLLINS: Good morning. My
3 name is Donna Marie Collins. I'm the hearing
4 examiner that will be presiding over today's
5 zoning hearing. The case is Sunniland Town Center
6 CPD. It's an amendment to an existing CPD to
7 change the development parameters.

8 All testimony and evidence I accept during
9 these hearings will be taken under oath.
10 Therefore, at the conclusion of my remarks, I will
11 administer the oath to everyone in the room en
12 masse so I don't have to swear everybody in as you
13 approach the podium.

14 The order of proceedings will be as follows:
15 First, the Applicant will present their case.
16 Their representatives -- their representatives of
17 the property owner or contract purchaser, they are
18 the ones making the request to change the
19 development parameters of this project. They
20 will -- their testimony will include probably
21 several witnesses with different areas of
22 expertise, and their job would be to demonstrate
23 how the request complies with the Lee Plan and the
24 Land Development Code. In those documents are the
25 review criteria that I am bound by when I consider

1 this amendment.

2 At the conclusion of their presentation, we
3 typically go to Staff, but I understand that
4 Staff's presentation will be this afternoon
5 because one of their expert witnesses is not
6 available until this afternoon. And because of
7 that, I will allow members of the public that
8 would like to speak this morning to speak at the
9 conclusion of the Applicant's presentation.

10 You don't have to speak at that time, but if
11 you speak at that time you'll not get a second
12 opportunity to speak later this afternoon at the
13 conclusion of Staff's presentation. I offer this
14 as an accommodation for those who may have taken
15 off of work and feel as though they can't stay the
16 whole day.

17 Regarding public testimony, each member of
18 the public that comes, I ask you come to the
19 podium, state your name, explain to us what your
20 specific concerns are with the project. It's my
21 experience with large projects like this that
22 contemplate a number of uses, that people are not
23 completely opposed or totally in favor; they have
24 very specific concerns. If you express them to
25 us, you'll allow us an opportunity to provide

1 further clarification or to craft conditions that
2 might address those specific concerns.

3 Each member of the public will have only one
4 chance to speak, so I ask that you please organize
5 your remarks before you come to the podium;
6 because in the interest of keeping the hearing
7 moving forward, I can't allow people to say, Oh,
8 and another thing and another thing. We keep
9 going from there.

10 During public input, that is your time to ask
11 questions. We will note all questions asked and
12 then we will circle back, after all members of the
13 public have spoken, to address those questions.
14 We find that this works better because sometimes
15 people ask the same question, but if you're
16 waiting your turn, you don't always listen to what
17 the person before you is saying and the response
18 to it. So that's how we handle that.

19 Because of the nature of this amendment, I am
20 not the final decision-maker. But I will be
21 taking in all testimony and evidence and I will be
22 preparing a recommendation to the Board of County
23 Commissioners. That recommendation is a public
24 record, which is available to you. You can access
25 it online, or if you wish to provide your e-mail

1 address or mailing address, if you don't have an
2 e-mail address, we will forward you a copy of that
3 recommendation. You will also receive
4 notification of the final board hearing via the
5 method of contact you provided to us.

6 When the board has their final hearing, they
7 will be accepting no new testimony or evidence.
8 You may speak to the matters that you brought up
9 during this hearing and you may point to any
10 errors you think are in my recommendation that
11 they should consider in their decision-making
12 process. So I encourage you to participate in
13 today's hearing, because if members of the public
14 don't participate at this level, they do not have
15 an opportunity to address the board during the
16 final decision-making process.

17 All right. I think that's everything. So
18 I'm going to administer the oath today. If you
19 intend to speak regarding this case, I ask that
20 you please raise your right hand.

21 (Right hands raised en masse.)

22 HEARING EXAMINER COLLINS: Do you swear or
23 affirm the testimony and evidence you give today
24 will be the truth?

25 (Witnesses answer affirmatively and are sworn

1 en masse.)

2 HEARING EXAMINER COLLINS: Okay. Thank you.
3 I'm ready to begin.

4 MS. MONTGOMERY: Can I ask a question
5 procedurally before we begin?

6 HEARING EXAMINER COLLINS: Sure.

7 MS. MONTGOMERY: I do appreciate the fact
8 that we have June dates. I'd very dearly like to
9 finish today. I'm assum- --

10 HEARING EXAMINER COLLINS: As would I.

11 MS. MONTGOMERY: I'm assuming the Staff has
12 more than one witness. Can the Staff start in the
13 morning and wait for the witness that can't come
14 until this afternoon?

15 HEARING EXAMINER COLLINS: That's up to
16 Staff.

17 MS. WORKMAN: I mean, we can. It's
18 Transportation.

19 MS. MONTGOMERY: I figured it might be.

20 MS. WORKMAN: Yeah. So, I mean, I can start,
21 that's not a problem, and then they can come in
22 later on. They just can't come in until this
23 afternoon.

24 MS. MONTGOMERY: Okay.

25 MS. WORKMAN: Yeah.

1 MS. MONTGOMERY: But in the interest of kind
2 of moving --

3 MS. WORKMAN: It's really about the public,
4 because the public is here this morning. You
5 know, they have the opportunity to speak if they
6 want to. If they want to hold out until Staff is
7 done, like she explained and then go this
8 afternoon after Transportation goes and we close
9 Staff's presentation, then that's their choice.
10 But really it was in respect of the public coming,
11 you know, if they wanted to speak about your
12 testimony in between.

13 HEARING EXAMINER COLLINS: Right. And I
14 just -- I just want to say, you're only going to
15 get one opportunity to speak in public. So if
16 your concerns are related to transportation, you
17 might be better off waiting until this afternoon
18 to speak.

19 MR. AHMADI: Do you have a time frame on when
20 they are coming? Do we have that? So that way
21 it's kind of --

22 HEARING EXAMINER COLLINS: Is it 1:00? Do we
23 know?

24 MS. WORKMAN: I believe it is 1:00. I
25 believe so.

1 MR. AHMADI: Okay.

2 HEARING EXAMINER COLLINS: 1:00. And I don't
3 know -- do you have any idea how long their
4 testimony is? A half hour, 45 minutes?

5 MS. WORKMAN: I'm going to say a half hour.
6 I don't even think it's that long.

7 HEARING EXAMINER COLLINS: Just to -- you
8 know, I'm going to offer the opportunity to speak
9 this morning, if there is time this morning after
10 they've made their presentations, for those who
11 are not able to stay. But I encourage you to try
12 to wait until you can hear all the testimony
13 before you do speak and -- because what will
14 happen is, during the transportation presentation
15 there'll be discussion on how the existing
16 approval trip generation compares with what is
17 proposed today, and that can be very helpful in
18 putting impacts into perspective.

19 Any other questions?

20 MS. MONTGOMERY: No. No.

21 HEARING EXAMINER COLLINS: I didn't know that
22 you weren't already aware. When they contacted
23 me, I thought this had already been shared.

24 MS. MONTGOMERY: (Shaking head.)

25 MS. WORKMAN: No, it had not. It all

1 happened this morning.

2 HEARING EXAMINER COLLINS: And it just --
3 they -- at 8:30 is when they came to me and said,
4 Not all the witnesses are present -- are going to
5 be present in the morning. So I said, That's
6 fine, they can go in the afternoon.

7 MS. MONTGOMERY: Yeah, I didn't know. So I
8 just wanted to kind of -- and I do -- do want to
9 try to finish today. But with that, may I --

10 HEARING EXAMINER COLLINS: And I have a
11 question before you start.

12 MS. MONTGOMERY: Okay.

13 HEARING EXAMINER COLLINS: What is the cutoff
14 date for a case to make it to the board before
15 their summer recess? Do you know what that is?

16 MS. WORKMAN: No, but I can find out from --
17 from --

18 HEARING EXAMINER COLLINS: Okay. Before the
19 end of the hearing today?

20 MS. WORKMAN: Of course, I can, yeah.

21 HEARING EXAMINER COLLINS: Because, if I can,
22 I will try to render my recommendation so that
23 there's an opportunity for the final hearing
24 before the board takes their summer break.

25 MS. MONTGOMERY: We would appreciate that

1 very much.

2 HEARING EXAMINER COLLINS: Now I'm ready to
3 begin.

4 MS. MONTGOMERY: With that, we'd call Mr. Dan
5 DeLisi, who's been qualified and accepted as an
6 expert previously.

7 (Cell phone interruption.)

8 HEARING EXAMINER COLLINS: You?

9 MS. WORKMAN: No, it was not me. I'm -- I
10 swear. I'm sworn in. I just turned it off. It
11 was a reminder for me.

12 MR. DELISI: All right.

13 MS. WORKMAN: Thank you.

14 HEARING EXAMINER COLLINS: Yes, please
15 silence your cell phones. And if -- if you need
16 to take a call, that's fine with me. Please just
17 step out and you'll be allowed to come back in.

18 MR. DELISI: Okay. So for the record, my
19 name is Dan DeLisi. I've testified in this forum
20 on many occasions. So I'll get started. I'm
21 going to talk about the planning aspects of the
22 case, the -- most of the criteria for approval,
23 the compatibility consistency with the comp plan,
24 all of that.

25 Afterwards, Paul Owen, the ecologist, is

1 going to talk about environmental aspects of the
2 site and the code violation, so you have more
3 details on that, how it's being remediated and how
4 the amendment is going to fulfill the requirements
5 of that.

6 HEARING EXAMINER COLLINS: Okay. Good,
7 because I would like greater detail on the timing
8 of how this gets accomplished.

9 MR. DELISI: Yeah. So before you ask me
10 those questions, just know Paul is coming up --

11 HEARING EXAMINER COLLINS: I'm going to wait.

12 MR. DELISI: -- and he's the guy.

13 HEARING EXAMINER COLLINS: Yes.

14 MR. DELISI: Brent Addison will then come up
15 and talk about stormwater and utilities, and then
16 Ted will discuss transportation. And then we can
17 go through the 48-hour memo.

18 I don't think our presentation is going to
19 take too much more than, if even, an hour. So we
20 should be done fairly quickly. But if you would
21 like me to talk slow to fill up the morning, I'll
22 be happy to.

23 All right. So the subject property is
24 33.3 acres on the north side of Lee Boulevard.
25 You can see some obvious characteristics of it.

1 It's -- it's about a half mile west of Sunshine
2 Boulevard. It's bisected by Sunniland --
3 Sunniland I think it's Road, not Boulevard, but
4 anyways, and it's adjacent to Sunshine Elementary
5 School.

6 We're in the Central Urban future land use
7 category. I'll talk more about that later. But
8 you can see what the general design for the area
9 is. Lehigh Acres is predominantly Urban
10 Community. It's a lot of quarter-acre lots, just
11 all over the place. That's how it's platted.

12 But Lee Boulevard, there's clear intent to
13 make it more of a highly urban area, and so the
14 designation of Urban Community on both sides kind
15 of lends to that character that you see along Lee
16 Boulevard for the desire for that future
17 development of character.

18 As you had mentioned before, this is an
19 existing planned development. It was zoned in
20 2006 for 232,000 square feet of commercial, both
21 retail and office. It was also designed to allow
22 for the continuation of an oil well which was on
23 site. So you can see the existing Master Concept
24 Plan, it was pretty detailed, much more detailed
25 than the proposed, which is part of the reason for

1 this amendment.

2 The oil well remained and the retail and
3 commercial uses were to be constructed around the
4 oil well. And, you know, of course, Sunniland is
5 bisecting the project. But that was how it was
6 previously designed.

7 There was a condition in the -- in the
8 existing zoning that required the capping of the
9 oil well once the -- it ceased production. And it
10 did cease production, the oil was capped and --

11 HEARING EXAMINER COLLINS: How long ago was
12 the oil well capped?

13 MR. DELISI: Oh, gosh. I have those records.
14 I would have to look them up. I want to --

15 HEARING EXAMINER COLLINS: I would be
16 interested in having that --

17 MR. DELISI: I want to say --

18 HEARING EXAMINER COLLINS: -- in the record.

19 MR. DELISI: -- it's been a couple of years.
20 But I'll look for that and I'll come back with
21 that.

22 HEARING EXAMINER COLLINS: And also, may I
23 have a paper copy of your PowerPoint --

24 MR. DELISI: This is the second time --

25 HEARING EXAMINER COLLINS: -- and also for

1 the court reporter?

2 MR. DELISI: -- second time in a row I've
3 done that. Sorry.

4 HEARING EXAMINER COLLINS: This is Applicant
5 Exhibit 1. Thank you.

6 (Applicant Exhibit No. 1 was presented and
7 marked for identification.)

8 MR. DELISI: So the proposed amendment
9 relocates the preserve areas, remediates the code
10 violation, loosens up the Master Concept Plan. So
11 now we have outparcels along Lee Boulevard and two
12 anchor parcels, one on the west side and one on
13 the east side. We've relocated the preserve
14 areas, and so this area along the north, both
15 preserve and dry detention area, acts as a nice
16 natural buffer to the residential to the north.

17 So the request now is for 265,000 square feet
18 of commercial and 100,000 square feet of
19 self-storage or 100,000 square feet of commercial,
20 100,000 square feet of self-storage and 300
21 residential units. And the residential units
22 would be placed on this eastern anchor parcel. So
23 the intent is for a smaller anchored retail
24 development on the west, a larger on the east, or
25 multifamily, and then, again, outparcels along Lee

1 Boulevard.

2 So Section 34-145 is the criteria for
3 approval for planned developments. I'm going to
4 go through, as I said, several of these and then
5 hand it over to other experts that will go through
6 the rest.

7 So the first is consistency with the
8 Comprehensive Plan. As I said before, we're in
9 the Central Urban future land use category, which
10 is designed in Policy 1.1.3 of the Lee Plan and
11 it's characterized as the urban core of Lee
12 County. So the idea is more intensive commercial
13 uses, higher densities of residential development
14 and -- and that, again, you see how it's located
15 along both the north and south sides of Lee
16 Boulevard.

17 The property is also within the Mixed Use
18 Overlay on Map 1C of the Lee Plan, the future land
19 use map series, and that creates incentives for
20 even more increased intensity on the property.
21 And the way the incentives work is both a density
22 incentive, which I'll talk about in a little bit,
23 as well as incentives in the Land Development Code
24 to concentrate intensity at these locations.

25 Objectives 2.1 and 2.2 talk about development

1 location and development timing. As you were able
2 to see on the aerial, the property is an infill
3 property. There's development on all sides of the
4 property. There are utilities and public services
5 all around. And so the property fills in an area
6 that is currently -- if you go out on site, it's a
7 blighted property. It's a vacant lot in the midst
8 of an urban area.

9 And so there are all sorts of things that --
10 I mean, the trash needs to be cleaned up, et
11 cetera. I mean, there's -- it's a vacant lot, so
12 it needs to be maintained. So this property is
13 well located for future development to enhance
14 what's going on along the corridor.

15 There is -- in Policy 5.1.3, there's
16 locational criteria for higher density residential
17 use. You know, being within the Mixed Use
18 Overlay, you would expect that this is a good area
19 for residential uses and higher density of
20 residential uses just because of what's going on
21 along Lee Boulevard. There are a lot of
22 commercial uses, and the policy specifically talks
23 to employment centers, access to transit and
24 proximity to schools. And we're, as I said
25 before, immediately adjacent to Sunshine

1 Elementary School. We're along a bus route that
2 runs along Lee Boulevard, and the commercial uses
3 all along Lee Boulevard provide an employment base
4 for people.

5 Policy 6.1.1 and all of 6 talks about
6 commercial evaluation criteria. 6.6. -- 6.1.1 are
7 the evaluation criteria that includes traffic
8 impacts, buffering, public services, proximity to
9 similar centers. We're consistent with all of
10 these.

11 We're not asking for any deviations from the
12 buffering requirements or open space. Public
13 services are all available. Ted will talk about
14 transportation impacts. So, you know, we're
15 consistent with Policy 6.1.1.

16 6.1.4, there's a lot of overlap. Again,
17 urban services are available to the site, and I'll
18 talk about compatibility a couple of slides from
19 now.

20 Policy 25.6.1 is the Lehigh Commercial
21 Overlay. We are -- that's incorrect. We're
22 entirely with the Lehigh Commercial Overlay. The
23 Lehigh Commercial Overlay was established to
24 designate existing commercial sites in Lehigh
25 Acres and encourage that commercial be developed

1 on those. What the policy says is that commercial
2 is allowed and so is residential but not platted
3 single-family lots. So anything that provides a
4 diversity of residential within the community.

5 And so what the policy is trying to get at is
6 essentially anything but what's there now, all of
7 the platted single-family lots. So commercial,
8 multifamily residential are all specifically
9 called out as uses that make sense within the
10 commercial overlay.

11 HEARING EXAMINER COLLINS: So this property,
12 was it ever platted for single-family development,
13 or was it always set aside as, you know, large
14 tracts, perhaps, for schools, libraries, parks,
15 commercial employment centers or what have you?

16 MR. DELISI: I'm not sure if it was ever
17 platted. Someone else may know the history of it.
18 If you drive out on site, there is, you know,
19 decaying infrastructure on the site. In other
20 words, you can see where the roads were platted.
21 And this road here, 5th Avenue or 5th Street, runs
22 right through it and is still there. You know, I
23 believe this road is there and falling apart.

24 HEARING EXAMINER COLLINS: It really just
25 looked like a dirt path once you got past that

1 first --

2 MR. DELISI: Yeah.

3 HEARING EXAMINER COLLINS: -- intersection.

4 MR. DELISI: Yeah. So at some point, it may
5 have been and then re-platted. But, I mean, the
6 way it looks like now is the infrastructure was
7 put in place. If -- you know, so I don't -- I
8 don't know the history of all of that.

9 MS. MONTGOMERY: Yeah, I do know, just for
10 the record, that there was a vacation in the 1995,
11 '96 time frame. So I believe some of it was
12 platted and then was vacated. I can provide you
13 that information if you need it.

14 HEARING EXAMINER COLLINS: I was just trying
15 to determine if from the beginning it was intended
16 to serve as a commercial employment center of some
17 kind based on its centrality to the Lehigh
18 community and the fact that it's not broken up
19 into single-family private lots like everything
20 around it. That's all.

21 MR. DELISI: Okay.

22 HEARING EXAMINER COLLINS: It's not that
23 important. I mean, it's been zoned for commercial
24 since 2006. I was just curious.

25 MR. DELISI: Yeah. And, you know, I do want

1 to -- going back to that point, again, if you look
2 at the policy, the goal of the policy, of course,
3 is to preserve and develop commercial spaces, but
4 also make sure you allow for diversity of housing
5 types.

6 So if you have -- you know, I mean, it's hard
7 to aggregate lots and develop multifamily on a big
8 platted area. So to the extent that you have
9 something that -- where you can create a condo
10 development, those areas are -- I mean, you can
11 just look at the aerial and there aren't a lot of
12 places where you would be able to do that either.

13 So the county created the Mixed Use Overlay
14 for, you know, that reason, and hopefully to
15 encourage mixed use development or something that
16 would create more activity centers, if you will,
17 you know, more commercial but more relationship
18 between residential and commercial
19 interconnectivity between those uses.

20 Objective 11.2 is the Mixed Use Overlay,
21 which I talked about just prior. But 11.2.7
22 specifically deals with how you evaluate density
23 within the Mixed Use Overlay. So this allows you
24 to take density from the entire property and
25 utilize that for your density calculation rather

1 than segregate the residential areas and the
2 commercial areas and only take density from the
3 residential portion of the development.

4 So we're requesting a potential of 300 units.
5 And the total land area is 33.3 acres. The
6 Urban -- the Central Urban future land use
7 category allows for up to 10 units an acre of
8 standard density. So we're well within that
9 density range.

10 Policy 25.6.1, as I mentioned before, was the
11 commercial overlay. We just talked about that.
12 And then Policy 25.10.1 encourages new
13 development, to locate preserve areas on site or
14 within the Lehigh Acres community rather than
15 mitigating outside of the community. So the idea
16 of that policy is to keep as much vegetation
17 within the community as possible.

18 And we are slightly exceeding our indigenous
19 vegetation requirement the way we're relocating
20 the preserves, the replanting, everything Paul
21 will talk about. And the total acreage is
22 slightly in excess of what the requirement would
23 be.

24 Surrounding uses and compatibility: One
25 notable aspect of this property just in general I

1 want to point out are the LAMSID canals, the
2 Lehigh Acres Municipal Service Improvement
3 District, LAMSID, canals on both the north -- and
4 then there's also one which is less pronounced on
5 the west of the site. They act as natural
6 setbacks, at least.

7 So to the north, you do have residential
8 property, single-family units zoned RS-1. They're
9 separated by a LAMSID canal. To the south, you
10 have Lee Boulevard, and then there's a mix of uses
11 along Lee Boulevard, some residential, RS-1, and
12 some commercial. There's CPD and CS-1 (sic)
13 zoning here in commercial uses. You can see
14 Sunshine Elementary School is to the east and then
15 commercial along Lee Boulevard to the east.

16 HEARING EXAMINER COLLINS: If the developer
17 exercises the option to build multifamily on the
18 site, I notice there wasn't a condition that
19 required an interconnect -- pedestrian
20 interconnect between the parcels. Is that
21 something that's been explored with Staff or the
22 School Board?

23 MR. DELISI: It hasn't.

24 HEARING EXAMINER COLLINS: It seems like it
25 would go a long way toward reducing traffic

1 impacts, you know.

2 MR. DELISI: Yeah, I mean, it hasn't come up.
3 I think the School Board would need to create that
4 opening. I've seen it done before, but it's --

5 (Ms. Montgomery and Ms. Marvin confer off the
6 record.)

7 MS. MONTGOMERY: No, I was just saying, the
8 school board elementary schools are highly fenced
9 and secured these days. So that would have to be
10 a discussion.

11 HEARING EXAMINER COLLINS: I seem to recall
12 some Lee Plan policies to that effect. But that's
13 okay. I was just curious.

14 MR. DELISI: Yeah. And then Sunniland
15 bisects the property, as I mentioned before. I
16 will note on the west side here, this RS-1 area
17 with the platted lots, it's all a LAMSID park.
18 It's not residential units nor will it be.

19 So the residential units are unbuilt here,
20 and then there are some existing over here
21 (indicating). But the residential really starts
22 once you get north of 5th as does -- well --

23 HEARING EXAMINER COLLINS: And what is the
24 condition to the addition of the bridge on the
25 north side? I did do my site visit prior to this

1 hearing, but it didn't seem as though Sunniland
2 was navigable safely, you know, in my car in the
3 condition it was in. So I wasn't able to -- is
4 the intention to improve that connection? What's
5 the state of that connection?

6 MR. DELISI: I'll defer that to Ted.

7 HEARING EXAMINER COLLINS: Ted. Okay.

8 MR. DELISI: I mean, I drove it last week
9 and, I mean, it's two lanes. But other than that,
10 I wasn't scared going across the bridge. So I do
11 expect that there is traffic, that the residential
12 units to the north use this regularly.

13 So Staff has condition buffers consistent
14 with the adjacent uses and the Mixed Use Overlay.
15 You know, we're not -- again, we're not asking for
16 any deviations.

17 Again, I'll point out, though, that we've
18 located our dry detention and our preserve at the
19 north end of the site which creates a nice natural
20 buffer to the uses to the north, and it also makes
21 sense, as what Brent will talk about, the drainage
22 patterns on the site.

23 So with that, I'm going to hand it over to
24 Paul, who will talk about the environment.

25 HEARING EXAMINER COLLINS: Okay. Just before

1 you sit down, did you say there was no deviations?

2 MR. DELISI: There is one deviation and that
3 is the replanting. So the deviation request is
4 from the indigenous preserve requirement to allow
5 us to use replanting to suffice the requirement.

6 HEARING EXAMINER COLLINS: So did you
7 withdraw deviation 2, which was the wall
8 condition?

9 MR. DELISI: So deviation -- yeah, it's a --
10 it's a little confusing. I think that was
11 deviation 1 or 3. We withdrew that because it's
12 not the applicable buffer requirement.

13 HEARING EXAMINER COLLINS: Right. Deviation
14 1 was withdrawn, but I see still two deviations.
15 And deviation 2 was for the requirement to provide
16 a 25-foot buffer with a wall, and vehicular
17 pavement is proposed within 125 feet of
18 residentially-zoned parcel -- and then this would
19 apply to the western boundary. So is that
20 still --

21 MR. DELISI: That's withdrawn.

22 HEARING EXAMINER COLLINS: That's withdrawn
23 as well. So we're down to one deviation?

24 MR. DELISI: One deviation, yes. And for
25 whatever reason -- and I'll have to look back at

1 the evolution of this -- but we're calling that
2 deviation 2, the one deviation that remains.

3 HEARING EXAMINER COLLINS: Not deviation 1
4 since that's the only deviation that remains?

5 MR. DELISI: I -- I need to look back at the
6 evolution of it. But that would be a good
7 suggestion.

8 HEARING EXAMINER COLLINS: But we digress.

9 MR. DELISI: Yes. But, yes, there is only
10 one deviation being requested.

11 MR. OWEN: All right. Good morning.

12 HEARING EXAMINER COLLINS: Good morning.

13 MR. OWEN: So my name is Paul Owen with Owen
14 Environmental Consulting. I'm the project
15 environmental consultant. I have been accepted as
16 an expert witness in this forum several times in
17 the fields of wildlife and listed species and
18 request to be accepted as such.

19 HEARING EXAMINER COLLINS: Yes, please
20 proceed.

21 MR. OWEN: Thank you. So I was going to
22 start off with the surrounding properties, but Dan
23 has covered that very well. But it is very
24 germane to the environmental aspects of this in
25 that it is surrounded -- this property is

1 surrounded by a canal and a road and developments
2 and has roads -- a major road running through the
3 middle of it that's got roads inside it. So that
4 is very important when you consider the
5 environmental aspects of this property.

