

THE OFFICE OF THE LEE COUNTY  
HEARING EXAMINER

CASE NO.: DCI2023-00050

IN RE: DIPLOMAT HOUSE F/K/A DIPLOMAT RPD AMENDMENT  
\_\_\_\_\_ /

PROCEEDINGS: PUBLIC HEARING

BEFORE: Donna Marie Collins  
Chief Hearing Examiner

DATE: June 26, 2024

TIME: 9:04 a.m. to 11:02 a.m.

LOCATION: Office of the Hearing Examiner  
1500 Monroe Street, Second Floor  
Fort Myers, FL 33901

REPORTER: Deborah M. Bruns  
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25

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

HEARING EXAMINER COLLINS: Good morning, my name is Donna Marie Collins. I'm the Hearing Examiner that will be presiding over this morning's zoning hearing. We have before us a request to amend an existing RPD to CPD. The focus is going to be on the RPD north of Diplomat Parkway.

All testimony and evidence I accept during these hearings must be taken in under oath; therefore, I will administer the oath to everyone in the room that intends on speaking on the record, at the conclusion of my remarks.

Do we have members of the public here?

(Participants raise hands.)

HEARING EXAMINER COLLINS: Yes, all right.

For those of you who may not be familiar with our process, the property owner, Applicant's representatives, will present the request. They will explain the details of the request, and they will go through the County regulations and explain how the request is consistent with the County's land development regulations. They may have more than one witness. Sometimes we have expert witnesses testify on specific issues, such as transportation, environment, what have you.

1           Following their presentation, we will go to the  
2 County Planner who prepared the Staff Report. The  
3 Staff Report in this case recommends approval. The  
4 County Planner will go over the basis of their  
5 recommendation.

6           And at the conclusion of their presentation, I  
7 will open up the hearing to members of the public. At  
8 that time I will call the names on the sheets that have  
9 been filled out here one at a time. I ask that you  
10 come to the podium, state your full name. If you live  
11 or work in relationship to the project, we will have an  
12 aerial of the general area up on the screen; and you  
13 can show us where you live or work and share with us  
14 your comments, favorable or opposed.

15           Many times I find members of the public are not  
16 completely in favor or totally against a request. They  
17 have very specific concerns. I urge you to share those  
18 concerns with us because you give us an opportunity to  
19 clarify something you may not have understood, or craft  
20 a condition to address those concerns.

21           This decision is not final with me. This is the  
22 first of two hearings. However, if you would like the  
23 opportunity to address the Board of County  
24 Commissioners at the final hearing, you must  
25 participate by putting remarks on the record at this

1 level.

2 You may speak as long as you wish; but once you  
3 take your seat, you may not come back. There's no  
4 calling out from the audience. I ask you to please,  
5 during the presentation, organize your thoughts so that  
6 you don't leave anything out if you do want to speak.  
7 And while you may speak as long as you wish at this  
8 hearing, you will be limited to only three minutes at  
9 the final Board of County Commissioner hearing; so it  
10 will be important for you to really focus on what  
11 matters to you most, when you address them, because you  
12 only have three minutes.

13 All right. I'm ready to administer the oath.  
14 Please raise your right hand.

15 (Participants sworn en masse.)

16 HEARING EXAMINER COLLINS: Thank you. I'm ready  
17 to begin.

18 MS. HEWITT: Good morning, Madam Hearing Examiner.  
19 I do have a couple of items I'd like to submit into the  
20 record. I have the Applicant's PowerPoint, as well as  
21 a composite exhibit with a cover letter.

22 HEARING EXAMINER COLLINS: And what is that  
23 pertaining to?

24 MS. HEWITT: This has the revised conditions --

25 HEARING EXAMINER COLLINS: Okay.

1 MS. HEWITT: -- that codifies all the way back to  
2 the original zoning resolution, with the proposed  
3 changes in clean and coded vision -- version. And then  
4 it's also a revised master concept plan --

5 HEARING EXAMINER COLLINS: Okay.

6 MS. HEWITT: -- to clarify, the first page being  
7 the overall RPD/CPD, and also updating some  
8 discrepancies that were discovered in the open space  
9 table that I'll go through during --

10 HEARING EXAMINER COLLINS: Okay, very good.

11 MS. HEWITT: -- the presentation.

12 And then it also has a copy of a referenced  
13 approved development order just for the indigenous, and  
14 updated resumes. My 48-hour notice was a little  
15 incorrect on the résumés on file.

16 HEARING EXAMINER COLLINS: Okay. That's it, those  
17 two exhibits?

18 MS. HEWITT: Yes, this --

19 And here's a copy of both for you, as well.

20 THE REPORTER: Thank you.

21 (Applicant's Exhibits 1 and 2 submitted.)

22 HEARING EXAMINER COLLINS: All right. I'm ready  
23 when you are.

24 MS. HEWITT: All right. My name is Stacy Ellis  
25 Hewitt. I'm the planner on the case. I have

1 previously been accepted as an expert witness in land  
2 use planning and zoning matters in the Lee Plan and  
3 Land Development Code, and I request to be accepted as  
4 such today.

5 HEARING EXAMINER COLLINS: Please proceed.

6 MS. HEWITT: Thank you.

7 With me today, I also have Christian Casey on  
8 environmental with Atwell; Sam Marshall, the engineer  
9 with Atwell; and Ted Treesh with T.R. Transportation.

10 The site is located on the north side of Diplomat  
11 Parkway E. The subject of the request is approximately  
12 38.13 acres, and it's outlined in red on the map. It's  
13 approximately .31 mile west of the intersection with  
14 North Cleveland Avenue/US 41.

15 The Applicant for the case is Diplomat Fort Myers,  
16 LLC. It is within the North Fort Myers Community  
17 Planning Area, and the request is an amendment to  
18 approximately 38.13 acres of the Diplomat North RPD/CPD  
19 from the zoning resolution Z-11-002/ADD2019-00085  
20 approvals to replace 238 dwelling units, or 138  
21 dwelling units and 400 assisted living facility units,  
22 and 50,000 square feet of commercial with a maximum  
23 height of 50 feet, to allow 360 multi-family dwelling  
24 units with amenities with a maximum height of 60 feet  
25 within the mixed-use overlay.



1           The site and the surrounding properties are all  
2           within the Central Urban Future Land Use designation,  
3           which has a standard density of up to 10 dwelling units  
4           per acre, and can go up to 20 dwelling units per acre  
5           utilizing bonus density. This is the urban core of the  
6           county.

7           This map designates the mixed-use overlay for the  
8           area, which allows incentives, including density  
9           utilized from commercial parcels, allows heights up to  
10          135 feet, reduced property development regulations,  
11          reduced parking, and reduced buffers.

12          We are proposing to utilize -- the yellow outline  
13          on this parcel is the actual development parcel, which  
14          is 35.18 acres; and we're also utilizing 2.95 acres of  
15          commercial parcels 1 and 2, which are on the east and  
16          west sides of the entrance. That's where we get the  
17          total of 38.13 acres for the request.

18          Now, this request could request, with this  
19          acreage, up to 381 dwelling units with standard  
20          density, or up to 763 dwelling units total maximum with  
21          bonus density in Greater Pine Island transfer  
22          development units. The request, however, is for 360  
23          dwelling units with a maximum height of 60 feet.

24                 HEARING EXAMINER COLLINS: So you're within  
25          standard density ranges?

1 MS. HEWITT: Correct, with no bonus density.  
2 Bonus density could be requested in this area, but it's  
3 not included with the request.

4 To the north we have the Serendipity Mobile Home  
5 Park, which is zoned MH-2, and their storage area in  
6 the northwest, which is zoned AG-2.

7 To the west we have a 25-foot drainage ditch, and  
8 it's zoned AG-2, and then the Six Lakes Country Club  
9 Mobile Home Park, which is zoned MH-2. And their  
10 common elements actually have approximately 58 feet  
11 between the subject property and their individual lots.

12 To the south are -- is Diplomat Parkway, and then  
13 the vacant lands within the subject RPD and CPD.

14 To the east we have the MIVO North Fort Myers  
15 Residential Planned Development, 285 dwelling units  
16 with 60-foot height, and it's got a current development  
17 order, DOS2022-00141, which is under review.

18 HEARING EXAMINER COLLINS: All right. Now, the  
19 project -- the rest of this project is south of  
20 Diplomat -- well, I know --

21 MS. HEWITT: Yes.

22 HEARING EXAMINER COLLINS: -- there's a couple  
23 more commercial parcels north, but south of Diplomat --  
24 I don't know how old that aerial is, but there is  
25 ongoing development on that parcel right now; is that

1 correct? Are you covering that in a later part of your  
2 presentation?

3 MS. HEWITT: There's nothing -- there is an  
4 approved development order on the south, but nothing is  
5 being developed that I'm aware right now in our --  
6 within our property or within the subject RPD/CPD.

7 HEARING EXAMINER COLLINS: Okay. So the  
8 multi-family project that's underway, that's part of  
9 the Merchants Crossing project and not part of this  
10 RPD/CPD?

11 MS. HEWITT: I'm not certain where that -- where  
12 exactly that is happening, if there's something under  
13 construction.

14 MR. DANLEY: If I could jump in on that?

15 MS. HEWITT: Yes, please.

16 MR. DANLEY: The multi-family project that's under  
17 construction associated with Merchants Crossing is  
18 wholly within the Merchants Crossing CPD.

19 HEARING EXAMINER COLLINS: When I did my site  
20 visit, I noticed that there was development activity  
21 south of Diplomat --

22 MR. DANLEY: Okay.

23 HEARING EXAMINER COLLINS: -- and I was wondering  
24 if that was part of this project or --

25 MR. DANLEY: I don't believe that there has been

1 anything -- we can confirm that.

2 HEARING EXAMINER COLLINS: Because this is really  
3 the CPD section of the -- of the project, right, to the  
4 south mainly?

5 MR. DANLEY: To the south there's a residential  
6 tract and a commercial tract similar to the way the  
7 north is.

8 HEARING EXAMINER COLLINS: Okay, proceed.

9 MS. HEWITT: Thank you.

10 The Staff Report does recommend approval. The  
11 Applicant's in agreement with the Staff Report  
12 recommendation and the conditions and deviations as  
13 revised with this submittal today, and I do request to  
14 incorporate the Staff Report and the Applicant's  
15 submittals as part of my testimony today.

16 I'm not -- the Staff Report outlines the existing  
17 public services and facilities within the area in  
18 detail. I have included them here, as well. As  
19 indicated by being included in the mixed-use overlay,  
20 there is a plethora of urban services available for the  
21 request.

22 This is a map depicting the overall residential  
23 planned development and CPD zoning. The overall is  
24 65.13 acres north and south of Diplomat. It was  
25 originally rezoned by Z-06-004, which granted approval

1 for 457 dwelling units, 200,000 square feet of  
2 commercial, of which 100,000 could be retail, and 120  
3 hotel rooms.

4 This was amended by Z-11-002, which amended the  
5 north 35.18-acre RPD to allow a maximum of 400 assisted  
6 living facility beds, 138 standard dwelling units, and  
7 also created this 5.4 -- oops, sorry -- also created  
8 this 5.43-acre north CPD with a maximum of 50,000  
9 square feet of commercial. I also had a conversion  
10 table and amended master concept plan, as we'll  
11 discuss, with the submittal.

12 There were some discrepancies in that zoning  
13 resolution. The CPD legal description was not  
14 included. So there was some discrepancies between the  
15 Applicant and Staff on the existence of this commercial  
16 planned development, but it is on the zoning map.  
17 There is a legal description in the zoning file, but  
18 this request proposes to utilize that CPD for  
19 multi-family.

20 HEARING EXAMINER COLLINS: Okay. So I want to  
21 make sure the legal description that's attached to this  
22 resolution includes the entire legal description of the  
23 RPD you seek to amend and the remainder of the overall  
24 RPD/CPD. Because this is going to be a codified zoning  
25 resolution that will address development entitlements

1 on the entire project, and it will remain named as it  
2 is.

3 MS. HEWITT: Right.

4 HEARING EXAMINER COLLINS: But this parcel -- you  
5 can call this parcel whatever you want.

6 So having said that, I want to go back to this map  
7 that represents the 2011 approval. So under this  
8 request, this 5.43-acre CPD is going to be RPD now; is  
9 that correct?

10 MS. HEWITT: That's what the Applicant was  
11 seeking.

12 HEARING EXAMINER COLLINS: Okay.

13 MS. HEWITT: But there was the mixed-use overlay,  
14 and commercial allows residential, and the request  
15 wasn't filed as a rezoning of the CPD. The request  
16 language didn't specify that, neither did the Z-11-002,  
17 but that was the intent of the Applicant. We have  
18 no -- I'm fine either way.

19 HEARING EXAMINER COLLINS: Well, I'm very unclear  
20 on what the master concept plan is including; and if it  
21 is including this north CPD, it should be RPD if it's  
22 going to be -- I mean, basically you have a lot of  
23 flexibility, but it's very difficult to kind of  
24 encapsulate the development entitlements when the  
25 master concept plan doesn't seem to match what you're

1 seeking.

2 MS. HEWITT: We did add that CPD zoning line --

3 HEARING EXAMINER COLLINS: Because it looks like  
4 it's included in your MCP.

5 MS. HEWITT: It is because, again, the Applicant's  
6 intent was to revert it back to RPD but --

7 HEARING EXAMINER COLLINS: Okay. So why can't we  
8 do that? Does it change the acreage?

9 MR. DANLEY: No -- if I can jump in on this. The  
10 reason why is historically, since I've been working  
11 with these mixture of RPD/CPDs, when the boundary of  
12 one of those types of projects changes, we've been  
13 requiring a rezoning because there are discrete legal  
14 descriptions for two different --

15 HEARING EXAMINER COLLINS: So isn't --

16 MR. DANLEY: -- zoning districts --

17 HEARING EXAMINER COLLINS: -- that what we're  
18 doing, we're amending the zoning approval?

19 MR. DANLEY: We are amending it. We are not doing  
20 a -- we didn't go through this as a full rezoning for  
21 the property. And so it was -- it was Staff's opinion  
22 to keep the -- remain -- or keep that CPD as a CPD,  
23 allow it to operate the multi-family uses, as CPDs are  
24 allowed to have, retaining the remanding -- remainder --  
25 sorry -- remaining acreage of the CPD to have 200,000

1 square feet, because the Land Development Code does  
2 allow for CPDs of more than 50,000 square feet to allow  
3 multi-family uses, as well.

4 HEARING EXAMINER COLLINS: Okay. Just for the  
5 record, legally, if you're amending a zoning approval,  
6 you're rezoning it.

7 MR. DANLEY: Okay.

8 HEARING EXAMINER COLLINS: So you could change  
9 that to RPD.

10 MR. DANLEY: Okay.

11 HEARING EXAMINER COLLINS: You don't have to  
12 because you can do what -- you can develop what you  
13 want, it appears from Staff, but this is an unclear way  
14 to approach the development entitlements of this  
15 property, I think. It's not streamlined.

16 MS. HEWITT: And if I may, the attachment to the  
17 Z-11 already has this described as an RPD, and I have  
18 that with me that I could submit into the record, and  
19 we wouldn't have to amend -- do an amended legal  
20 description, if it's chosen to go that route.

21 HEARING EXAMINER COLLINS: Okay. Just so that I  
22 understand, though, you're including the north RPD, the  
23 north 5.43-acre CPD, and the acreage of parcels 1 and 2  
24 for the purposes of calculating your density because  
25 of -- you're in the mixed-use overlay.



1 MS. HEWITT: Correct.

2 HEARING EXAMINER COLLINS: But parcels 1 and 2 are  
3 going to remain for commercial use?

4 MS. HEWITT: Yes.

5 HEARING EXAMINER COLLINS: Okay, proceed.

6 MS. HEWITT: Thank you.

7 There have been multiple administrative amendments  
8 since the Z-11-002, which are outlined in the Staff  
9 Report and attachments and have been codified  
10 throughout the amended conditions.

11 This is the existing master concept plan option  
12 that had the assisted living facility with the  
13 commercial CPD, as well. They're part of that zoning  
14 resolution because there is an existing development  
15 order on the other existing master concept plan.  
16 Development orders are existing and valid until 2030  
17 based on this master concept plan, which was from the  
18 2007-00169 --

19 HEARING EXAMINER COLLINS: Are we focusing north  
20 or south of Diplomat at this point?

21 MS. HEWITT: This is the overall -- this is -- the  
22 overall has the CPD parcels. This has the overall  
23 planned development. And this is in the existing  
24 zoning resolution, and it is proposed to continue to be  
25 included, again, because there are development orders

1 issued based off of this master concept plan.

2 HEARING EXAMINER COLLINS: So then the master  
3 concept plan that you're proposing today is an  
4 alternate?

5 MS. HEWITT: Yes.

6 HEARING EXAMINER COLLINS: Okay.

7 MS. HEWITT: Yes.

8 Now, the north is under -- has development order  
9 approval DOS2007-00255, which is valid until February  
10 of 2030, and then the south RPD has a development order  
11 DOS2007-00267, which is valid until February of 2030.

12 Part of the -- the reasoning for the alternate  
13 master concept plans is because there's bifurcated  
14 ownership on this parcel now. The commercial parcels  
15 right now, these two are owned by the same individual,  
16 but the commercial -- the three commercial parcels, two  
17 on the north and the one on the south, have separate  
18 ownership, and that's -- and those are not owned by the  
19 same as the RPD either. So coming in with a new master  
20 concept plan with other people's property that aren't  
21 authorized, it's been a little -- there's been some --  
22 some attention there to not touch their property or  
23 cause any -- anything that would affect their property.

24 This is -- excuse the red line, but in the late  
25 notice with, you know, the revisions, we found some --

1 this is the existing open space table and indigenous,  
2 as it's approved by the development order for the south  
3 parcel, which is more current than the open space table  
4 and delineations of the indigenous that are on the  
5 existing ADD2007-00169.

6 HEARING EXAMINER COLLINS: All right, let's go  
7 back.

8 MS. HEWITT: Yeah.

9 HEARING EXAMINER COLLINS: Show me that -- what's  
10 that from?

11 MS. HEWITT: This is --

12 HEARING EXAMINER COLLINS: That's from the  
13 development order?

14 MS. HEWITT: Correct, but it's a basis -- because  
15 of the two -- the ADD that happened in 2007 had  
16 indigenous calculations and an open space table that  
17 had some inconsistencies with the Code; and then rather  
18 than carrying that forward, we've updated that to --  
19 and this is just for the record to show exactly what  
20 we're changing -- to update it to reflect the more  
21 current open space table and indigenous that's on the  
22 existing approval for the south development order. It  
23 just puts credits with the uplands; the original one  
24 had credits on wetlands, which is isn't allowed per the  
25 Code; and it clarifies that rather than carrying that

1 forward.

2 HEARING EXAMINER COLLINS: Okay. And this is all  
3 consistent with the Code now --

4 MR. DANLEY: Yes.

5 HEARING EXAMINER COLLINS: -- these changes?

6 MS. HEWITT: Yes. And this is included mostly for  
7 your record. When you see the new open space table, I  
8 did not want to have strike-through/underlines on the  
9 master concept plan --

10 HEARING EXAMINER COLLINS: So the master concept  
11 plan is a clean version of these corrections?

12 MS. HEWITT: Correct, but this is just for the  
13 record to show exactly what's changed and where that  
14 came from.

15 HEARING EXAMINER COLLINS: Okay.

16 MS. HEWITT: This is the proposed master concept  
17 plan, which we've put as page 1, because it remains, as  
18 required by Code, the overall RPD/CPD master concept  
19 plan.

20 HEARING EXAMINER COLLINS: But it's considered  
21 alternate 1 at this point?

22 MS. HEWITT: I guess. This is --

23 HEARING EXAMINER COLLINS: Because you're telling  
24 me I have to retain the old one.

25 MS. HEWITT: Yes, so I suppose it would be

1 alternate 1. This is the overall master concept plan,  
2 is what we've referred to it as.

3 HEARING EXAMINER COLLINS: Well, my question is  
4 why doesn't this supersede the prior one? It doesn't  
5 matter that there's a DO under the old format. They  
6 can't -- once you amend this, they can't proceed under  
7 the old development order. They have to either amend  
8 it or replace it.

9 MS. HEWITT: If the property -- the Applicant does  
10 not own the property. The property owner has those  
11 entitlements. So we are going through this process,  
12 and when the new Applicant -- if they obtain a  
13 development order, they would rescind that old  
14 development order so --

15 HEARING EXAMINER COLLINS: So the Applicant is a  
16 contract purchaser?

17 MS. HEWITT: Correct.

18 HEARING EXAMINER COLLINS: Okay, thank you.

19 MS. HEWITT: This is now page 2 of the master  
20 concept plan, which is what the subject request is  
21 about today. It's really -- the development would be a  
22 simple request if there wasn't such an extensive  
23 history on the approvals.

24 But what we're proposing is 360 multi-family  
25 dwelling units. We are within the mixed-use overlay so

1 we're amending the property development regulations to  
2 match those which are required within the mixed-use  
3 overlay. And although open space is half of the  
4 requirement, this development is going to result in  
5 actually more than what's required today. So they're  
6 really providing -- the original approval allowed all  
7 of the indigenous preserve to be included in the south  
8 development order, and we're proposing to have an  
9 on-site indigenous preserve with credits in the western  
10 boundary within the floodway, and we're also proposing  
11 to do a phased portion of this south indigenous  
12 preserve while relieving -- or while leaving the  
13 originally allocated preserve amount.

14 So the total would have been, on the existing  
15 development order, 12.17 acres with credits; and once  
16 you include our .55-acre indigenous preserve, which is  
17 .61 acres with credits, we end up with a total for the  
18 entire RPD/CPD of 12.78 acres with credits for the  
19 preserve. For this site, it would have only required  
20 3.52 acres under the mixed-use overlay, and we are  
21 providing 7.68 acres so --

22 HEARING EXAMINER COLLINS: Including the parcel to  
23 the south?

24 MS. HEWITT: Correct.

25 HEARING EXAMINER COLLINS: And when you say you're

1 including the parcel to the south, you mean as part of  
2 the development approval, this property owner will have  
3 the responsibility of restoring this segment down here?

4 MS. HEWITT: Yes, as working with Staff, it was  
5 determined -- and it's in one of the conditions, which  
6 is all on the master concept plan, as well, that a  
7 2.92-acre credit phased portion of the upland  
8 indigenous preserve on the south RPD parcel will be  
9 provided before certification of completion of the  
10 development order for this parcel.

11 HEARING EXAMINER COLLINS: What does that mean  
12 though? What's going to happen on those two acres?

13 MS. HEWITT: Those two -- we are going to have to  
14 go in and do --

15 HEARING EXAMINER COLLINS: Remove exotics and --

16 MS. HEWITT: Remove exotics, and whatever the  
17 indigenous management plan comes up with, we're going  
18 to have to do our portion of that preserve and do an  
19 amendment to the development order as part of ours.

20 HEARING EXAMINER COLLINS: And then when the other  
21 parcels within the RPD/CPD come in, they'll address the  
22 remaining areas?

23 MS. HEWITT: That's correct.

24 HEARING EXAMINER COLLINS: Okay.

25 MS. HEWITT: Now, one -- a couple of notes that I

1 just would like to make as far as the existing versus  
2 the -- the existing approval and development orders  
3 with the proposed. While we're increasing the height  
4 by 10 feet, and we are increasing the density, we  
5 really pulled the site further away from the  
6 boundaries. So the existing setbacks are increased  
7 from the north, along the north property line there is  
8 a 20-foot drainage easement, and then we are continuing  
9 to provide a 30-foot enhanced buffer that was  
10 originally required with the development, and then  
11 along the northeast we are providing a 10-foot buffer.

12 Now, in this area, because of the mixed-use  
13 overlay, there's no buffer required, but we're  
14 continuing to provide those enhancements to be good  
15 neighbors.

16 HEARING EXAMINER COLLINS: Is the project  
17 proposing to use any of the site development standards  
18 applicable to the mixed-use overlay?

19 MS. HEWITT: We are updating our property  
20 development regulations to allow them to have that, but  
21 right now we exceed most -- we exceed them.

22 HEARING EXAMINER COLLINS: So when they come in  
23 for development order, can they possibly provide none?

24 MS. HEWITT: It has to be consistent with the  
25 master concept plan but -- the development order would



1 basically say the requirement is none, but we are  
2 providing and exceeding it.