6 The site contains disturbed pine flatwoods,
7 willow wetlands, disturbed lands, spoil areas and
8 cleared areas which are all infested by varying
9 degrees of exotic vegetation. There's
10 approximately 30.4 acres of uplands and 3.2 acres
11 of state-owned jurisdictional wetlands. I don't
12 think they're going to be considered federally
13 jurisdictional wetlands because they don't
14 connect.

15 If there will be any impacts to the South
16 Florida Water Management District jurisdictional
17 wetlands -- there's two, here and here
18 (indicating) -- then the Applicant will obtain the
19 appropriate ERP permit. They will provide
20 mitigation which meets county code.

21 So during our protected species survey, we
22 found 28 potentially occupied gopher tortoise
23 burrows scattered across the site. A Florida Fish
24 and Wildlife Conservation Commission gopher
25 tortoise permit will be obtained to relocate any

1 affected gopher tortoises to a Florida Fish and
2 Wildlife Conservation Commission-approved
3 recipient site if any disturbances or development
4 will be within 25 feet of any burrow. And that
5 seems likely that these tortoises will be
6 relocated offsite. And in my professional
7 opinion --

8 HEARING EXAMINER COLLINS: So how does that
9 work?

10 MR. OWEN: Okay. And I just did this
11 yesterday. So first of all, you have to be an
12 agent with the Game Commission. You have to --
13 it's a -- it's a -- quite a process to become an
14 agent and qualified. It's like a license, more or
15 less, to be able to get the permits and relocate
16 these tortoises.

17 So you have to survey the property. You have
18 to do a hundred percent survey. You have to
19 submit a form online to get a permit. They will
20 issue the permit. You have to pay a mitigation
21 fee. You have to pay the recipient site. I think
22 they're usually in -- there's one in Arcadia.
23 There's a couple around. But they're in the
24 middle of the state. They're at these old
25 agricultural fields that have been restored so

1 that -- to allow for gopher tortoises to come back
2 in.

3 It's been -- rehabilitated habitat where
4 there's not -- tortoises are not many now. And so
5 they're improving it. And so this is an area that
6 will never be developed. It goes under
7 conservation easement and it's monitored,
8 excellent habitat.

9 So the developer has to pay them. Right now
10 that fee is \$5,000 per tortoise.

11 HEARING EXAMINER COLLINS: So you pay to
12 get --

13 MR. OWEN: So it's no small fee.

14 HEARING EXAMINER COLLINS: You pay to get the
15 permit?

16 MR. OWEN: Yes.

17 HEARING EXAMINER COLLINS: And then you pay
18 the recipient site --

19 MR. OWEN: Yes.

20 HEARING EXAMINER COLLINS: -- to accept the
21 tortoises?

22 MR. OWEN: Exactly. And then we excavate
23 them very carefully, transport them very
24 carefully. This is all very tightly regulated,
25 every little thing. And then you -- you drop them

1 off at the site and they accept them and all the
2 paperwork is done. You -- you write the after
3 action report and it's all over. This is very
4 tightly regulated.

5 HEARING EXAMINER COLLINS: So there's
6 companies that specialize in this --

7 MR. OWEN: I do.

8 HEARING EXAMINER COLLINS: -- relocation?

9 MR. OWEN: This -- this is what I do.

10 HEARING EXAMINER COLLINS: Oh, you do it?
11 You actually --

12 MR. OWEN: We do everything --

13 HEARING EXAMINER COLLINS: Okay.

14 MR. OWEN: -- start to finish. I subcontract
15 the backhoe operator. We do everything. And,
16 yeah, there are a few, but not every consultant
17 does that.

18 HEARING EXAMINER COLLINS: All right. So 28
19 burrows were found on the site. There could be
20 more or less tortoises. But before you do
21 anything, you're going to do a hundred percent
22 survey?

23 MR. OWEN: It's required to do one within 90
24 days of when you start to remove the tortoises.
25 So if you do one like now -- we did a hundred

1 percent one -- and they come in six months later,
2 we're going to have to do it again to make sure
3 that no tortoises have moved in.

4 So we have to know exactly where every burrow
5 is. We have to get every single one of them that
6 will be affected by the development. If it
7 happens that there's a tortoise in the middle of
8 the preserve, we'll probably leave it alone,
9 because why -- it involves a little bit of
10 disturbance to the habitat. So if you have to
11 leave one, that's not a big deal.

12 HEARING EXAMINER COLLINS: Okay. Thank you
13 for explaining that.

14 MR. OWEN: You're welcome.

15 So regarding the indigenous habitat, a total
16 of 1.2 acres of existing indige- -- indigenous
17 habitat located -- I'm just going to mess this up.
18 It's located right here (indicating). This is the
19 indigenous habitat. It's pine flatwoods.

20 MS. MONTGOMERY: Paul, can you -- just for
21 the record, when you say "right here," just
22 explain generally so it shows up in writing where
23 that's located.

24 MR. OWEN: Okay. So the existing indigenous
25 habitat is located in the southeastern portion of

1 the site off of the main -- off of Lee Road by a
2 few hundred feet. It consists of pine flatwoods,
3 which will be preserved. And then there's 2.3
4 acres located in the north portion of the site
5 which is currently disturbed or cleared land that
6 was part of that violation. That's the
7 restoration area. Those areas will be restored to
8 be pine flatwood indigenous habitat.

9 And the proposed preservation and restoration
10 of indigenous habitats is provided to satisfy Land
11 Development Code 10-415(b) as the indigenous areas
12 on site will be created as described in deviation
13 question mark -- I don't know which one -- 1 or 2
14 or both.

15 All right. So within these restoration areas
16 or preservation areas, there's horticultural and
17 garbage. That's going to all be removed first and
18 be disposed of in an appropriate facility. Then
19 all the exotic and nuisance vegetation will be
20 removed from these areas. Any significant soil
21 disturbances will be regraded within the
22 restoration areas. After that, the restoration
23 areas will be planted with 310 trees and 1,002
24 understory plants for the habitat restoration.
25 That's -- that's to make it indigenous.

1 And then to abate for the violation, which
2 I'll talk about next, there'll be 711 trees
3 planted, as described in the Preservation Area
4 Management Plan, which I believe is part of the
5 record. It's all -- it's all described in great
6 detail.

7 HEARING EXAMINER COLLINS: So the abatement
8 process involves planting extra trees than would
9 ordinarily be necessary to develop this site, and
10 the plan is to put these extra trees where?

11 MR. OWEN: In the restoration areas.

12 HEARING EXAMINER COLLINS: In the restoration
13 areas.

14 MR. OWEN: And that will -- that will just
15 help provide greater density of vegetation and
16 make it a better habitat, better -- better
17 community, more natural community. So -- yeah, so
18 the abatement is -- I'll go through the abatement
19 and the detail of that real quick here.

20 So on January 19th, 2023, Lee County
21 Enforcement issued two violations. The county
22 staff had observed violations at those addresses.
23 On August 4th, 2021, there was approximately 13.62
24 acres of previously approved indigenous and gopher
25 tortoise preserve that had been cleared without a

1 development order, obtaining permits.

2 So the preservation plan includes replacement
3 plantings to abate those two code violations for
4 the removal of those trees without permits. And
5 we've worked with Staff and this has all been
6 worked out and we're all in agreement on how this
7 is going to go.

8 HEARING EXAMINER COLLINS: And those
9 replantings will be concentrated in the
10 restoration area along the north property line?

11 MR. OWEN: Correct, in these -- in these two
12 areas right here (indicating). They -- as these
13 areas are today, they're either disturbed land,
14 which is a lot of exotic vegetation. It's just
15 kind of a mess. And this area was the area that
16 was kind of -- that was cleared as part of the
17 violation. So it's just kind of an uneven
18 herbaceous disturbed area. So they'll re- --
19 regrade it and replant it to make it into pine
20 flatwoods.

21 And I know you had asked about the timing, so
22 I'm going to run through that real quick. So
23 prior to the replanting, the de- -- a detailed
24 restoration landscape plan will be submitted as --
25 during the development order process. It will

1 show the planted materials' location, species and
2 the planting standards. Then a certificate of
3 compliance will be obtained.

4 So the proposed work schedule is that the
5 debris removal, the exotic species control program
6 and the regrading will commence after the approval
7 of the project's development order. The initial
8 debris removal, exotic treatment and regrading
9 will be initiated during the first dry season
10 following issuance of the required federal, state
11 and local authorizations.

12 And it is anticipated that the initial
13 treatment will be completed in less than three
14 months after that. The restoration and
15 replacement plantings will be initiated within
16 approximately two to three months of the
17 completion of the initial exotic removal, weather
18 permitting.

19 And this is directly read out of the
20 restoration plan.

21 HEARING EXAMINER COLLINS: So essentially,
22 that northern area will be restored and planted
23 before development activity on the remainder of
24 the site --

25 MR. OWEN: I'm not positive --

1 HEARING EXAMINER COLLINS: -- or concurrent?

2 MR. OWEN: -- of exactly what that -- the
3 timing of it, if it's --

4 MS. MONTGOMERY: Well, I think that's a
5 discussion we're going to have when we discuss the
6 condition.

7 MR. OWEN: Yeah. Okay. It's all been
8 approved by Staff. We're all in agreement about
9 it; I just don't know the exact detail of it.

10 HEARING EXAMINER COLLINS: Okay. That's
11 fine.

12 MR. OWEN: And so these areas, restoration
13 and the preservation areas, they're going to be
14 monitored for five years and then will be
15 maintained free of exotics and in good shape
16 thereafter.

17 HEARING EXAMINER COLLINS: Right. And that's
18 a condition in your development order approval.
19 So if that falls by the wayside, that would be
20 addressed via the violation process?

21 MR. OWEN: Correct.

22 HEARING EXAMINER COLLINS: Okay. What about
23 the preserve area on the eastern edge of the
24 property? Is restoration required there?

25 MR. OWEN: No, it's actually in pretty good

1 shape. It does have some exotic vegetation, very
2 little, like Brazilian pepper, maybe a Melaleuca
3 tree or two. Those will be removed.

4 HEARING EXAMINER COLLINS: Thank you.

5 MR. OWEN: That concludes what I have as a
6 presentation.

7 HEARING EXAMINER COLLINS: Thank you, Paul.
8 I'm ready for the next person.

9 MR. ADDISON: Brent Addison. Good morning.

10 HEARING EXAMINER COLLINS: Good morning.

11 MR. ADDISON: For the record, my name is
12 Brent Addison, and I'm a Registered Engineer in
13 the state of Florida with Atwell. And then today
14 I'm here to talk to you about stormwater.

15 So as has been discussed previously, the site
16 is surrounded by canals, the larger canal,
17 Angelfish Canal on the north, and then some
18 relatively smaller drainage ditches on either
19 side. And the drainage along Lee Boulevard is
20 closed drainage, urban gutter. It goes into a
21 pipe network and then drains to the ditches on the
22 side that go to the Angelfish Canal.

23 So currently, I mean, the site is relatively
24 flat. There's a few depressional areas that were
25 mentioned by Paul that were the wetland areas. So

1 some water will stage up in those areas. But
2 overall, when water runs off of this site, it's
3 going to go to the east, north or west currently.

4 So for the proposed design for the
5 stormwater, we're going to have two independent
6 systems, at least how I see it going forward --
7 when we get into detailed design, we'll determine
8 that more -- but two independent systems on either
9 side of Sunniland. There will be a system on the
10 right-hand side that serves everything on the
11 right-hand side and then goes to the dry detention
12 area in the north.

13 And then the same thing is going to happen on
14 the left-hand side, the west side. There will
15 be -- commercial development requires dry
16 detention pretreatment -- a half inch of dry
17 pretreatment. At a minimum right now we're
18 proposing this entire system is dry detention, so
19 it would definitely meet those -- meet the
20 requirements of the water management district.

21 There probably will be some other smaller dry
22 detention areas scattered out depending on how the
23 development is set up. We will be permitting
24 through the South Florida Water Management
25 District and LAMSID. I've mentioned about the

1 current drainage. Again, because we're pretty
2 much an island, we're not going to be affecting
3 anybody else around us with respect to drainage.
4 There's canals on all sides and those canals are
5 going to stay in place and we won't be affecting
6 those.

7 The next slide. Did you have any questions
8 on stormwater before I proceed?

9 HEARING EXAMINER COLLINS: No.

10 MR. ADDISON: Okay. On the utilities, we've
11 had contact with FGUA. As you can see in the top
12 left-hand side, there are existing water and sewer
13 improvements. There's a force main. That's the
14 red one on the right-hand side, which is where we
15 would connect to the sewer. And then there's a
16 water main on the left-hand side, which is the
17 blue one, which is, of course, where we would
18 connect the water.

19 Most likely, there will be a pump station
20 design for this system probably to serve both
21 sides of the community to be more efficient, and
22 then the water will be routed through there for
23 fire protection and potable service. We also
24 have, on the bottom of the slide, a letter of
25 availability from FGUA for water and sewer

1 service. And that's all I have.

2 HEARING EXAMINER COLLINS: Okay. Thank you.

3 MR. ADDISON: Thank you.

4 MR. TREESH: Good morning. Ted Treesh, TR
5 Transportation Consultants. We prepared the
6 traffic analysis for this application. I'd like
7 to go over that and give you a summary.

8 The analysis looked at the trip generation
9 for the two proposed Master Concept Plans, and we
10 looked at the trip generation for both MCPs and
11 then we did our analysis based on the highest trip
12 generation. And that was based on MCP number 1
13 that had the 265,000 square feet of retail and the
14 100,000 square feet of self-storage uses. That
15 generates the most trips on the road network when
16 compared to the option with the multifamily use
17 due to the higher retail square footage contained
18 on that Master Concept Plan.

19 So in the end, if the multifamily is
20 developed, ultimately the ultimate trip generation
21 would be much lower. So the impacts will be lower
22 than what we ultimately analyzed in this analysis.
23 So this analysis submitted is the worst case in
24 terms of the impacts this project can have.

25 So as Dan and Brent explained, access to this

1 project would be provided consistent with the
2 previously approved zoning onto Sunniland as well
3 as to 5th Street, the parallel road to Lee
4 Boulevard. There will be no access directly to
5 Lee Boulevard, which is the six-lane arterial out
6 front.

7 The analysis looked at the level of service
8 on the roadways. Again, as the Hearing Examiner
9 is familiar, Lee County is no longer participating
10 in the transportation concurrency. So the level
11 of service analysis is more informative to the
12 county in terms of informing the county where the
13 roadways are in terms of level of service and
14 keeping track of the traffic volumes on the
15 roadways.

16 So it's more looking at the impacts of this
17 project and what improvements are going to be
18 needed as we proceed towards development. And as
19 this project proceeds to the next steps in terms
20 of development, another traffic study will have to
21 be done as a development order is applied for.
22 The county requires another traffic study to look
23 at what site-specific improvements are going to be
24 needed, and I'll discuss that here in a moment.

25 For this analysis, we looked at 2028 for the

1 county for a rezoning required as to project out
2 traffic conditions to look at the build-out
3 conditions of the project in its entirety. We
4 looked at the study network area, which included
5 Lee Boulevard, which is a six-lane arterial
6 roadway area. Sunniland and 12th Street are major
7 collectors. Those right now are two-lane roads.
8 Sunshine Boulevard to our east is a two-lane
9 arterial.

10 All of those roadways will operate at a Level
11 of Service C in 2028, both with and without the
12 project trips added to the network. The only
13 roadway that was shown to operate at a poor level
14 of service was Gunnery Road, which was further to
15 the west, and it's not shown to have a significant
16 impact due to our impact. And that poor level of
17 service was shown prior to any development trips
18 being added. So that was shown to have a poor
19 level of service in 2028 regardless if this zoning
20 is approved or any trips from this project was
21 added.

22 So again, as I indicated, at the time of DO
23 there'll be site-specific improvements that are
24 going to be required, turn lanes at the access
25 drives. There'll be improvements that will be

1 done to Sunniland along the frontage of the
2 project, turn lanes into the site access drives to
3 accommodate left turns and right turns into the
4 project.

5 So Sunniland will be improved from its
6 current condition. It won't stay in its current
7 two-lane condition. There'll be turn lanes that
8 will be provided at the access drives that will
9 safely accommodate the turning movements into and
10 out of the project.

11 We've had quite a number of discussions with
12 Lee County DOT, and I'm sure we'll have those
13 discussions later this afternoon when they come,
14 regarding specifically the intersection of Lee
15 Boulevard and Sunniland. With a project of this
16 intensity, that intersection will mostly likely
17 need to be signalized with this development if
18 it's to be developed with any amount of commercial
19 development.

20 And even under the scenario with a
21 multifamily project at 100,000 square feet of
22 retail, a signal most likely will be required at
23 that intersection, especially due to the six-lane
24 nature of Lee Boulevard and the traffic volumes
25 that that corridor currently carries and is -- and

1 will continue to carry into the future.

2 So one of the conditions that Staff has
3 recommended and we're in agreement with -- it's
4 just the language that I think we need to work on,
5 and I think that's the reason that Staff -- that
6 DOT is showing up this afternoon -- is the
7 language of that agreement. And DOT is
8 implementing these -- what they call these traffic
9 signalization agreements now at the time of zoning
10 to work out the details of the signal at Lee and
11 Sunniland which we have no objection to.
12 Obviously, the signal helps with commercial
13 development in getting traffic into and out of
14 Sunniland onto Lee Boulevard.

15 That agreement will dictate when the signal
16 goes in, who pays for the signal -- which the
17 developer will pay for the signal; the county
18 doesn't pay for the signal -- and what
19 improvements specifically will go in at the
20 intersection. There will be turn lane
21 improvements that are going to be required at that
22 intersection, you know, when that signal goes in.

23 Again, we've had meetings with DOT to talk
24 about the signalization. They're not objecting to
25 a signal at that location. It does meet spacing

1 criteria for a future signal.

2 HEARING EXAMINER COLLINS: And is there a
3 full median opening at that location right now?

4 MR. TREESH: Yes, it is currently a full
5 median opening.

6 So I believe -- and again, we're not
7 objecting to the signalization agreement. It's
8 just, I believe, the wording, how we at this point
9 come to an agreement. There's several other
10 projects.

11 HEARING EXAMINER COLLINS: So what is the
12 wording that's troublesome right now? Is this
13 something that can be worked out before this
14 record is closed? Is it timing? Is it -- what is
15 it?

16 MS. MONTGOMERY: Well, the Applicant in their
17 letters -- well, let's back up. The initial Staff
18 Report didn't have the signal condition. Mr.
19 Treesh crafted the signal condition that's in the
20 48-hour letter. And after we had done that, then
21 the Staff sent an updated Staff Report that has a
22 condition. I think --

23 MS. WORKMAN: I'm going to go over that in my
24 testimony --

25 HEARING EXAMINER COLLINS: Okay.

1 MS. WORKMAN: -- because that timing is not
2 correct.

3 HEARING EXAMINER COLLINS: All right. I just
4 -- yeah, I'm just trying to figure out, is it a
5 decision I'm going to have to make, or is there a
6 possibility that with further discussion between
7 the parties you can come to terms on --

8 MS. MONTGOMERY: Well, I think Ted --

9 HEARING EXAMINER COLLINS: -- at least how
10 the condition is drafted, you know?

11 MR. TREESH: Yeah.

12 MS. MONTGOMERY: I think Ted will know better
13 when he has a discussion with the witness this
14 afternoon. I don't think they've had a chance to
15 talk about it.

16 MR. TREESH: No, we haven't had a chance to
17 talk.

18 HEARING EXAMINER COLLINS: Okay.

19 MR. TREESH: I think we can come to an
20 agreement.

21 And the other condition that seems to be
22 creeping into the Staff Reports and the conditions
23 lately is regarding this condition regarding
24 limiting the development.

25 Do you have the -- the letter?

1 MS. MONTGOMERY: Our letter?

2 MR. TREESH: It's the condition from, I
3 believe --

4 HEARING EXAMINER COLLINS: That ties it to
5 trips generated from specific parameters?

6 MR. TREESH: Yes. And this was on another
7 case. I believe it was last week or the week
8 before. I don't believe it was in front of you,
9 Madam Hearing Examiner. It was from the -- in
10 front of the other hearing examiner.

11 MS. MONTGOMERY: Ted, that's the Staff
12 condition.

13 MR. TREESH: Yeah, the Staff condition talks
14 about the development intensity is limited to
15 265,000 square feet of retail and 100,000 square
16 feet of mini-warehouse based upon the ITE Trip
17 Generation Manual in effect at the time of local
18 development order.

19 We just think that condition is redundant
20 because, obviously, the Master Concept Plan and
21 the zoning resolution limits the square footage,
22 limits the uses that are approved in the zoning.
23 I mean, we don't need another condition just
24 spelling out what everything else already
25 approves.

1 When we come in to do a traffic study, we
2 have administrative codes that dictate what we
3 have to use for trip generation. ITE is a fluid
4 document. It changes. In fact, now with the 11th
5 Edition of ITE, it's actually an online document.
6 So as ITE gets new data into their headquarters in
7 regards to trip generation, they put that data
8 into the 11th Edition online and it updates the
9 11th Edition on their online portal.

10 So as I view new traffic studies using the
11 online trip generation, I may get new trip
12 generation data using the 11th Edition today that
13 I didn't get -- than when I did the traffic study
14 three months ago utilizing the same 11th Edition.
15 Whereas, the 10th Edition was a printed manual.
16 It didn't change until the new edition came out.

17 So ITE continuously changes. So trip
18 generation is continuously changing. Banks, for
19 instance, used to be one of the highest
20 trip-generating uses there was with a
21 drive-through. Now banks are very -- considered a
22 lower trip generation. Most people -- I don't
23 even go to the bank anymore. I don't remember the
24 last time I actually went to a bank. I went to an
25 ATM once, but -- maybe a few weeks ago. Most

1 people do their banking online now.

2 So trip generation of uses change as time
3 goes on. Some increase. Some decrease. So --

4 HEARING EXAMINER COLLINS: The thing that
5 makes me question the condition -- and, obviously,
6 I'll save it for Rob -- is it used to be years ago
7 they tried to put these conditions into their
8 recommendation --

9 MR. TREESH: Yeah.

10 HEARING EXAMINER COLLINS: -- and then we
11 stopped it. We got away from that, you know, the
12 county.

13 MR. TREESH: Correct.

14 HEARING EXAMINER COLLINS: And now it's
15 resurfacing. And I share your opinion that it's
16 redundant and it's not even needed as a safety
17 backup because it's going to be examined again at
18 the development order stage. And if there is some
19 change, it's going to affect a site-related
20 improvement, not the greater road network because
21 of the way transportation is no longer regulatory.

22 MR. TREESH: Correct.

23 HEARING EXAMINER COLLINS: So I'm going to
24 allow Rob an opportunity to enlighten us all on
25 why we may need this condition.

1 MR. TREESH: Thank you. That -- that was --
2 that was our point.

3 HEARING EXAMINER COLLINS: I understand the
4 issue with it.

5 MR. TREESH: Okay. Thank you. I think
6 that's my only -- that wraps up my comments, if
7 you have any other questions.

8 HEARING EXAMINER COLLINS: I do not have
9 questions.

10 MR. TREESH: Okay. Thank you.

11 MR. DELISI: That's it.

12 MS. MONTGOMERY: Do you want to do the
13 48-hour memo now or after the Staff goes? That's
14 what we have been doing.

15 HEARING EXAMINER COLLINS: Maybe we should
16 wait until after Staff --

17 MS. MONTGOMERY: Okay.

18 HEARING EXAMINER COLLINS: -- has completed
19 all of their witnesses --

20 MS. MONTGOMERY: Okay.

21 HEARING EXAMINER COLLINS: -- since some of
22 the issues seem to pertain to --

23 MS. MONTGOMERY: Transportation?

24 HEARING EXAMINER COLLINS: -- transportation.

25 MS. MONTGOMERY: Okay.

1 HEARING EXAMINER COLLINS: I just want to
2 circle back. I have a request for the oil well
3 decommissioning documents that documents when
4 that's been decommissioned.

5 MR. DELISI: We can --

6 MS. WORKMAN: I have that.

7 MR. DELISI: -- resubmit that. But I have it
8 in front of me. And what it says on the DEP form
9 is that the work began to cap the well in May --
10 May 22nd, 2023. And they did a final inspection
11 that the well had been plugged and abandoned
12 June 5th of 2023.

13 MS. WORKMAN: And that's attachment G of the
14 Staff Report.

15 HEARING EXAMINER COLLINS: I must have missed
16 it.

17 MS. WORKMAN: And I have it here, too. I can
18 give it to you.

19 HEARING EXAMINER COLLINS: That's fine. If
20 it's attached to the Staff report, that's fine.

21 Okay. And then -- no, that was answered.
22 Ready for Staff?

23 MS. MONTGOMERY: Yeah. Did you want the
24 information from the vacation from the '90s?

25 HEARING EXAMINER COLLINS: Yes, let me have

1 that.

2 This will be Applicant Exhibit 2. And is
3 this a road right-of-way vacation or a plat
4 vacation?

5 MS. MONTGOMERY: Plat vacation.

6 (Applicant Exhibit No. 2 was presented and
7 marked for identification.)

8 MS. MONTGOMERY: Oh, did you want Ted to talk
9 about the condition of the bridge or -- you had
10 raised that question with Mr. DeLisi.

11 HEARING EXAMINER COLLINS: Yeah, I did, but
12 it occurred to me that it'll probably be a
13 condition of development order if it doesn't meet
14 standards.