3 HEARING EXAMINER COLLINS: Okay. It's very  
4 confusing.

5 MS. HEWITT: And then we have the -- the request  
6 is consistent with what the mixed-use overlay column in  
7 the Code -- in the Land Development Code is. We  
8 mirrored that for our request. So it's --

9 HEARING EXAMINER COLLINS: So --

10 MS. HEWITT: -- per the Land Development Code.

11 HEARING EXAMINER COLLINS: But when you say that,  
12 you mean that with regard to internal setbacks,  
13 building setbacks, and things like that. You're not  
14 talking about the perimeter because your testimony was  
15 the perimeter exceeds that.

16 MS. HEWITT: Correct -- well, we have to be  
17 consistent with the master concept plan.

18 HEARING EXAMINER COLLINS: So do your property  
19 development regulations reflect this master concept  
20 plan, or are they reflecting the mixed-use overlay?

21 MS. HEWITT: The mixed-use overlay.

22 HEARING EXAMINER COLLINS: Well, I find that very  
23 confusing then. That tells me the master concept plan  
24 could be developed consistent with the property  
25 development regulations, because you have now a

1 conflict. The master concept plan does not match the  
2 property development regulations, but those are listed  
3 as minimums.

4 MS. HEWITT: Then, in that case, we do have the  
5 buffering requirements which still cannot be encroached  
6 upon.

7 HEARING EXAMINER COLLINS: And they're  
8 incorporated into the conditions?

9 MS. HEWITT: That's correct.

10 HEARING EXAMINER COLLINS: Okay.

11 MS. HEWITT: So there's -- nothing can go closer  
12 than the 30-foot enhanced buffer that's along the north  
13 property line, which then has an additional 20-foot  
14 drainage easement. So there's a 50-foot separation  
15 there even if the -- from the buildings. That's in --  
16 where we've got development. Up in the northeast we  
17 have a 10-foot buffer; but it's, again, adjacent to a  
18 20-foot drainage easement, and there's no --

19 HEARING EXAMINER COLLINS: So really the property  
20 development regulations are not the guiding force.  
21 It's the conditions and the master concept plan. And  
22 if the property development regulations mirror what's  
23 permitted in the Land Development Code, you're just  
24 going to reference the Land Development Code there, per  
25 LDC, and not put in actual dimensions?

1 MS. HEWITT: There could be a per LDC mixed-use --  
2 the --

3 HEARING EXAMINER COLLINS: Do you see how this  
4 creates a problem when we're going to development order  
5 stage because you have conflicting documents?

6 MR. DANLEY: I understand what you're saying. We  
7 couldn't reference the LDC because that's referencing a  
8 conventional zoning district. There's no -- there's no  
9 relief to zero feet in the mixed-use overlay for CPDs  
10 just by right. It's not uncommon for the property  
11 development regulations to be less than what's shown on  
12 the master concept plan.

13 HEARING EXAMINER COLLINS: Okay.

14 MR. DANLEY: I think if there's concern over that  
15 northern boundary, I don't think either of us would  
16 have a problem including an additional setback for that  
17 northern boundary. That would provide some of the --  
18 to reduce some of the concern that you have, at least  
19 on that northern boundary.

20 HEARING EXAMINER COLLINS: Right. Because if  
21 we're going to celebrate the fact that they're  
22 providing this, and this is an enhancement to  
23 compatibility, which is an issue because you're  
24 adjacent to, you know, existing development -- even  
25 though you shouldn't really have to buffer residential

1 to residential; but if we're going to celebrate the  
2 fact that you're providing it, then it should be  
3 incorporated into a condition so we can point to  
4 conditions of approval require this enhancement, which  
5 further -- further makes the project compatible with  
6 adjacent development, even though it's residential,  
7 it's different in character, mitigate some of the  
8 height differential or what have you, you know. But  
9 without a condition that becomes too nebulous, in my  
10 opinion.

11 I mean, to amend the master concept plan to make  
12 it consistent with the property development regulations  
13 wouldn't require a public hearing. So we go in  
14 thinking that we're having these enhancements; but at  
15 the end of the day, they don't have to be provided or  
16 can be changed administratively without hearing.

17 MS. HEWITT: Condition 23 is where the buffer  
18 requirements are included for this enhanced Type F  
19 buffer along the north property line west of the lake.  
20 This is Condition 23b. As shown on the master concept  
21 plan, the buffer will be 30 feet wide and include 10  
22 native canopy trees per 100 linear feet and a double  
23 hedgerow planted at 48 inches in height at the time of  
24 the planting.

25 HEARING EXAMINER COLLINS: Very good, thank you.

1 MS. HEWITT: And while we're on the subject, on  
2 the western property, the -- since the original  
3 approval, a portion of the property is now within a  
4 FEMA floodway, and Condition 23a requires that the  
5 development plans must demonstrate the preservation of  
6 native vegetation within the floodway, which will  
7 provide the buffer for that --

8 HEARING EXAMINER COLLINS: And that's represented  
9 by the hash lines, the confines of the --

10 MS. HEWITT: Yes.

11 HEARING EXAMINER COLLINS: -- floodway?

12 MS. HEWITT: Yes.

13 HEARING EXAMINER COLLINS: I see, thank you.

14 So you're basically staying out of that area and  
15 setting it aside for preservation?

16 MS. HEWITT: Yes. There's only -- the reason --  
17 the only reason that the preserve is not the entire  
18 floodway was because of the FLUCCS code south of the --  
19 what's included in the indigenous preserve qualified as  
20 existing native indigenous.

21 HEARING EXAMINER COLLINS: Based on its FLUCCS  
22 code?

23 MS. HEWITT: Correct.

24 HEARING EXAMINER COLLINS: And then outside of  
25 that, it still appears that it's open space; right?

1 Because there's some separation before you get to the  
2 garage and the parking area, it seems.

3 MS. HEWITT: Yes, the property -- and to your  
4 point, the property development regulations don't  
5 require that so -- but, yes, right now the master  
6 concept plan shows that. But the compatibility to the  
7 north and to the west are included in the required  
8 Condition 23a and b, which both exceed the requirements  
9 of the mixed-use overlay.

10 HEARING EXAMINER COLLINS: Thank you.

11 MS. HEWITT: Thank you.

12 This is just a closer-up view of the development.  
13 Let's see. There is also, approved by ADD2019-00181, a  
14 master concept plan that provided an alternate for the  
15 south RPD. This was filed and adopted. It just shows  
16 an alternate to the existing townhomes on the master  
17 con -- that are on the existing master concept plan for  
18 the overall, because the use is allowed -- single  
19 family, duplex, two-family, you know. This just  
20 provided an alternate to show that those other uses are  
21 allowed.

22 The conditions codify all previous approvals.  
23 They remove the commercial uses from the north --  
24 5.43-acre north CPD.

25 And establish the 360 multi-family dwelling units,

1 with the increase of 10 feet in height.

2 Removes Assisted Living Facility uses, dwelling  
3 unit types, except for multi-family and townhomes.

4 And applies mixed-use overlay incentives.

5 The open space, again, as I went over earlier, we  
6 are exceeding those requirements.

7 HEARING EXAMINER COLLINS: And we're going to  
8 continue to look at the project as a whole, north and  
9 south of Diplomat, for the purposes of indigenous and  
10 open space requirements?

11 MS. HEWITT: That's correct.

12 There's -- there are several existing deviations  
13 that are continuing along with the development. We are  
14 requesting amendment of two deviations, Deviations 7  
15 and 8.

16 Deviation 7 originally approved curbside pickup  
17 for the townhome development, and we are requesting to  
18 allow a reduction in the amount of required space  
19 because we do have a compactor. We are requesting a  
20 minimum of 144 square feet for recyclable materials,  
21 and we did receive a recommendation from Solid Waste of  
22 approval for that request.

23 We also are amending Deviation 8. Originally,  
24 this was approved for -- between this north CPD and the  
25 ALF for reduced buffers, and what we are seeking relief

1 for is to allow no buffers within -- within our project  
2 adjacent to internal rights-of-way. I did -- I just  
3 show -- what that's referring to is this darker line  
4 represents a right-of-way, and we did not want to  
5 buffer within basically what is the internal parking  
6 lot. So that's --

7 HEARING EXAMINER COLLINS: So that would mean no  
8 trees or bushes or anything there?

9 MS. HEWITT: Oh, we'll have general landscaping  
10 requirements, but it's more like a parking lot than a  
11 street within a multifamily development. Of course  
12 there will be internal landscaping, in general trees  
13 and -- well, appropriate with the Code, but we didn't  
14 want a required buffer since it's not -- it's internal  
15 to the site.

16 HEARING EXAMINER COLLINS: So do you need a  
17 deviation at all?

18 MS. HEWITT: Well, yes, because of the fact that  
19 right-of-ways (sic) -- the mixed-use overlay allow --  
20 requires buffers in only two instances, if you're  
21 abutting single-family or if you're abutting a  
22 right-of-way, and because of that -- it only requires a  
23 5-foot right-of-way buffer. But just to allow  
24 flexibility of where we put our landscaping, we wanted  
25 to include that with the request, as well as we have



1 back-out parking, which is the next new deviation that  
2 is going to be along that right-of-way, as well. So we  
3 just want some flexibility with where the landscaping  
4 goes.

5 We believe the intent of that is for a site on the  
6 perimeter abutting right-of-way to provide those  
7 buffers; but internal to the site, we did not feel it  
8 was appropriate.

9 We are including two new deviations with the  
10 request:

11 Deviation 9 is to allow back-out parking within  
12 the internal right-of-way. Staff does recommend  
13 approval for this. And it is internal to the site and  
14 functions more like parking lot aisles, and we feel  
15 it's appropriate for the mixed-use overlay, as well.

16 Deviation 10 is for minimum building separation.  
17 This is to allow -- instead of half the sum of the  
18 building height, to allow 20 feet building separation  
19 within the site.

20 Again, we feel that's appropriate for the  
21 mixed-use overlay and urban development regulations.

22 HEARING EXAMINER COLLINS: And the Fire District  
23 was fine with that?

24 MS. HEWITT: Um...

25 HEARING EXAMINER COLLINS: Because these are going

1 to be five-, six-story buildings; right?

2 MS. HEWITT: I believe they're --

3 HEARING EXAMINER COLLINS: 60 feet.

4 MS. HEWITT: Yeah, so -- but -- but that will  
5 be -- that will be reviewed during the time of  
6 development order.

7 We do believe that the existing and proposed  
8 deviations enhance the achievements of the planned  
9 development and continue to protect the public health,  
10 safety, and welfare.

11 HEARING EXAMINER COLLINS: Is the building  
12 separation something that could be requested as an  
13 administrative deviation at the time of development  
14 order?

15 MR. DANLEY: We have done those before in the  
16 past.

17 HEARING EXAMINER COLLINS: Because I feel like  
18 that's premature at this stage, really.

19 MS. HEWITT: I think it's -- especially in this  
20 instance with -- I -- if we could include maybe a  
21 condition that a letter be provided? Because I would  
22 hate to take it out with the contract purchase  
23 situation. It's not the property owner. I would just  
24 hate to have more uncertainty on the table. The site  
25 does utilize this deviation.

1 HEARING EXAMINER COLLINS: Okay.

2 MS. HEWITT: With that, I am going to turn this  
3 over to Christian Casey with Atwell. With the  
4 submittal document of this morning, I did include a  
5 copy of Christian's résumé. He has not previously  
6 testified here, but we do request that he be accepted  
7 as an expert with the Land Development Code, Lee Plan,  
8 and regarding environmental issues.

9 HEARING EXAMINER COLLINS: All right.

10 Christian, were you sworn?

11 MR. CASEY: Yes, ma'am.

12 HEARING EXAMINER COLLINS: Okay. Since you  
13 haven't been qualified as an expert here before, what I  
14 need you to do is give us a brief overview of your  
15 education background and also your work background, and  
16 then, finally, your -- your experience working with the  
17 Lee Plan and Land Development Code specifically. And  
18 then once we go through that, we can qualify you as an  
19 expert, and then you're good to go going forward.

20 MR. CASEY: Sure.

21 MS. HEWITT: The résumés are the last pages of the  
22 packet I gave you --

23 HEARING EXAMINER COLLINS: Okay.

24 MS. HEWITT: -- just for reference, if you need  
25 it.

1 HEARING EXAMINER COLLINS: Christian Casey; right?

2 MR. CASEY: Yes, ma'am.

3 HEARING EXAMINER COLLINS: Do you go by Chris?

4 MR. CASEY: Christian.

5 HEARING EXAMINER COLLINS: Okay. Why don't you  
6 begin with your educational background, then to your  
7 work experience, and then specifically how many  
8 projects you've worked within Lee County on the Land  
9 Development Code and the Lee Plan.