15 MS. MONTGOMERY: Okay.

16 HEARING EXAMINER COLLINS: So you'll have to
17 improve the bridge to meet development standards.

18 This is Applicant -- Staff's PowerPoint.
19 This will be Staff Exhibit 2. Exhibit 1 is the
20 Staff report.

21 (Staff Exhibit No. 1 was presented and marked
22 for identification.)

23 (Staff Exhibit No. 2 was presented and marked
24 for identification.)

25 HEARING EXAMINER COLLINS: Did she give you a

1 copy?

2 THE COURT REPORTER: Yes, she did.

3 HEARING EXAMINER COLLINS: Okay.

4 MS. WORKMAN: Ready?

5 HEARING EXAMINER COLLINS: (Nodding head.)

6 MS. WORKMAN: Good morning. My name is Beth
7 Workman. I'm a principal planner in the Zoning
8 Section. I've been accepted as an expert in the
9 Land Development Code and Lee Plan and I wish to
10 do so today as well.

11 HEARING EXAMINER COLLINS: Yes, please
12 proceed.

13 MS. WORKMAN: Thank you. The case before you
14 is DCI2023-00010. It's Sunniland Town Center
15 Commercial Planned Development. The request Mr.
16 DeLisi went over thoroughly. I want to make one
17 correction to the slide as well as the Staff
18 Report. The total site area is 33.3 instead of
19 34.9. It was on the original application as 34.9.
20 The advertisement went out as 34.9, but it really
21 is 33.3 acres in size.

22 There are two different development options
23 which Mr. DeLisi went over: One is to permit the
24 265,000 square feet of commercial development
25 along with 100,000 square feet of mini-warehouse

1 on the site, or to permit 100,000 square feet of
2 commercial development with 100,000 square feet of
3 mini-warehouse and then 300 residential dwelling
4 units.

5 HEARING EXAMINER COLLINS: So can that be
6 any -- I notice there was no list of permitted
7 uses. So my question is: Can that be any type of
8 residential development, single-family,
9 multifamily?

10 MS. WORKMAN: Correct. There's no -- and
11 their schedule of uses that they proposed, it can
12 be anything.

13 HEARING EXAMINER COLLINS: Okay. Because
14 there's no -- the conditions and deviations and
15 the -- okay. Well, let's continue.

16 MS. WORKMAN: If that's something that needs
17 to be changed, that would be like an Applicant
18 question, because they cited multifamily in their
19 presentation.

20 HEARING EXAMINER COLLINS: Yes, that's why
21 I'm requesting clarification.

22 MS. WORKMAN: So Staff is recommending
23 approval with conditions. The property history
24 Mr. DeLisi went over. This has been approved. So
25 if they decide to go forward today as it stands,

1 they could go forward with the 33.3 acres of
2 Commercial Planned Development with the existing
3 approval that you see before you with the
4 development scheme. However, the problem is is
5 that there's a vio- -- code violations on both
6 parcels.

7 So the Sabal Palm cluster has been impacted
8 as well as the preserve in the bottom, and then
9 there's preserve that wraps around the eastern and
10 northern portions of the site --

11 HEARING EXAMINER COLLINS: This is
12 existing --

13 MS. WORKMAN: -- on the original Master
14 Concept Plan --

15 HEARING EXAMINER COLLINS: -- conditions?

16 MS. WORKMAN: -- site condition. So in order
17 for them to go forward, they would still need to
18 abate the violation somehow and still revise the
19 Master Concept Plan.

20 The future land use category is Central
21 Urban. Mr. DeLisi went over that thoroughly. I'm
22 not going to belabor the topic. It is an urban
23 core, heavily settled. Public services are
24 available. It's in the Mixed Use Overlay, as you
25 see in the shaded pink/purple before you.

1 Mixed Use Overlay promotes various scales of
2 intensity. It's part of that urban core to
3 provide interconnections between uses, to provide
4 retail businesses as well as residential all in
5 the same vicinity. And then Mr. DeLisi went over
6 the density calculations, how you can sort of --
7 you can double dip, sort of (sic) speak, into --
8 the commercial portions can also -- that acreage
9 can also be calculated as a density for the
10 residential portions, which is an advantage being
11 in the Mixed Use Overlay.

12 It is in the Lehigh Acres Commercial Overlay
13 area, so Policy 11.2.7. It promotes the
14 commercial schools, parks, public facilities in
15 this area, which their design is promoting that.
16 The Sunshine Elementary School here, LAMSID has an
17 ecological park that sits over here that's zoned
18 RS-1. So there is a mixture.

19 He touched on 11.2.7 as it applies to them
20 promoting mixed -- or doing mixed use -- or, I'm
21 sorry, multifamily development. In the Lehigh
22 Acres Commercial Overlay area, the housing
23 alternatives are being looked at.

24 So in the commercial overlay, quarter-acre
25 and then half-acre lots are not what the Lee Plan

1 is promoting in this area. Multifamily is really
2 what is subject to that Lee Plan policy.

3 The surrounding land uses Mr. DeLisi went
4 over thoroughly. That is bound by a LAMSID canal
5 to the north and to the western side of the
6 property. That affects buffering because of the
7 abutting definition in our Land Development Code
8 and what is required. If you're more than 25 feet
9 wide, you're not abutting anymore, and the LAMSID
10 canals are over 25 feet wide.

11 The south property abuts the arterial road,
12 Lee Boulevard. There is an elementary school to
13 the east which plays into some of the consumption
14 on premise requirements as part of the schedule of
15 uses as well as the residential to the west over
16 here.

17 This is the Master Concept Plan. It's a
18 little bit different than what was previously
19 approved just because of those impacts to wetlands
20 and gopher tortoises in this area. The
21 restoration is being done up in the northern part
22 of the property for that violation. As Mr. Owen
23 went over, it's in these areas right in here
24 (indicating). The replanting of these areas will
25 provide the screening, and for compatibility, from

1 the residents to the north even though there's no
2 buffer required in this area.

3 Schedule of uses. I just want to go over
4 this a little bit. This is bar and cocktail
5 lounges, nightclubs and package stores. In the
6 original zoning, there was a condition regarding
7 the package stores and it limited them to the
8 code, which is, you have to be over 500 feet from
9 a school or from residential uses.

10 They also have nightclubs and bar and
11 cocktail lounge that are in our code as having
12 that 500-foot distance. So I kind of measured out
13 500 feet from the school from this existing
14 residential. So in these vicinities, the bar and
15 cocktail lounge, the nightclubs and the package
16 store use would not be allowed.

17 So in the Staff 48-hour letter that we
18 provided, the consumption on premise has been
19 changed from a package store that was originally
20 condition 4 to consumption on premise to include
21 the bars and cocktail lounges and nightclubs as
22 well as the Single-Family Residential under
23 private ownership, which is right out of the code.
24 So that is something that we were concerned about
25 just with the consumption on premises.

1 Staff went over this with the Applicant prior
2 to doing any of this to kind of give them a
3 heads-up about the distance issue, and we did
4 provide the strike-through and underline in the 48
5 -- Staff's 48-hour letter that was sent in. Urban
6 Ser- --

7 HEARING EXAMINER COLLINS: So wait.

8 MS. WORKMAN: I'm sorry.

9 HEARING EXAMINER COLLINS: So let's go back.
10 So anything that's not X'd out can host one of
11 these uses?

12 MS. WORKMAN: Uh-huh.

13 HEARING EXAMINER COLLINS: What about the
14 remainder of the east side of the site, though,
15 because that looks like it's abutting the school?

16 MS. WORKMAN: This -- this is abutting the
17 school. They would have to demonstrate -- I'm not
18 sure what's going in here, if it's going to be
19 multifamily or commercial, so --

20 HEARING EXAMINER COLLINS: Oh, I see. It's a
21 large site, so they can just set back.

22 MS. WORKMAN: Yeah.

23 HEARING EXAMINER COLLINS: Okay.

24 MS. WORKMAN: And there's no deviation from
25 that that was submitted. So this is something

1 that, you know, needs to be worked on a little
2 bit. Staff provided that revision just as a
3 protection to show compatibility and meeting the
4 code --

5 HEARING EXAMINER COLLINS: Okay. And
6 we're --

7 MS. WORKMAN: -- because of land use.

8 HEARING EXAMINER COLLINS: -- going to go
9 over the 48-hour letter --

10 MS. WORKMAN: Correct.

11 HEARING EXAMINER COLLINS: -- after all the
12 testimony is in.

13 MS. WORKMAN: Correct.

14 HEARING EXAMINER COLLINS: So we can revisit
15 that with Applicant.

16 MS. WORKMAN: So this site does have urban
17 services provided. It is on a bus route. I
18 have -- this is the site right here (indicating).
19 We do have the sheriff's department right here
20 (indicating). There's the fire department over
21 here (indicating).

22 There's -- it is on the bus route. It is
23 close to a park. That ecological park to the
24 west, which is owned by LAMSID, has a boardwalk.
25 I have a note here about the letter of

1 availability. The Applicant has provided a new
2 letter of availability that has the scope of work
3 for the commercial. The original one just talked
4 about residential.

5 So residential land uses for this, if it's
6 proposed to be multifamily, it's going to need to
7 provide the variety of housing types. The
8 multifamily is going to provide the variety of
9 housing types in this area due to the platted lots
10 surrounding our single-family. Mr. DeLisi went
11 over that in detail.

12 The prohibitive residential development with
13 physical constraints, there really aren't any
14 physical constraints in this area. It's not in a
15 coastal high hazard area. They are bound by the
16 canals on two sides, the north and the west. The
17 environmental portion of this is being dealt with
18 through the restoration plan to abate the
19 violation.

20 Direct high-density near shopping centers and
21 close to parks and schools, this is located near
22 some shopping centers across the street on Lee
23 Boulevard as well as schools to -- to the east.
24 You have Sunshine Elementary as well as a private
25 school further down Lee Boulevard on the same side

1 as Sunshine Elementary on the north side.

2 HEARING EXAMINER COLLINS: Isn't the library
3 close to this property, too, on Gunnery --

4 MS. WORKMAN: Yes.

5 HEARING EXAMINER COLLINS: -- or am I
6 remembering that wrong?

7 MS. WORKMAN: It is. There's -- there's a
8 library close by on -- on this. I didn't have
9 that on the overall aerial. It will protect exis-
10 -- the existing and future residential uses.

11 On the western side, there are vacant
12 residential lots north of that LAMSID property
13 that are not developed. The canal bounds this
14 property, as well as enhanced landscaping that is
15 going in there for buffers that are part of the
16 conditions of the zoning. There are some
17 enhancements. And in that, I'll go over those a
18 little bit in detail when we get to Policy 6.1.6.

19 So the original zoning that was approved, it
20 was approved in 2006. There was -- Lehigh Acres
21 Community Plan didn't exist. So Lehigh Acres
22 followed 10-416(d) which required anytime you have
23 a commercial parking lot, a drive aisle within 125
24 feet of a single-family residential use, which
25 this did, you need to provide the 125-foot rule,

1 as we call it, which is a 25-foot-wide buffer with
2 a wall setback 25 feet and landscaping on the
3 outside of that wall.

4 Well, then Lehigh Acres formulated their own
5 community plan. And then the Land Development
6 Code in Chapter 33-1405 states that we don't -- we
7 don't look at a 125-foot rule. We're doing
8 abutting. If you abut, if you're doing a
9 commercial use that abuts a residential
10 single-family, then you need to provide a
11 30-foot-wide buffer. This is not an abut because
12 of the canal and the definition of "abutting."

13 So no buffer is required in that as the code
14 stands today. On top of all of this, you're in
15 the Mixed Use Overlay, and I went over this in
16 detail in my Staff Report because you're kind of
17 following a dancing ball through the code.

18 So you're in the Mixed Use Overlay, and Mixed
19 Use Overlay then trumps all of the codes. And
20 Mixed Use Overlay in 10.425 states that when
21 commercial abuts single-family, you have a
22 10-foot-wide buffer. Again, the definition of
23 "abutting" applies here.

24 But the Applicant has provided buffering in
25 these -- in these areas to show compatibility

1 against the single-family. So we do have
2 conditions in the zoning regarding some buffering
3 that was shown on the Master Concept Plan to make
4 sure that that goes through at time of development
5 order.

6 HEARING EXAMINER COLLINS: So the Master
7 Concept Plan exceeds codes and code in terms of
8 buffering from residential?

9 MS. WORKMAN: Correct. Correct. So in
10 Policy 6.1.1, traffic and access, we'll be going
11 over later -- later this afternoon. I just went
12 over landscaping and screening and buffering.

13 Again, Mixed Use Overlay, right-of-way
14 buffers in Mixed Use Overlay are five feet. So on
15 Sunniland and Lee Boulevard, five-foot buffer. On
16 the north side, there won't be a buffer. However,
17 the restoration plantings are going in there.

18 HEARING EXAMINER COLLINS: And that looked
19 like it was over 150 feet wide --

20 MS. WORKMAN: Correct.

21 HEARING EXAMINER COLLINS: -- that area.

22 MS. WORKMAN: Yes, for the detention areas as
23 well as the restoration.

24 HEARING EXAMINER COLLINS: Right.

25 MS. WORKMAN: We went over adequate services

1 and facilities and the impact on adjacent
2 properties. The buffer is an addition to. It's
3 an enhancement.

4 Objective 11.2 is for the mixed use
5 developments that they're proposing to do with
6 that multifamily and then the commercial. To
7 insert the multifamily with the surrounding
8 commercial with the surrounding uses in this area
9 to support the multifamily with workplaces, retail
10 businesses having internal accesses to reduce the
11 trips.

12 And then there's bicycle facilities. There
13 is an existing sidewalk along this area. During
14 the development order process, that will be looked
15 at as long -- and as well as the LeeTran bus stop
16 to see if it needs to be updated -- if the
17 sidewalks need to be updated or the bus stop needs
18 to be updated.

19 HEARING EXAMINER COLLINS: Okay. Just to be
20 clear, though, this Master Concept Plan is
21 proposing height limitations of 45 feet for
22 residential/multifamily, and 35 feet for
23 commercial, correct?

24 MS. WORKMAN: Correct.

25 HEARING EXAMINER COLLINS: Okay.

1 MS. WORKMAN: So the Lee Plan Policy 11.2.7
2 in the Mixed Use Overlay, the calculation of
3 density has been gone over. That's an important
4 part of being in the Mixed Use Overlay.

5 Lehigh Acres community, we kind of went over
6 the -- we went over the commercial overlay area,
7 the sewer and water.

8 The on-site preservation of indigenous plant
9 communities, the Applicant is proposing to -- to
10 preserve the indigenous that's been left on site,
11 some of it in that southeastern corner that is the
12 pine flatwoods, as well as restore along the
13 northern part of the property for the violation.

14 So there were wetland impacts. There were
15 gopher tortoise impacts as part of this violation.
16 FWC as well as the South Florida Water Management
17 District have closed out those violations. I
18 don't even think FWC had a violation on this. I
19 think it was all -- just the district had it for
20 the wetland impacts.

21 HEARING EXAMINER COLLINS: So what does
22 that --

23 MS. WORKMAN: That's all been closed out.

24 HEARING EXAMINER COLLINS: What does that
25 mean? They paid a fine or something like that?

1 MS. WORKMAN: They investigated and abated it
2 through what they did.

3 HEARING EXAMINER COLLINS: Okay.

4 MS. WORKMAN: I don't think they had to do
5 anything but remove the nuisance debris --

6 HEARING EXAMINER COLLINS: Okay.

7 MS. WORKMAN: -- that was left in there.

8 So the public information meeting was held
9 June 22nd in 2023 with the community.

10 So environmental and surface water. The open
11 space area is -- the indigenous open space area is
12 upland. It provides the requirements for the
13 indigenous that's required per the Mixed Use
14 Overlay. We're in the Mixed Use Overlay. It's a
15 large project.

16 Mixed Use Overlay in 10-425 requires
17 20 percent open space with 10 percent represented
18 as indigenous. So in the old zoning it was
19 40 percent open space for residential and
20 30 percent open space for commercial. We have a
21 reduction due to the Mixed Use Overlay that has
22 happened.

23 Brent went over the surface water management
24 system and how that will be designed, so I'm not
25 going to really belabor that topic going over the

1 violations.

2 So there are two violations that were issued
3 on the site in 2021. Mr. Owen went over them.
4 There was nuisance accumulation, land clearing
5 without permits, and then the lack of compliance
6 with the resolution. There were two notices of
7 violation that went out. Those violat- -- those
8 notices of violations are attached to the Staff
9 Report with the -- with what needs to abate the
10 violation. The Condition Number 8 has that
11 section of what needs to be replanted in there.

12 I know we're going over the 48-hour letter
13 later on. The 48-hour letter from the Applicant
14 has some issues with Condition 8, mostly timing
15 and reiteration of code.

16 HEARING EXAMINER COLLINS: Mostly timing and
17 what?

18 MS. WORKMAN: And reiteration of code for
19 monitoring and the irrigation section.

20 So just, I'm not going to belabor this. But
21 what Staff would like to do is work on these with
22 the Applicant because the condition that you see
23 in the Staff Report is a consistent condition that
24 we have put on other zoning cases, one that was
25 just issued yesterday, Kelly Road. It's exactly

1 the same condition, tying the abatement to a
2 limited development order so that we can get that
3 limited development order looked at, get the
4 violation abated, get it cc'd, it's done, and then
5 a development order comes in for the development,
6 the vertical.

7 The problem that is happening on this case is
8 that the Master Concept Plan and where the
9 abatement is happening is in a dry detention area
10 that will not be designed until at such time the
11 development comes in. So to do an LDO and put
12 trees in these areas and dig a dry detention, just
13 thinking about what you would possibly need and
14 then have to go in and impact during the
15 development, whatever the district -- whatever
16 happens with South Florida Water Management,
17 presents a problem, and Staff understands that.

18 So we've started to work on a revision to do
19 the old -- the first development order. Since
20 there are two violations, one is on this side and
21 the other is on -- you know, the east and the west
22 side of Sunniland -- we may need to write two
23 separate violation conditions to represent this
24 side for VIO2021-X and VIO2021-Z --

25 HEARING EXAMINER COLLINS: Right. That would

1 be my preference.

2 MS. WORKMAN: -- so that it separates it.
3 And it would be for the ease of the development
4 order to come in. The development order would
5 come in on this side, let's say, and then they
6 would show in that first development order
7 infrastructure, which would be the detention, and
8 the infrastructure would include the abatement.

9 HEARING EXAMINER COLLINS: In the meantime, a
10 daily fine is accruing --

11 MS. WORKMAN: Correct.

12 HEARING EXAMINER COLLINS: -- each day this
13 goes on.

14 MS. WORKMAN: Correct. That's why in the --
15 in what was in the other case that was -- the
16 issuance of that approval was yesterday -- we did
17 an LDO. Because then you can stop -- you can get
18 the LDO in, get that abated, get it cc'd, stop the
19 daily fines and move on with whatever you're doing
20 for your development footprint.

21 We can't do it on this one because of the
22 detentions, unless they know what the detentions
23 are going to be and include that in the LDO.
24 These things we don't know. So that's why Staff
25 would like to leave the record open to be able to

1 sit down with the Applicant and Code Enforcement
2 Staff with this condition and separate out.

3 We've already started writing two sep- -- you
4 know, separate these things, because we had two
5 violations, separate.

6 HEARING EXAMINER COLLINS: I have no problem
7 with leaving the record open for that.

8 MS. WORKMAN: Because I understand what's
9 going on in the 48. I totally get it. I totally
10 understand the DO process and I understand the dry
11 detention and how that all meshes together.

12 We need to get this thing violated (sic) --
13 or get this thing abated because I've been working
14 on this thing since 2020. So I would like to see
15 this abated. So that's my two cents on the
16 abatement for the violation.

17 HEARING EXAMINER COLLINS: So I need a point
18 of clarification on the north area where this
19 restoration is to take place.

20 MS. WORKMAN: Uh-huh.

21 HEARING EXAMINER COLLINS: The restoration is
22 going to be part of the abatement. It's also
23 going to serve as a water management area. So on
24 both sides it's going to serve as a water
25 management area?

1 MS. WORKMAN: According to what we have on
2 this Master Concept Plan, this is dry detention
3 and restoration (indicating). Dry detention and
4 restoration (indicating).

5 HEARING EXAMINER COLLINS: Okay. And then
6 that other piece is what?

7 MS. WORKMAN: This right here (indicating) --

8 HEARING EXAMINER COLLINS: Yeah.

9 MS. WORKMAN: -- is straight up dry detention
10 and no restoration. And in my Staff Report in the
11 section for outstanding issues, I wanted this to
12 be labeled as abatement and this to be labeled as
13 abatement and then have the VIO cited for each on
14 the Master Concept Plan so that in the future we
15 know that that's an abatement area (indicating).

16 But the condition will serve as such. So
17 anyway. But that's -- Staff understands where the
18 Applicant is coming from.

19 HEARING EXAMINER COLLINS: So the
20 condition -- you're asking the record to remain
21 open for a condition to redraft it and possible
22 relabeling of the Master Concept Plan?

23 MS. WORKMAN: Correct. And it would be two
24 -- two separate conditions sort of saying the same
25 thing but citing the violations and the parcels.

1 Because the other thing that comes into play, we
2 can say parcel 1, parcel 2, but then we have
3 outparcels down here (indicating). And the
4 problem is, we have outparcels coming in on our
5 informals.

6 If an outparcel comes in first, they're going
7 to have to do the restoration. See what I'm
8 saying? So the anchor may not come in first. And
9 we have had two informals on this piece and a
10 piece over here for uses (indicating).

11 HEARING EXAMINER COLLINS: Which -- which
12 pieces?

13 MS. WORKMAN: This piece and I believe it was
14 this piece (indicating).

15 HEARING EXAMINER COLLINS: And so there's --
16 and how do I want to say this? So it's not
17 desirable, from Staff's point of view, to make
18 them achieve restoration on whatever site comes in
19 first? It's preferable that it happens in this
20 area? Is that why you're willing to delay
21 correction of these two violations?

22 MS. WORKMAN: We would like an LDO to come in
23 to abate these violations. But with the design
24 and where this is located, and what the Applicant
25 is saying, the detention areas are not going to be

1 designed.

2 HEARING EXAMINER COLLINS: Right. So my
3 discomfort is the indefinite postponement of
4 addressing these two violations, which there's
5 probably already a lien on the property, judging
6 from the date of the violation, because I think
7 that they don't -- if the fine accrues for three
8 months, the county places a lien on the property.

9 So this property is basically liened. These
10 two parcels on the north are liened until these
11 two violations are addressed. But I guess that's
12 an Applicant issue.

13 MS. WORKMAN: Yeah. And, I mean, going
14 through the review of this prior to sufficiency,
15 we have looked at various areas to get the
16 restoration away from this and move it so it would
17 blend in with this over here, working around the
18 oil well, because the oil well was out of it and
19 now it's in it, so -- and this is where we landed,
20 to put the abatement trees.

21 HEARING EXAMINER COLLINS: Yeah. Well, I'm
22 curious about the ability to have the oil well
23 back in it, quite frankly, because it's really a
24 nonconforming use in CPD and it's been
25 discontinued more than six months at this point.

1 And to seek to include it as a permitted use in
2 the CPD, I question the legality of that.

3 But that's -- you know, I understand that's
4 part of the 48-hour letter and we'll have to
5 discuss that more. But I don't see how you're
6 able to include that use in a Commercial Planned
7 Development.

8 MS. WORKMAN: Yeah. And the discontinuance
9 in Chapter 34 prohibits this.

10 HEARING EXAMINER COLLINS: Right.

11 MS. WORKMAN: So, yeah, it was accepted in
12 this -- the original Z06 zoning. Because it
13 existed on site, we were making -- we were
14 allowing it to happen.

15 And now with this amendment, we won't -- we
16 don't want to push something to more
17 nonconformity, and it's against that
18 discontinuance code, plus it's been plugged, so
19 I -- I don't agree with adding it back in. I took
20 it out for that very reason.

21 HEARING EXAMINER COLLINS: Right. I just --

22 MS. WORKMAN: And then --

23 HEARING EXAMINER COLLINS: I feel as though
24 I'm legally constrained from including that in the
25 use -- list of permitted uses because it's -- it

1 was existing only as nonconforming, essentially,
2 before --

3 MS. WORKMAN: Correct.

4 HEARING EXAMINER COLLINS: -- and it's been
5 discontinued for more than six months. But we can
6 talk about that more later, I guess.

7 MS. WORKMAN: Yeah. And then the -- just for
8 the platted lot question, the very beginning of
9 Dan's testimony when you were like, what the
10 history is in 19 -- I believe it was 1961 -- it
11 was platted -- it was platted lots, and there was
12 a board direction to then remove the plat.

13 We have -- I have the OR book and page and
14 everything on that. So it was BOCC direction. I
15 have people out that listen to these things and
16 then research the questions that come up.

17 So thank you, Adam Mendez.

18 HEARING EXAMINER COLLINS: All right.

19 MS. WORKMAN: So, okay. So then going on,
20 I'm not going to go over traffic that much because
21 Rob is going to be here. It really -- it is
22 compatible as long as when the signalization
23 warrant analysis is done at time of DO, they look
24 at it, and however that rolls out. So he'll go
25 over what the rub is with the 48-hour letter from

1 the Applicant versus what we proposed.

2 Now, Staff -- I made a mistake on the Staff
3 Report by not including Transportation's two
4 conditions. They were analyzed in the Staff
5 Report. They were in Attachment Q of
6 Transportation's Staff memo.

7 HEARING EXAMINER COLLINS: Right.

8 MS. WORKMAN: It just didn't make it into the
9 Attachment S, which is in my 48-hour letter in the
10 underlined version. So it's the second condition
11 that is in the 48-hour letter from the Applicant
12 that they're disputing and Transportation is going
13 to go over.

14 The first condition that Ted talked about in
15 transportation, I'm going to allow Rob to go over
16 that. I understand where the Applicant is coming
17 from. I am going to allow Rob to go over that a
18 little bit more. I went over urban services and
19 the locations.

20 Now, the deviations, it gets a little
21 confusing because deviation 1 for the water-body
22 setback was originally withdrawn in the original
23 zoning. Deviation 2, we're recommending that that
24 gets -- get withdrawn because it doesn't apply
25 anymore because of the Lehigh Acres code, and now

1 it's in the Mixed Use Overlay, as I explained.
2 And so with those two things withdrawn, we weren't
3 sure to label it deviation 2 or deviation 1,
4 because deviation 1 is withdrawn in the original,
5 deviation 2 from the original we're requesting to
6 be withdrawn, and deviation 3 or 2 in this is a
7 new deviation.

8 HEARING EXAMINER COLLINS: If you're creating
9 a new Master Concept Plan and this resolution is
10 going to supersede the original resolution, my
11 vote would be to call it deviation 1. But I will
12 defer to whatever it is that you-all decide. Just
13 agree on what it is.

14 MS. WORKMAN: Right. I'm okay with that.
15 However, the Master Concept Plan that's in the
16 file right now still has 1 and 2.

17 HEARING EXAMINER COLLINS: Well, they're
18 going to have to conform the Master Concept
19 Plan --

20 MS. WORKMAN: Correct.

21 HEARING EXAMINER COLLINS: -- to at least
22 where we are at the end of this hearing, leave the
23 record open for that --

24 MS. WORKMAN: Correct.

25 HEARING EXAMINER COLLINS: -- and then

1 perhaps, based on what comes in after, before it
2 goes to the board.

3 MS. WORKMAN: Correct. I'm with you all the
4 way on that. The deviation that they're
5 requesting that's new is to allow the indigenous
6 native vegetation communities for that 50 percent
7 of the open space, to allow the restoration areas
8 to be counted towards that. And we -- we are in
9 agreement with that. So that -- that ties to
10 Condition 8.

11 And so with that, Staff finds that the
12 Application, as it stands with the conditions that
13 are in the Staff Report, are consistent with the
14 Land Development Code and the Lee Plan and
15 recommends approval as conditioned.

16 And we'll go over the -- the two conditions
17 that need to be worked on, the transportation as
18 well as -- I think it's Condition 12 and
19 Condition 8 --

20 HEARING EXAMINER COLLINS: All right. So
21 that --

22 MS. WORKMAN: -- and then the COP stuff --

23 HEARING EXAMINER COLLINS: The abatement --

24 MS. WORKMAN: -- in the Master Concept Plan.

25 HEARING EXAMINER COLLINS: The abatement

1 condition has to be addressed and resolved one way
2 or the other, and then this transportation
3 condition must be addressed and resolved in some
4 way. And it sounds like both of the things are
5 achievable before we close the written record, at
6 least.

7 And then at that point, what I would like is
8 complete conditions and deviations, however
9 they're numbered, to be provided to me for the
10 purposes of preparing my recommendation.

11 MS. WORKMAN: So it would be Condition 8 and
12 Condition 12. And then a new Master Concept Plan
13 showing the deviations, whatever we're going to
14 call it, and then labeling the restoration areas
15 as abatement with the violation case numbers.

16 HEARING EXAMINER COLLINS: Okay.

17 MS. WORKMAN: And then --

18 HEARING EXAMINER COLLINS: Is there anything
19 further?

20 MS. WORKMAN: That's all I have.

21 HEARING EXAMINER COLLINS: Okay.

22 MS. MONTGOMERY: I've got a couple of
23 questions.

24 MS. WORKMAN: Sure.

25 MS. MONTGOMERY: If you'd go to your slide 8

1 on the Master Concept Plan.

2 MS. WORKMAN: Oh, God, I --

3 MS. MONTGOMERY: Remember the discussion
4 about what kind of dwelling units, and the Master
5 Concept Plan, at least what I read, is that it
6 limits it to multifamily?

7 MS. WORKMAN: Correct.

8 MS. MONTGOMERY: And in your listed permitted
9 uses, you limit it to dwelling units/multifamily
10 parcels, two only.

11 MS. WORKMAN: The schedule of uses says
12 multifamily?

13 MS. MONTGOMERY: Uh-huh.

14 MS. WORKMAN: Yeah. Okay.

15 HEARING EXAMINER COLLINS: Okay.

16 MS. WORKMAN: It was a question from the
17 Hearing Examiner.

18 MS. MONTGOMERY: Yeah.

19 HEARING EXAMINER COLLINS: Yeah.

20 MS. MONTGOMERY: I just wanted to clear that
21 up.

22 HEARING EXAMINER COLLINS: I got confused
23 because of -- the way the request was worded, I
24 guess, is what created the confusion for me.

25 MS. MONTGOMERY: Yeah, I just wanted to clear

1 it up so that there wasn't a concern about --

2 MS. WORKMAN: Thank you.

3 MS. MONTGOMERY: -- whether we --

4 MS. WORKMAN: And this --

5 MS. MONTGOMERY: -- misrepresented what we
6 intend to do.

7 HEARING EXAMINER COLLINS: And if they
8 develop the multifamily, the residential can be up
9 to 45 feet in height.

10 MS. MONTGOMERY: Under the property
11 development regulations?

12 MS. WORKMAN: Yep.

13 MS. MONTGOMERY: I know you were looking at
14 the graphic that Beth had with the --

15 HEARING EXAMINER COLLINS: Did you see my --
16 I recoiled.

17 MS. MONTGOMERY: I cried.

18 MS. WORKMAN: I put that in there on
19 purpose --

20 MS. MONTGOMERY: You got our attention.

21 MS. WORKMAN: -- just to throw it off.

22 MS. MONTGOMERY: The other question -- I have
23 a question -- is in regards to, there's been a lot
24 of discussion about the violation. The violation
25 was not caused by the Applicant, correct?

1 MS. WORKMAN: If you want me to go into the
2 whole story --

3 MS. MONTGOMERY: No, no. I just --

4 MS. WORKMAN: -- of this case --

5 MS. MONTGOMERY: -- want to make it clear
6 that it's --

7 MS. WORKMAN: -- I've been through two -- two
8 planning firms, two different engineers. The
9 previous owner was the violator. The current
10 owner is not. We are trying to abate this
11 violation.

12 The violation -- the VIOs that were cited,
13 the 2021s, were not originally issued to the
14 original owner. We were trying to work with the
15 owner and we couldn't get anywhere. And so the
16 notice of violations went, and that starts the
17 time clock.

18 MS. MONTGOMERY: And there's no bad guys in
19 this room --

20 MS. WORKMAN: Correct.

21 MS. MONTGOMERY: -- on that issue?

22 MS. WORKMAN: It is -- it's not the current
23 owner, but --

24 HEARING EXAMINER COLLINS: Hey, listen, the
25 goal is abatement.

1 MS. MONTGOMERY: Yes.

2 MS. WORKMAN: Correct.

3 HEARING EXAMINER COLLINS: The goal is not to
4 penalize. We're trying to achieve abatement.

5 MS. WORKMAN: Correct.

6 MS. MONTGOMERY: I just didn't want you to
7 think we were the bad guys.

8 HEARING EXAMINER COLLINS: If good faith
9 purchases for value correct the violation, I'm
10 sure that role would bode favorably for you in a
11 lien mitigation hearing. I just -- I wanted to
12 point out that --

13 MS. WORKMAN: And Staff --

14 HEARING EXAMINER COLLINS: -- we have a daily
15 fine accruing. That's all.

16 MS. MONTGOMERY: There isn't one, as I
17 understand it.

18 HEARING EXAMINER COLLINS: There's not?

19 MS. WORKMAN: No, there isn't anything going
20 on right now. No, there's no -- I believe there's
21 no lien.

22 HEARING EXAMINER COLLINS: I would double
23 check that.

24 MS. WORKMAN: From Staff's perspective, we're
25 trying to get a consistent code violation

1 condition in these zoning cases.

2 HEARING EXAMINER COLLINS: Oh, so this hasn't
3 even gone to hearing?

4 MS. WORKMAN: This hasn't -- this has not,
5 and that is -- the original owner, we were under
6 the direction --

7 HEARING EXAMINER COLLINS: Well, how much
8 time --

9 MS. WORKMAN: -- of trying to correct.

10 HEARING EXAMINER COLLINS: -- are we going to
11 allow to go forward before this thing goes to
12 hearing if it's not addressed?

13 MS. WORKMAN: I can't answer that question.
14 But it's the goal of Staff to have a consistent
15 condition to go on these zoning cases with these
16 violations. But it's --

17 HEARING EXAMINER COLLINS: I'm thinking --

18 MS. WORKMAN: -- case by case.

19 HEARING EXAMINER COLLINS: -- this might be
20 more suited to a code enforcement agreement where
21 there's that provision under the code where you
22 enter into like a contract with the county and it
23 outlines the terms of how and when it's going to
24 be addressed --

25 MS. MONTGOMERY: A typical --

1 HEARING EXAMINER COLLINS: -- and then the
2 condition could only -- would refer just to the
3 agreement between the county and --

4 MS. MONTGOMERY: I think there's been a lot
5 of time and a lot of meetings to get to this
6 point. While we didn't agree with the verbiage in
7 Condition 8, we did agree with getting to what the
8 Staff and the ecologist agreed to in regards to
9 what needs to happen out there.

10 MS. WORKMAN: We're in a good spot. We
11 just -- it's -- it's the language in the
12 condition.

13 HEARING EXAMINER COLLINS: Okay. Well, you
14 will have an opportunity to work that out.

15 MS. MONTGOMERY: Okay. One -- I have one
16 more question. On slide 10, you have the graphic
17 with the Xs. And they can't have bars and
18 cocktail lounges, but --

19 MS. WORKMAN: Oh, I'm way --

20 MS. MONTGOMERY: And my question is: If you
21 have a restaurant that's a bona fide restaurant
22 but inside of the restaurant they serve alcohol,
23 are you prohibiting that?

24 MS. WORKMAN: No, that is -- it's explicitly
25 in the code that you can allow that.

1 MS. MONTGOMERY: I just wanted that --

2 MS. WORKMAN: You can have a restaurant --

3 MS. MONTGOMERY: -- to be clear.

4 MS. WORKMAN: -- with -- so, like, if there's
5 a particular use that wants to go in -- oh, in --
6 oh, God -- in the location that we had an
7 informal, they would allow -- be allowed to have
8 that if they were within the 500 feet because they
9 serve food. The bar and cocktail lounges, it's
10 in -- it's in 34-1264. It talks about how to
11 disseminate (sic) between the two.

12 MS. MONTGOMERY: And I would --

13 MS. WORKMAN: Hotels --

14 MS. MONTGOMERY: I just --

15 MS. WORKMAN: Hotels with a cocktail
16 lounge --

17 MS. MONTGOMERY: Right.

18 MS. WORKMAN: -- are okay because it's an
19 accessory use.

20 MS. MONTGOMERY: Okay.

21 HEARING EXAMINER COLLINS: If you want to
22 propose more detailed language for that condition,
23 I will entertain it.

24 MS. MONTGOMERY: Okay. Thank you.

25 MS. WORKMAN: I just don't want it to get

1 gigged (sic) at time of DO or something.

2 MS. MONTGOMERY: No, I just don't want there
3 to be confusion later.

4 MS. WORKMAN: Yeah.

5 MS. MONTGOMERY: So maybe we can --

6 MS. WORKMAN: Okay.

7 HEARING EXAMINER COLLINS: No ABC Liquor
8 Store on those two outparcels --

9 MS. MONTGOMERY: Got it.

10 HEARING EXAMINER COLLINS: -- or three
11 outparcels.

12 MS. WORKMAN: Anything else, Neale?

13 MS. MONTGOMERY: No, I think those are it for
14 now. Thank you.

15 MS. WORKMAN: That's all I have.

16 HEARING EXAMINER COLLINS: Okay. Members of
17 the public, we have concluded Applicant's
18 presentation, and Staff -- we're halfway through
19 Staff's, more than halfway. There's one more
20 witness that is going to be testifying on behalf
21 of Staff pertaining specifically to transportation
22 issues.

23 If you wish to speak now, if your concern
24 does not pertain to transportation so much and you
25 want to speak now and then leave and not come back

1 after the lunch break, I invite you to come
2 forward. Otherwise, if you prefer to wait until
3 all the testimony is in the record, you can speak
4 after. But you can't speak both.

5 So I'm going to ask anyone who is here right
6 now from the public that would like to speak
7 now -- is there anyone that would like to speak
8 now? I've got Rahim Ahmadi?

9 MR. AHMADI: I'll speak after.

10 HEARING EXAMINER COLLINS: Okay. Derek
11 Felder?

12 MR. FELDER: I can speak now.

13 HEARING EXAMINER COLLINS: Okay.

14 MR. FELDER: I have a meeting at 12:30 with a
15 commissioner.

16 So Derek --

17 HEARING EXAMINER COLLINS: State your --
18 state your name for the record, please.

19 MR. FELDER: Derek Felder, for the record.

20 Staff brought up the Lehigh Acres
21 Architectural Review Board meeting that was held
22 June 23rd, 2023. At that meeting, the motion that
23 was made from a recommendation of that board was
24 approval with the stipulation of commercial only,
25 if possible. The viewpoint is that Lehigh has

1 enough residential, and also Lehigh has enough
2 storage units. We lack commercial.

3 So if there's a way to make it 365,000 square
4 feet of only commercial, that was the motion. If
5 that's not possible, then maybe -- you know, the
6 residential, the mixed-use apartments, it does
7 give a variety to people that need apartments
8 versus homes. But, again, the storage units are
9 not needed. There's already like four more that
10 are currently being developed in Lehigh that are
11 not built yet.

12 The gopher tortoise burrows that were buried
13 over during the land clearing that was done
14 illegally, there was nothing -- no fines or
15 anything was done for those gopher tortoises that
16 were buried over and killed. That was a question
17 that if -- if there's anything that happened from
18 that.

19 If it does go forward with the residential,
20 whatever we can do to have walkability around the
21 site between the residential to the commercial
22 developments; or also it was mentioned about to
23 the school, if that's at all possible.

24 The oil well, if we can -- if it's not being
25 used, it will never be used, it's already capped,

1 somehow involve that site to be, you know, part of
2 the development, whether it becomes a park or
3 something, you know, and then have a wishing well
4 over the top of the cap. I don't know.

5 But just to keep that -- I don't know how big
6 it is, 100-foot by 100-foot square of vacant land
7 because of a well, just doesn't seem to make sense
8 to me if it's never going to be an oil well ever
9 again.

10 And lastly, the gopher tortoise burrows that
11 are on site on the survey map, it would be nice if
12 they -- you know, the preserve areas could include
13 those, which it doesn't seem like it really is.
14 The preserve that's being preserved has like four
15 burrows, maybe. The ones that were included up in
16 the abatement area where it was already cleared is
17 pretty much useless because they were probably
18 demolished with the land clearing, unless I'm
19 wrong in the timing of that survey. Was that
20 survey done after the land clearing had been done,
21 or was that before?

22 And he had mentioned about the relocation
23 sites of gopher tortoises, it's Arcadia and other
24 sites. I know this is nothing that you guys can
25 do or anything, but it would be nice to see if we

1 can get use of local sites for these re- -- the
2 relocation. Like, I live with a gopher tortoise
3 preserve right in my backyard within my community
4 right over in Town Lakes. There might be two
5 gophers that live in that preserve. You know,
6 could more gophers be added to that preserve and
7 keep them more locally and enhance our environment
8 within our community, you know, on a Lehigh local
9 basis? I think that's all I have.

10 HEARING EXAMINER COLLINS: Thank you.

11 Deborah Wilkison, would you like to speak
12 now, or would you prefer to wait?

13 MS. WILKISON: I'll wait. Thank you.

14 HEARING EXAMINER COLLINS: Okay. And Marsha
15 Ellis?

16 MS. ELLIS: I would prefer to wait.

17 HEARING EXAMINER COLLINS: Yes?

18 MS. ELLIS: Yes. Thank you.

19 HEARING EXAMINER COLLINS: Okay. Fine.

20 So I'm going to pause the hearing now and we
21 will resume at 1:00.

22 (A recess was held from 10:49 a.m. to 1:01
23 p.m.)

24 HEARING EXAMINER COLLINS: Okay. Good
25 afternoon. We're back on the record. This is the

1 Sunniland CPD amendment.

2 Neale?

3 MS. MONTGOMERY: We worked really hard and
4 agreed we just should have deviation 1. And on
5 Condition 4, the COP condition, what we talked
6 about is that we're afraid we're going to create
7 confusion. So really what we need to do is just
8 delete that condition and rely on the Land
9 Development Code because --

10 MS. WORKMAN: On the CO- -- the COP
11 condition, because they're going to have to come
12 through the process.

13 HEARING EXAMINER COLLINS: I love that.

14 MS. WORKMAN: Yeah.

15 MS. MONTGOMERY: See, we started off making
16 it happen.

17 MS. WORKMAN: That way when they have an end
18 user, they know where it's at, they come through
19 the process and there you go.

20 HEARING EXAMINER COLLINS: I noticed there
21 were a couple of antiquated conditions that got
22 ca- --

23 MS. MONTGOMERY: Well, we're going to talk --
24 yeah, so on -- the next thing, the first one on
25 mine, the 48-hour letter, we all agree we're going

1 to have to get you a new MCP. So we'll have to
2 put a new date in Condition 1.

3 Condition 2, in light of your conversation
4 about the oil and gas -- and I believe the
5 gentleman who owns the property agrees that we
6 don't have to put that use back in.

7 Item Number 3, this is what I call the John
8 Fredyma condition that we don't do anymore. We
9 agree we can take that out.

10 4, there's the concurrency condition we don't
11 do anymore, and we agree we can take that out.

12 Condition 8 is the one that we spent some
13 time on. And we talked through it at lunch, and
14 Beth agrees that this situation is different from
15 some of the other situations. And there's two
16 sides of the property, so it needs work.

17 She's going take the first shot at it and
18 then send it to us. And so we hope to work
19 through that and have that resolved, which leaves
20 us with Jillian's presentation on the one
21 condition we didn't talk about. And we don't know
22 what we think or if we agree or disagree yet.

23 MS. SCHOLLER: Do you want me to come speak
24 on it?

25 HEARING EXAMINER COLLINS: Yeah, just -- just

1 one moment.

2 So we're at a point right now where Staff's
3 transportation expert is going to speak, and then
4 there's a possibility that Condition 12 will be
5 refashioned following this testimony?

6 MS. WORKMAN: Correct. And I have one thing
7 to add. So in the expert witness list that was
8 submitted for the Staff's 48, we have all of DOT
9 transportation. We do not have Marcus Evans.
10 Marcus Evans authored 12A -- Condition 12A, which
11 is the development intensity.

12 So if the Applicant is okay with Marcus
13 speaking on behalf of that, 12A, to understand
14 why -- and I let -- and Marcus was watching, so he
15 knows that it's on the table to be struck, but he
16 wants to put something on the record about the
17 "why" behind the condition, if that is okay with
18 you. If you don't --

19 HEARING EXAMINER COLLINS: It's okay.

20 MS. WORKMAN: -- think you need anything --

21 HEARING EXAMINER COLLINS: It's okay with me.
22 If he wants to come explain the reasoning behind
23 requesting that as a condition, that's fine with
24 me, as long as the Applicant doesn't object to him
25 not being listed on the original notice.

1 MS. WORKMAN: Correct.

2 MS. MONTGOMERY: We'll accept that. I'm not
3 going to -- I don't think we're going to change
4 our mind about why we don't think the condition is
5 appropriate. But if he wants to comment on it,
6 okay.

7 HEARING EXAMINER COLLINS: I'd like to allow
8 him the opportunity to.

9 MS. WORKMAN: Yes. And I spoke with the
10 Applicant before this letting them know that this
11 was what I was going to do.

12 MS. MONTGOMERY: She did.

13 HEARING EXAMINER COLLINS: Okay. So
14 Condition 12, though, remains perhaps in need of
15 work, especially with regard to the signal
16 agreement, correct?

17 MS. WORKMAN: Correct.

18 HEARING EXAMINER COLLINS: Okay.

19 MS. WORKMAN: And Jillian Scholler is here,
20 Deputy Director of Transportation. She was going
21 to speak on 12B, which is the signalization.

22 HEARING EXAMINER COLLINS: Okay. Jillian,
23 would you come to the podium? I will swear you in
24 and then I would like you to state your full name
25 and your position with Lee County, and then you

1 can commence your testimony.

2 MS. SCHOLLER: Okay.

3 HEARING EXAMINER COLLINS: Please raise your
4 right hand.

5 MS. SCHOLLER: (Raises right hand.)

6 HEARING EXAMINER COLLINS: Do you swear or
7 affirm the testimony and evidence you place into
8 the record this afternoon will be the truth?

9 MS. SCHOLLER: I do.

10 HEARING EXAMINER COLLINS: Thank you. You
11 may proceed.

12 MS. SCHOLLER: Hi, Jillian Scholler, Deputy
13 Director of DOT. I've been previously approved
14 and would request to be approved again.

15 HEARING EXAMINER COLLINS: Please proceed.

16 MS. SCHOLLER: Okay. The signal agree- --
17 sorry. The signalization agreement that was
18 included -- we've been crafting new signalization
19 agreements throughout interactions over the last
20 several years.

21 The original signalization agreements that
22 have been used in previous years have served to be
23 very hard to enforce, especially in conditions
24 like this where parcels will get broken up and
25 then you end up with multiple owners. So DOT is

1 taking a new approach in that potentially the
2 signal gets installed prior to the need for the
3 signal, but at least we're getting it installed so
4 that we can ensure safety and effective traffic
5 operations coming in and out of the developments.

6 In this location specifically, we already
7 have a safety concern that I've been monitoring
8 over the last several years. There was one fatal
9 crash involving a left-turn vehicle turning from
10 Lee Boulevard onto Sunniland colliding with a
11 westbound vehicle on Lee Boulevard. And there has
12 been a pattern of both angle crashes involving
13 southbound motorists hitting either eastbound or
14 westbound motorists and those eastbound left-turn
15 vehicles being hit by westbound vehicles.

16 The crash pattern right now is not at a point
17 where I would make -- take any drastic changes at
18 the intersection, but it is something that I've
19 been monitoring and it is a concern. And
20 increasing the traffic on this roadway will
21 increase that concern. So we think that a signal
22 is very justified and we'd like to ensure in all
23 of our documentation that we can make it happen
24 when it needs to happen.

25 HEARING EXAMINER COLLINS: Okay. So my

1 question with regard to the signal is: Is what is
2 anticipated some sort of proportional share
3 contribution, or is it that this Applicant is
4 expected to pay for the whole signal?

5 MS. SCHOLLER: So Sunniland Boulevard is a
6 county road. So the expectation is that the
7 county would contribute towards the signal. And
8 that is a detail that would get worked out in the
9 signalization agreement that would be developed at
10 the time of the first DO.

11 The main difference -- the biggest difference
12 between our signalization agreement and the one
13 that they proposed is the inclusion of design.
14 Our agreement states that they will include design
15 with their first DO. Theirs does not. It just
16 leaves it more general and says that the
17 agreement, including how design and construction
18 will be facilitated, will be worked out at the
19 time of the first DO.

20 So being able to get that design done with
21 the first DO makes it a lot easier to get the
22 signal installed, again, when it needs to be to
23 ensure, you know, health, safety, and welfare for
24 the motoring public.

25 HEARING EXAMINER COLLINS: And how can we

1 have a condition that requires participation and
2 agreement without specifying its terms, since it
3 seems like there's some negotiation that may
4 occur?

5 MS. MONTGOMERY: Well, but there's not a
6 negotiation about the design the way they had the
7 condition written. They have a problem now. The
8 problem is not caused by our client. The first DO
9 could be for McDonald's. McDonald's isn't going
10 to be in a position, nor should they be, to design
11 a signal for the entire project to solve the
12 problem.

13 That's why we wrote it more generally,
14 because Mr. Treesh did an analysis assuming maybe
15 we had a big-box retailer and a well-known grocery
16 store; and if those uses went in, would they trip
17 the warrant? The answer is yes. The problem is,
18 at the first DO, this condition says, I've got to
19 analyze build-out conditions. Well, we have two
20 Master Concept Plans. So what build-out
21 conditions are we going to be looking at?

22 To me, it makes more sense to have that at
23 the time you're doing the DO for one or the other
24 anchor parcels because then you'll have a much
25 clearer vision of what you're going to analyze.

1 Otherwise, we don't really know what the project
2 share is, and I'm assuming the share would be
3 based on some look at trips.

4 MS. SCHOLLER: Trips.

5 MS. MONTGOMERY: And so there's already
6 existing background trips. And so you would have
7 to analyze and kind of consider the public trips
8 and the project trips to figure out what that
9 prop. share is.

10 HEARING EXAMINER COLLINS: Well, what's the
11 danger of postponing this to the point where we
12 have a DO that triggers the warrant? What's the
13 danger there?

14 MS. SCHOLLER: It becomes hard to then rally
15 the -- like the businesses or the property owners
16 that have already built and did not have to be
17 part of that signal at that time --

18 HEARING EXAMINER COLLINS: So --

19 MS. SCHOLLER: -- and come back and impart
20 that cost or -- associated with the signal later
21 after the fact, potentially ten years down the
22 road, whatever.