10 MR. CASEY: Sure. So I graduated from FGCU with a  
11 degree in civil engineering and biology, with a  
12 concentration in environmental ecology.

13 I am at Atwell, previously DexBender, going on  
14 five years now. I am an ecologist with them.

15 I have worked on projects in Lee County working on  
16 indigenous plants, doing everything from protected  
17 species assessments, ERP modification and permitting.  
18 Let's see what else. I'm also qualified with FWC for  
19 different tortoise removal processes; eagle monitoring  
20 with the City of Cape Coral; I'm on the Fort Myers  
21 Environmental Advisory Board.

22 I'm trying to just think of different projects in  
23 the area as far as -- do you want names of the projects  
24 or --

25 HEARING EXAMINER COLLINS: Yeah, so how many --

1     how many years have you worked since graduation in this  
2     field?

3             MR. CASEY:   In environmental, five years.

4             HEARING EXAMINER COLLINS:   Okay. All right. You  
5     may proceed.

6             MR. CASEY:   Okay, thank you.

7             The property primarily consists of uplands.  
8     During our survey we did not find any wetlands on-site.  
9     An updated protected species survey was conducted back  
10    in August of 2022. During those surveys no listed  
11    species from either FWS or FWC were found on-site.

12            As far as the environmental goals and objectives  
13    of the Lee Plan, this project with the indigenous  
14    preserves -- you know, if there are any tortoises or  
15    anything like that on-site that we find in the future,  
16    we will move those with FWC. So they do meet all the  
17    requirements of, you know, FWC, Lee Plan, all of those.

18            As far as environmental, that's my slide.

19            HEARING EXAMINER COLLINS:   All right, thank you.

20            MS. HEWITT:   Sam Marshall is also here on surface  
21    water management, and we did submit an updated résumé  
22    since Banks Engineering has merged with Atwell now.

23            Sam?

24            MR. MARSHALL:   Sure.

25            HEARING EXAMINER COLLINS:   Sam, you've been

1 recognized as an expert in this forum before. You will  
2 continue to be recognized as such in the area of civil  
3 engineering. And you're going to review the stormwater  
4 management for the site?

5 MR. MARSHALL: Yes, ma'am --

6 HEARING EXAMINER COLLINS: Okay.

7 MR. MARSHALL: -- thank you.

8 HEARING EXAMINER COLLINS: I look forward to that.

9 MR. MARSHALL: Thank you for covering the first  
10 part of my introduction for me. That was appreciated.

11 Good morning. So a lot of what I'm going to talk  
12 about has already been covered.

13 Miss Stacy, I don't know if I can get back  
14 to the --

15 MS. HEWITT: Certainly.

16 MR. MARSHALL: I'll go through the points here,  
17 and then I'll go back to the site plan.

18 MS. HEWITT: Okay.

19 MR. MARSHALL: As Stacy mentioned, this site has  
20 existing permits. It does have a DO, which means --  
21 the fact that it's got an existing South Florida Water  
22 Management District permit, that permit is good  
23 through, I think, the end of --

24 THE REPORTER: Sam --

25 MR. MARSHALL: -- 2026 --

1 THE REPORTER: -- slow down a little bit, please.

2 MR. MARSHALL: Yes, ma'am, sorry.

3 We will be modifying the South Florida permit to  
4 match the new site plan, if approved.

5 As noted on the -- on the slide, issuance of the  
6 ERP ensures that surface and groundwater quality won't  
7 be adversely impacted, and I can cover that in a little  
8 bit more detail, too.

9 The proposed plan does remove development from the  
10 FEMA floodway. The existing permits have development  
11 and fill basically right up to the canal. We've pulled  
12 that back -- as Stacy mentioned earlier, too, with our  
13 increased setbacks, we pulled it back from the -- from  
14 the floodway. That's -- that's no fill at all in the  
15 floodway.

16 Additionally, just some points for the new -- for  
17 the new site plan and the new proposed water management  
18 plan. There's going to be no reduction to the  
19 stormwater storage. You can see there's a large pond  
20 to the east/northeast. We're going to continue to  
21 propose and utilize that. There's going to be no  
22 significant changes to the stormwater discharge. It  
23 will not be increased. We're proposing basically the  
24 same stormwater discharge that exists today in the --

25 HEARING EXAMINER COLLINS: So will this large lake

1 support all the development of the commercial parcels  
2 on Diplomat Parkway, too? Is it designed to do that,  
3 or --

4 MR. MARSHALL: It will --

5 HEARING EXAMINER COLLINS: -- it will not connect  
6 it?

7 MR. MARSHALL: -- it will support -- yes, it will  
8 support them. It will support biometrically the -- and  
9 I'm talking specifically about parcels 1 and 2. It's  
10 going to be the outfall for all of the commercial  
11 parcels along Diplomat Parkway. As part of the water  
12 management permit, it's going to provide volumetric and  
13 some water treatment for parcels 1 and 2.

14 The other parcel, parcel 3 as shown on that plan,  
15 will be responsible to do its own pretreatment water  
16 quality, and it will -- it will have some detention on  
17 its site, but we will provide the outfalls. We're  
18 going to provide stubs for that parcel to connect into  
19 that will route through.

20 And we don't know what's exactly proposed on those  
21 parcels, but we are going to provide a route through  
22 consistent with the existing permit.

23 HEARING EXAMINER COLLINS: Okay. So walk me  
24 through how this works. The water is going to hit the  
25 impervious areas; it's going to be channeled to dry



1 detention -- show me where that is -- and then outfall  
2 into this lake?

3 MR. MARSHALL: Right. So for the proposed  
4 multi-family, there's no -- no dry detention proposed.  
5 So the commercial parcels will provide dry detention  
6 and pretreatment. And that will flow -- we've got  
7 structures that are here and here and for this road,  
8 and they will basically be channeled through pipes to  
9 the lake. So everything in here, everything in the  
10 development area is going to be channeled to the lake.

11 HEARING EXAMINER COLLINS: And that's like curb  
12 and gutter there?

13 MR. MARSHALL: Yes, curb and gutter pipes,  
14 correct, inlets.

15 HEARING EXAMINER COLLINS: All right. So now the  
16 lake rises up --

17 MR. MARSHALL: Correct.

18 HEARING EXAMINER COLLINS: -- and where does it  
19 outfall?

20 MR. MARSHALL: So there is one pipe that will come  
21 from the corner of the lake to the south edge of the  
22 parcel -- it could really be anywhere on the parcel,  
23 but we've got it proposed on the south edge of the  
24 parcel, and goes all the way through here and basically  
25 ties into the ditch on the west side.

1 HEARING EXAMINER COLLINS: And that will be a  
2 pipe?

3 MR. MARSHALL: Yes, that's correct. And that  
4 ditch flows north to south, exists today. And, again,  
5 the existing permit proposes fill and allows fill up to  
6 basically this line right here. Our current plan, as  
7 you can see -- this is the floodway line that Stacy  
8 referenced, and we're set back even further from that,  
9 that floodway line. So we're -- we're increasing the  
10 setback. It will increase -- I mean, you get some  
11 storage out of that in the floodway, which is good. It  
12 also allows more of a flow cross section. So it will  
13 help improve flow on there, as well, so it's going to  
14 be an improved system over what's permitted today.

15 HEARING EXAMINER COLLINS: Thank you.

16 MR. MARSHALL: Yeah, you're welcome.

17 Also, no decrease in water quality, as well.

18 We do have to go through permitting. Permitting  
19 has changed a little bit with South Florida so there  
20 are probably some nutrient removal calculations that  
21 we're going to do that will probably -- we may  
22 incorporate swales, or we may incorporate exfiltration  
23 trenches, things like that. I don't know yet. We  
24 haven't gotten that far into design. So I suspect in  
25 the permit modification process, we're going to have a

1 couple of additional water quality nutrient removal  
2 features on the site.

3 The lake itself is a large part of that. With the  
4 depth of the lake, it does allow a lot of nutrient  
5 removal to occur, but we may end up incorporating small  
6 swales -- I don't want to say we're not. I don't know  
7 yet. We haven't gotten that far in design.

8 One important thing --

9 HEARING EXAMINER COLLINS: And that will come into  
10 play during the permit mod?

11 MR. MARSHALL: Yes, it will, yeah.

12 The older permits, there was not as much of a  
13 focus on nitrate and phosphate removal. There's  
14 less -- and this permit goes back a ways. I think it  
15 was -- I think 2000 and -- it's before 2010.

16 HEARING EXAMINER COLLINS: Okay.

17 MR. MARSHALL: That was not as much of a focus  
18 back then. It was presumed that if you built the  
19 lakes, it would treat -- now it's more of a let's make  
20 sure -- let's quantify it and make sure we're doing it.  
21 So there's a little bit more calculation involved now.

22 One important thing that we're going to continue  
23 to do with the site -- and I know we've got some  
24 neighbors here today. We had a chat beforehand. There  
25 is an existing swale along the north edge that conveys

1 water from the north, allows it to convey to the ditch.  
2 That swale is going to remain. We're proposing that it  
3 stays in. It's going to be outside of our drainage  
4 system -- again, kind of our being good neighbors.  
5 It's in the permit today to be outside the drainage  
6 system and to allow flow to hit the swale and go to the  
7 drainage ditch. It will be preserved in the -- in the  
8 proposed system. So that will not be taken away.

9 HEARING EXAMINER COLLINS: So you're not utilizing  
10 that part as part of your plan?

11 MR. MARSHALL: No -- correct, our drainage is not  
12 flowing to it. It's just going to allow drainage from  
13 the north to continue to flow --

14 HEARING EXAMINER COLLINS: So they'll see no  
15 impacts. They can drain to that swale, as they have in  
16 the past. As long as they maintain it, everything will  
17 continue to work as it has.

18 MR. MARSHALL: That's -- that's correct. That's  
19 correct.

20 So we are going to maintain that swale, and its  
21 purpose will be maintained, and it will get to continue  
22 to drain to the south. So we're preserving the  
23 existing --

24 HEARING EXAMINER COLLINS: So it's on your  
25 property so you'll be maintaining it?

1 MR. MARSHALL: It is, and there's a drainage  
2 easement there, as well. And I don't have a copy of  
3 the easement in front of me. I don't know who it's  
4 dedicated to. But -- but, again, the purpose of it is  
5 to collect water from the north -- to continue to  
6 collect water from the north and outflow, as it does  
7 today, to the west through the ditch.

8 We're not going to control it. Whatever water  
9 management system they have, whatever rate they flow to  
10 it, that's really up to them with their permit, but the  
11 ditch will remain on our property.

12 HEARING EXAMINER COLLINS: Thank you.

13 MR. MARSHALL: Yeah, you're welcome.

14 MS. WORKMAN: (Indicating.)

15 HEARING EXAMINER COLLINS: Question?

16 MS. WORKMAN: I have a question. For the record,  
17 Beth Workman.

18 The drainage easement that you talk about, is  
19 it -- do you know how wide -- because we have a  
20 condition about the enhanced buffer up there.

21 MR. MARSHALL: Um...

22 MS. WORKMAN: And I just ask this because it's not  
23 shown on the MCP --

24 MR. MARSHALL: Right. I've got --

25 MS. WORKMAN: -- the width of it. I just --

1 something to grow on because you've got -- I think it's  
2 an F buffer, which is 30 feet wide.

3 MR. MARSHALL: Right. And I think the ditch --  
4 (unintelligible) -- sort of part of that --

5 MS. WORKMAN: Okay.

6 MR. MARSHALL: -- buffer. I know we'll keep the  
7 planting zone out of the buffer. We'll be conscious of  
8 where the vegetation is planted so that we don't block  
9 the flow of the ditch.

10 MS. WORKMAN: Okay. I just don't want to  
11 condition an enhancement if we're not able to enhance  
12 because it's 30 feet wide.

13 MR. MARSHALL: Right.

14 HEARING EXAMINER COLLINS: Isn't it customary to  
15 show the buffer on the master concept plan?

16 MS. WORKMAN: The easement, yes.

17 HEARING EXAMINER COLLINS: The easement only, not  
18 the plan buffer --

19 MS. WORKMAN: Yes, but if we -- if it's a 30-foot  
20 Type F buffer enhancement per the condition that we  
21 have in the zoning, and it's a 30-foot-wide drainage  
22 easement, we have a code section that you can't deviate  
23 or vary from -- that says you can't plant any required  
24 plants in any easement.