23 In this case, I don't think it would be that
24 long. But in a lot of cases it's several years
25 down the road and there may be two property owners

1 removed. And so the property owner at the time is
2 like --

3 MS. MONTGOMERY: No, I know --

4 MS. SCHOLLER: -- I don't know anything about
5 this. So it makes it very hard for us to then go
6 approach all of these, however many property
7 owners, to get the proportionate share from each
8 of them.

9 HEARING EXAMINER COLLINS: This is my
10 question: Why can't you have a signalization
11 agreement now --

12 MS. MONTGOMERY: I think we can.

13 HEARING EXAMINER COLLINS: -- that becomes
14 incorporated into the chain of title somehow? Do
15 you know what I mean? Applicable to this property
16 owner and all future property owners, that, yes,
17 there's going to be a need for a signal and all
18 property owners are going to contribute based on
19 their proportionate contribution to trips.

20 Why couldn't it been structured that way? So
21 it's going to run with the land and anyone who
22 buys an outparcel is now on notice that they have
23 this potential obligation in the future to
24 contribute towards the cost of.

25 MS. MONTGOMERY: Yeah, I think you can do it

1 through a covenant. I think you can do the
2 sig- -- you can do the signal agreement with the
3 first DO if the design with the first DO --
4 depending on what that first DO is. So I think --
5 I think there's a way to get there. We haven't
6 had a chance to have a conversation, so --

7 MS. SCHOLLER: Yeah.

8 HEARING EXAMINER COLLINS: So is the issue
9 that DOT's position is that this signal is a
10 site-related improvement, and for that reason, the
11 entire cost of the design should be on the
12 Applicant?

13 MS. SCHOLLER: Not necessarily. We just want
14 them to take the initiative of incorporating the
15 design into their first DO so that it's -- once
16 the design is done, the construction is a lot
17 easier to facilitate.

18 And the desire is really for the broader
19 developer to end up taking that -- that cost
20 instead of having to parse it out. Like, you
21 know, you're dealing with one big entity versus
22 however many small entities, it gets very
23 complicated.

24 And the county, in our, you know, methods, we
25 don't really have a way to facilitate that with,

1 you know, potentially 20 different owners, so --

2 HEARING EXAMINER COLLINS: Well, you'd need
3 some kind of covenant. But still enforcement
4 would be a challenge even under those
5 circumstances --

6 MS. SCHOLLER: Yeah.

7 HEARING EXAMINER COLLINS: -- I would think.

8 MS. SCHOLLER: So that's why we're trying to
9 get it so that the broader developer at least
10 initiates the signal and describes when it's going
11 to happen and takes on their portion of the cost.

12 HEARING EXAMINER COLLINS: Well, what if the
13 county paid for the design and then the developer
14 that trips the warrant pays for the signal?

15 MS. SCHOLLER: But then potentially the
16 developer that trips the signal is a small,
17 little -- smaller outparcel. And, you know, the
18 bigger developments maybe don't trip it at that
19 point and then some small guy is now fronted the
20 entire bill for the signal.

21 So that's where it gets very complicated.
22 And we're trying -- that's why we're trying to
23 kind of get it done initially.

24 MS. MONTGOMERY: Okay. I have a question:
25 If you take our condition and then require the

1 signal agreement to dictate when the design is
2 going to be done so it can be done by the big "D"
3 developer, not the little "d" of like the
4 outparcels, does that work?

5 MS. SCHOLLER: If we can revise it to specify
6 when the design is going to be done, then I think
7 we could work something out in there. Your
8 current one, it just leaves it very general and
9 broad and it doesn't really specify who's
10 facilitating what. And so, like I said, it just
11 gets very hard to make it happen.

12 HEARING EXAMINER COLLINS: Hasn't this come
13 up before?

14 MS. SCHOLLER: It is -- it's something we're
15 desperately trying to work through.

16 MS. MONTGOMERY: It's evolving. I know the
17 situation that Jillian is talking about. It's
18 down -- it -- it's the Lowe's signal. It was 20
19 years later, and she was right, it was a nightmare
20 on both sides of the road.

21 MS. SCHOLLER: And now there's like 30
22 different owners.

23 MS. MONTGOMERY: So they're trying to avoid
24 that. I know what they're trying to avoid. But
25 we've gotten a little too draconian, so -- but I

1 do think we can get there. And Mr. Treesh, the
2 traffic gentleman in the back, thinks you guys can
3 sit down and resolve this.

4 So I'd like to leave the record open to try
5 to come up with a condition we can agree with, if
6 that's possible.

7 HEARING EXAMINER COLLINS: My wish would be
8 to have this condition broad enough so that the
9 signalization agreement is required but it's going
10 to be negotiated off to the side. So as long as
11 you guys enter into it, how you determine you're
12 going to do the signalization agreement, that's
13 covered by the agreement and the condition is only
14 referencing the need for the agreement.

15 MS. SCHOLLER: But the conditions that we've
16 used over the last, you know, whatever, 15 or 20
17 years, are in that manner where they're very broad
18 and they just say an agreement is needed.

19 However, then it gets split up and the agreement
20 is linked to the zone but the guy that bought this
21 outparcel isn't aware of the agreement, and so
22 it -- that is the problem we've had, which is why
23 we're trying to make them more specific and really
24 pin the original developer on it.

25 The person that's entering into the

1 agreement, they're the ones agreeing to this
2 condition, not, you know, each individual owner.
3 So we're trying to make it so that that person
4 who's agreeing to enter into this agreement is the
5 one that enters into the agreement --

6 MS. WORKMAN: And Rob Price --

7 MS. SCHOLLER: -- and facilitates the signal.

8 MS. WORKMAN: Rob Price is here to further
9 that, if you would like.

10 HEARING EXAMINER COLLINS: I'm just
11 wondering, if this is not a site-related
12 improvement, why isn't impact fees covering the
13 cost of the signal?

14 MS. MONTGOMERY: But it's not completely a
15 site-related improvement because they've been
16 monitoring the intersection and have problems now.
17 So, I mean, there's a need to -- oh, the big guy
18 is here.

19 MR. PRICE: Good afternoon. Rob Price with
20 Lee County DOT, Director of Lee County DOT. I
21 have testified in this forum in the past and been
22 recognized.

23 MS. MONTGOMERY: Wait. You're not sworn,
24 though.

25 MR. PRICE: I am not sworn.

1 (Raises right hand.)

2 Go ahead.

3 HEARING EXAMINER COLLINS: Do you swear or
4 affirm the testimony and evidence you enter into
5 the record will be the truth?

6 MR. PRICE: Yes, ma'am, I do.

7 I have been recognized in this forum as an
8 expert in traffic engineering and transportation
9 planning in the past and wish to be recognized as
10 such again today.

11 HEARING EXAMINER COLLINS: (Nodding head.)

12 MR. PRICE: So I was listening to the line of
13 questioning that you were asking of Jillian, and
14 the way that the -- your questions seem to be
15 leading us is a way that we've been doing things
16 in the past, and it's just been proven to be an
17 accounting nightmare for the county.

18 I'll give you an example. At Plaza del Sol
19 and Corkscrew Road, there was a signal that was
20 warranted at that location. There was a
21 signalization agreement that was put on the
22 development on the south side of Corkscrew Road.

23 There was a Lowe's that was developed there.
24 There was a Ruby Tuesday's, a bunch of outparcels
25 and those had been in operation for years and

1 years and years. Ownership of those, it changed
2 hands multiple times over the course of time. And
3 so as we went back to try to approach those
4 property owners to get them to pay their share of
5 the signalization, it was a nightmare.

6 And the Village of Estero ended up having to
7 step up and actually pay a good portion of that
8 traffic signal. So we don't want to get stuck
9 holding all the bag.

10 We understand that this is a county road, and
11 so the county does have a part in funding a
12 traffic signal at this location. What we're
13 trying to do is work with the developer to
14 accomplish getting the signal installed in a
15 timely manner when it's -- when it's needed and
16 when it's warranted through an agreement. And the
17 question, though, that you just had about impact
18 fees versus site-related impacts, I think we need
19 to get that on the record, too.

20 So impact fees are not eligible to pay for
21 traffic signals. Impact fees are used to increase
22 or enhance capacity on a roadway. A traffic
23 signal will actually reduce the capacity of the
24 roadway. So when you have a site that is causing
25 the need or furthering the need for a traffic

1 signal, it really kind of is a site-related
2 impact -- a site-related improvement.

3 Now, I think when Jillian was answering your
4 question earlier, this is not solely 100 percent
5 their responsibility, and that's what we're --
6 this one is a little bit unique. A lot of times
7 when we're in a situation like this, you have a
8 development that they want to signalize their
9 driveway connection to a county road, and in that
10 case it is 100 percent the responsibility of that
11 property owner to pay for that signal design,
12 construct, the soup, the nuts, the whole nine
13 yards.

14 In this particular case, the county is trying
15 to recognize our responsibility that this is a
16 county road. And so we do have some skin in the
17 game here. Our goal was that having that design
18 done with that first development order will
19 expedite the construction of the signal when
20 it's -- when it's needed to go in.

21 HEARING EXAMINER COLLINS: So who pays for
22 the signal, then, when it's time to go -- if they
23 incur the cost of design, when the time comes to
24 install and construct the signal, who pays for
25 that?

1 MR. PRICE: So we would look at -- whatever
2 we work out from an existing traffic -- and what
3 the responsibility is for the county for the
4 background traffic versus their development and
5 what their impacts are, we would factor all of
6 that in and the design costs would also go into
7 that proportionate share.

8 HEARING EXAMINER COLLINS: So there'd be
9 credit --

10 MR. PRICE: So if they fronted the design --

11 HEARING EXAMINER COLLINS: Right.

12 MR. PRICE: -- their cost at construction
13 would be a little bit less. It would be -- it
14 would be less.

15 That -- that's our intent, is having that
16 design in place allows us to implement that signal
17 faster. If we get to a point where we have a
18 demonstrated safety issue at this intersection, it
19 needs to be signalized and we don't have a design,
20 I've got to go out and get a design cut. It's
21 going to take me a year, year and a half,
22 potentially, to go through the procurement process
23 to get an engineer to do the design and get the
24 design set up.

25 If we have a demonstrated safety problem,

1 we're closing the median. I mean, that is going
2 to be our first step. If we have a safety issue
3 to address, we're going to close this median and
4 restrict all lefts out. And I don't think that
5 the developer wants that, and the county doesn't
6 necessarily want that either.

7 I can tell you that if this was 100 percent
8 the county's responsibility to do something at
9 this intersection and there was a demonstrated
10 safety issue, we would go out and we would close
11 the -- close the median, allow no left turns from
12 the side street. And we probably would just walk
13 away and that would be -- that would be the fix.
14 We would never signalize the intersection.

15 I think the developer would like to have the
16 signal. We are okay with a signal. It's an
17 appropriate location for a traffic signal. So
18 however we can work out the mechanics of getting
19 the signal designed and installed and share the
20 cost, that's what we're really trying to achieve
21 here.

22 HEARING EXAMINER COLLINS: So the rub is to
23 make sure that the responsibility to pay doesn't
24 fall entirely on one parcel?

25 MR. PRICE: That's -- that's correct. When

1 we -- when we do an agreement and we have these
2 developments, as each outparcel develops,
3 acknowledge that there's a signalization need and
4 they're going to have to pay their fair share -- I
5 mean, oftentimes you have a developer that
6 develops whatever goes on that lot and then they
7 sell it and then the next person might sell it.

8 And while that runs with the land and we can
9 all say that, it's the mechanics of actually
10 getting that money that caused problems for the
11 county. It just -- it becomes a nightmare to try
12 to collect. This is a whole genesis as to why
13 we're looking at changing how we administer these
14 signal agreements.

15 HEARING EXAMINER COLLINS: Has the County
16 Attorney's Office been consulted on a possible way
17 to accomplish this goal?

18 MR. PRICE: Not -- I mean, you know, we talk
19 to them about these things all the time. We've
20 had multiple conversations with them regarding
21 other cases. I don't know if we've spoken
22 specifically about this particular case.

23 I mean, we're happy to leave the record open
24 and work with the developer and try to see if we
25 can come up with a way to achieve a signalization

1 agreement that works and that you're comfortable
2 with and that they're comfortable with and that
3 we're comfortable with.

4 HEARING EXAMINER COLLINS: My concern is
5 enforceability from a zoning standpoint. That's
6 my main concern. I don't begrudge Lee DOT from
7 wanting this contribution. All the testimony that
8 I've heard from Jillian, I understand that, but
9 I'm dealing with crafting a condition that if it's
10 not complied with is basically going to stop all
11 development approvals on this project.

12 So I want to be very careful how this
13 condition is crafted, and that's why that would be
14 easier to do if you can come up with a method for
15 financing this.

16 MS. MONTGOMERY: Well, see, I think we can --
17 I go back to what I said to Jillian and I would
18 like to say to Rob: We understand the problem.
19 We understand the goal. We understand what's
20 happened in the past. Some of us have been
21 involved at various phases of that.

22 MR. PRICE: Uh-huh.

23 MS. MONTGOMERY: We don't want that to happen
24 again. We've just got to sit down and work
25 through language. And if we have until, what,

1 next Thursday or whatever, the time we have to do
2 that, I think we can, if that's okay with Rob.

3 MR. PRICE: Yeah. Our --

4 HEARING EXAMINER COLLINS: Is that
5 satisfactory to you?

6 MR. PRICE: It -- sure, yes, it's
7 satisfactory with us.

8 I mean, we -- also, it's not our intention
9 and our goal to shut the development down. That
10 is not -- that is not what we're trying to do.

11 HEARING EXAMINER COLLINS: Just so that you
12 understand my perspective, I don't want to put a
13 condition in here if it can't be enforced. So it
14 has to be enforceable. Now, typically when a
15 condition is not complied with, it's either a code
16 violation or the condition itself provides some
17 kind of consequence for failing to comply.

18 MR. PRICE: Uh-huh.

19 HEARING EXAMINER COLLINS: So if I don't have
20 a condition that does one of those two things --

21 MR. PRICE: Uh-huh.

22 HEARING EXAMINER COLLINS: -- it's like, why
23 is it in here? So I want to make sure that we can
24 find some wording that is satisfactory to you-all
25 that accomplishes this goal that you both want.

1 Because I understand what you're saying.
2 This project will work better if there's a signal
3 at Sunniland. You know, otherwise, the
4 circulation is not ideal.

5 MR. PRICE: Right.

6 MS. MONTGOMERY: We should probably cut those
7 trees down.

8 HEARING EXAMINER COLLINS: And it's not a
9 situation where they can front end and get credit
10 on impact fees. You've explained that to me. So
11 this is something separate.

12 MR. PRICE: Right. You're -- you're correct.
13 We agree, and we will do what we can to work with
14 the Applicant.

15 HEARING EXAMINER COLLINS: Okay. Well --

16 MS. MONTGOMERY: Thank you.

17 HEARING EXAMINER COLLINS: -- we are leaving
18 the record open for submission of additional doc-
19 -- updated documents and conditions. So maybe
20 we'll leave the record open two weeks so that you
21 can continue to discuss.

22 And just a suggestion that maybe you involve
23 one of the assistant county attorneys in this
24 endeavor. They might have some insight that could
25 be helpful in terms of accomplishing the goal.

1 MR. PRICE: If we meet with Ms. Montgomery,
2 we have to have the County Attorney's Office
3 involved, so --

4 HEARING EXAMINER COLLINS: I heard that.

5 MR. PRICE: -- they'll be involved.

6 MS. WORKMAN: It's a rule.

7 MS. MONTGOMERY: They insist they need
8 protection. I don't know why.

9 MS. WORKMAN: Yeah, the file has been marked.

10 MR. PRICE: But I'll also commit that we'll
11 work with -- outside of this case, I mean, we
12 acknowledge that this is a recurring --

13 HEARING EXAMINER COLLINS: Recurring --

14 MR. PRICE: -- topic of discussion. This one
15 is a little bit -- a little different because,
16 obviously, we know it's a county-maintained
17 roadway where we're talking about having the
18 signal. It's an intersection of two
19 county-maintained roadways.

20 But we will fully commit to you that we'll
21 try to get with the County Attorney's Office and
22 see if we can come up with a better mechanism in
23 the future. I mean, we don't like these
24 signalization agreements as much as the developers
25 don't like them either. But in this particular

1 situation, it's a little different because we do
2 recognize we have some skin in the game.

3 HEARING EXAMINER COLLINS: Could it be an
4 MSTU or an MSBU where you set up --

5 MS. MONTGOMERY: Well, that's what happened
6 in Estero. That's what they ended up doing, was
7 an MSTU. So, yes, it can be done.

8 HEARING EXAMINER COLLINS: You can get the
9 money and then --

10 MR. PRICE: It could -- it could be -- I
11 mean, that could be the mechanism. It's something
12 that we've kicked around in the past as a
13 possibility. But it's about implementing the
14 MSTU, getting the funds, getting the design,
15 getting the construction.

16 In a situation like this, it might make more
17 sense to do that. Where we're talking about a
18 shopping center development or a residential
19 development where it's their driveway to a county
20 road, I would say the cost is 100 percent the
21 developer's.

22 And so it's really about a timing thing. And
23 our goal with the way that we've been doing these
24 is, we're -- we're not trying to say day one you
25 must build and construct a traffic signal. It's

1 when it's needed. You tell me when it's needed.
2 We'll get the con- -- we'll work on the conditions
3 and we'll work on the DO stipulations so that the
4 timing is based on what the developer says their
5 traffic study says as to when the signal is going
6 to need to go in.

7 We will condition and stipulate the DO, that
8 it be in before we issue another CO or CC past
9 that number. And I think that that gives them the
10 flexibility to start developing, start generating
11 some revenue to help pay for the traffic signal,
12 and then we can all be happy at the end of the
13 day.

14 MS. MONTGOMERY: Yeah, I think we can --

15 HEARING EXAMINER COLLINS: That sounds great
16 to me.

17 MS. MONTGOMERY: -- get there. Right now
18 it's tied to a CC for 300 units. But to Rob's
19 point, Ted may say it's sooner. So we- -- we'll
20 work on it.

21 MR. PRICE: Okay. Sounds good.

22 HEARING EXAMINER COLLINS: Thank you.

23 MR. PRICE: Do you got anything else?

24 HEARING EXAMINER COLLINS: No. Thank you.

25 MR. PRICE: All right.

1 HEARING EXAMINER COLLINS: I appreciate it.
2 I'm going to leave the record open for two weeks
3 for you to continue to talk and resolve something.

4 MS. MONTGOMERY: All righty.

5 HEARING EXAMINER COLLINS: Jillian, thank
6 you.

7 Is there any further testimony from DOT?

8 MS. WORKMAN: Marcus with Development
9 Services.

10 HEARING EXAMINER COLLINS: Marcus, I'm going
11 to administer the oath and then I'm going to ask
12 you to state your full name and your position with
13 Lee County.

14 MR. EVANS: (Raises right hand.)

15 HEARING EXAMINER COLLINS: Do you swear or
16 affirm the testimony and evidence you enter into
17 the record will be the truth?

18 MR. EVANS: Yes, I do.

19 HEARING EXAMINER COLLINS: Okay.

20 MR. EVANS: Marcus Evans with Lee County
21 Department of Community Development, Development
22 Services. I am a licensed Professional Engineer
23 with the Department and I have been accepted as an
24 expert in planning -- or transportation planning
25 and traffic engineering in the past.

1 HEARING EXAMINER COLLINS: Okay. I
2 understand that you're going to explain a
3 condition --

4 MR. EVANS: Yes.

5 HEARING EXAMINER COLLINS: -- that's been
6 recommended by you?

7 MR. EVANS: That is correct, yes. The
8 purpose of the condition, I think, overall is to
9 promote transparency with respect to the site's
10 trip generation.

11 When we consider a public hearing, obviously,
12 the transparency is very important as we present
13 information to the public, and not only to the
14 public, but yourself and the county board as well.
15 So we certainly have accountability when it comes
16 to presenting information that is understandable,
17 and then also that it's -- the picture that's
18 painted is something, again, more in the planning
19 phase as something that can be related to -- very
20 well in the actual final development.

21 So that being said, if I could, I'd like to
22 go back to Chapter 34 of the Land Development
23 Code, and that describes, in Chapter 34-378, the
24 effect of planned development zoning, paragraph --
25 or subpart B, the applicability of development

1 regulations. There it states, in part, that this
2 section must be interpreted to apply to -- and
3 applied such that no approved use will be vested
4 as to density or intensity unless the proposed
5 density or intensity is specifically reviewed and
6 approved during the planned development process.

7 So, again, that's the effect of planned
8 development zoning. So that intensity is really
9 important to consider.

10 Now, intensity, again, looking at the Land
11 Development Code, Chapter 34, Section 34-2,
12 defines it as such. It says, it means a
13 measurement of the degree of customarily
14 nonresidential uses based on use, size, impact,
15 bulk, shape, height, coverage, sewage generation,
16 water demand, traffic generation or floor area
17 ratios.

18 So traffic generation is described in the
19 meaning of intensity. So when it comes to
20 intensity as considered through the planned
21 development process, as referenced in 34-378, it's
22 important that we consider that, and that as we
23 look at the traffic study, that that is something
24 that is more considered a worst-case scenario.
25 And if it's not a worst-case scenario, that there

1 are conditions that -- that account for the
2 reduced worst-case scenario, you might say.

3 So that brings us to this particular case.
4 In this case, as with many others, there's a very
5 long schedule of uses. A lot of different uses
6 can be built on this or in this development. That
7 being the case, it makes it difficult with the
8 traffic study preparer, as well as Staff, to
9 identify what is a worst-case scenario.

10 We have a lot of different uses. We have a
11 lot of different trip generation for each of the
12 uses, they're different, and we have internal
13 capture. We have pass by. There's a lot of
14 different elements. There are a lot of different
15 gears that are turning as we look at the analysis
16 for trip generation.

17 So when I looked at the schedule of uses, my
18 big concerns were some potential development that
19 perhaps might be more of a worst-case scenario
20 than that -- than was considered in the traffic
21 study. The two in particular that caught my
22 attention was the school.

23 Now, a school, a large school in particular,
24 can generate a lot of traffic. And we have a
25 school right next to this. If for whatever reason

1 the school district decides, well, wouldn't that
2 be a nice place for maybe a middle school or high
3 school, we can share some of our administrative
4 operations with a nearby elementary school, hey,
5 good spot for a school, the trip generation for a
6 school very high. So if a school were to develop
7 on this site, my sense is is the numbers that were
8 looked at in the traffic study might be on the low
9 side, not accounting for a potential school there.

10 In addition to that, if the footprint of the
11 commercial portion of the development were to be
12 reduced from the 265 to say 150 or so and there
13 were to be a grocery store as an anchor, trip
14 generation really jumps. And so that, again, is a
15 potential concern.

16 For instance, a commercial development of,
17 say, 150,000 square feet without a grocery store
18 is a certain value for trip generation. But if we
19 add that grocery store to that mix, then the trip
20 generation may jump up to one and a half times
21 what that initial 150,000-square-foot commercial
22 development without the shopping center would
23 generate.

24 So this condition, I believe, again, promotes
25 transparency, and it's understood that, hey, if a

1 school jumps -- decides to locate here, if for
2 whatever reason the commercial footprint were to
3 be reduced and then the remainder of the floor
4 area is built as office or some other uses, and
5 then a grocery store is added to that mix, that,
6 again, the picture we're painting to the public,
7 the picture we're painting to yourself, the county
8 board, perhaps others that may have interest here,
9 it's understood that what we looked at in the
10 traffic study is the limit.

11 That's the intensity. That's the intensity
12 in my opinion that is considered through the
13 planned development process which goes right back
14 to 34-378.

15 HEARING EXAMINER COLLINS: So how is this not
16 accomplished by Condition 1, which sets the
17 development parameters for the project?

18 MR. EVANS: I'll give a good example. And
19 this is something that we've seen a number of
20 times. Let's step aside and look at a
21 development, a hypothetical situation.

22 Say we have a development -- a residential
23 planned development that's approved for 1,000
24 dwelling units, and simply in the description in
25 the resolution it says that it's approved for

1 1,000 residential dwelling units.

2 You look at the schedule of uses. You see
3 maybe a handful of different types of residential
4 units. You have single-family detached. You have
5 single-family attached. You may have multifamily.
6 You may have townhomes, and then the site
7 development regulations gives you some idea of
8 your heights of your multifamily and so on.

9 If you just simply have an approval, a carte
10 blanche approval, 1,000 dwelling units, and you
11 look at the schedule of uses, technically if they
12 wanted the most intense in terms of trip
13 generation, they could build 1,000 single-family
14 detached homes there. But the reality is, if then
15 you look at the traffic study and the traffic
16 study looked at 500 single-family detached homes
17 and then a mix of, say, single-family attached,
18 multifamily and townhomes, your trip generation in
19 the traffic study is going to be a decent amount
20 less than what you would see with the actual
21 development of 1,000 single-family detached homes.

22 Now, again, every site is different. You may
23 not be able to fit everything that the zoning
24 might allow on that site.

25 HEARING EXAMINER COLLINS: Well, what would

1 be different? They would pay impact fees based on
2 their impacts tied to the impact fee schedule.

3 MR. EVANS: This is true.

4 HEARING EXAMINER COLLINS: That is what I'm
5 struggling with. What changes by adding this
6 condition in terms of mitigation or otherwise?

7 MR. EVANS: If that residential development,
8 or, say, this development was in an area where
9 there was very contentious, very concerned
10 citizens that live in that area and you paint the
11 picture, perhaps, that this is going to be a
12 fairly sublime and a lower -- fairly low trip
13 generator and then all of a sudden what develops
14 there is a much higher trip generator -- the
15 public trust, I think, is very important. And I
16 think that through the public hearing process, the
17 transparency and all, that we should be concerned
18 about that.

19 And I think, again, it goes right back to
20 this 34-378 where it talks about --

21 HEARING EXAMINER COLLINS: Well, what does
22 this condition accomplish for us?

23 MR. EVANS: It makes sure that what the
24 public is told, what the board is told as far as
25 the traffic in that area and the issues, perhaps,

1 with accesses and delay and so on, that that
2 carries over to what actually gets built.

3 HEARING EXAMINER COLLINS: Okay. Thank you.

4 MR. EVANS: That's my concern. And whether,
5 you know, I've made it clear enough, it's been
6 shared. It's understood it may not be, but --

7 HEARING EXAMINER COLLINS: I appreciate you
8 coming to clarify.

9 MR. EVANS: All right. Very good. Thank
10 you.

11 HEARING EXAMINER COLLINS: Thank you.

12 MS. WORKMAN: That is all.

13 HEARING EXAMINER COLLINS: That is all.

14 Anything further from DOT? No?

15 MS. WORKMAN: Nope.

16 HEARING EXAMINER COLLINS: Okay. Thank you.

17 If there is no questions by the Applicant,
18 I'm going to move to the public at this time.

19 Members of the public, I'm going to call your
20 name one at a time. Please come to the podium,
21 state your name and share your remarks with us.

22 Rahim Ahmadi?

23 MR. AHMADI: Hello.

24 HEARING EXAMINER COLLINS: Thank you for
25 coming.

1 MR. AHMADI: Thank you. So my main concern
2 is that I was -- I read over the traffic impact
3 statement and there's no mention of the impact on
4 Terry Avenue in regards to the increase in
5 traffic. And so currently if you're trying to go
6 westbound onto Lee Boulevard going into Fort
7 Myers --

8 HEARING EXAMINER COLLINS: So what -- what
9 road? Can you --

10 MR. AHMADI: Terry Avenue.

11 HEARING EXAMINER COLLINS: You can approach
12 and show me where.

13 MR. AHMADI: Yeah.

14 MS. WORKMAN: Right here (indicating)?

15 MR. AHMADI: Yeah, right here (indicating).
16 So I own this property right here on Terry Avenue
17 (indicating).

18 HEARING EXAMINER COLLINS: Okay.

19 MR. AHMADI: And so in order to leave in the
20 morning -- this is the only median between Gunnery
21 and Sunshine that has full access, a U-turn, left
22 turn lane from both ways.

23 And so in morning rush hour and the evening
24 rush hour, it's next to impossible. I'm pretty
25 much playing Frogger to get onto Lee Boulevard.

1 The traffic backs up in the morning. And then on
2 the way home with, you know, 50,000 cars a day
3 travel, it's pretty tough to get onto Lee
4 Boulevard.

5 And on top of that, when you're heading --
6 trying to head home around 5:00, this turn lane
7 (indicating) prevents you from even leaving
8 because it will kind of block your median.

9 HEARING EXAMINER COLLINS: So if you were to
10 make a right and head to the next signal and make
11 a left turn, U-turn --

12 MR. AHMADI: You could, yeah.

13 HEARING EXAMINER COLLINS: Okay.

14 MR. AHMADI: And so that's a possibility.
15 But with Sunshine being the next turn, and then
16 with the extension of Alico to Sunshine, that's
17 going to be a horrendous U-turn to make as it
18 already is.

19 And so, you know, my concern is really, how
20 does -- you know, if there's a McDonald's there,
21 I'm going to be there every day, to be honest.
22 And so I now have to fight, you know, the -- how
23 much residential properties are here that have to
24 fight additional traffic now to get to this
25 commercial use?

1 And so my main concern is that nothing in
2 the -- all the traffic study really details is
3 this intersection and this here (indicating), but
4 it doesn't include how do people make left turns.
5 Is this going to be closed out (indicating)?

6 They did mention that probably right here
7 (indicating), which is really a dead U-turn, will
8 be closed. I think that was in the traffic study.
9 But it doesn't account for how do people, you
10 know, from really Yvonne -- there's a block here
11 on Yvonne that technically you can't make a right
12 to do U-turns. So all of this traffic from Yvonne
13 all the way to Sara really uses Terry Avenue to
14 access Lee Boulevard, or you've got to go all the
15 way down to 8th Street to then get to Sunshine
16 where there's a traffic light and then go north.

17 So it really makes it difficult. So my only
18 main concern is just there was no consideration to
19 Terry Avenue. I personally -- I think there was a
20 fatality in March. Two people died on Sunniland.
21 In March of 2024, there was another fatality on
22 Terry Avenue. I've personally seen three
23 accidents at this intersection just anecdotally
24 with my own eyes.

25 So I don't know how many accidents have been

1 between Sunniland and Terry Avenue, but you're
2 literally playing Frogger to make a left turn to
3 go. And with the traffic backing up all the way,
4 you know, in the morning to having -- to force you
5 to go right and then to do a U-turn on Sunshine is
6 going to be really difficult, especially with the
7 extension of Alico to Sunshine and eventually
8 Sunshine to 80. That's going to --

9 HEARING EXAMINER COLLINS: Can you take 4th
10 to Gunnery and go that way?

11 MR. AHMADI: No. It stops eventually. And
12 so you could technically go and do another turn
13 and do it. But then you talk about increased
14 traffic on arterial roads, too, and there's really
15 very little mention of it in that traffic impact
16 statement.

17 And so that's my only -- my main concern is
18 how do we incorporate for increased traffic for
19 all this commercial use? You know, the rumor mill
20 was a Publix, and then I heard that that's not the
21 case anymore, but -- and so that is -- the prior
22 statement about if it is a grocery, you are going
23 to increase so much intensity of people trying to
24 make a left turn into this development.

25 And so are you going to really force them to

1 go all this way down here to do a U-turn? And
2 you're going to increase all of this traffic on
3 arterial roads for all the southbound traffic.

4 And so my main thing is safety from -- you
5 know, I own a house on -- that's 3703 Lee
6 Boulevard. It's been hit by a car already. And
7 so --

8 HEARING EXAMINER COLLINS: So this -- this
9 lot you spoke of on the corner there, is that a
10 commercial business --

11 MR. AHMADI: No, it's a house.

12 HEARING EXAMINER COLLINS: -- that you own?
13 It's a home.

14 Okay. Well, I will -- we will have the
15 transportation engineer or planner for the
16 Applicant illuminate that for you.

17 MR. AHMADI: Yeah, just if they can maybe
18 incorporate -- this traffic, how does this -- how
19 is Terry Avenue impacted with the increased
20 density of people trying to go to this large
21 commercial space?

22 HEARING EXAMINER COLLINS: Okay. We'll ask
23 them to clarify that. Thank you.

24 MR. AHMADI: All right. Thank you.

25 HEARING EXAMINER COLLINS: Thank you very

1 much.

2 Deborah Wilkinson (sic) -- Wilkison?

3 MS. WILKISON: Wilkison.

4 HEARING EXAMINER COLLINS: Thank you for
5 coming.

6 MS. WILKISON: Please bear with me. This is
7 my first time ever attending this meeting and
8 speaking. For the record, I would like to say
9 that Mr. DeLisi was incorrect when he said that
10 the residential area was unbuilt. I live on 6th
11 Street and my house and lot abuts along the
12 drainage ditch that runs along the west side of
13 the property being developed. And you can see it.

14 HEARING EXAMINER COLLINS: Okay. Show me
15 where you're talking about so I can visualize.

16 MS. WILKISON: Yes, ma'am. 5th Street. 6th
17 Street.

18 MS. WORKMAN: 6th Street?

19 MS. WILKISON: That's me (indicating).

20 MS. WORKMAN: This is you (indicating).

21 HEARING EXAMINER COLLINS: Okay.

22 MS. WILKISON: And this is a drainage ditch.
23 It's not a canal. It's narr- -- much more narrow
24 than the canal. And actually, most times of the
25 year -- I mean, I loved it when Ian was here. It

1 was water. But, otherwise, most times of the year
2 it's dry.

3 People cross, wildlife cross it all the time,
4 but not a lot because it's vacant land right now.
5 Once it's built up, you're going to see people
6 wandering around in our neighborhoods. And I'm
7 speaking on behalf of my neighbors. They all work
8 and they get docked pay. I'm being paid for a day
9 off. But nobody can afford it.

10 And then all the children that goes to the
11 schools around --

12 HEARING EXAMINER COLLINS: So what -- so your
13 concern is?

14 MS. WILKISON: Well, concern is, there's not
15 going to be a buffer to stop any human trafficking
16 (sic) when -- I mean, walking when you've got all
17 these people. My other concern is -- gosh, just
18 so many.

19 HEARING EXAMINER COLLINS: Can you return to
20 the podium --

21 MS. WILKISON: Yes.

22 HEARING EXAMINER COLLINS: -- so we can get
23 you on the microphone?

24 MS. WILKISON: Okay.

25 HEARING EXAMINER COLLINS: Okay. So the

1 first concern is --

2 MS. WILKISON: There's not going to be a
3 buffer.

4 HEARING EXAMINER COLLINS: -- the buffer
5 between the residences off of 6th Street and the
6 site?

7 MS. WILKISON: And the commercial. Correct.
8 Correct. And I understand the property will be
9 developed without a buffer on the west side. I've
10 already explained all of that. It's smaller.

11 We get wildlife crossing over. We've even
12 had a go- -- gopher tortoise cross over onto my
13 street. And I didn't have a fence there before.
14 I'm walking in the yard. The dogs were at it. My
15 husband stopped and protected it and took the
16 turtle -- or the tortoise back over through the
17 drain- -- drainage ditch over there. We do this.

18 HEARING EXAMINER COLLINS: You just increased
19 that turtle's day's work now. He's going to have
20 to cross again.

21 MS. WILKISON: Well, that's right.

22 HEARING EXAMINER COLLINS: He was going that
23 way for a reason.

24 MS. WILKISON: But that's where his home is.
25 He was out for a walk.

1 But we've had -- we've had neighbors, we've
2 seen people walk across it. That was one concern.

3 The other concern is -- sorry, I'm trying
4 to --

5 HEARING EXAMINER COLLINS: Take your time.

6 MS. WILKISON: I'm -- I'm on well water. How
7 will these buildings, including the 300
8 multidwellings get their water? My concern is my
9 well drying up, as I've seen in areas -- many
10 areas in Southwest Florida.

11 Even the San Carlos Park neighborhood -- I'm
12 on the neighborhood watch -- I've got friends and
13 family living there -- and her well dried up. She
14 had to redrill because of the development around
15 there. I'm very concerned about that. And with
16 all the water (sic) being developed, are we going
17 to get sinkholes like they have in the Clermont
18 area? I'm just -- it's a concern.

19 With the 300 multidwelling, we can expect
20 approximately another 450 cars on the road in the
21 neighborhood. Right now where I live, it's --
22 we're all workers. We're blue collars, white
23 collars, but it's not really a retirement
24 community. And the public transportation,
25 everybody has got a car, at least one per person

1 in the house.

2 So, you know, during rush hour, Lee becomes a
3 parking lot due to congestion. We're not even
4 talking about car accidents. There's been times
5 when I didn't know how I'm going to get to Bonita
6 to work. It just -- it's just backed up
7 everywhere.

8 And many cars are -- div- -- divert. Because
9 Lee is a parking lot, many cars divert onto 5th
10 Street. 5th Street, it's considered, I guess, two
11 lanes but it's really very narrow. And at
12 nighttime, especially, it's dark. There's not
13 many streetlights. And it's only residential
14 homes and there is a child -- a child daycare that
15 backs onto 5th Street.

16 5th Street is where the school bus picks up
17 the kids for school, drops the kids off. I see it
18 in the morning. A lot of times I end up driving
19 down 5th Street, because Lee is backed up, and
20 then get onto Lee to get to Fort Myers, Bonita.

21 People walk their dogs on 5th Street. They
22 take walks -- I mean, it's a residential area --
23 walk the children. So that -- that's a major
24 concern with the traffic. Because the minute Lee
25 is backed up, people are going to take 5th Street.

1 Where are all those cars going to go?
2 It's -- go north? Sunniland, it's just two lanes
3 and -- but 5th Street is much more narrow than
4 Sunniland.

5 And we don't have a whole lot of
6 streetlights. I've already witnessed two
7 accidents. I'll show you. This is Xelda.
8 There's a stop sign. I've already seen two
9 fender-benders in rush hour trying to get to work.
10 And I'm thinking, well, I can't even get out of my
11 neighborhood.

12 And it's just traffic. I don't know what to
13 say, but I'm scared. The excess traffic is a
14 danger and must be taken into consideration when
15 we're going to develop. I know that land is going
16 to be developed, but a 300 multi-development is
17 scary.

18 Okay. I'm trying to -- bottom line, by
19 bringing this type of development into our
20 residential neighborhood, I'm concerned of the
21 loss of nature and the natural environment in our
22 community by replacing it with concrete, becoming
23 an eyesore and hurting our wildlife.

24 Right now I can look -- I mean, it's nature.
25 And you're just going to put in buildings and

1 after a while it's going to be rundown. Take a
2 look around at what we do. I'm concerned of my
3 property value dropping, of my well water dropping
4 or disappearing, of traffic volume rising to the
5 point that we will not be able to evacuate in a
6 timely manner when needed. Hurricanes. Also, of
7 the crime growth and the growth that will impact
8 on our police department and our fire department.
9 Thank you.

10 HEARING EXAMINER COLLINS: Thank you. The
11 last paper I have is Marsha Ellis?

12 Good afternoon.

13 MS. ELLIS: Good afternoon.

14 HEARING EXAMINER COLLINS: Thank you for
15 coming.

16 MS. ELLIS: Thank you. Marsha Ellis, for the
17 record.

18 So I'm speaking as someone who has given
19 comment numerous times at the MPO board, citizen
20 meetings and technical meetings with concerns for
21 the coordination regarding transportation and with
22 special concern regarding coordinating with the
23 school district, which is of grave concern here
24 with such close proximity to the elementary
25 school.

1 I also want to speak from the standpoint of
2 someone who is also very concerned about the
3 future of wildlife in eastern Lee County, with
4 specific interest in the gopher tortoise
5 population and accurately surveying those
6 population and giving the good people of Lehigh
7 Acres the opportunity to have coexistence with
8 gopher tortoises like communities in Marco Island
9 enjoy where gopher tortoises live on multiple
10 properties. Audubon has come in and bought land
11 to add to that, and in places like Cape Coral,
12 which underwent their own survey in order to
13 accurately document and protect the gopher
14 tortoises, to give everyone in the community the
15 opportunity to enjoy that quality-of-life benefit
16 from interaction with the wildlife.

17 I can't imagine the grief that citizens like
18 Deborah, the children who live in this area and
19 attend Sunshine Elementary, will experience, the
20 trauma that they'll experience of having this
21 property turned into concrete and the thriving
22 population of gopher tortoises removed. That's a
23 horribly traumatizing thing to think about.

24 So I just want to jump in first and address
25 the -- some of the things that the folks from Lee

1 DOT talked about, because it's in my margin at the
2 top. I do agree that the primary problem is that
3 not all the outparcels will go in at the same
4 time, which is truly a timing issue; that asking
5 the development to sort of self-certify and say,
6 oops, looks like we have a traffic problem now
7 when they're probably long gone and it's changed
8 ownership hands is not really realistic of what's
9 happening. It's allowing -- this policy is
10 allowing developers to get off scot-free and then
11 later stick it to the folks that bought the
12 property down the road and really across the
13 county.

14 I think that we have an obligation to min- --
15 minimize conflicts and to be preventative in
16 community development. The -- community
17 development means that we're being wise and
18 thinking ahead, knowing the problems that have
19 happened in the past. Yeah, precedence is
20 important, but so is, you know, honest reflection
21 on what the problems are and what we should do
22 about it.

23 I've also given comments in front of the
24 school board twice with concerns for safety,
25 asking for the school district to participate with

1 the Metropolitan Planning Organization to
2 coordinate to close these gaps. I have several
3 concerns. I would like to reserve comments on the
4 outstanding issues that the record is being left
5 open on for new evidence pending future
6 conditioning, changes to the MCP in response to
7 any answers to posed questions that have come
8 forward today or questions that I will pose.

9 And I will say that I do not see this
10 development as being consistent with or compatible
11 with the surrounding neighborhood per the Land
12 Development Code or Lee Plan. I would also like
13 to say that the information as it's presented and
14 the fact that we have all of these outstanding
15 violations and basically a lot of movement to try
16 to abate violations, it sort of paints a muddy
17 picture. Things aren't very organized or clear to
18 provide that level of transparency for the public
19 to know actually what's going on.

20 I'm very concerned about this intensification
21 of use over what was previously proposed in 2006
22 and the fact that those preserve areas were pretty
23 much leveled. Fundamentally, there are
24 coordination gaps between Lee County with the
25 school district, the MPO, especially looking at

1 the bike, ped element, since we have a school in
2 this neighborhood and we have children who are --
3 live within one mile are not provided bus
4 services. So the children -- the elementary
5 children that are within a mile are walking and
6 biking to this school.

7 The broader transportation issues regarding
8 the fatalities that have been brought forward and
9 accidents, the danger is clear, present and now.
10 There's a lack of coordination between the South
11 Florida Water Management District. I notice that
12 they closed their violations, but it clearly has
13 not been resolved.

14 Coordination with FWC regarding the gopher
15 tortoises, those are not -- those are not
16 registered on their online survey. I checked at
17 lunch. From historical when they were -- their
18 burrows were destroyed during the land clearing,
19 or now, I question whether or not that the FWC has
20 been informed of these violations so they can
21 pursue enforcement since Lee County is not taking
22 care of their duty and responsibility. There's
23 coordination among code enforcement and there
24 lacks clarity in terms of their role in all of
25 this.

1 We heard today that there are no liens or
2 penalties, and that's for illegal land clearing
3 activity and harms that have occurred to
4 threatened species. When we kick the can down the
5 road through development orders, we're really
6 losing that opportunity to compel that the right
7 and ethical action be taken. We want to do the
8 right thing, and we do that by closing the
9 coordination gaps, by compelling cooperation and
10 working out these issues, the transportation
11 issues and other issues.

12 I see some fatal flaws in the documentation.
13 For instance, Attachment L with the FGUA letter
14 regarding availability of services does not give
15 the correct square footage or description of the
16 property. And Owens (sic) Environmental, there's
17 some confusion around the future of the cabbage
18 palms that would be removed. Those are not to be
19 included in the final count.

20 This really bothers me because they're not
21 looking at the areas that are most suitable for
22 indigenous preservation at this point. It's sort
23 of recreating something artificial when we have
24 cabbage palms and all of the species that are
25 already living in -- at this site. It's not just

1 about the gopher tortoises. But more about that
2 later.

3 There's no environmental testing around the
4 oil well or where the dumping occurred, and so
5 I -- there needs to be environmental testing so we
6 can understand what the -- what's in the soil as
7 well as a minimum ten-foot groundwater well to see
8 what's in there. We have folks that are drawing
9 from a water source nearby.

10 Recently it's come to the attention at the
11 Gulf Coast Landfall that we have PFAS
12 contamination in excess of 70 nanograms per liter.
13 That requires survey and monitoring of wells
14 within one mile.

15 So we need to get a handle on what was in
16 that dumping, and we want to know what that oil --
17 how much oil. And this would not just be for
18 PFAS; this would be for other things, the
19 benzenes, whatever is associated with oil wells,
20 what the protocol is, and have the FDEP
21 involvement on that.

22 This is a matter of public health, life and
23 safety. The 2006 plan, it seemed to integrate the
24 gopher tortoise preserve areas. It really makes
25 me sad that we are, what, 18 years down the road

1 and we're going backwards. There was more of an
2 opportunity and a recognition of the coexistence
3 potential, especially next to an elementary
4 school. The individual -- the indigenous areas
5 were in line with the natural topography.

6 The Applicant has an omission, and what I
7 would like to see -- and I think this is necessary
8 for making any determination -- would be -- I want
9 to see where those surveys are. He clearly
10 conducted a gopher tortoise survey. I should be
11 looking up here and I should see where those
12 burrows are marked on the property. Without that
13 piece of information, how can you make a
14 determination about where to put an indigenous
15 preserve, right? And we'll talk a little bit more
16 about that methodology.

17 There is a vagueness of what's proposed. As
18 the options, they presented scenario 1, scenario
19 2. Are we going to have 300, you know, apartments
20 or not? So this is -- this prohibits the public
21 from being able to give any kind of meaningful,
22 competent or substantial evidence, including, to
23 be specific, on the adverse harms when we're being
24 presented two different options.

25 Storage units. Storage units really appear

1 to become a vehicle to gain entitlements, right?
2 So let's talk about, what are the benefits from a
3 developer's perspective about the storage units?
4 Well, you're getting in 10,000 square feet, right?
5 It's going to have -- it's going to figure lower
6 on your traffic trips, right? And then later,
7 just like your experts spoke from DOT, and
8 Mr. Evans -- then later whenever they put in a
9 7-Eleven that happens to be drawing in a lot of
10 traffic at the same time as the elementary school,
11 you've got a problem, right?

12 So this is just a vehicle. It's just a
13 guise. Really, when we -- we have to look at it
14 both ways. You have to look at these traffic
15 studies not just in isolation of what's being
16 proposed but within the responsibilities of being
17 next to an elementary school and in residential
18 areas that are full of children.

19 With the school next door, yes, we have to
20 look at the schedule of uses in detail to limit
21 increased risk and find compatible uses. This is
22 what community development is all about. It's
23 about development, not entitlement.

24 It seems like what was advertised to the
25 public is not consistent with what has been

1 brought forward, including the violations,
2 including how it was presented to the planning
3 board, the presence of the gopher tortoises.
4 There are -- there are real issues with how this
5 was represented to the public that I don't think
6 fully is getting the folks here that need to be
7 here in order to represent their interest.

8 Let's talk about the coordination gap on
9 gopher tortoises. So I'm going to just kind of
10 leave that open as a topic. But we're hearing
11 about no penalties for folks who destroyed habitat
12 of a threatened species. No hearing is occurring.

13 In Charlotte County and Cape Coral and
14 surrounding counties, they have stronger
15 ordinances that protect the gopher tortoise. They
16 take it seriously. And so we are living in -- as
17 a result, we're having places like Lehigh Acres
18 that are primarily ideal for gopher tortoises --
19 there's a lot of upland and scrub habitat -- and
20 those tortoises are suffering because of the
21 perception that's coming out from this county that
22 they don't care enough to prosecute people. They
23 don't care enough to enforce on behalf of the
24 gopher tortoise. They don't care enough to look
25 at their ordinances and straighten them out like

1 the other counties and municipalities have to
2 protect the species.

3 The public information meeting occurred in
4 June of 2023, in the summer, all right? So it
5 would have -- you have an elementary school next
6 door, right? Those are the folks that you want to
7 hear from on these matters of transportation. You
8 want to hear from the folks that live in the
9 community.

10 So I see that as a -- there really -- that
11 makes me question the good faith if you have a
12 public information hearing, no one knows about it,
13 folks that are here today that are living
14 contiguous. The folks over at Sunshine
15 Elementary, I called them at lunch. They had no
16 idea. So I don't think that the effort that we
17 saw to engage the public was in good faith.

18 In matters of the kids moving onto the school
19 property and a comment that Mr. DeLisi made
20 regarding the gate, having been a teacher at a
21 local middle school off of Gunnery with a
22 neighborhood directly back behind, right back by
23 the stormwater pond, security staff goes out, they
24 open that gate and the kids come in from that
25 community through the back way across the -- by

1 the pond, across the field into the school, right?
2 So there's coordination.

3 That's what you want to do. You don't want
4 kids out on the road. Yeah, that neighborhood,
5 you could force them to get out on failing Gunnery
6 Road and walk and bike, but why would you when
7 there's another option? We want to -- we want to
8 protect our kids, not force them out on Lee
9 Boulevard.

10 I'm very concerned about the response times
11 to any emergency, including any lockdowns that we
12 might have at the school in response to the
13 increased threat of people moving onto the school
14 property from the commercial and intensification
15 of various uses. That concerns me. You have --
16 you have kids, families moving across this
17 property. I haven't seen any effort whatsoever to
18 try to take that into consideration and in good
19 faith work with the community.

20 So when we look at this traffic study, all
21 right, the -- and the modeling that is coming from
22 it, we have to consider what's next door as well,
23 which is a high trip use, as Mr. Evans so rightly
24 pointed out. So we have to look at two things at
25 once, and we can do that. I mean, it is well

1 within our capacity.

2 With the gopher tortoises, I'm very concerned
3 about opportunities for coexistence in Lehigh
4 Acres. Gopher tortoises have over 360 species
5 that live in their burrows. They are a
6 keystone -- a keystone species. So 360 other
7 species are known to live in there, including the
8 endangered -- this is the federally endangered --
9 indigo snake.

10 So we have a nexus insomuch as that we have
11 wetlands on the site. We have impacted gopher
12 tortoises and we have the impacts on the comissal
13 (phonetically) species, the indigo snake.

14 In terms of mechanical clearing, there are
15 serious problems with bringing in machines to
16 clear an area this dense with gopher tortoise
17 burrows. Gopher tortoise burrows are not always
18 easily visible. They have to be walked. They
19 have to be hand walked. This is a very dense
20 population. I don't know of another place in
21 Lehigh Acres with this many gopher tortoises. And
22 we've been conducting active surveys on this and
23 recently wrote to a -- a grant to look at the GIS
24 mapping of the gopher tortoise populations in
25 Lehigh Acres.