25 HEARING EXAMINER COLLINS: So that enhanced buffer

1 would have to be outside that easement.

2 MS. WORKMAN: At least half of it, yeah.

3 HEARING EXAMINER COLLINS: All going back to  
4 shouldn't that be shown on the master concept plan?

5 MS. WORKMAN: The easement should, yes.

6 MS. HEWITT: If I may, earlier we were discussing  
7 there's the -- right now there's the 20-foot drainage  
8 easement, and we're showing the 30-foot buffer --

9 MS. WORKMAN: Okay.

10 MS. HEWITT: -- south of that --

11 MS. WORKMAN: Okay.

12 MS. HEWITT: -- so there's 50 feet total.

13 MS. WORKMAN: Because we don't want plants. If  
14 you want it to convey, you don't want to put plants  
15 within that drain -- even though you're maintaining it  
16 on-site, the owner is. I just wanted to make sure that  
17 was clear --

18 MS. HEWITT: Thank you.

19 MS. WORKMAN: -- for the enhancement.

20 HEARING EXAMINER COLLINS: Stacy, your testimony  
21 is that the master concept plan does show the 30-foot  
22 buffer?

23 MS. HEWITT: Plus the 30-foot buffer.

24 MS. WORKMAN: What I'm concerned about is the  
25 easement width. It says -- it says a Type F buffer, I

1 got that, it's 30 feet; but what is the easement in  
2 there that's remaining -- the ditch that's remaining to  
3 serve the people to the north?

4 HEARING EXAMINER COLLINS: Well, it looks like  
5 there's a hash mark perhaps depicting the drainage  
6 easement.

7 MS. WORKMAN: Okay. Just as long as we're aware  
8 of that, and that, you know, we can plant outside of it  
9 and still get that --

10 MR. MARSHALL: Right.

11 MS. WORKMAN: -- enhancement.

12 MR. MARSHALL: Yeah.

13 MS. WORKMAN: Otherwise we have a condition that  
14 doesn't do anything.

15 MS. HEWITT: Thank you, Beth. I appreciate --

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

17 MS. HEWITT: Thank you.

18 HEARING EXAMINER COLLINS: Anything else, Sam?

19 MR. MARSHALL: No, ma'am.

20 HEARING EXAMINER COLLINS: Thank you.

21 So this master concept plan replaces all the other  
22 ones, and the date of it is going to be June 25th;  
23 correct?

24 MS. HEWITT: Correct.

25 HEARING EXAMINER COLLINS: Ted, good morning.



1 MR. TREESH: Good morning, Ted Treesh with TR  
2 Transportation Consultants. We conducted the traffic  
3 analysis as part of this application.

4 The changes, again, as Stacy indicated, in terms  
5 of traffic relate just simply to the north side, and  
6 it's a reduction in terms of traffic because we're  
7 eliminating the 50,000 square feet of retail uses. So  
8 it results in an 85 percent reduction in the p.m. peak  
9 hour trip generation for the overall project. The  
10 request -- we're reducing the request from the 238  
11 multi-family and the 50,000 square feet on the north  
12 parcel, and requesting the 360 multi-family units,  
13 again, along the north parcel.

14 At Staff's request, because it's all one project,  
15 we did look and include the uses from the south parcel,  
16 so the traffic study does analyze the entire project.

17 Our analysis indicated that the surrounding  
18 roadways will operate at an acceptable level of service  
19 at the projected build-out.

20 Diplomat Parkway is a City of Cape Coral roadway,  
21 so permitting for access will be through the City of  
22 Cape Coral at the time of permitting. As included in  
23 the Staff Report --

24 HEARING EXAMINER COLLINS: Is a condition in there  
25 about potential participation in an intersection

1 improvement? Does that pertain to the US 41  
2 intersection?

3 MR. TREESH: Yes.

4 HEARING EXAMINER COLLINS: What's the status of  
5 that? Did it already occur?

6 (Discussion at lectern)

7 HEARING EXAMINER COLLINS: I'm just wondering how  
8 we're going to enforce that now. If it's a City road  
9 and a State highway, I'm not sure where the County gets  
10 a seat at the table anymore with regard to that  
11 condition. Is there any independent agreement with the  
12 City of Cape Coral?

13 MS. HEWITT: Stacy Hewitt for the record.

14 Applicant did propose to strike it because of that  
15 reason, and there was some hesitation so we revised the  
16 language to say if required by the City of Cape Coral  
17 or the Florida Department of Transportation.

18 MR. TREESH: Right, we added the words "if  
19 requested by the Florida Department of Transportation  
20 or the City of Cape Coral" in the language that's  
21 proposed. Because you're correct, there's no --  
22 there's no permitting actually to access through Lee  
23 County.

24 HEARING EXAMINER COLLINS: I'm just wondering, is  
25 this intended to be a permitting bar within the County?

1 If they fail to participate in this agreement, how  
2 would we know? I'm averse to keeping conditions that  
3 we're not able to enforce so let me think on that.

4 Thank you --

5 MR. TREESH: Thank you.

6 HEARING EXAMINER COLLINS: -- for the  
7 clarification.

8 MR. TREESH: Then this last --

9 HEARING EXAMINER COLLINS: They took over the  
10 whole -- they took over the whole road, even the part  
11 that is bordered by Lee County?

12 MR. TREESH: Yes.

13 HEARING EXAMINER COLLINS: Yeah.

14 MR. TREESH: All the way up to the 41  
15 intersection.

16 And the last comment that -- from a transportation  
17 perspective, we're consistent with the Lee Plan and the  
18 Land Development Code --

19 HEARING EXAMINER COLLINS: And that intersection  
20 functions fine not signalized?

21 MR. TREESH: Well, there are -- there are issues  
22 with the intersection. The Florida Department of  
23 Transportation has studied it. But because of the  
24 location of the signal at Merchants Crossing further to  
25 the south, the signal spacing is too close. So FDOT

1 has looked at it for a number of years. There have  
2 been a number of different studies of how --

3 HEARING EXAMINER COLLINS: It seems like they  
4 should relocate it to Diplomat and then funnel the  
5 multi-family in Merchants Crossing out to Diplomat to  
6 go --

7 MR. TREESH: There have been studies and  
8 discussions about that, but FDOT has yet to do anything  
9 about it at this point.

10 HEARING EXAMINER COLLINS: All right, thank you.

11 MR. TREESH: Uh-huh.

12 MS. HEWITT: For the record, Stacy Hewitt.

13 The request does meet the findings and review  
14 criteria of the Land Development Code. The project  
15 does comply with the Lee Plan, as outlined in the Staff  
16 Report and the attachments.

17 It's consistent with Policy 1.1.3 for Central  
18 Urban.

19 Objectives 2.1, Policy 2.1.1 on development  
20 location.

21 Objective 2.2, Policy 2.2.1 on development timing.

22 It also is consistent with Goal 5 and Objective  
23 5.1, Policies 5.1.2, 5.1.3, 5.1.5, 5.1.6, and 5.1.7 on  
24 residential uses. And there's no development or fill  
25 within the floodway. It is near employment, shopping

1 centers, parks, schools, mass transit, and bicycle  
2 facilities; and provides on-site open space and  
3 recreation area; and it does remain compatible with the  
4 surrounding properties.

5 The existing commercial uses continue to be  
6 consistent with Goal 6 and the commercial policies.

7 It's also consistent with the mixed-use overlay  
8 policies, Objectives 11.1 and 11.2, Policies 11.2.2,  
9 11.2.5, and 11.2.7. It is appropriate for a mixed-use  
10 development where existing infrastructure exists.

11 There's connections with the commercial parcels, and  
12 the requested revisions provide an appropriate urban  
13 forum and utilize nonresidential area for density.

14 It's also consistent with North Fort Myers Goal  
15 30, Policy 30.1.3. It is infill, compact, mixed-use  
16 development with residential adjacent to commercial  
17 where uses have been approved for development since  
18 2006.

19 It's consistent with the water quality, Goal 125,  
20 Objective 125.1, Policies 125.1.1 and 125.1.3. And as  
21 testified, there's existing South Florida and  
22 development order approvals, and the issuance of the  
23 ERP will ensure that surface and groundwater quality  
24 won't be adversely impacted.

25 It's also consistent with Goal 135, Objective

1 135.1, Policy 135.1.9, on meeting housing needs. It  
2 does provide for the alternate of either townhouse or  
3 multi-family development and appropriate density to  
4 assist with meeting the housing needs of the County.

5 And it's also consistent with Goal 158, mixed-use  
6 infill development assisting with diversified and  
7 stable economy by providing employment and --  
8 opportunities for the County, as well, on the  
9 commercial parcels.

10 The request does meet the Code and other  
11 applicable regulations or qualifies for deviations.

12 We did hold a public information meeting within  
13 the North Fort Myers Community Planning area, but no  
14 one attended. And we -- that's part of the Staff  
15 Report, as well.

16 And it does qualify for the existing revised and  
17 proposed deviations.

18 It is compatible with existing and planned uses in  
19 the surrounding area.

20 And will provide access sufficient to support the  
21 proposed development intensity. Again, the request  
22 results in a reduction of trips.

23 The expected impacts on transportation facilities  
24 will be addressed by existing County regulations and  
25 conditions of approval. We must get permitting with

1 the appropriate authorities. And the Applicant and  
2 Staff do agree that the request will not have a  
3 detrimental impact on the roadway network in the area.

4 It will not adversely affect environmentally  
5 critical or sensitive areas and natural resources.  
6 Again, we are providing additional indigenous  
7 preservation above the requirements, and it's also  
8 served by urban services. It's within a future urban  
9 area with adequate urban services previously outlined.

10 The proposed mix of uses is appropriate at the  
11 proposed location.

12 And the conditions provide sufficient safeguards  
13 to the public interest and are reasonably related to  
14 the impacts of the request.

15 And the deviations do enhance the achievement of  
16 the objectives of the planned development.

17 And protects the public health, safety, and  
18 welfare.

19 And that concludes my presentation.

20 HEARING EXAMINER COLLINS: Okay, I have a  
21 question.

22 MS. HEWITT: Of course.

23 HEARING EXAMINER COLLINS: The request is for 360  
24 units. Your master concept plan shows way more detail  
25 than I think is required by the Code, which is fine.

1 You're showing 36 buildings. That's 10 units per  
2 building, and you're asking for 60 feet.

3 MS. HEWITT: I think you're looking at the  
4 existing master concept plan.

5 HEARING EXAMINER COLLINS: This is the existing?

6 MS. HEWITT: From 2007, the overall --

7 HEARING EXAMINER COLLINS: I'm looking at the  
8 wrong page?

9 MS. HEWITT: Page 2 is --

10 HEARING EXAMINER COLLINS: I see, yes, so 13  
11 buildings?

12 MS. HEWITT: Yes.

13 HEARING EXAMINER COLLINS: All right. Now it's  
14 making more sense.

15 All right. And can we just talk about your  
16 stabilized emergency access? That's part of the  
17 request. It was tied to a deviation, was it?

18 MS. HEWITT: Yes, it's tied --

19 HEARING EXAMINER COLLINS: An existing deviation?

20 MS. HEWITT: -- to one of the existing deviations,  
21 and it's proposed to remain. Let me see which one that  
22 was.

23 HEARING EXAMINER COLLINS: So the plan is for that  
24 emergency access to align with the access to the south?

25 MS. HEWITT: That's correct.



1 HEARING EXAMINER COLLINS: But it won't really  
2 appear to be an entrance or an exit, you know. It will  
3 just be stabilized and usable for that purpose; right?

4 MS. HEWITT: Correct.

5 HEARING EXAMINER COLLINS: It's going to be gated?  
6 What's it going to look like in terms of access by  
7 emergency vehicles?

8 MS. HEWITT: I'll ask Sam to --

9 HEARING EXAMINER COLLINS: Thanks.

10 MS. HEWITT: -- address that, thank you.

11 MR. MARSHALL: We're -- we're still working on the  
12 engineering design, but preliminarily we're proposing a  
13 gate at the -- at the roundabout on the east end where  
14 it connects in. So where our pavement begins, we're  
15 proposing a gate there. Obviously the fire department  
16 would have either a -- their --

17 HEARING EXAMINER COLLINS: Universal access?

18 MR. MARSHALL: -- clicker -- yeah, yeah. Or if  
19 there's a lock, they'd have a key to the lock. It  
20 would be their lock. So we're proposing that they --  
21 that the fire department is the only -- you know, only  
22 persons to have access right now.