1 So what happens is the females, when they
2 have a nest, or the juveniles, obscure, as an
3 adaptive strategy, the front of their burrows,
4 right? They're hiding. So it makes it
5 particularly difficult to -- for any kind of
6 machinery to catch --

7 MS. MONTGOMERY: I'm going to object at this
8 point in time.

9 MS. ELLIS: Yes.

10 MS. MONTGOMERY: Condition 9 of the Staff
11 Report says machines are prohibited. So I don't
12 think we need to discuss machines.

13 MS. ELLIS: No, I read that back carefully.
14 So the way that it's described, it says, No
15 machines within 50 feet of a known burrow. I
16 don't think that that is enough -- astringent
17 enough to protect the gopher tortoises.

18 I don't think that what has been brought
19 forward by Owens (sic) is as stringent as it needs
20 to be, particularly with the reputation in Lee
21 County of not enforcing and giving oversight. So
22 I would -- I would just like to say that there are
23 some additional elements that could be put in to
24 make sure, with this dense of a population, that
25 they're properly attended to.

1 MS. WORKMAN: I can answer that question when
2 the time comes.

3 HEARING EXAMINER COLLINS: Okay. Proceed.

4 MS. ELLIS: Great. Thank you.

5 HEARING EXAMINER COLLINS: You're welcome.

6 MS. ELLIS: So the mechanical clearing is --
7 is an issue. I also want to talk about the idea
8 of the receiver sites and the fact that our
9 gophers are being relocated up to Arcadia. This
10 has come to attention lately -- our attention
11 lately, and we've posed some questions regarding
12 the status of Gator Hole off of Corkscrew Road,
13 which is a receiver site, and received some vague
14 responses that they were full.

15 When I drove past Gator Hole yesterday,
16 unfortunately with the road clearing, I saw that
17 they had the gates open and equipment in there.
18 So I'm concerned about the management of the
19 receiver sites. I know it's been discussed that
20 Bob Janes is potentially going to open up, and
21 that I agree that -- that when we're talking about
22 taking such a healthy, vibrant population of
23 gopher tortoises, we don't want them to go up to
24 Arcadia to a farm field that's been restored. I
25 think we owe them more than that, for certain.

1 There's a coordination gap that fits within
2 the context of Lehigh Acres. This is one of the
3 few parcels that's of this size. But any parcel
4 that is less than five acres does not require a
5 survey, and that's why they're being entombed and
6 they're being buried throughout this area.

7 So that's a stressor over this whole
8 population. This just happens to be one of the
9 sites where they hired Mr. Owens (sic) to come in
10 and do a survey. But tortoises are being entombed
11 and buried throughout Lehigh Acres, and I think
12 that's important to recognize in terms of how we
13 can best protect and manage the species.

14 It's clear, looking at the MCP as it is
15 brought forward, especially compared to the 2006,
16 that the placement of the indigenous preserve is
17 for-profit, not for preservation. It's convenient
18 to put it in the back. It can double as a buffer
19 between the neighborhood. It's not for the gopher
20 tortoises. It's to maximize profit on this
21 property through intensification.

22 So the receiver sites include, like I said,
23 Gator Hole, which is full, though we can't get
24 straight information; Bob Janes, potentially.
25 There are waif sites throughout the county that

1 can accept. But this is an intact, probably
2 healthy population. When gopher tortoises are
3 relocated -- and this is according to the master's
4 work of Julie Ross, who is a teacher over at
5 Lehigh Senior. When she did her master's thesis
6 on gopher tortoises, it was 50 percent deaths. So
7 it's pretty -- it's not a good scene to take a
8 healthy population of gopher tortoises up to a
9 reclaimed site up in Arcadia.

10 We want to see opportunities for coexistence,
11 and this is an ideal opportunity for coexistence
12 on this parcel. It's so unfortunate that, again,
13 this comes down to what the development community
14 wants rather than what is the best opportunity for
15 the broader community and what are the
16 responsibilities to the kids who are living right
17 there.

18 Now, I'm just looking over my notes quickly.
19 I have some questions if -- to pose.

20 HEARING EXAMINER COLLINS: Okay. So we're
21 going to take note of the questions --

22 MS. ELLIS: Yes.

23 HEARING EXAMINER COLLINS: -- and at the
24 conclusion of your testimony when we go back to
25 the Staff and the Applicant, they will address the

1 issues raised as appropriate.

2 MS. ELLIS: I can only -- just before I get
3 into the questions, I just want to say one thing:
4 It is so hurtful to me, you know, to be
5 learning -- it's always a journey, right? We're
6 all in a journey together.

7 And recently through my efforts with the East
8 Lee Wildlife Stewardship Group, which is developed
9 to try to address these issues of the
10 diminishment, destruction of wildlife habitat in
11 Lee County, to be standing here before you today
12 talking about a population of 24 burrows, up to 34
13 gopher tortoises and what is being proposed, it
14 just feels like that we are going back in time and
15 I'm in an episode of the Dark Crystal or
16 something. I just know that we can do better as a
17 community than -- than what we're seeing here.

18 So here are my questions: When was the oil
19 well installed? I did not see that. On the sign
20 for the oil well, it said Lehigh Park, so I
21 just -- it seems like perhaps that this was maybe
22 intended, as it rightly should be, for a park.

23 Are we sure that through the plugging of that
24 well that some sort of testing, environmental
25 testing, et cetera -- did we need to let the FDEP

1 know or -- you know, we're plugging up an oil
2 well? What's required there? I'm not sure.
3 That's why it's a question.

4 Is there any kind of Lee County policy, FWC
5 policy, FDEP policy, U.S. Fish and Wildlife
6 policy, about moving forward on developments when
7 violations are present and unresolved?

8 I want to know what sort of permitting is
9 required. I know we mentioned an ERP -- possibly
10 an ERP. We heard from the stormwater person. So
11 I'm assuming that there's definitely going to be
12 some interaction with South Florida Water
13 Management District. I'm assuming it's not a
14 water use permit, so that would be, I guess,
15 probably the ERP.

16 Permitting with the FDEP with that nexus with
17 our indigos, our threatened species, our habitat,
18 destruction, our violations, and FWC.

19 The burrows, registering those with the FWC
20 survey, reporting those in good faith, as they
21 should have already been, historically and
22 current.

23 What sort of protocol or methodology was done
24 for the placement of the in- -- indigenous
25 preserve in terms of evaluating the native

1 communities that were there, going, you know what,
2 what can -- how can we work in harmony with
3 this -- this vast resource that happens to be on
4 this property? So looking at that methodology.

5 What coordination occurred with FWC in this
6 plan? I would assume with all of these gopher
7 tortoises, and gopher tortoises being destroyed
8 with the land clearing, there had to be some --
9 some interaction, right? Because, I mean, for
10 instance, with the survey that we just did on the
11 15th, the FWC came out and wrote a violation when
12 it was discovered that there was land clearing
13 happening over in Lehigh Acres. So I'm assuming
14 that that was reported to the FWC, as it should
15 have been.

16 What sort of coordination is occurring with
17 bike and ped with the MPO to make sure that these
18 kids have a safe way to get to school? Moving
19 across this property, that that's being addressed.
20 I know it is addressed other places. I've read it
21 in Collier County looking at some of their
22 development regarding schools.

23 The coordination -- what sort of coordination
24 has occurred between South Florida Water
25 Management District, the FDEP, any conservation

1 organizations? For instance, Wildlands
2 Conservation is well known for their outreach
3 regarding closing the enforcement gaps. So I
4 would think that, you know, working with those
5 agencies would be documented and part of this
6 process.

7 And coordination with the school district
8 with its -- the Parent Teacher Association at
9 Sunshine Elementary, the local community.

10 I would like to know what environmental
11 testing for PFAS, benzenes, whatever is typical
12 with oil wells and dumping -- illegal dumping that
13 occurs to -- I want to know what that is, what the
14 remediation following that environmental testing
15 would be as follow-up to these violations and that
16 use as an oil well and plugging.

17 Given the illegal dumping, the oil well, I
18 think that there needs to be surveillance and
19 testing done with no cost to the surrounding
20 residents. If there's any PFAS, violations,
21 anything that shows up in those wells, for them to
22 go and have a program that -- at no cost to the
23 surrounding community -- will put them onto a
24 public supply of water, which is apparently
25 available at this parcel.

1 Provisions for -- since we know that we've
2 had illegal dumping as well as oils on this site,
3 provisions to keep that dust from getting up into
4 the air to protect the surrounding residents as
5 well as the nearby school from those impacts.

6 And more detail to the construction
7 contingencies that would be involved on this proc-
8 -- in this process, including any dewatering that
9 might be anticipated as well. Just more detail.

10 We have a site that is so sad because it has
11 such rich environmental resources. And who would
12 know? You know, that's the beautiful thing with
13 gopher tortoises, is they really do allow a
14 community to live in coexistence. And this is a
15 great -- I mean, this is a wonderful population, a
16 wonderful location, but yet we have people who are
17 being disrespectful and dumping -- illegally
18 dumping, and we have an uncleaned-up oil well site
19 that's sort of left in limbo, like nobody knows
20 who even owns this thing. We have an unclear
21 chain of title on this property. Like, who knows?
22 You know, they're not the bad guys. Who's the bad
23 guys? Nobody is the bad guys, but no one seems to
24 care about holding anyone responsible.

25 And this is sort of like -- really paints a

1 picture of where we are in this moment in time.
2 How do we move forward in a community? Do we just
3 continue to ignore the mess of transportation and
4 not coordinate with agencies? Do we not
5 acknowledge the pollution that has been caused by
6 the mismanagement and just let people scot-free
7 off by changing ownership of a parcel, or do we
8 truly, truly develop this community responsibly?
9 Thank you for your time.

10 HEARING EXAMINER COLLINS: Thank you very
11 much.

12 That concludes the sheets that I have in my
13 bin for public input. Is there any other member
14 of the public present that would like to speak
15 that did not complete the public participation
16 form?

17 (No response.)

18 HEARING EXAMINER COLLINS: All right. Then
19 I'm going to close public input. I'm going to go
20 back to the parties. I would like to take a
21 ten-minute break, if that's okay with everyone,
22 and we'll resume at -- let's make it 2:35. Thank
23 you.

24 (A break was held from 2:21 p.m. to 2:37
25 p.m.)

1 HEARING EXAMINER COLLINS: Good afternoon.
2 We're back on the record. We are back to the
3 parties' response to questions raised by members
4 of the public and then their concluding remarks.

5 MS. MONTGOMERY: Thank you. We have recalled
6 Mr. Treesh to address the concern we heard raised
7 about Terry Street and whether or not we looked at
8 it and what will happen.

9 MR. TREESH: Ted Treesh, TR Transportation.
10 We did not specifically look at the intersection
11 of Lee and Terry Street, which is just to our
12 east, as part of this analysis. But Terry Street
13 does go all the way to Gunnery to the west, which
14 does have a traffic signal, if you follow that all
15 the way to the west, which does have a traffic
16 light.

17 HEARING EXAMINER COLLINS: Okay. Just wait.
18 Could you orient me again where -- where's Terry
19 Street?

20 (The court reporter confers with the Hearing
21 Examiner.)

22 MR. TREESH: Here we go. Here is -- here's
23 Sunniland and Lee. Terry is just to our east
24 right here (indicating).

25 HEARING EXAMINER COLLINS: And you're saying

1 that Terry Street connects to Gunnery at some
2 point?

3 MR. TREESH: No, this is 4th right here
4 (indicating).

5 MS. WORKMAN: This is 4th Street
6 (indicating).

7 HEARING EXAMINER COLLINS: 4th Street --

8 MR. TREESH: 4th, yes.

9 HEARING EXAMINER COLLINS: -- connects to
10 Gunnery?

11 MR. TREESH: 4th is a -- 4th is a parallel
12 road to Lee Boulevard on the south side.

13 HEARING EXAMINER COLLINS: And what is your
14 point you're trying to make with that?

15 MR. TREESH: That there's multiple ways out
16 on the south side along 4th Street. There's
17 multiple other connections to Lee Boulevard if you
18 travel along 4th Street to get back to Lee
19 Boulevard to multiple other full median openings,
20 unsignalized.

21 But, yes, Lee Boulevard is a very busy
22 corridor, so it is difficult to make left turns
23 out during peak times. Obviously, we're not
24 disputing that fact.

25 Unfortunately, Sunniland is a T-intersection

1 from the north, so there's no -- at this point if
2 a signal goes in there, there's no 4th light to
3 the south that will provide any connection. At
4 this point, there's private property on the south
5 side that won't provide any connection to 4th
6 Street to the south, so -- but that will provide
7 some gaps, obviously. The signal there will
8 provide some gaps that will allow traffic to turn.

9 But again, I can't speak for Lee County DOT,
10 but I know I'm working on a project further to the
11 west that as -- that Lee DOT does monitor their
12 roadways and they do modify median openings as
13 dictated by accidents. So if there is an accident
14 history, they will go and close some full median
15 openings as dictated by accidents.

16 Just as Jillian indicated, there was an
17 accident history developing at Sunniland, so they
18 all start looking at it. Hopefully as our project
19 progresses -- and we are working with Lee DOT --
20 and again, I will get with Rob and Jillian this
21 week as we leave the record open to modify that
22 language -- I am confident we will be able to
23 reach an agreement on that language.

24 HEARING EXAMINER COLLINS: If Sunniland is
25 signalized --

1 MR. TREESH: Yes.

2 HEARING EXAMINER COLLINS: -- do you believe
3 that median opening at Terry will remain a median
4 opening, or will that be closed, or is it not
5 possible to tell?

6 MR. TREESH: That's something that we'll have
7 to look at. But then again, that will be up to
8 DOT.

9 HEARING EXAMINER COLLINS: It seems as though
10 the distance isn't that far, although it's hard
11 with an aerial to get true perspective on what
12 that separation is.

13 MR. TREESH: Yeah, it isn't -- unfortunately,
14 because Sunniland -- again, because it's a
15 T-intersection and only serves the north side, you
16 know, Terry Street really is -- doesn't have any
17 impact on the sou- -- the north side of Lee
18 Boulevard. The signal and everything that impacts
19 is further to the west. So --

20 HEARING EXAMINER COLLINS: All right. So
21 your point --

22 MR. TREESH: -- the turn lanes and so forth,
23 what we do will be to our west.

24 HEARING EXAMINER COLLINS: And your point is
25 that since 4th Street connects to Gunnery, it

1 operates as like a reverse frontage road?

2 MR. TREESH: Yes. There's other options
3 available for those drivers. And again, as you
4 indicated, right turns, U-turns, there's a
5 right -- you can turn right and do a U-turn at
6 several locations before -- even before you get to
7 Sunshine at the light.

8 But it is difficult to turn left out onto Lee
9 Boulevard from either side during peak times due
10 to the heavy volumes on Lee Boulevard at an
11 unsignalized location. I guess that's -- was
12 there anything else from the public?

13 MS. MONTGOMERY: No, that was it, unless the
14 Hearing Examiner has any other traffic questions.
15 But that was the one raised by the public.

16 HEARING EXAMINER COLLINS: Thank you, Ted.

17 MR. TREESH: Thank you.

18 MS. MONTGOMERY: We will call Ms. Marvin.

19 HEARING EXAMINER COLLINS: Other than the
20 outparcel, has there been -- are there any
21 prospective developments underway for the larger
22 parcels?

23 MS. MONTGOMERY: Well, we have the
24 representative of the contract purchaser here.
25 But that isn't what I was going to ask her.

1 The question was raised about whether there's
2 any contamination from the oil well, and I was
3 going to ask, did you perform a phase 1?

4 MS. MARVIN: We did. We have two phase 1
5 reports.

6 HEARING EXAMINER COLLINS: Excuse me. Please
7 state your name for the record.

8 MS. MARVIN: Sorry. Darendia Marvin --

9 HEARING EXAMINER COLLINS: Okay. Go ahead.

10 MS. MARVIN: -- representative of WMG.

11 There are two phase 1 reports. There's one
12 for the larger parcel that had no RECs, and there
13 was a separate phase 1 for the oil well parcel
14 that had a historical REC from the oil spill with
15 information about how that had all been corrected
16 and the corrective action that the state accepted.

17 HEARING EXAMINER COLLINS: Okay. So the oil
18 well parcel had a history of contamination, which
19 was remediated --

20 MS. MARVIN: Correct.

21 HEARING EXAMINER COLLINS: -- is that what
22 your testimony means?

23 MS. MARVIN: Yes, ma'am.

24 HEARING EXAMINER COLLINS: And the larger
25 parcel outside the oil well site had an

1 environmental audit and that showed --

2 MS. MARVIN: No -- no RECs.

3 HEARING EXAMINER COLLINS: -- no
4 contamination?

5 MS. MARVIN: Correct.

6 HEARING EXAMINER COLLINS: Just, I want to
7 urge you to use like common English terms because
8 the public doesn't understand what these
9 abbreviations mean.

10 MS. MARVIN: Okay. Sorry.

11 HEARING EXAMINER COLLINS: Thank you.

12 MS. MONTGOMERY: As -- as a potential future
13 developer, did you want to respond to what you're
14 working on or --

15 MS. MARVIN: Yeah.

16 MS. MONTGOMERY: -- is it too premature?

17 MS. MARVIN: Sure. Sure. There has been
18 more interest in the outparcels. On the larger
19 parcels, one of the issues we've run into is, it
20 has taken quite a while to go through this entire
21 process and to -- to be able to tell a tenant when
22 you would be able to deliver that parcel.

23 I think Beth has said that there were -- at
24 least two outparcels users came forward for
25 informal preop conferences.

1 HEARING EXAMINER COLLINS: Right. But I'm --
2 the question I'm trying to figure out is, you
3 know, the timing of triggering the restoration of
4 the site to abate the code violations and the
5 implementation of this signalization agreement --
6 I'm trying to get a handle on the timing of both,
7 but more importantly the restoration effort.

8 And it seems to me what Applicant is seeking
9 is not to have to commence that during development
10 of the outparcels and to delay that to the
11 development of the larger parcels. So I'm trying
12 to get a better idea on whether -- is there
13 something in the works underway for these larger
14 parcels, or this is speculation at this point and
15 we're looking at potentially years before this
16 would be accomplished?

17 MS. MARVIN: Our intent coming into this
18 process was to first establish the infrastructure,
19 which would be the roadway, the improvements on
20 Sunniland, the utility extensions that would go
21 along with the abatement before any of those users
22 were coming in. That was the plan.

23 MS. WORKMAN: Can I ask a question?

24 HEARING EXAMINER COLLINS: Yes.

25 MS. WORKMAN: So what you just said there

1 was, the infrastructure, utilities, the roadway
2 work, the abatement for both parcels or whatever
3 was coming in, you wanted -- you knew that you
4 needed to start the process for infrastructure?

5 MS. MARVIN: Right. I would say before
6 today, it was our understanding everything would
7 be tied together. So it was our assumption the
8 obligation would be to do it all at once. The
9 discussion today has been possibly separating
10 those to abate them at two different times. So
11 that was a bit of a change in circumstance.

12 HEARING EXAMINER COLLINS: But if the
13 intention is to improve the site, road and
14 utilities to serve both of the larger tracts,
15 what's the barrier to addressing the violation at
16 that time, then, as part of your backbone
17 infrastructure --

18 MS. MARVIN: Yeah --

19 HEARING EXAMINER COLLINS: -- so to speak?

20 MS. MARVIN: -- I don't --

21 MS. MONTGOMERY: Because I don't think there
22 is one. South Florida Water Management System --

23 MS. MARVIN: Right.

24 MS. MONTGOMERY: -- and the vegetation are
25 all part of that. I don't want to speak for you.

1 MS. MARVIN: Yeah, I don't believe that there
2 is one.

3 MS. WORKMAN: Because right now how the
4 condition is written, it's tied to a limited
5 development order. So the limited development
6 order would come in -- and I'm just speaking to
7 the abatement -- and it would show the abatement
8 plantings. It would -- if they happened to be
9 located into a dry detention area but then could
10 be designed as part of that LDO that would come
11 in, it would show all of that.

12 That would get planted. It would get the
13 certificate of completion, compliance and the
14 monitoring would start on that. Meanwhile, you
15 could have a development order riding
16 simultaneously with the LDO on an outparcel,
17 possibly McDonald's or whatever you -- and then
18 that DO for that use could not be issued until the
19 CC, the certificate of compliance, is issued on
20 that LDO.

21 That's the purpose of that condition as it's
22 written today, right now. And so what I'm hearing
23 now is -- because in my testimony I said, we have
24 two violations on two separate pieces. We would
25 have to have two -- we could do two separate

1 conditions. But then that would allow the
2 Applicant to come in on the east piece with a
3 development order with the infrastructure and all
4 the abatement and then the piece to the west would
5 sit until an infrastructure DO came in because we
6 had a user.

7 HEARING EXAMINER COLLINS: But if they
8 improve Sunniland, that impacts both halves of the
9 property. So in my mind, that should trigger the
10 abatement of the violation along the north
11 boundary.

12 MS. WORKMAN: So then both -- because we have
13 a separation. We have two different basins on a
14 District permit and all of that.

15 HEARING EXAMINER COLLINS: I understand that.
16 But there's one road serving both parcels. And if
17 they're going to be installing utilities and
18 improving the road that services both parcels --

19 MS. WORKMAN: Yep.

20 HEARING EXAMINER COLLINS: -- to my way of
21 thinking, that should trigger the abatement of the
22 violations on both sides. That way you've got
23 that addressed and development can move forward.
24 And this area has an opportunity to get
25 established, right, provide the screen and the

1 open space necessary to support the project and we
2 don't have these violations with this question of,
3 when exactly is this happening? Is it the DO on
4 the big parcel that's going to trigger it? Is it
5 just some floating, oh, when you feel like
6 applying for a DO, that's when it's going to be
7 handled? Because I can tell you right now, that
8 second scenario I do not support.

9 I want to have a definitive timeline. So if
10 what you're suggesting is the outparcel to the
11 west triggers the need to do the abatement on the
12 north end --

13 MS. WORKMAN: What I want -- what I want is
14 what's in the condition as it stands today, and
15 that is a limited development order to come in for
16 the whole entire thing to show the abatement.

17 HEARING EXAMINER COLLINS: Well, I like that,
18 too. But if what the testimony that I just heard
19 is, their first step is to improve Sunniland and
20 the -- put in the infrastructure before they start
21 marketing for these large parcels, then it seems
22 to me that's -- it should be tied with that, yes?

23 MS. MONTGOMERY: Yes, that's what I think
24 we're envisioning rather than a two-step process
25 to get to the same place. Because we want to

1 avoid the problem again that the restoration can
2 occur in the dry detention. So you've got to do
3 the infrastructure at the same -- the backbone
4 infrastructure at the same time you do the
5 abatement.

6 HEARING EXAMINER COLLINS: And you're going
7 to have to design this dry detention area to
8 support maximum development potential just to
9 abate the violations and have that north area
10 taken care of, correct?

11 MS. MONTGOMERY: That's -- that's you.

12 MS. MARVIN: I mean, I think that falls to
13 Brent, but --

14 MS. MONTGOMERY: Now you've gone past my --

15 MS. WORKMAN: We need Brent, because in our
16 conversations at our break, it was that because
17 the District permit is set up in different basins
18 because of Sunniland splitting it, that it could
19 be developed separate. But what I'm hearing now
20 is we could have one DO come in for the whole
21 entire thing that we're looking at here and that
22 whole entire DO would have the infrastructure for
23 both sides.

24 MR. ADDISON: All right. So, Brent Addison,
25 for the record.

1 So there definitely has been a little bit of
2 back and forth today as we've been talking. What
3 I had envisioned up until this conversation
4 started was that, as we talked about, we'd do the
5 left side, then the right side. I'm not going to
6 get into east and west.

7 But we'd do the left side. The first
8 development order on either one of those
9 properties would trigger the abatement
10 improvements for this for the left side or the
11 right side, respectively.

12 HEARING EXAMINER COLLINS: Including an
13 outparcel?

14 MR. ADDISON: Including an outparcel. We are
15 fine with that condition.

16 HEARING EXAMINER COLLINS: And access on
17 Sunniland without improvements is going to be
18 sufficient to accomplish all of that work?

19 MR. ADDISON: No. And I don't think,
20 according to what Darendas said, the client's
21 rep -- the client, excuse me -- the intent is to
22 come in and build the infrastructure. But we
23 can -- and maybe that's where it went a little bit
24 sideways.

25 We can do the infrastructure for each side

1 independently. We would come in and improve 5th
2 Street, which was one of the concerns. We would
3 improve 5th Street within the limits of our
4 development to make sure that it meets county
5 standards, extend water, extend sewer and then
6 provide drainage connections from the south to the
7 north on the left side.

8 And we could do that also independently on
9 the right side, which was what I -- like I said,
10 where I thought we were headed after our previous
11 meetings.

12 HEARING EXAMINER COLLINS: So under your
13 scenario, it's triggered by the first DO on the
14 outparcel?

15 MR. ADDISON: The first DO on the property.

16 HEARING EXAMINER COLLINS: On the property.
17 So that could either be development of an
18 outparcel --

19 MR. ADDISON: Uh-huh.

20 HEARING EXAMINER COLLINS: -- or the DO that
21 accomplishes the road improvement to 5th or
22 Sunniland?

23 MR. ADDISON: Sure. I mean, we're going
24 to -- what we were saying is, to do the -- to do
25 the plantings in the dry detention areas, we are

1 going to have to fill or maybe excavate. I don't
2 know. We would look at the elevations when we get
3 the models done, so -- but there's going to have
4 to be work that's done on that, and that's going
5 to require a development order to actually go in
6 and fill on the property.