23 HEARING EXAMINER COLLINS: Okay, thank you.

24 MR. MARSHALL: You're welcome.

25 HEARING EXAMINER COLLINS: Okay, thank you. I'm

1 going to take a 10-minute break; and then when we come  
2 back, we will begin with Applicant's (sic)  
3 presentation. Thank you.

4 (Recess from 10:12 to 10:20 a.m.)

5 HEARING EXAMINER COLLINS: Good morning, we're  
6 back on the record.

7 We're going to start with Staff's presentation,  
8 then we will have public; and when we come back to the  
9 parties, I'd like to walk through the conditions  
10 together.

11 (Staff Exhibit 2 submitted.)

12 HEARING EXAMINER COLLINS: Thank you. Staff's  
13 PowerPoint will be Staff Exhibit 2.

14 Thank you, I'm ready to begin.

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

20 HEARING EXAMINER COLLINS: (Nods head.)

21 MR. DANLEY: Before we get started, I did want to  
22 discuss some of the things that were discussed where  
23 the Applicant was just provided additional  
24 clarification from Staff, the first of which is the  
25 discussion about CPD versus RPD. It's -- in Staff's

1 opinion, the function of the land will be the same. If  
2 it's the Hearing Examiner's preference, reverting that  
3 property back to RPD wouldn't change the function of  
4 the property, and we would be in support of that moving  
5 forward. And we can provide you whatever additional  
6 information you need to help make that clarification on  
7 your end.

8 That said, the legal description that was provided  
9 with the Staff Report is a fully functioning legal  
10 description, assuming that that RPD -- or that CPD  
11 portion reverts back to RPD. Because there was some  
12 murkiness in the Z-11 case, that there was a legal  
13 description for the CPD, it was (unintelligible) in our  
14 system. It functioned in the conditions as a CPD  
15 because it had commercial uses, but the approved  
16 resolution didn't have it mapped in their legal --  
17 legal description.

18 HEARING EXAMINER COLLINS: It's complicated though  
19 because you've got the existing development order,  
20 right, that leaves that part out; correct?

21 MR. DANLEY: Um, I don't -- I don't think it does.  
22 I think -- I think it includes it.

23 HEARING EXAMINER COLLINS: It includes it?

24 MR. DANLEY: Uh-huh, because it's gone through a  
25 handful of administrative approvals since then.

1 HEARING EXAMINER COLLINS: I'm trying to clean it  
2 up --

3 MR. DANLEY: Correct.

4 HEARING EXAMINER COLLINS: -- because I feel like  
5 there's a lot of loose strings here.

6 MR. DANLEY: Yeah, I think you would find that the  
7 Applicant and Staff both agree with that. So anything  
8 that we can do to help move that process into a  
9 cleaner --

10 HEARING EXAMINER COLLINS: My only concern at this  
11 point is we have a property owner and a contract  
12 purchaser. So I'm not sure the property owner -- if  
13 the sale doesn't go through, how are they going to feel  
14 about that reverting to the RPD?

15 MR. DANLEY: My understanding is that the CPD  
16 right now has residential uses on -- in the DO --

17 HEARING EXAMINER COLLINS: Okay, thank you.

18 MR. DANLEY: -- and so moving forward I don't  
19 think there would be a particular issue with the  
20 Applicant reverting that piece back to residential.

21 MS. HEWITT: If I -- Stacy Hewitt, for the record.  
22 I just was -- it just came to me that the existing  
23 DO is for townhomes, and I believe the Land Development  
24 Code only allows multi-family. Does that include  
25 townhomes, in a commercial planned development?

1 MR. DANLEY: The definition of a townhome gets a  
2 little murky with multi-family depending on ownership  
3 and how the lots and everything is chopped up. So it  
4 may be functioning as a townhome product but still be  
5 consistent with multi-family --

6 MS. HEWITT: My concern is just -- I didn't think  
7 of that till now, that if the old DO ends up happening,  
8 is there a problem with that remaining CPD because it's  
9 townhomes? And I believe they're fee simple.

10 MR. DANLEY: I don't -- I don't believe so, but  
11 that being said, it probably adds more fuel to the  
12 potential of just reverting --

13 HEARING EXAMINER COLLINS: The RPD --

14 MR. DANLEY: -- back to RPD on that end.

15 HEARING EXAMINER COLLINS: I think it's cleaner if  
16 it's an RPD, and it's very simple -- I mean, we're not  
17 changing the overall development entitlements, per se,  
18 and what was --

19 MR. DANLEY: Correct.

20 HEARING EXAMINER COLLINS: -- contemplated in this  
21 DO.

22 MR. DANLEY: Correct.

23 HEARING EXAMINER COLLINS: It's not like they  
24 contemplated commercial, and now we're foreclosing  
25 that.

1 MR. DANLEY: Correct.

2 HEARING EXAMINER COLLINS: It was not planned for  
3 that.

4 MR. DANLEY: Correct.

5 HEARING EXAMINER COLLINS: Potentially in conflict  
6 with the Code, it's murky. I guess we've got to figure  
7 out what we're going to do with townhomes somewhere  
8 along the line but...

9 All right, let's proceed.

10 MR. DANLEY: Okay. I just wanted to add in --  
11 like I said, I think the legal that we have today would  
12 assume residential planned development for that whole  
13 tract, including the north RPD and CPD.

14 HEARING EXAMINER COLLINS: Would that affect the  
15 master concept plan?

16 MR. DANLEY: The way it's designed right now, I  
17 don't believe so.

18 HEARING EXAMINER COLLINS: Okay.

19 MR. DANLEY: That said, I wanted to add, too,  
20 there was a discussion on the deviation for the  
21 building separation, the 20 feet or half the height,  
22 whatever is greater. The property is in the mixed-use  
23 overlay. Conventional districts that allow for  
24 multi-family uses, including the RM districts and the  
25 C-1, C-2 districts, would allow for height with no

1 required building separation. It would just defer back  
2 to the Building Code.

3 The Applicant's request is basically to allow  
4 additional flexibility to facilitate the same type of  
5 development that a conventional district would allow in  
6 the mixed-use overlay, and that's why Staff did  
7 recommend approval, and we didn't even require the  
8 additional fire letter, because that wouldn't have been  
9 required in the conventional district.

10 HEARING EXAMINER COLLINS: Thank you for that  
11 clarification.

12 MR. DANLEY: Okay. I just wanted to add one more  
13 little detail, and we'll go through the conditions  
14 later, as I understand.

15 There was, as we've stated, some murkiness in the  
16 zoning history. In that Z-11 case, there were property  
17 development regulations that weren't pulled forward  
18 from an ADD, the previous ADD2007. So in the  
19 Applicant's conditions that they provided you, those  
20 are corrected. And our understanding is that kind of  
21 the mosaic of changes that the Applicant's provided  
22 you, plus the clean version, does correct -- correctly  
23 reflect all the changes from the beginning of this.

24 HEARING EXAMINER COLLINS: All right. So you've  
25 confirmed that --

1 MR. DANLEY: Correct.

2 HEARING EXAMINER COLLINS: -- everything is pulled  
3 in --

4 MR. DANLEY: Correct.

5 HEARING EXAMINER COLLINS: -- and the color-coded  
6 version is the guide to what came from where.

7 Thank you, this must have been a yeoman's task.

8 And I knew something was amiss when I started to  
9 prepare the development history of this for my own  
10 understanding, and I could see there were some  
11 incongruities -- and that's inevitable when you've got  
12 a project approved so long ago. It's undergone a lot  
13 of changes. So thank you, I appreciate you looking  
14 further into that, and now this codified resolution  
15 will be very useful to everyone, and we can rely on it  
16 going forward.

17 MS. HEWITT: Yes, thank you.

18 HEARING EXAMINER COLLINS: Thank you.

19 MR. DANLEY: So all of that said, there will be  
20 some things in this presentation that refer to that  
21 north CPD. We're just going to pretend or assume  
22 moving forward that that will be an RPD at the end of  
23 all this, but I just wanted to make sure that was on  
24 the record before we got going.

25 There is a request, as the Applicant stated, to



1 allow 360 multi-family dwellings on that northern  
2 tract, both in the RPD and the northern CPD tracts.

3 Overall, there's still a residential development  
4 intense -- or residential development density  
5 considered for the southern RPD, and the Applicant  
6 seeks to retain the commercial intensity for the entire  
7 project.

8 HEARING EXAMINER COLLINS: All right. So this is  
9 an amendment to the overall RPD/CPD, with a focus on  
10 this 35-acre parcel to the north.

11 MR. DANLEY: Yes.

12 HEARING EXAMINER COLLINS: But this resolution is  
13 going to continue to apply to the entire project.

14 MR. DANLEY: Correct.

15 I wanted to put a little bit on the record, too.  
16 We've clarified -- or confirmed the construction that  
17 you saw during your site visit was specific to the  
18 Merchants Crossing CPD. The RPD to the south does not  
19 have -- from my understanding, it doesn't have any  
20 active construction on it at this time.

21 HEARING EXAMINER COLLINS: Okay. So what I saw  
22 then was not -- boy, I could have sworn there was  
23 construction there, but okay. I probably came down  
24 that road, and I was looking at --

25 MR. DANLEY: That's our understanding as it is

1 today.

2 HEARING EXAMINER COLLINS: Yeah.

3 MR. DANLEY: But -- so moving forward, there will  
4 be 1, 2, this CPD tract, and this CPD tract, as well.

5 HEARING EXAMINER COLLINS: So it continues to be  
6 four commercial --

7 MR. DANLEY: Correct.

8 HEARING EXAMINER COLLINS: -- parcels fronting on  
9 either Diplomat or 41 or both.

10 MR. DANLEY: Correct.

11 And then there's two -- two separate and distinct  
12 RPDs: RPD 1, which is what the Applicant is working  
13 with, then RPD 2 to the south.

14 The property is in the mixed-use overlay, as the  
15 Applicant stated. The approach that we took with the  
16 conditions was to incorporate those changes to the  
17 mixed-use overlay and to the resolution. It is in the  
18 Central Urban Land Use category and is in the North  
19 Fort Myers Community Plan area.

20 Did you have questions?

21 HEARING EXAMINER COLLINS: So this property to the  
22 east, the RPD to the east is a recent --

23 MR. DANLEY: Right.

24 HEARING EXAMINER COLLINS: -- rezoning, if I  
25 recall, and that is also for a multi-family

1 development; am I right?

2 MR. DANLEY: Correct, correct. I believe the  
3 Applicant is MIVO; and, yes, in the past couple of  
4 years it's been approved.

5 So the Applicant has gone through this, but just  
6 to rearticulate. This is the approved MCP, and  
7 alternate 1 and alternate 2 are for the north and the  
8 south pieces of the property. I won't belabor the  
9 point because we've gone through it.

10 Just to kind of superimpose the project onto the  
11 aerial, this is what the proposed development plan  
12 generally looks like, just to conceptualize it a little  
13 bit. The Applicant's gone through the separation --  
14 it's not quite a straight line here, but there is going  
15 to be a notable separation between the 60-foot-tall  
16 buildings proposed and the residential uses to the  
17 north, and the same goes for the residential use to the  
18 west.

19 We've been talking about the history at length.  
20 Applicant and Staff are of the opinion the proposed  
21 conditions provided by the Applicant do reflect all the  
22 changes from the past and moving forward with the  
23 amendment today.

24 We've gone through the decision-making criteria.  
25 We'll go through those a little bit more as we discuss

1 the Lee Plan, but we do find that this request overall  
2 is meeting those criteria.

3 We've talked about the property being in the  
4 Central Urban Future Land Use category. Commercial,  
5 light industrial, residential uses are all considered  
6 for this category. No industrial uses are considered  
7 at this time, but the residential uses here and here,  
8 along with the commercial uses along Diplomat and 41,  
9 are both consistent with the category. Although this  
10 amendment is really focused on here, as we've been  
11 discussing, the whole PD has to function at the end of  
12 this amendment. So we do find that it is consistent  
13 with this policy.

14 This is in an urban area -- sorry. This is in an  
15 urban area, and we do find that it meets the  
16 requirements of Objectives of 2.1 and 2.2.

17 This is -- we do find it's consistent with Goal 5,  
18 as the Applicant stated. The property development  
19 regulations are characteristics of the mixed-use  
20 overlay, and there are residential uses to the north  
21 and west; but with the additional separations, just by  
22 site design, we do find that they're consistent with  
23 Policy 5.1.5.

24 Although commercial uses weren't really discussed  
25 as part of this application, there are functioning

1 commercial uses within the planned development.

2 Overall we do find them to be consistent with those  
3 criteria still.

4 The Applicant did discuss the water quality, the  
5 water -- surface water management plan for the  
6 property. We do find that they're consistent with Goal  
7 125.

8 Goal 135 is there to ensure a mix of housing  
9 within the area. The multi-family uses that we  
10 discussed, both MIVO to the east and then what's being  
11 proposed by the Applicant here on this property, do  
12 introduce additional multi-family in the area where  
13 it's predominantly single-family and mobile home  
14 community. And that's what the -- also the  
15 multi-family use within Merchants Crossing.

16 And then just moving forward, the PD globally does  
17 help expand a healthy business climate within Lee  
18 County and in this area.

19 There was a public information meeting. They did  
20 meet those requirements within the Staff Report.

21 We did talk about the deviations. Deviations 7  
22 and 8 were amended just to include the proposed  
23 development plan. The Applicant did go -- did discuss  
24 that at length in their presentation, and we are  
25 recommending approval of Deviations 9 and 10.

1 We did talk about the building separation, and  
2 we're here with any questions that you may have about  
3 that.

4 HEARING EXAMINER COLLINS: Yeah, I'm requesting a  
5 Word copy of the clean set of conditions and  
6 deviations, if you don't mind. That will help me in  
7 preparing my recommendation. You can send that to me  
8 post hearing.

9 MR. DANLEY: Of course.

10 HEARING EXAMINER COLLINS: Thank you.

11 MR. DANLEY: And with that, we do recommend  
12 approval. We do find that this case does meet the  
13 criteria for rezonings and for amendments to planned  
14 developments, and we're here for any questions you may  
15 have.

16 HEARING EXAMINER COLLINS: Well, I just want to  
17 make an observation. I think that this land being  
18 designated in the mixed-use overlay, and it being  
19 adjacent to these two mobile home communities, I had a  
20 concern regarding -- not so much residential against  
21 residential, but we're talking about a marked increase  
22 in intensity on this site versus its two adjacent  
23 sites. But between the floodway protection area and  
24 this enhanced 30-foot buffer outside the drainageway on  
25 the north side, I think that sufficient transition has

1     been established between the intensity of the mixed-use  
2     overlay and the adjacent development pattern.   Would  
3     you agree with that?

4           MR. DANLEY:   Yes, absolutely.

5           HEARING EXAMINER COLLINS:   Thank you.

6           All right.   Now I'm going to open up the floor to  
7     members of the public that wish to put remarks on the  
8     record.

9           Okay.   I've got two on one -- oh, no, here we go.  
10    Brandon George?

11          MR. VATALARO:   I'm Ryan Vatalaro.   I should be on  
12    the first one --

13          HEARING EXAMINER COLLINS:   Ryan Vatalaro, okay.  
14    I'm going to cross out Brandon since he's got his own.

15          MR. VATALARO:   Yes.

16          HEARING EXAMINER COLLINS:   Good morning, thank you  
17    for coming.

18          MR. VATALARO:   Thank you for having me.   My name  
19    is Ryan Vatalaro.   That's V-A-T-A-L-A-R-O.   I'm with  
20    Atlas Law, and we represent the property owner to the  
21    north, the manufactured home community.   It's called  
22    Serendipity, and it's owned and operated by a company  
23    named Sun Communities.   Brandon George from Sun  
24    Communities is here, as well.

25          There are a lot of questions we had had about the

1 development so we appreciate the opportunity to attend  
2 this. A lot of them were answered in the presentation,  
3 but we had a couple things that we wanted the Hearing  
4 Examiner and the Applicant to consider, as well.

5 First and foremost, we do not contest that the  
6 public comment hearing was held as required, but I  
7 think there was no direct communication thus far  
8 between the property owners and the Applicant and the  
9 northern property owners. So I think going forward we  
10 would like to improve that, and I think in talking to  
11 the Applicant and their staff, we have opened the lines  
12 of communication and hope to keep them open.

13 The first concern that we had was drainage, as did  
14 the Hearing Examiner, and a lot of that was addressed  
15 very well by Sam. I think I can say personally that I  
16 represent a lot of communities, and more and more it  
17 seems that they've been having problems with flooding.  
18 Some homes have been condemned that are in mobile home  
19 parks because the flooding issues have been so bad.  
20 And obviously Lee County knows that better than almost  
21 any other jurisdiction, the issues with flooding and  
22 stormwater.

23 We think, just based on the testimony, that it  
24 appears that the retention pond that is proposed will  
25 hopefully address that. I was maybe confused from my



1 own understanding, but I wasn't sure if the commercial  
2 parcels abutting Diplomat -- and I think they may have  
3 been referred to as CPD 1, 2, and 3. I was confused as  
4 to whether or not those parcels which are now vacant  
5 are being counted into the allotment for the drainage  
6 or --

7 HEARING EXAMINER COLLINS: 1 and 2 only. Parcel  
8 3, his testimony was that they will be responsible for  
9 their own dry retention and lakes.

10 MR. VATALARO: So one concern that we may have is  
11 if CPD 1 and 2 are developed, or they're used for some  
12 other purpose, whether or not there's going to be  
13 adequate drainage on those or if that needs to be  
14 included. And I will defer to the expert on whether --  
15 if those are developed, if that will affect the  
16 drainage in any way as per the current drainage plan.  
17 But those were -- that was just one of the questions  
18 that the property owner to the north had.

19 I believe, if I understood correctly with regard  
20 to the drainage swale to the north, that there was no  
21 planned landscaping in the drainage swale, but that  
22 there would be plantings within the 30-foot buffer,  
23 which is good.

24 One of the other main concerns of the mobile home  
25 park to the north is privacy. We think that the trees

1 will help, but as far as the -- a physical barrier  
2 preventing the movement of noise, as well as  
3 individuals, that's something that we would ask to be  
4 considered. It would be the mobile home park's  
5 preference that some sort of physical barrier -- a  
6 fence, wall, vinyl fence -- be used on that border.

7 And if we look at AG-2 right now, that's a, you  
8 know, storage area for RVs and other types of utility  
9 items. You know, depending on how the landscaping is  
10 cleared around there, it may even be unsightly for the  
11 people that are in this residential development. And  
12 there's a 30-foot buffer behind the new residences, the  
13 apartment buildings that are being planned, but there's  
14 only about a 10-foot buffer between the neighboring  
15 property and the retention pond. So some of our  
16 concerns are, you know, even people moving from the  
17 mobile home park to the retention pond to fish, to do  
18 whatever, or vice versa, the flow of people or sound  
19 going in the other direction.

20 And I think the Hearing Examiner mentioned that  
21 there's an increase in intensity between, you know, the  
22 developments in the two mobile home parks and this, you  
23 know, effectively apartment complex, and they're both  
24 residential but markedly different uses. So we are of  
25 the opinion that a physical barrier or fence may

1 alleviate or, you know, propose some sort of line of  
2 demarcation between, you know, these 60-foot  
3 potentially apartment buildings and, you know, two  
4 mobile home parks with one-story residences throughout  
5 that are kind of closely packed together. And, you  
6 know, depending on how the trees look -- and obviously  
7 there's, you know, hedgerows that are planned, but we  
8 believe that some sort of fencing would be more  
9 beneficial.

10 Also, I know that Serendipity to the north is a  
11 senior living community, 55 plus. I'm not sure about  
12 the mobile home park to the west, although I will say  
13 that demographically it's going to be older  
14 individuals. That's another big difference between the  
15 character of these two uses. Just generally speaking,  
16 you know, the individuals who live in multi-family  
17 apartments trend younger than, obviously, the  
18 individuals that live in the 55 plus community to the  
19 north.

20 So we appreciate the buffer area that's being  
21 provided. We agree with the opinion of the Hearing  
22 Examiner, that that buffer should be incorporated  
23 somewhere in the -- whether it's the ordinance approval  
24 or if it's in the deviations, we would just like that  
25 in writing in the event that, you know, the developer

1 changes their minds or what have you. We want that to  
2 be guaranteed, that, you know, there's going to be that  
3 buffer between these two markedly different residential  
4 uses.

5 And the other questions that we had have already  
6 been answered by the Staff, as well as the Applicant,  
7 so we appreciate that.

8 And with that, I would cede my time, thank you.

9 HEARING EXAMINER COLLINS: Thank you.

10 Brandon George? Good morning, thank you for  
11 coming.

12 MR. GEORGE: Good morning, thank you for allowing  
13 me to speak.

14 Ryan did a great job, you know, communicating our  
15 concerns here. Obviously I just want to reiterate the  
16 55 plus nature. I'm 99 percent sure that the golf  
17 course community that's to the west is 55 plus, as  
18 well. And the concern is obviously for our 338  
19 homesites that are on the north side, that this have  
20 the least amount of impact to them as possible, and  
21 obviously their safety and security are paramount. And  
22 I'm sure this will be a beautiful development when it's  
23 done, but we want to make sure that there is a buffer  
24 that is secured.

25 So no other comments other than that.

1 HEARING EXAMINER COLLINS: Thank you very much.

2 Is there anyone else from the public that's  
3 present that would like to put remarks on the record?

4 I will close public input and come back to Staff  
5 and the Applicant.

6 Do you want to clarify any points that were raised  
7 during the public input? Perhaps explain what a Type B  
8 buffer looks like, the composition of the buffer?

9 MS. HEWITT: Right, yes, the 30-foot Type F buffer  
10 has --

11 HEARING EXAMINER COLLINS: Is it F or B?

12 MS. HEWITT: It's an F on the west side -- and let  
13 me get the conditions.

14 And if I may, one of the concerns that I have with  
15 providing fencing would be any barriers to maintenance  
16 for the flood -- you know, the floodway and the ditches  
17 on the property. I don't know, do you have any  
18 anything to add to that --

19 MR. MARSHALL: I know typically -- sure.

20 MS. HEWITT: Do you want to look at the buffer?

21 MR. MARSHALL: I mean, typically if you're going  
22 to provide any kind of a fence or a wall, the  
23 vegetation is going to be outside of it. That may  
24 force it to be more into the ditch. I don't know.  
25 Again, we have to look at the cross section and look at

1 the buffer, but it -- I mean, you can do gates and  
2 everything for maintenance, but it's certainly easier  
3 if we don't.

4 So we haven't looked that far into it, but I know  
5 it -- again, you're going to put your -- you're going  
6 to put your vegetation on the outside of a fence so I  
7 don't know where the fence would exactly be placed.

8 HEARING EXAMINER COLLINS: Stacy, can you show me  
9 on the plan up here how far the F buffer will go and  
10 then the B buffer?

11 MS. HEWITT: Yes. And just for clarification,  
12 also, the mixed-use overlay doesn't require buffers  
13 unless it's adjacent to single-family lots or adjacent  
14 to a right-of-way. So --

15 HEARING EXAMINER COLLINS: Right, I'm aware.

16 MS. HEWITT: -- right now there's no buffer  
17 allowed (sic) to the north.

18 HEARING EXAMINER COLLINS: There's no required.

19 MS. HEWITT: Correct, but we've carried forward  
20 the enhanced buffer. But the Type F buffer will go  
21 over as far as the residential development is. There's  
22 the 20-foot drainage ditch, then a 30-foot enhanced  
23 buffer that is on the master concept plan and is also  
24 included in Condition 23b that states, "An enhanced  
25 Type F buffer must be provided along the north line

1 west of the lake, as shown on the master concept plan.  
2 This buffer must be 30 feet in width and include 10  
3 native canopy trees per 100 linear feet and a double  
4 hedgerow planted at 48 inches in height at the time of  
5 planting."

6 HEARING EXAMINER COLLINS: And then that drops  
7 down to what along the lake?

8 MS. HEWITT: That drops down to a 10-foot buffer  
9 with -- and I believe that -- let me...

10 HEARING EXAMINER COLLINS: And what makes it an  
11 enhanced F buffer? Are you doing more than an F buffer  
12 requires?

13 MR. DANLEY: Yes, there should be additional  
14 plantings within that.

15 HEARING EXAMINER COLLINS: Okay. And what is the  
16 buffer standard along the lake line?

17 MS. HEWITT: It's a 10-foot buffer with Type B  
18 plantings, which I believe is 5 trees per 100 linear  
19 feet and a hedgerow. I need to -- I apologize, I don't  
20 have that in front of me, but let me pull that up just  
21 to make sure we are clear on the record for what's  
22 proposed there.