7 HEARING EXAMINER COLLINS: Right. Not an
8 LDO, an actual DO?

9 MR. ADDISON: Correct. Correct.

10 HEARING EXAMINER COLLINS: Right.

11 MR. ADDISON: So that's why I'm saying -- and
12 I think I'm speaking for the client here. But,
13 yes, if it's an outparcel, that -- any DO, so you
14 don't have that time frame, it's going to have to
15 be done. But ideally, you go in and do the whole
16 infrastructure for the left side or the whole
17 infrastructure for the right side or we might do
18 both.

19 But right now they're two separate pieces of
20 property and we -- you know, we don't know how
21 it's going to be done.

22 HEARING EXAMINER COLLINS: I heard testimony
23 earlier that there are -- there's an interest on
24 the west side for an outparcel and there's also
25 interest on the east side for an outparcel. So

1 under your scenario, the west parcel comes in, the
2 left side parcel comes in for DO for, whatever,
3 Jack in the Box, McDonald's, whatever, that's
4 going to trigger improvement to 5th, improvement
5 to Sunniland and restoration on the left side?

6 MR. ADDISON: Well, it's going to trigger it
7 to the extent of the impact of that development.
8 I mean, you have to -- when we come in, we have to
9 come in and do a turn-lane analysis and things
10 that I'm not -- you know, that's Ted's department.

11 But we're going to have to look at it. But
12 again, I don't -- I don't think my client is
13 adverse to doing that at the same time.

14 HEARING EXAMINER COLLINS: As the first
15 development order for the outparcel on the left?

16 MR. ADDISON: Correct. They're shaking their
17 head.

18 HEARING EXAMINER COLLINS: Because let's get
19 this done, right?

20 MS. MARVIN: Yes.

21 MR. ADDISON: I -- we -- we agree.

22 HEARING EXAMINER COLLINS: Okay.

23 MR. ADDISON: That's why we're here.

24 HEARING EXAMINER COLLINS: Okay. So now
25 let's talk about the right side. I thought I

1 heard that there's interest on the right side as
2 well, one of the outparcels, Dollar store,
3 Nordstrom's, whatever, whatever it is, okay,
4 they're going to come in and that's what's going
5 to trigger, whichever one comes in first, the
6 right side and potentially infrastructure along
7 Sunniland --

8 MR. ADDISON: Correct.

9 HEARING EXAMINER COLLINS: -- and 5th Street
10 on the west side -- or east side.

11 MR. ADDISON: Correct.

12 HEARING EXAMINER COLLINS: Does your
13 condition read that way, because I didn't feel
14 that it read that way?

15 MS. WORKMAN: No, the current condition does
16 not. But what I said in my testimony is, it would
17 be two separate conditions. The first condition
18 would be tied to the left side. The other
19 condition would be tied to the right side with the
20 VIO cited in them, because there's two separate
21 violations and then what is required.

22 HEARING EXAMINER COLLINS: So then when does
23 the DO come in for the infrastructure of
24 Sunniland, which is going to include road
25 improvement and utility extension and potentially

1 drainage, I don't know?

2 MR. ADDISON: Well, anything on Sunniland is
3 going to be associated with a -- with the on-site
4 DO. It's going to be an off-site improvement of
5 the on-site permit to the -- you know, if we work
6 on the left side, we're going to -- we potentially
7 have to do offsite improvements that will have to
8 be bonded, right-of-way permits and things like
9 that. So --

10 HEARING EXAMINER COLLINS: Even for just an
11 outparcel, though?

12 MR. ADDISON: Potentially. I mean, depending
13 on how it -- you know, what the outparcel is and
14 what has to be done. We have to be able to have
15 an -- access to a county road that meets
16 standards.

17 HEARING EXAMINER COLLINS: Okay.

18 MS. MONTGOMERY: Yeah. Well, let me ask a
19 question that might make this easier. A lot of
20 times when you have an outparcel, it drains into
21 the major road's right-of-way. But if we go back
22 to Brent's water management, this site flows
23 north --

24 HEARING EXAMINER COLLINS: Right.

25 MS. MONTGOMERY: -- which is unusual --

1 HEARING EXAMINER COLLINS: Right.

2 MS. MONTGOMERY: -- for -- we usually see it
3 flow in different ways. So it seems, it doesn't
4 matter where you develop, the water is going north
5 and you have to deal --

6 MR. ADDISON: Correct.

7 MS. MONTGOMERY: -- with the pretreatment and
8 all the things that are required before you
9 discharge it into that canal.

10 MR. ADDISON: Correct. So we would have to
11 install drainage to the Angelfish Canal.

12 HEARING EXAMINER COLLINS: So it wouldn't go
13 directly to the drainage ditch on the left side
14 and go up to Angelfish that way? Would that be a
15 way to bypass having to do the improvements to
16 Sunniland?

17 MR. ADDISON: I mean, that's not the way
18 we've intended the design.

19 MS. MONTGOMERY: As long as you're up there,
20 let me ask you a question. I think it was Ms.
21 Wilkison who was concerned that the development of
22 this site was going to have an impact on her
23 private well. Can you address that?

24 MR. ADDISON: So as I stated earlier in the
25 presentation, we have the letter of availability

1 from FGUA for water and sewer, and that's where we
2 would be tying in for our connections to that.
3 And that letter has since been updated to -- that
4 was the other question. It's been updated to
5 reflect the correct amount of square footage.

6 HEARING EXAMINER COLLINS: What that means is
7 the source of your water is not the groundwater
8 underneath these residential wells, but from the
9 water plant --

10 MR. ADDISON: Central water system, yes.

11 HEARING EXAMINER COLLINS: -- that gets
12 pumped in from there? So there should be no
13 interaction between the two; is that what you're
14 saying?

15 MR. ADDISON: Correct. That's -- yeah, we
16 wouldn't install a well for drinking water.

17 HEARING EXAMINER COLLINS: Anything else?

18 MS. MONTGOMERY: No. Nope. That's it. We
19 would recall Mr. Owen.

20 HEARING EXAMINER COLLINS: Okay. So in terms
21 of drafting this condition -- Mr. Owen, please
22 come forward -- I'm inclined towards the split A/B
23 on the sides. I'm inclined toward first D0,
24 whatever it is for whatever site it happens on is
25 going to trigger the restoration there.

1 To me it seems so economy of scale, you just
2 do the whole thing at once, both sides, right?
3 You're out there. You're mobilized. But I don't
4 know how big the job is. And I'm not -- I'm just
5 saying, we can split it in half and do it that
6 way, but I would really like to see these get
7 abated like right at the front end.

8 MS. WORKMAN: My concern is when the out --
9 I'm sorry, Paul.

10 My concern is when the outparcel comes in,
11 it's considered a small project, and small
12 projects get looked at internally as surface water
13 management review, not a District permit. And so
14 you have to demonstrate on-site pretreatment and
15 not an overall infrastructure -- backbone
16 infrastructure for surface water management.

17 So the scope of that first DO in the
18 condition must read that the entire -- it's for
19 the entire site. Because properties come in all
20 the time that are small and they're part of a
21 larger PD and they want to go in but they don't
22 want to hook up and do the whole infrastructure
23 permit for stormwater management.

24 So they want to do their own little
25 detentions and everything else, and then when the

1 overall -- what would be considered back in the
2 day the anchor parcel comes in, everything else
3 will come in. That's my concern, which --

4 HEARING EXAMINER COLLINS: But if you word
5 the conditions to say --

6 MS. WORKMAN: Correct.

7 HEARING EXAMINER COLLINS: -- little parcel
8 comes in, gets reviewed as a little parcel, it
9 still has to take care of the restoration area on
10 the north end to abate the code violation, then
11 that becomes a condition of the development order
12 approval, correct?

13 MS. WORKMAN: Correct. And the detention
14 that needs to be designed for the backbone
15 infrastructure is where the abatement trees are
16 going. So it's all just a matter in how we word
17 this thing so that it doesn't get hung up in DO.
18 We'll do it. We've got two weeks. It'll get
19 done.

20 HEARING EXAMINER COLLINS: Go ahead.

21 MS. MONTGOMERY: Go ahead.

22 MR. OWEN: Paul Owen with Owen Environmental
23 Consulting. So I just want to just briefly go
24 back -- go back in time and talk about the
25 clearing, what happened with the clearing.

1 So I was working for the previous property
2 owner after the violation occurred. From what I
3 understand, what happened was, he was approached
4 and told that he needed to take care of this issue
5 on his property. There were homeless camps and
6 there were crimes being committed. So he was
7 advised to clear the property to solve these
8 problems. He was unaware, didn't know what he had
9 to do, completely messed up, had a violation.
10 That's what happened.

11 So, all right. So regarding the gopher
12 tortoises and the Game Commission, there is no
13 active investigation. We got an e-mail. It's
14 on -- it's on the record and given to Staff and it
15 is not an issue.

16 When we -- when they come forward with the
17 individual project, outparcel or whatever it is,
18 and there's a tortoise within 25 feet of what
19 they're going to impact, which is very likely, we
20 will get a Game Commission permit and it will be
21 done properly.

22 HEARING EXAMINER COLLINS: The gopher
23 tortoises were mainly on the east side of the
24 property?

25 MR. OWEN: They're -- sorry.

1 HEARING EXAMINER COLLINS: Go ahead. No.

2 MR. OWEN: They're on --

3 HEARING EXAMINER COLLINS: Can we bring up
4 your slide? Is that possible?

5 MR. OWEN: It's possible. But probable,
6 we'll see.

7 MS. WORKMAN: Hang on.

8 MR. OWEN: Yeah, you'll have to turn it on.

9 MS. WORKMAN: Hang on. I'm working on it. I
10 don't know where it is. You'll have to --

11 MR. OWEN: I'll flip there.

12 MS. WORKMAN: You're in control now.

13 MR. OWEN: All right. We're all in trouble.

14 There we go. All right. So the gopher
15 tortoise burrows are shown here, which is part of
16 my restoration plan and was submitted. So we've
17 always known where these burrows were, which we
18 surveyed and located and submitted to the county.

19 And I got lost. Where are we? What question
20 was I answering?

21 HEARING EXAMINER COLLINS: When is the
22 restoration -- when is the relocation of the
23 tortoises going to happen? Is it going to happen
24 all at once, or is it going to happen when that
25 outparcel goes and the next outparcel goes?

1 MR. OWEN: Exactly. As each come in and they
2 need to get within 25 feet, we'll get a separate
3 permit to relocate those tortoises.

4 HEARING EXAMINER COLLINS: Okay. So that is
5 the basis of the reevaluation of the site with
6 each development order, because gophers may leave,
7 gopher tortoises may come on. And so you're going
8 to have -- this is what we have at this moment.

9 And the condition that's proposed does not
10 permit the filling under -- of these burrows
11 without trying to relocate the turtles, right?
12 The turtles will be --

13 MR. OWEN: That is correct.

14 HEARING EXAMINER COLLINS: -- excavated, they
15 will be taken to a state- or federal-approved --

16 MR. OWEN: Approved site.

17 HEARING EXAMINER COLLINS: -- recipient site
18 that I'm sure has been vetted or what have you
19 and --

20 MR. OWEN: Highly regulated. All -- the Game
21 Commission follows up. There's conditions. If
22 things go bad, the mitigation recipient site loses
23 its license.

24 But prior to each one of these parcels coming
25 in for a new permit, we've got to do another

1 100 percent gopher tortoise survey. One
2 hundred percent of those sites will be surveyed.
3 We'll find every one of those burrows, we know
4 what we're looking for, and we'll get a permit.

5 HEARING EXAMINER COLLINS: So even the
6 outparcel in the lower left side, even though
7 there's no gopher tortoise there today, they come
8 in for a DO on their small site, that's still
9 going to get looked at?

10 MR. OWEN: We'll do a -- we'll do an
11 80 percent survey when there's -- that's wetlands.
12 This corner, for example, that's a wetland site.

13 But we will still look at it. We'll still do
14 the 80 percent regular protected species survey
15 that's required by the county. And if we see any
16 signs, of course, we'll look and find them,
17 because it's in the client's best interest to find
18 them and get a proper permit.

19 HEARING EXAMINER COLLINS: All right. And
20 there was a reason why these tortoises couldn't be
21 located to the restoration area. Was that because
22 the timing of the completion of the restoration
23 area was in question, or the restoration area is
24 not large enough to accommodate the population?

25 MR. OWEN: It's -- it's regulated by the

1 Florida Fish and Wildlife Conservation Commission.
2 That is the -- that is the only agency that
3 regulates gopher tortoises. Not the county, not
4 the city; the Game Commission, their rules. They
5 are very strict since the gopher tortoises were
6 uplisted in '06 or '07. I can't remember.

7 But you can't -- you can't relocate tortoises
8 on a site without going through a bunch of extra
9 hoops. It's a minimum of 25 acres and it has to
10 be able to support the new tortoises. If you've
11 got tortoises that are already there, they don't
12 want you to overpopulate it. And in a situation
13 like this, it wouldn't be appropriate to keep
14 tortoises on this site because it's surrounded by
15 roads. There's animals. There's people.

16 HEARING EXAMINER COLLINS: It's not ideal?

17 MR. OWEN: This --

18 HEARING EXAMINER COLLINS: It's already
19 impacted habitat?

20 MR. OWEN: It is not ideal. The interactions
21 that are happening are not healthy for tortoises
22 on this site.

23 MS. MONTGOMERY: Okay. Our next witness is
24 Mr. DeLisi.

25 MR. DELISI: For the record, Dan DeLisi.

1 MS. MONTGOMERY: Mr. DeLisi, there's a
2 concern -- I believe it was Ms. Wilkison -- about
3 whether or not there's adequate buffers. Can you
4 address whether or not her property will be
5 buffered and whether people will be able to drive
6 down to her road from this site?

7 MR. DELISI: Yeah, on the Master Concept
8 Plan, we noted a buffer at this location. In the
9 Staff Report and the conditions, there's a buffer
10 requirement, Condition 10B.

11 I think, you know, Beth's testimony went
12 through what's required, and she had said that
13 there's no buffer required because of the
14 definition of abutting and the Mixed Use Overlay
15 and all of that sort of stuff. But what we had
16 discussed during the zoning process and what's
17 reflected in her Staff Report and conditions is
18 complying with the Lehigh Acres buffer guidelines
19 which require a very specific buffer in 33-1405,
20 which is 25 feet in width, 37 trees per 100 linear
21 feet, 33 ground covers, a double hedgerow.

22 So, I mean, the double hedge is going to
23 prevent people from crossing anyways. But it's a
24 pretty intense buffer.

25 HEARING EXAMINER COLLINS: Okay. So what the

1 testimony was is short term most of the Land
2 Development Code would excuse a buffer along this
3 western boundary; however, the Lehigh Community
4 Plan trumps other provisions in Chapter 10 that
5 would otherwise require some buffer, and you're
6 complying with the Lehigh buffer?

7 MR. DELISI: Yeah. So Beth's testimony was
8 the Mixed Use Overlay trumps the Lehigh Plan. It
9 doesn't matter what the requirement actually is --

10 HEARING EXAMINER COLLINS: Okay.

11 MR. DELISI: -- in the Land Development Code.
12 We are still providing a buffer. So regardless of
13 what trumps what and the -- Ms. Workman's
14 testimony is that a buffer is not required at
15 all -- we are still providing a buffer and county
16 Staff is still requiring us to provide a buffer.

17 So I get why there was confusion, but there
18 is going to be a buffer there.

19 HEARING EXAMINER COLLINS: And this buffer is
20 going to consist of trees and bushes, it's going
21 to be 25 feet in width, and your testimony is that
22 that would serve as a barrier from people
23 traversing back and forth, yes?

24 MR. DELISI: Yes.

25 MS. WORKMAN: Yes, this is an enhancement.

1 This is an enhancement.

2 HEARING EXAMINER COLLINS: Okay. Right. In
3 addition, there is this drainage -- it's not a
4 canal -- that's my understanding of the
5 testimony -- there's some kind of drainage swale?

6 MR. DELISI: Yeah, it's a LAMSID ditch.

7 HEARING EXAMINER COLLINS: It's a ditch.

8 MR. DELISI: I mean, it's --

9 HEARING EXAMINER COLLINS: On your property?
10 Not on your property?

11 MR. DELISI: Well, it's owned by LAMSID, I
12 believe.

13 MS. WORKMAN: Yeah, so --

14 HEARING EXAMINER COLLINS: So a separate
15 tract?

16 MR. DELISI: Yeah.

17 MS. WORKMAN: Uh-huh.

18 HEARING EXAMINER COLLINS: So they would have
19 to traverse this ditch, large or small, or
20 whatever it is --

21 MR. DELISI: Yeah.

22 HEARING EXAMINER COLLINS: -- and then
23 traverse this buffer --

24 MR. DELISI: Yeah.

25 HEARING EXAMINER COLLINS: -- to access

1 whatever is going on on your -- on your site on
2 foot?

3 MR. DELISI: It would be easier just to go
4 along 5th Street.

5 HEARING EXAMINER COLLINS: Yeah.

6 MR. DELISI: Okay. So that was the buffers.

7 MS. MONTGOMERY: Well, and there's a concern
8 that whatever we're going to do, that we're not
9 going to get input from the public. But it's my
10 understanding in the Lehigh Community Plan, that
11 when you -- at the time of DO, you must have
12 another public information meeting, and those are
13 held at LAMSID. Is that your understanding?

14 MR. DELISI: That's where, yes, the Lehigh
15 Architectural Design & Review Board holds public
16 meetings for development orders as well.

17 MS. MONTGOMERY: So that will be -- the
18 gentleman who was concerned that we wouldn't have
19 that reviewed, there's no need to be concerned?

20 MR. DELISI: That's correct.

21 MS. MONTGOMERY: And there was concern
22 expressed, and I believe from the Hearing
23 Examiner, about coordination with the school.

24 MR. DELISI: Yeah, so the Applicant is -- if
25 we build residential units on this parcel, the

1 Applicant is more than happy to talk to the school
2 about some sort of a pedestrian connection.

3 I think we all need to just keep in mind that
4 there is, again, a canal that runs north/south
5 here that you would have to cross. But, you know,
6 that -- those are all coordination aspects with
7 both LAMSID, who operates and owns the canal, and
8 the school board.

9 But the issue is not on the Applicant's
10 willingness side. The Applicant is more than
11 happy to do it. They don't control every aspect
12 of this.

13 HEARING EXAMINER COLLINS: Thank you.

14 MS. MONTGOMERY: I didn't have any other
15 questions unless you had a question that we have
16 left you wondering about.

17 HEARING EXAMINER COLLINS: No. Does that
18 conclude your rebuttal, so to speak?

19 MS. MONTGOMERY: Yes, ma'am.

20 HEARING EXAMINER COLLINS: Okay. Thank you,
21 Dan.

22 Beth, is there any additional testimony you
23 would like to place on the record based on --

24 MS. WORKMAN: I just have a couple of
25 small -- just very small things about FDEP, the

1 District, about the violations, if that's okay,
2 and then I have the dates for you for the BOCC.

3 So I've been working on this property for a
4 very long time through the violation process as
5 well as the zoning. Code enforcement -- Lee
6 County Code Enforcement, anytime we get a
7 violation that has impacts to wetlands or species,
8 we work with those agencies.

9 So our code enforcement staff has been
10 working on this and going out and checking up on
11 the property, has been in contact with the South
12 Florida Water Management District, followed their
13 process through the removal of the nuisance
14 material out there, as well as the clearings that
15 have happened with the refuse that was left
16 behind, as well as FWC for the impacts to gopher
17 tortoises.

18 So it's not like there's no collaboration or
19 we're not coordinating. We are. And we also do
20 interagency meetings with our zoning application
21 cases. So we -- and in those collaboration
22 meetings, we have the District, we have FDEP, we
23 have FWC, and the Conservancy is usually on the
24 call, and we discuss -- we discuss these issues.

25 HEARING EXAMINER COLLINS: So the abatement

1 protocol that's outlined in each violation is a
2 result of this interagency collaboration in
3 determining what would need to be accomplished to
4 abate?

5 MS. WORKMAN: Correct. For instance, they
6 wanted -- the District wanted the Applicant or the
7 previous owner to go in and remove the logs.
8 Well, we had FDEP -- or, I'm sorry, FWC where we
9 had active gopher tortoises still out there -- so
10 we had to collaborate on that. And then we had
11 protected species vegetation-wise that needed to
12 be saved, too.

13 So how are you going to do that? We have to
14 work together. So it's not like we're out working
15 against each other. We actually work together.
16 And there's documentation in the code enforcement
17 files as to e-mails or site visits or joint site
18 visits.

19 So we do that. And then how we decide what
20 is an indigenous preserve and what is not is all
21 laid out in the definitions of indigenous
22 vegetation as well as in 10-701 of the Land
23 Development Code of what is an indigenous species.
24 So those were the two things that I heard on that.

25 And then the cutoff date for going to the

1 board is May 24th.

2 HEARING EXAMINER COLLINS: So any
3 recommendation issued by May 24th will be heard by
4 the board prior to their July recess?

5 MS. WORKMAN: To make the June 19th BOCC
6 meeting --

7 HEARING EXAMINER COLLINS: May 24th.

8 MS. WORKMAN: -- prior to the July recess.

9 HEARING EXAMINER COLLINS: So June 19th is
10 the last board zoning hearing --

11 MS. WORKMAN: Correct.

12 HEARING EXAMINER COLLINS: -- before the
13 recess?

14 MS. WORKMAN: Correct. That's all I have.

15 HEARING EXAMINER COLLINS: Thank you.

16 I'm going to look at the calendar because I
17 want to give you an idea of the time frame that I
18 would urge you to get me information so that I can
19 meet this --

20 MS. MONTGOMERY: Deadline?

21 HEARING EXAMINER COLLINS: -- deadline of
22 May 24th. Now, if May 24th is not that important
23 to you, please convey that to me as well. But I
24 will endeavor to get something out by the 24th.

25 Today is the 25th. I would like to receive

1 all revised Master Concept Plans and revised
2 conditions by end of business on May 10th. If I
3 receive it by May 10th, that will allow me enough
4 time to finalize the recommendation so that it
5 gets to the board in time to make that June 18
6 (sic) meeting.

7 MS. MONTGOMERY: Okay.

8 HEARING EXAMINER COLLINS: But you're driving
9 the bus, not me. I will -- I will allow as much
10 time as you feel, so --

11 MS. MONTGOMERY: No, no, we hear you loud and
12 clear.

13 HEARING EXAMINER COLLINS: I want to
14 accommodate everyone. If there's an urgency to
15 have this heard quickly, then I am -- I'll
16 endeavor to meet that need.

17 MR. DELISI: Two weeks is more than enough
18 time, right?

19 MS. MONTGOMERY: (Nodding head.)

20 HEARING EXAMINER COLLINS: And it's going to
21 take a little time for me to get the transcript
22 for this. So I'm not going to finalize anything
23 until I have the transcript. And that could be a
24 week.

25 MS. MONTGOMERY: That was a noncommittal

1 look.

2 THE COURT REPORTER: It's up to you guys.

3 MS. MONTGOMERY: When do you need her
4 transcript by in order to make that date?

5 HEARING EXAMINER COLLINS: Well, I will say,
6 without intending to complain or brag, that I am
7 completely caught up with all of my cases. So
8 whichever one is ready first is going to get my
9 attention and be completed.

10 So if you want to --

11 MS. MONTGOMERY: Well, no --

12 HEARING EXAMINER COLLINS: -- expedite the
13 transcript, that's up to you.

14 Otherwise, what do you think? A week? Ten
15 days?

16 THE COURT REPORTER: Usually it's ten days.

17 HEARING EXAMINER COLLINS: Ten days --

18 MS. MONTGOMERY: Okay.

19 HEARING EXAMINER COLLINS: -- without an
20 expedite.

21 MS. MONTGOMERY: Okay. Thank you.

22 HEARING EXAMINER COLLINS: Okay. So I'm
23 going to recap before I close the hearing. The
24 written record is going to be left open for
25 revised conditions and deviations.

1 MS. MONTGOMERY: And the MCP.

2 HEARING EXAMINER COLLINS: That includes
3 renumbering the only deviation to deviation number
4 1, a revised Master Concept Plan, preferably
5 stamped and received by Staff that reflects the
6 location of the deviation and anything we discuss
7 today regarding what might affect the site plan.

8 And these revised conditions will include a
9 redrafting of the violation condition and a
10 sharpening of the language regarding the
11 signalization agreement, which I understand you're
12 going to work together on, Conditions 8 and 12, I
13 believe. And that's it.

14 MS. MONTGOMERY: Okay.

15 HEARING EXAMINER COLLINS: So thank you,
16 everyone, for coming. I appreciate the detailed
17 presentation. Thank you for a very complete
18 Applicant's narrative and Staff Report.

19 And I will leave the record open until end of
20 business on May 10th --

21 MS. MONTGOMERY: May 10th.

22 HEARING EXAMINER COLLINS: -- for the items
23 that I've requested. And please feel free to
24 provide them ahead of time. Thank you.

25 (Proceedings concluded at 3:19 p.m.)

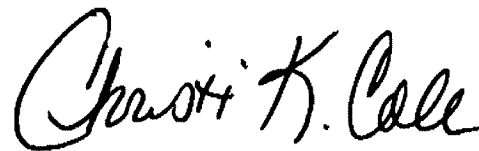
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Reporter, certify that I was authorized to and did
stenographically report the foregoing proceedings and
that the transcript is a true and complete record of
my stenographic notes.

DATED this 9th day of May, 2024.



Christi K. Cole, FPR

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