23 Do you recall, Dirk, a Type B buffer's  
24 requirements?

25 MR. DANLEY: I don't recall off the top of my

1 head.

2 MS. HEWITT: Okay. Bear with me one moment.

3 MR. DANLEY: The enhanced Type F buffer, just to  
4 read it into the record, is 30 feet with 10 native  
5 canopy trees per 100 linear feet, a double hedgerow  
6 planted at 48 feet at time -- or 48 inches at time of  
7 planting.

8 HEARING EXAMINER COLLINS: And then maintained at  
9 60?

10 MR. DANLEY: That's my understanding, yes.

11 HEARING EXAMINER COLLINS: And that's more than  
12 what a typical F requires?

13 MR. DANLEY: I can pull that up.

14 HEARING EXAMINER COLLINS: Well, good, then you  
15 can pull up the B while you're at it.

16 MS. HEWITT: That's what --

17 MR. DANLEY: Of course.

18 HEARING EXAMINER COLLINS: Yes, that's an anomaly  
19 in the Land Development Code, that they don't require a  
20 buffer along the perimeter of the mixed-use overlay  
21 since there is usually a distinct drop-down in  
22 intensity outside the overlay.

23 MS. HEWITT: Yes, a 10-foot buffer -- a Type B is  
24 a double-staggered hedge and 5 trees per 100 linear  
25 feet, which is what I had thought so --



1 HEARING EXAMINER COLLINS: And then the B is 36  
2 inches on planting for the hedge, maintained at 48?

3 MS. HEWITT: Let's see. Yes, 36 inches, and the  
4 Type F buffers are 48 inches at time of planting.

5 HEARING EXAMINER COLLINS: And then maintained at  
6 60 for F, but maintained at 48 for the B?

7 MS. HEWITT: Correct.

8 HEARING EXAMINER COLLINS: All right. Anything  
9 else? We're going to leave the record open for a Word  
10 version.

11 MS. HEWITT: I believe there was a question about  
12 drainage. Did we properly answer the drainage  
13 question?

14 HEARING EXAMINER COLLINS: Oh, no, why don't we  
15 have Sam get up and --

16 MR. MARSHALL: Sure.

17 HEARING EXAMINER COLLINS: -- go through that  
18 again.

19 MR. MARSHALL: Right.

20 HEARING EXAMINER COLLINS: Because I think he  
21 misunderstood about the --

22 MR. MARSHALL: That's okay.

23 HEARING EXAMINER COLLINS: -- parcels 1 and 2.

24 MR. MARSHALL: Sure. So parcels 1 and 2 in our  
25 drainage calculations -- we are presuming a pretty high

1 amount of impervious for parcels 1 and 2, so we're  
2 going to ensure that when those two develop out, that  
3 the lake that's proposed on this property has the  
4 capacity to treat their water biometrically and from a  
5 water quality standpoint.

6 HEARING EXAMINER COLLINS: So it's only parcel 3  
7 that's on its own in terms of its water management  
8 system?

9 MR. MARSHALL: Yes, parcel 3 -- but they will  
10 outflow through us. So we're basically allowing for  
11 their flow to flow through. We're giving them an  
12 outfall. It was part of the original older permitting  
13 effort, was to give them a path for their water to get  
14 to the ditch. So we are providing a stub, a physical  
15 stub -- a pipe or a box -- for that parcel to tie into.  
16 But they -- we don't know what they're proposing for a  
17 design, we don't know their impervious, but they'll be  
18 on their own for --

19 HEARING EXAMINER COLLINS: Would you agree that  
20 accommodating the floodway will also be an enhancement  
21 to the flow of water to the properties to the north?

22 MR. MARSHALL: Without a doubt, yes, it will  
23 absolutely be an enhancement to everybody in the north,  
24 yes.

25 HEARING EXAMINER COLLINS: Increasing storage

1 capacity and flow?

2 MR. MARSHALL: It will -- yes, it will increase  
3 both storage capacity and flowability. I won't say it  
4 will solve drainage problems, but it certainly will not  
5 exacerbate any, and it should incrementally help --  
6 help any solution, yes.

7 HEARING EXAMINER COLLINS: It has to be an  
8 improvement over the prior plan that showed  
9 obstructions within it.

10 MR. MARSHALL: It's significantly wider, yes.

11 HEARING EXAMINER COLLINS: Okay, thank you.

12 MR. MARSHALL: You're welcome.

13 MS. HEWITT: The only -- Stacy Hewitt for the  
14 record.

15 Additionally, we're required, as part of the  
16 conditions, to remove the exotics from the floodway,  
17 which should help, as well. And we're going to  
18 maintain the native vegetation within it, but exotics  
19 will be removed.

20 HEARING EXAMINER COLLINS: So if that's all we  
21 have for testimony in the record, I'd just like to go  
22 through the conditions real quick.

23 The only language that will be in the  
24 recommendation is language shown in red underscore; is  
25 that correct?

1 MS. HEWITT: That is correct. The only changes --  
2 you mean as far as -- the red is what's proposed as  
3 revisions is our -- the strike-throughs were not in  
4 red, but the proposed language is in red and  
5 underlined.

6 HEARING EXAMINER COLLINS: All right. So then we  
7 get to the schedule of uses, and green is proposed for  
8 addition?

9 MS. HEWITT: Green is -- if you look at the top of  
10 the page, each page has kind of a codification of where  
11 that language came from.

12 HEARING EXAMINER COLLINS: Okay, I see.

13 Okay. So we're including property development  
14 regulations for townhouse even though this product is  
15 probably going to be multi-family?

16 MS. HEWITT: These were maintained because of that  
17 existing development order and the other master concept  
18 plan. And on -- on page 8 and 9, that is where --  
19 that's for the south RPD, and that was the  
20 clarification that had been done in the ADD2007-00169  
21 but was lost in the Z-11-002. So we are proposing to  
22 put that back in consistent --

23 HEARING EXAMINER COLLINS: Okay. So the RPD north  
24 of Diplomat Parkway -- and I'm on page 11 now -- that  
25 is what is Diplomat House, but this project is not now

1 Diplomat House. It's the Diplomat RPD/CPD that's going  
2 to continue forward.

3 MS. HEWITT: Correct.

4 HEARING EXAMINER COLLINS: Okay.

5 MS. HEWITT: And that additional language about  
6 the north CPD was just added to make sure that it's  
7 clear we're including that property.

8 HEARING EXAMINER COLLINS: Yeah.

9 Okay. The concurrency condition will probably  
10 come out. That's covered by the Land Development Code  
11 already.

12 The no agricultural uses approved, that's going to  
13 come out. It's not on the list of permitted uses, and  
14 we don't have a condition allowing it to continue.

15 Doesn't the Code require all required buffers have  
16 native vegetation now?

17 MR. DANLEY: Sorry, can you ask that question  
18 again?

19 HEARING EXAMINER COLLINS: The Lee Plan, 126.2.1,  
20 I think, requires all required buffers to have native  
21 vegetation, I think. Isn't that also in the Land  
22 Development Code?

23 MR. DANLEY: Uh-huh.

24 HEARING EXAMINER COLLINS: So can we delete that  
25 condition?

1 MR. DANLEY: Let me -- keep going, and I'll  
2 confirm that.

3 HEARING EXAMINER COLLINS: Okay.

4 MR. DANLEY: I thought it was 75 percent, but I --

5 MS. HEWITT: That's what I'm looking...

6 HEARING EXAMINER COLLINS: Oh, traffic condition  
7 can go out. That's covered by the Land Development  
8 Code.

9 The Lee Plan condition can come out. That's  
10 covered by the Land Development Code.

11 Accessory uses, that's also covered by the Land  
12 Development Code. This is an old --

13 MS. HEWITT: (Nods head.)

14 HEARING EXAMINER COLLINS: Yeah.

15 I will probably delete Condition 19 and move that  
16 text to the very front, Condition 1.

17 MS. HEWITT: Yes.

18 HEARING EXAMINER COLLINS: Okay. And then all the  
19 deviations, old and new -- 9 and 10 are new.

20 Okay. When I go through and I put this all  
21 together, and I check out all the moving pieces, if  
22 something's missing, I may make a request for a  
23 post-hearing submittal. Hopefully we won't have to  
24 reopen the hearing on it. I just want to make sure we  
25 can get this as clean as possible.

1 Dirk, I can leave that condition in. It's just  
2 that I thought that was already required by Code.

3 MR. DANLEY: Okay. I know that certain areas --  
4 just reading from the Code now, certain areas do  
5 require 100 percent, but I believe that the Code says  
6 75 percent.

7 HEARING EXAMINER COLLINS: Okay. Well, then I'll  
8 leave that condition in.

9 All right, very good.

10 MS. HEWITT: If I can, just for right now, the  
11 overall RPD/CPD, I don't think it's like an attachment  
12 to the Staff Report, per se. It's just attached to one  
13 of the zoning resolutions. If you want me to submit  
14 one for -- it's the same thing. I don't know if you  
15 need one submitted for the record or --

16 HEARING EXAMINER COLLINS: What is it?

17 MS. HEWITT: The legal description for the  
18 RPD/CPD.

19 HEARING EXAMINER COLLINS: Yes, I do need that.

20 MS. HEWITT: Right. It's in the record, but I  
21 don't think it's by itself.

22 MR. DANLEY: I don't believe so.

23 MS. HEWITT: Excuse the hole punches.

24 (Applicant Exhibit 3 submitted.)

25 HEARING EXAMINER COLLINS: That will be Applicant

1 Exhibit 3, thank you.

2 MS. HEWITT: Thank you.

3 HEARING EXAMINER COLLINS: Oh, same engineering  
4 firm. That makes it easy.

5 Is there anything further we need to consider this  
6 morning?

7 Thank you, everyone, for clarifying what was not  
8 clear to me before. I appreciate the effort.

9 It's going to take me a little while to get this  
10 recommendation out. The Board's on break for the next  
11 month, so hopefully I can get it done so that you can  
12 be heard sometime in August, probably not the first  
13 date but maybe the second hearing in August.

14 MS. HEWITT: Okay.

15 HEARING EXAMINER COLLINS: All right.

16 MS. HEWITT: I do have one other question, just to  
17 clarify. There was a lot of discussion and moving  
18 parts with the RPD/CPD situation and the master concept  
19 plan. I just want to make sure, if there is anything  
20 needed submitted, just to make sure -- because I can  
21 turn around any revisions, you know, pretty darn quick.  
22 But the question -- the one question I'm having is the  
23 master concept plan, we amended it as part of the  
24 48-hour notice to -- I believe to show --

25 MR. DANLEY: There is a hash line --



1 MS. HEWITT: It's just a line calling it out, but  
2 I just don't want --

3 HEARING EXAMINER COLLINS: I will clarify that in  
4 the recommendation and somewhere in the condition --

5 MS. HEWITT: Okay.

6 HEARING EXAMINER COLLINS: -- if possible.

7 Otherwise, I mean --

8 MS. HEWITT: You don't need it. I just wanted to  
9 make sure that we talked about it because --

10 HEARING EXAMINER COLLINS: Let me see how it all  
11 lays out.

12 MS. HEWITT: Okay.

13 HEARING EXAMINER COLLINS: It's --

14 MS. HEWITT: Okay, that sounds good.

15 And I do -- the flash drive has those Word  
16 documents, if I can get those to you.

17 HEARING EXAMINER COLLINS: And I don't anticipate  
18 there being an issue with this. It sounds like it's  
19 going to create less impacts. I recognize that the  
20 offer of the buffer along the north boundary is more  
21 than Code, and certainly on the west boundary. I don't  
22 really see that as an issue that's going to impact this  
23 in any way. And emergency access addresses any concern  
24 I might have with that deviation.

25 So it's just going to take me time to get

1 everything like in order, and I'm taking vacation next  
2 month.

3 MS. HEWITT: Good for you.

4 HEARING EXAMINER COLLINS: Okay right, thank you.

5 MS. HEWITT: Thank you very much.

6 (Proceedings concluded at 11:02 a.m.)  
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## CERTIFICATE OF REPORTER

STATE OF FLORIDA )

COUNTY OF LEE )

I, Deborah M. Bruns, Florida Professional Reporter, do hereby certify that I was authorized to and did report the foregoing proceedings, and that the transcript, pages 1 through 90, is a true and correct record of my stenographic notes.

Dated this 28th day of June, 2024.



Deborah M. Bruns, FPR

(This transcript was electronically signed.)

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